

Reserved on : 18.07.2024
Pronounced on : 31.08.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.13943 OF 2024 (GM-RES)

BETWEEN:

MR. R.GOPAL REDDY
AGED ABOUT 68 YEARS
S/O RAMAREDDY K.,
RESIDING AT NO.62
SWAPNA SADANA
5TH 'A' CROSS, 16TH MAIN
NEAR METROPOLITAN CLUB
BTM LAYOUT, 2ND STAGE
BANNERGHATTA ROAD
BENGALURU - 560 076.

... PETITIONER

(BY SRI PRABHULING K.NAVADGI, SR. ADVOCATE FOR
SMT. SANJEEVINI NAVADGI, ADVOCATE)

AND:

1 . MR. MOHAMMED MUKARAM
POLICE INSPECTOR
AGED ABOUT 45 YEARS
BY CCB POLICE, N.T.PETE
BENGALURU CITY

REPRESENTED BY ITS SPP
HIGH COURT BUILDING
BENGALURU – 560 001.

- 2 . THE STATE OF KARNATAKA
BY ITS STATION HOUSE OFFICER
HEBBAGODI POLICE STATION
REPRESENTED BY ITS SPP
HIGH COURT BUILDING
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI THEJESH P., HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR DTD. 21.05.2024 REGISTERED BY THE RESPONDENT HEBBAGODI POLICE IN CR.NO.0329/24 FOR THE OFFENCES PUNISHABLE UNDER SECTION 8(c), 22, 25, 27(a) AND 27(b) OF THE NDPS ACT, 1985 AND UNDER SECTIONS 290 AND 294 OF THE IPC AND THE COMPLAINT DTD. 20.05.2024 HEREIN PRODUCED AT ANNEX-A AND B RESPECTIVELY IN SO FAR AS THE PETITIONER IS CONCERNED.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioner is before this Court calling in question registration of a crime in Crime No. 329 of 2024 for offences punishable under Sections 8(c), 22(b), 22(C), 22(A), 27(B), 25, 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act' for short) and Sections 290 and 294 of the IPC.

2. Heard Sri Prabhuling K.Navadgi, learned senior counsel appearing for the petitioner and Sri P.Thejesh, learned High Court Government Pleader appearing for the respondents.

3. The facts, in brief, germane are as follows:-

The story in the case at hand would commence from 16-05-2024 in terms of what is averred in the petition. One M/s Victory ('the Company' for short), an event management Company enquires about the property of the petitioner and makes a payment of ₹1,10,000/- to the property manager towards renting out the property for an event of one person by name Vasu for the celebration of his birthday. On 19-05-2024 the Company put up

invitation titling "Vasu's birthday – Sunset to Sunrise Victory". In the wee hours of 20-05-2024, on receipt of credible information that drugs were freely distributed in the said premises, Police conducted a search, which results in seizure of several narcotic drugs and psychotropic substances. The seizure panchanama included drugs like Ganja, MDMA pills, Cocaine, Hydro-ganga and other psychotropic substances. The premises was sealed, most of the persons tested positive towards consumption of drugs. The petitioner is roped in as accused No.6. The reason for the petitioner being roped in is that the property stands in his name. Therefore, he is also guilty of offence punishable under Section 27B of the Act. Registering the crime against the petitioner is what has driven him to this Court in the subject petition.

4. The learned senior counsel Sri Prabhuling K.Navadgi would contend that the petitioner is 68 years old residing elsewhere. It is the property managed by the property manager and he is sitting elsewhere being not even aware who takes the property and does what. He would submit that Section 25 of the Act is a complete answer to the allegation against the petitioner, as Section 25

mandates knowledge of the owner of the premises of it being used for distribution of drugs. On the said score, he seeks quashment of proceedings *qua* the petitioner.

