

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL PETITION No.906 OF 2023

ORDER:

1. This Criminal Petition is filed to quash the proceedings against the petitioner/Accused No.16 in S.C.NDPS.No.222 of 2022 on the file of I Additional Metropolitan Sessions Judge, Hyderabad.

2. The S.R.Nagar Police investigated the compliant which was made on 11.07.2022 stating that a trap was laid on the basis of information at KCR Classic Apartments, Madhura Nagar, S.R.Nagar, Hyderabad. The police personnel have taken vantage positions near the area and found that some persons gathered and there was exchange of articles in between one another. On seeing the police, the persons tried to escape, however, they were apprehended and were found in possession of MDMA Drug. The said persons identified themselves who are now arrayed as A1 to A6. Due procedure was followed by the police before searching them and thereafter, the MDMA drug found in their possession was seized. It was further found that A1 to A6 were procuring drugs from various sources and selling them to customers/consumers. During the course of investigation, it was

found that this petitioner was one of the 'consumers' who purchased MDMA drug for the purpose of consumption.

3. The police, having concluded investigation filed charge sheet for the offences under Sections 8(C) r/w 22(C), 27 of NDPS Act, 1985 (for short 'the Act').

4. Learned counsel appearing for the petitioner would submit that even according to the prosecution case, he was not involved in drug trafficking or peddling, however, he is identified as one of the consumer on the basis of investigation. He further submits that the petitioner had undergone counseling and other therapy sessions in Asha Hospital as a patient with ID No.205342. After the petitioner had undergone counseling and the therapy sessions, the Asha Hospital authorities i.e., Consultant Psychiatrists namely K.Chaitanya Laxmi Reddy and Dr.Sandeep Kodepi certified that this petitioner was duly screened for substance of abuse on 22.12.2022 to 13.01.2023 which yielded negative result. In the said circumstances, this Court under inherent powers quash the proceedings against the petitioner invoking the provisions under Section 64-A of the Act.

5. At the stage of admission, this Court directed the learned Additional Public Prosecutor to get instructions regarding the correctness of the certificate filed by the petitioner issued by Asha Hospital on 30.01.2023. On instructions, the learned Additional Public Prosecutor would submit that the petitioner had undergone therapy sessions and the contents of the certificate produced by the petitioner before this Court are correct.

6. Section 64 of the Act empowers the Central Government or the State Government to grant immunity to any person who is directly or indirectly privy to violation of any of the penal provisions of NDPS Act, with a view to obtaining his evidence for prosecuting the accused in a case. Section 64 of the Act is similar to Section 306 of Cr.P.C whereby a Court can tender pardon. However it is the state or central government that is competent to grant immunity under section 64.

7. Section 64-A of the Act was substituted by Act 9 of 2001 with effect from 02.10.2001 for the purpose of granting immunity to addicts. Section 64-A of the Act is extracted for the sake of convenience:

“64A. Immunity from prosecution to addicts volunteering for treatment.—Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction.”

8. Section 64-A of the Act was introduced but there is no mention about the authority, by whom such immunity can be granted from prosecution to the addicts volunteering for treatment. The Legislature had deemed it fit to introduce the provision under Section 64-A of the Act to grant immunity to persons who are addicted to drugs and not in any way involved either with peddling or sale of drugs. In the absence of any specification regarding the authority or the procedure to grant immunity from prosecution to the addicts volunteering treatment, this Court under the inherent powers can quash the proceedings by granting immunity from prosecution considering the facts and circumstances in a given case. In similar circumstances, the High Court of Madras in the case of **Sanjiv Bhatnagar v. State, represented by its Intelligence Officer** (2016 SCC OnLine

Mad 33796) and also in the case of **Anish Kumar Dundoo v. State of Telangana** (2021 SCC OnLine TS 2195) invoked the provision under Section 482 of Cr.P.C for grant of immunity from prosecution.

9. Since the certificate produced by the petitioner reveals that this petitioner had attended psychosocial counseling and also other therapy sessions over a period in Asha Hospital and when it is stated that substance of abuse on 22.12.2022 and 13.01.2023 yielded negative result, this Court deems it appropriate to quash the proceedings against the petitioner by granting immunity.

10. In the result, the proceedings against the petitioner in S.C.NDPS.No.222 of 2022 on the file of I Additional Metropolitan Sessions Judge, Hyderabad, are hereby quashed.

11. Criminal Petition is allowed. Consequently, miscellaneous petitions, if any, shall stand disposed.

K.SURENDER, J

Date: 09.03.2023
kvs

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