5. Per contra, the learned High Court Government Pleader would contend that whether the petitioner has the knowledge or not is a matter of trial. He cannot escape the clutches of law, as the investigation is still pending. With regard to the role of the petitioner in the entire episode of crime, he would contend that if proceedings are quashed, at this juncture against the petitioner, it would be a premium on the activities of the petitioner for letting his premises to be used for the activities as alleged. He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. Events that happened on 19-05-2024 through 20-05-2024 led to the subject

crime. The seizure panchanama insofar as the present petitioner is concerned reads as follows:

“....ಈ ದಿನ ನನ್ನ ಬರ್ತಡೇ ಇದ್ದುದರಿಂದ ನನ್ನ ಫ್ಯಾಮಿಲಿ ಫ್ರೆಂಡ್ ಆಗಿರುವ ಗೋಪಾಲರೆಡ್ಡಿರವರನ್ನು ಸಂಪರ್ಕಿಸಿ ಅವರಿಗೆ ನಾನು ಈ ದಿನ ನನ್ನ ಬರ್ತಡೆ ಪಾರ್ಟಿ ಇರುವುದರಿಂದ ತಮ್ಮ ಜಿ.ಆರ್ ಫಾರಂ ಹೌಸ್‌ನ್ನು ಉಪಯೋಗಿಸಿಕೊಳ್ಳಲು ಕೇಳಿಕೊಂಡಾಗ ಆಯ್ತು ಎಂದು ತಿಳಿಸಿದರು. ಅದರಂತೆ ನನ್ನ ತಮ್ಮನಾದ ಅರುಣ್‌ರವರಿಗೆ ಜಿ.ಆರ್ ಫಾರಂ ಮಾಲೀಕರು ನನ್ನ ಬರ್ತಡೆಗೆ ಫಾರ್ಮ್ ಹೌಸ್ ಅನ್ನು ಉಪಯೋಗಿಸಿಕೊಳ್ಳಲು ಅನುಮತಿ ನೀಡಿರುವುದರಿಂದ ನನ್ನ ಬರ್ತಡೆಗೆ ತಮ್ಮನಿಗೆ ಎಲ್ಲಾ ಆರೆಂಜ್‌ಮೆಂಟ್ ಮಾಡಲು ಹೇಳಿದೆ. ಅದರಂತೆ ಅರುಣ್‌ರವರು ಎಲ್ಲಾ ಆರೆಂಜ್‌ಮೆಂಟ್ ಮಾಡಿದರು. ನಂತರ ತನಿಖಾಧಿಕಾರಿಗಳು ಪಾರ್ಟಿಯಲ್ಲಿ ಮಾದಕ ವಸ್ತುಗಳ ಸೇವನೆ ಬಗ್ಗೆ ಕೇಳಲಾಗಿ, ಸದರಿ ವಾಸುರವರು ಈ ಪಾರ್ಟಿಗೆ ಬಂದಿರುವ ನನ್ನ ಸ್ನೇಹಿತರಾದ 1) ನಾಗಬಾಬು, 2)ರಣದೀರ್‌ಬಾಬು ಮತ್ತು 3) ಸಿದ್ದಿಕೃಷ್ಣರವರುಗಳು ಮಾದಕ ವಸ್ತುಗಳನ್ನು ಪಾರ್ಟಿಗೆ ತಂದಿರುತ್ತಾರೆ. ಮತ್ತು ಪಾರ್ಟಿಯಲ್ಲಿ ಎಲ್ಲರಿಗೂ ಡ್ರಗ್ಸ್‌ನ್ನು ಸೇವನೆ ಮಾಡಲು ಸರಬರಾಜು ಮಾಡಿರುತ್ತಾರೆ. ಈ ಪಾರ್ಟಿಯಲ್ಲಿ ಡ್ರಗ್ಸ್ ಸೇವೆ ಮಾಡುವ ಬಗ್ಗೆ ಮಾಲೀಕರಾದ ಶ್ರೀ ಗೋಪಾಲರೆಡ್ಡಿರವರಿಗೆ ಮಾಹಿತಿ ಇರುವುದಿಲ್ಲವೆಂದು ತಿಳಿಸಿದನು....”

It is the case of the person himself, who searched, that the petitioner is not in the know of things. No person has pointed out a finger at the petitioner as to the knowledge of consumption or distribution of drugs on the said date in the said premises. The petitioner is roped in, after a *suo motu* complaint found registered by the jurisdictional police. The complaint reads as follows:

“ರವರಿಗೆ,
ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್,
ಎಲೆಕ್ಟ್ರಾನಿಕ್ ಸಿಟಿ ಪೊಲೀಸ್ ಠಾಣೆ,
ಬೆಂಗಳೂರು ನಗರ.

ಯಿಂದ

ಮೊಹಮ್ಮದ್ ಮುಕರಮ್
ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್,
ಮಾಧಕದ್ರವ್ಯ ನಿಗ್ರಹ ದಳ

ಸಿಸಿಬಿ, ಬೆಂಗಳೂರು ನಗರ.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಜಿ.ಆರ್ ಫಾರ್ಮ್ ಎಲೆಕ್ಟ್ರಾನಿಕ್ ಸಿಟಿ, ಬೆಂಗಳೂರು ಫಾರಂ ಹೌಸ್‌ನಲ್ಲಿ
ಮಾಧಕವಸ್ತು ಮಾರಾಟ ಹಾಗೂ ಸೇವನೆ ಮಾಡಿಕೊಂಡು ರೇವ್
ಪಾರ್ಟಿ ಮಾಡುತ್ತಿರುವ ಬಗ್ಗೆ ದೂರು.

ಈ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ನಾನು ಮಾಧಕದ್ರವ್ಯ ನಿಗ್ರಹ ದಳ, ಸಿಸಿಬಿ
ವಿಭಾಗದಲ್ಲಿ ಪಿಐ-1 ಆಗಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸಿಕೊಂಡಿರುತ್ತೇನೆ. ಈ ದಿನ ದಿನಾಂಕ 19-05-2024
ರಂದು ರಾತ್ರಿ ಸುಮಾರು 11-30 ಗಂಟೆಗೆ ನನ್ನ ಭಾತೀದಾರರಿಂದ ಬಂದ ಭಾತೀ ಏನೆಂದರೆ
ಎಲೆಕ್ಟ್ರಾನಿಕ್ ಸಿಟಿ ವ್ಯಾಪ್ತಿಯಲ್ಲಿರುವ ಜಿ.ಆರ್.ಫಾರ್ಮ್ ನಲ್ಲಿ "VASU'S BIRTHDAY" ಎಂಬ
ಶೀರ್ಷಿಕೆ ಅಡಿಯಲ್ಲಿ **Sunset to Sun Rise Victory** ಎಂಬುದಾಗಿ ದಿನಾಂಕ 19-05-
2024 ರಂದು 05-00 PM Onwards ಎಂದು ರೇವ್‌ಪಾರ್ಟಿಯ ಸಮಾರಂಭವನ್ನು
ಏರ್ಪಡಿಸಿಕೊಂಡು ರಾತ್ರಿ ಅವೇಳೆಯಾದ ನಂತರವು ಸಹ ಮಾಧಕವಸ್ತು ಮಾರಾಟ ಹಾಗೂ ಸೇವನೆ
ಮಾಡಿಕೊಂಡು ರೇವ್ ಪಾರ್ಟಿ ಮಾಡುತ್ತಾ ಸಾರ್ವಜನಿಕರ ನೆಮ್ಮದಿಗೆ ಮತ್ತು ಶಾಂತತೆಗೆ ಭಂಗ
ತರುತ್ತಿರುತ್ತಾರೆಂದು ಮಾಹಿತಿ ಬಂದಿರುತ್ತದೆ. ಸದರಿ ರೇವ್ ಪಾರ್ಟಿಯಲ್ಲಿ ಸುಮಾರು 100 ರಿಂದ 150
ಜನ ಹುಡುಗ ಮತ್ತು ಹುಡುಗಿಯರು ಜಮಾವಣೆಗೊಂಡು ಪಾರ್ಟಿಯಲ್ಲಿ ರಾಜಾರೋಷವಾಗಿ
ಎಂ.ಡಿ.ಎಂ.ಎ ಪಿಲ್ಸ್, ಕೊಕೇನ್, ಹೈಡ್ರೋಗಾಂಜಾ ಹಾಗೂ ಇತರೆ ಮಾಧಕ ವಸ್ತುಗಳನ್ನು ಸೇವನೆ
ಹಾಗೂ ಮಾರಾಟ ಮಾಡುತ್ತಿರುವುದಾಗಿ ಭಾತೀಯನ್ನು ಸ್ವೀಕರಿಸಿದ್ದು ಸದರಿ ಭಾತೀಯನ್ನು ಹಿರಿಯ
ಅಧಿಕಾರಿಗಳಾದ ಮಾನ್ಯ ಡಿಸಿಪಿ ಮತ್ತು ಎಸಿಪಿ ಸಾಹೇಬರಿಗೆ ದೂರವಾಣಿ ಮೂಲಕ ತಿಳಿಸಿರುತ್ತೇನೆ.
ಮಾನ್ಯ ಹಿರಿಯ ಅಧಿಕಾರಿಗಳು ತಕ್ಷಣ ಸಮಯ ವಿಳಂಬ ಮಾಡದೇ ಎಲೆಕ್ಟ್ರಾನಿಕ್ ಸಿಟಿ ಪೊಲೀಸ್
ಠಾಣೆಯಲ್ಲಿ ದೂರನ್ನು ದಾಖಲಿಸಿಕೊಂಡು ಮುಂದಿನ ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ಸೂಚಿಸಿದ ಮೇರೆಗೆ ದಳದ
ಇತರೆ ಅಧಿಕಾರಿ ಮತ್ತು ಸಿಬ್ಬಂದಿಗಳನ್ನು ಎಲೆಕ್ಟ್ರಾನಿಕ್ ಸಿಟಿ ಪೊಲೀಸ್ ಠಾಣೆಯ ಬಳಿ ಬರಲು
ಸೂಚಿಸಿರುತ್ತೇನೆ.

ಆದ್ದರಿಂದ ಜಿ.ಆರ್.ಫಾರ್ಮ್‌ನಲ್ಲಿ "VASU'S BIRTHDAY" ಎಂಬ ಶೀರ್ಷಿಕೆ
ಅಡಿಯಲ್ಲಿ ಎಂದು ದಿನಾಂಕ 19-05-2024 ರಂದು 05-00 PM Onwards ಎಂದು
ಸಮಾರಂಭವನ್ನು ಏರ್ಪಡಿಸಿಕೊಂಡು ರಾತ್ರಿ ಅವೇಳೆಯಾದ ನಂತರವು ಸಹ ಮಾಧಕವಸ್ತು ಮಾರಾಟ
ಹಾಗೂ ಸೇವನೆ ಮಾಡಿಕೊಂಡು ರೇವ್ ಪಾರ್ಟಿ ಮಾಡುತ್ತಾ ಸಾರ್ವಜನಿಕರ ನೆಮ್ಮದಿಗೆ ಮತ್ತು
ಶಾಂತತೆಗೆ ಭಂಗ ಉಂಟುಮಾಡಿರುವ ರೇವ್ ಪಾರ್ಟಿಯ ಆಯೋಜಕರ ವಿರುದ್ಧ ಹಾಗೂ ಸದರಿ
ರೇವ್ ಪಾರ್ಟಿಯನ್ನು ನಡೆಸಲು ಅವಕಾಶ ಮಾಡಿಕೊಟ್ಟಿರುವ ಜಿ.ಆರ್.ಫಾರ್ಮ್ ಮಾಲೀಕರ ವಿರುದ್ಧ
ಮತ್ತು ಮಾಧಕವಸ್ತು ಸೇವನೆ ಮತ್ತು ಮಾರಾಟ ಮಾಡುತ್ತಿರುವ ವ್ಯಕ್ತಿಗಳ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ
ಕೈಗೊಳ್ಳಲು ಈ ಮೂಲಕ ಕೋರಿಕೊಂಡಿರುತ್ತದೆ ಮತ್ತು ಈ ದೂರಿನೊಂದಿಗೆ ಕಾರ್ಯಕ್ರಮದ ಭಿತ್ತಿಪತ್ರದ
ಪ್ರತಿಯನ್ನು ಲಗತ್ತಿಸಿರುತ್ತದೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,

ತಮ್ಮ ವಿಶ್ವಾಸಿ.

ಸಹಿ/- 20/5/24

[ಮೊಹಮ್ಮದ್ ಮುಕರಮ್]
ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್,
ಮಾಧಕದ್ರವ್ಯ ನಿಗ್ರಹ ದಳ,
ಸಿಸಿಬಿ, ಬೆಂಗಳೂರು ನಗರ.”

It is then the petitioner is issued a notice under Section 41A of the Cr.P.C., to appear before the Investigating Officer. It is the averment in the petition that it is then the petitioner comes to know about what has happened in the premises. It would not, on the face of it, become believable that the petitioner is not aware of what happened on 20-05-2024 as, a notice was issued on 23-05-2024 but what merits consideration is, whether the provisions of the Act would get attracted *qua* the petitioner. To consider the said issue, it becomes germane to notice Section 25 of the Act. Section 25 of the Act reads as follows:

“25. Punishment for allowing premises, etc., to be used for commission of an offence.—Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.”

(Emphasis supplied)

Section 25 deals with punishment for allowing the premises to be used for commission of offence. It observes that whoever, being the owner or occupier knowingly permits it to be used for

commission of the offence would become punishable. This is the only allegation against the petitioner. Interpretation of Section 25 need not detain this Court for long or delve deep into the matter.

8. The Apex Court in the case of **BHOLA SINGH v. STATE OF PUNJAB**¹ has held as follows:

"....

5. *We have gone through the judgment of the trial court and the High Court insofar as Bhola Singh is concerned. We see that he was not present at the spot and the allegation against him is that he was the co-owner of the truck and that while purchasing the truck he had given his residential address in Rajasthan whereas he was a resident of Haryana. The High Court has accordingly drawn a presumption under Section 35 of the Act against him to hold that by giving a fake address his culpability was writ large on the facts of the case.*

6. *Mr T.N. Razdan, the learned counsel for the appellant has raised only one argument before us during the course of the hearing. He has pointed out that there was no evidence that the appellant had been involved in the smuggling of contraband and even if the prosecution story that he was the co-owner of the truck and had given a wrong address while purchasing the truck was correct, these factors could not fasten him with any liability under Sections 15 and 25 of the Act. He has also submitted that the "culpable mental state" and the conditions for the applicability of Section 35 of the Act were not made out.*

7. *Mr Kuldip Singh, the learned counsel for the State of Punjab, has however supported the judgment of the trial court. We, however, repeatedly asked the learned counsel as to whether there was any evidence as to the involvement of the appellant, other than that he was the co-owner of the truck and*

¹ (2011) 11 SCC 653

that he had given a wrong address. The learned counsel fairly stated that there was no other evidence against the appellant.

8. We have considered the arguments advanced by the learned counsel. We see that Section 25 of the Act would not be applicable in the present case as there is no evidence to indicate that Bhola Singh, the appellant had either knowingly permitted the use of the vehicle for any improper purpose. The sine qua non for the applicability of Section 25 of the Act is thus not made out.

9. The High Court has however drawn a presumption against the appellant under Section 35 of the Act. This provision is reproduced below:

"35.Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section 'culpable mental state' includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

10. While dealing with the question of possession in terms of Section 54 of the Act and the presumption raised under Section 35, this Court in Noor Aga v. State of Punjab [(2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748] while upholding the constitutional validity of Section 35 observed that as this section imposed a heavy reverse burden on an accused, the condition for the applicability of this and other related sections would have to be spelt out on facts and it was only after the prosecution had discharged the initial burden to prove the foundational facts that Section 35 would come into play.

11. Applying the facts of the present case to the cited one, it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting narcotics still lay on the prosecution, as would be clear from the word "knowingly", and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn. The only evidence which the prosecution seeks to rely on is the appellant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana while registering the offending truck cannot by any stretch of imagination fasten him with the knowledge of its misuse by the driver and others.

12. We accordingly allow the appeal, set aside the judgments of the courts below and order the appellant's acquittal. His bail bonds shall stand discharged."

(Emphasis supplied)

The Apex Court, later, in the case of **HARBHAJAN SINGH v. STATE OF HARYANA**² following the judgment in the case of **BHOLA SINGH** and has held as follows:

"...."

3. Brief argument raised by the learned counsel for the appellant is that Section 25 of the NDPS Act provides that an owner of the vehicle could be convicted only if he

² 2023 SCC OnLine SC 490

knowingly permits use of his vehicle for commission of any offence. No such case was made out by the prosecution. Even the presumption as provided for in Section 35 of the NDPS Act cannot be raised as the prosecution had failed to discharge its initial burden of proving the foundational facts. In the statement of the Appellant as recorded under Section 313 of the Criminal Procedure Code, 1973, it was submitted that he had given the truck on hire to one Kashmir Singh s/o Hoshiyar Singh resident of Dalel Singhwala for carrying sand. The Appellant was not arrested from the spot. The driver and cleaner of the truck have already been acquitted and the State has not filed any appeal challenging their acquittal. In support of his arguments, learned counsel for the Appellant has relied upon the judgments of this Court in *Balwinder Singh v. Asstt. Commr., Customs and Central Excise, State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu v. Rajangam*², *Bhola Singh v. State of Punjab* and *Gangadhar alias Gangaram v. State of Madhya Pradesh*.

4. On the other hand, learned counsel for the State submitted that the Appellant has failed to prove its case that the truck was not being used for any illegal activities. The owner of the truck is vicariously liable. Though stand was taken by him that the truck was given for carrying sand however no such evidence was led by him to prove his plea. Presumption goes against him.

5. Heard learned counsel for the parties and perused the relevant referred record.

6. **The basic facts of the case as have been noticed above are not in dispute. The Appellant who is the registered owner of the truck was not arrested from the spot. A case was set up by the prosecution that Joginder Singh and Gurmail Singh were driver and cleaner of the truck. Even they were not arrested from the spot. Their identity was established on the basis of the information furnished to the police party by Ram Sarup (PW-6) and Naresh Kumar (PW-10). However, when appeared in Court, they were declared hostile. Joginder Singh and Gurmail Singh were acquitted. The Appellant is owner of the truck. He was not arrested from the spot.**

Section 25 of the NDPS Act provides that if an owner of a vehicle knowingly permits it to be used for commission of any offence punishable under the NDPS Act, he shall be punished accordingly.

7. In the case in hand, the prosecution has failed to produce any material on record to show that the vehicle in question, if was used for any illegal activity, was used with the knowledge and consent of the Appellant. Even presumption as provided for under Section 35 of the NDPS Act will not be available for the reason that the prosecution had failed to discharge initial burden on it to prove the foundational facts. In the absence thereof, the onus will not shift on the accused.

8. The issue was considered by this Court in Bhola Singh's case (supra). It was opined that unless the vehicle is used with the knowledge and consent of the owner thereof, which is sine qua non for applicability of Section 25 of the NDPS Act, conviction thereunder cannot be legally sustained. Relevant paragraphs thereof are extracted below:

"8. We have considered the arguments advanced by the learned counsel. We see that Section 25 of the Act would not be applicable in the present case as there is no evidence to indicate that Bhola Singh, the appellant had either knowingly permitted the use of the vehicle for any improper purpose. The sine qua non for the applicability of Section 25 of the Act is thus not made out.

9. The High Court has however drawn a presumption against the appellant under Section 35 of the Act. This provision is reproduced below:

"35. Presumption of culpable mental state.—(1)
In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section 'culpable mental state' includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

10. While dealing with the question of possession in terms of Section 54 of the Act and the presumption raised under Section 35, this Court in Noor Aga v. State of Punjab (2008) 16 SCC 417 while upholding the constitutional validity of Section 35 observed that as this section imposed a heavy reverse burden on an accused, the condition for the applicability of this and other related sections would have to be spelt out on facts and it was only after the prosecution had discharged the initial burden to prove the foundational facts that Section 35 would come into play.

11. Applying the facts of the present case to the case cited above, it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting narcotics still lays on the prosecution, as would be clear from the word "knowingly", and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn. The only evidences which the prosecution seeks to rely on is the Appellant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana and that the Appellant had taken the truck on superdari. Registration of the offending truck cannot by any stretch of imagination fasten him with the knowledge of its misuse by the driver and others."

(emphasis supplied)

9. On the facts of the case in hand, it is evident that FIR No. 68 dated 16.05.2000 was registered on a

complaint by Sub-Inspector Ram Mehar (PW-8) who was on a petrol duty when it was found the truck no. PAT/2029 was lying turtle and bags of powder scattered. He was informed by two shopkeepers at the nearby place, namely, Ram Sarup (PW-6) and Naresh Kumar (PW-10) that the accident occurred at 9 P.M. on 15.05.2000. After the accident, the driver and the cleaner came out of the truck cabin and on enquiry by the said witnesses they informed their names as Joginder Singh s/o Jang Singh and Gurmail Singh s/o Nachhattar Singh. They claimed themselves to be the driver and cleaner of the truck. They had gone to inform the owner of the truck of the said accident but did not return. Having suspicion that the truck was carrying contraband substances, both the truck and the contraband items were taken into possession.

10. Eleven prosecution witnesses were produced. Two prosecution witnesses namely Ram Sarup (PW-6) and Naresh Kumar (PW-10) could be said to be relevant for the reason that in the FIR their names were mentioned as the witnesses who had informed the police party about the names of the driver and cleaner of the truck. They denied that any incident had happened in their presence or they informed anything to the police party. Both were declared hostile. They did not even identify the driver and cleaner of the truck. PW-7 ASI Ram Sarup was posted at Police Station Agroha along with Sub-Inspector Ram Mehar (PW-8), who was the author of the FIR. Besides reiterating what is stated in the FIR in his evidence, he added that on 19.05.2000 Balwan Singh s/o Chatar Singh, resident of New Grain Mandi, Barwala stated that Joginder Singh s/o Jang Singh and Gurmail Singh s/o Nachhattar Singh, the driver and cleaner of the truck in question stated before him that they have brought 21 bags of Choorapost along with powder from Rajasthan on instructions of Harbhajan Singh and that their truck turned turtle at Agroha. As the police party was in search of them, they asked that they be produced before the police. The fact remains that Balwan Singh s/o Chatar Singh was not produced in evidence. The case sought to be set up by the prosecution was that the driver and the cleaner of the truck made extra judicial confession before Balwan Singh s/o Chatar Singh. Ram Mehar who is the author of the FIR appeared as PW-8. In his statement also, nothing was stated against the Appellant. He also referred to the statement of Balwan Singh s/o

Chatar Singh recorded during investigation, who was not produced in evidence.

11. *The appellant in his statement recorded under Section 313 CrPC denied all the suggestions. In the entire evidence led by the prosecution, no material was produced against the Appellant to discharge initial burden to prove the foundational facts that the offence was committed with the knowledge and consent of the Appellant. It is a case in which he was not with the vehicle nor was he arrested from the spot when the accident occurred or when truck and contraband were taken into custody. He has been convicted merely on the ground that he was the registered owner of the truck. The Trial Court had put entire burden of defence on the Appellant being the registered owner of the vehicle. The Court held that the driver and cleaner of the vehicle being poor will not take risk of smuggling such huge quantity of contraband without the connivance of the owner and it was for the appellant to clear his stand. The judgment of the Trial Court was upheld by the High Court."*

(Emphasis supplied)

The High Court of Rajasthan in **SHARVAN KUMAR v. STATE OF RAJASTHAN**³ following the judgment in the case of **BHOLA SINGH** *supra* has held as follows:

"...."

15. *The next issue before this court is whether the learned Judge was legally justified in taking cognizance against the petitioner for offences under Sections 8(c)/15(c) and 25 of the Act on the basis of Sec. 35 of the Act, or not?*

Section 25 of the Act is as under:

Punishment for allowing premises, etc., to be used for commission of an offence; Whoever, being

³ 2011 SCC OnLine Raj 2693

the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

And Section 35 of the Act is as follows:

Presumption of culpable mental state:— (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation: In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

16. A bare perusal of Section 25 of the Act clearly reveals that it creates a vicarious liability against a person who is the owner, or is occupier or having the control or use of any conveyance etc. provided that he has knowingly permitted the conveyance to be used by another person for the purpose of commission of an offence under the Act. Naturally, the words "knowingly permitted" means to have the knowledge that the other person shall do an act, legal or illegal, and to allow him to do so. Hence, in order to vicariously involve the owner the prosecution must make out a prima facie case that the owner has knowingly allowed the use of the conveyance by another person for the purpose of commission of an offence under the Act.

17. On the other hand, a bare perusal of Section 35 of the Act reveals that it creates a rebuttable presumption against the accused. The said presumption

cannot be drawn at the initial stage of taking cognizance. It can be invoked only during the trial. But before this presumption can be pressed into service, the prosecution must lay down the basic facts for raising the presumption against the accused. It is only after the prosecution has laid down the basic facts constituting the offence that the presumption can be raised against the accused. It is only after the prosecution has discharged its initial burden of proof that the onus of proof shifts to the accused to rebut the presumption by leading cogent evidence on his behalf.

18. In the case of *Bhola Singh (supra)* the appellant, *Bhola Singh*, the owner of the truck in which contraband drugs were discovered, was convicted of offence under Section 25 of the Act with the aid of the presumption raised under Section 35 of the Act. While acquitting *Bhola Singh*, the Hon'ble Supreme Court observed as under:

The initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting Narcotics still lay on the prosecution, as would be clear from the word "knowingly", and it was only after the evidence proved beyond a reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond a reasonable doubt and not merely when its existence is established by a preponderance of probabilities. In the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn.

19. Admittedly the present case deals with the initial stage of taking of cognizance, while the case of *Bhola Singh (supra)* dealt with a case of conviction. But even then, before cognizance can be taken a *prima facie* case must exist against the petitioner in the evidence collected by the police. The police report must reveal the basic facts constituting the elements of offence under Section 25 of the Act. There has to be sufficient evidence to *prima facie* show that the present petitioner had the knowledge that the jeep owned by him was used by *Jabbar Singh*, his brother, for commission of an

offence under this Act. And the petitioner permitted him to do so. After all, at the stage of taking cognizance the learned Judge is concerned with the existence of a prima facie case against the accused. The trial court is not permitted to sift through the evidence. In fact, its examination is limited only to the evidence gathered by the investigation agency and as contained in the report/com-plaint. The learned court is not permitted to step outside these limits. Further, the presumption under Section 35 of the Act could not be raised at the time of taking cognizance, but is available only during the course of the trial.

20. In the present case, the police had registered and investigated the case against three persons, namely Rajuram, Jabbar Singh and Narendra @ Nenu. While it had filed the charge-sheet against the first two, it had kept the investigation pending against the last one. According to the charge-sheet, the police was well aware of the fact that the petitioner was the owner of the jeep in question. They were also aware of the fact that the petitioner was serving in the Indian Army at the Siachin Glacier. In fact, while the police had filed the charge-sheet against Jabbar Singh for offence under Section 25 of the Act along with other offences, it cited the petitioner as a prosecution witness. Therefore, the police did not file any charge-sheet against the petitioner.

21. A bare perusal of the impugned order clearly reveals that the learned Judge has taken the cognizance against the petitioner not so much on the police report as on the application filed by the petitioner under Sections 451 and 457 of the Code for the custody of the jeep. According to the learned Judge, in the application the petitioner had clearly admitted that he was owner of the jeep. Therefore, drawing the presumption under Section 35 of the Act, the learned Judge has taken the cognizance of offence under Section 25 of the Act. However, the learned Judge has ignored the legal position, as discussed above, and as underlined by the Apex Court in the case of Bhola Singh (supra).

22. Moreover, the learned Judge has totally ignored the contents and tenor of the charge-sheet qua the petitioner, as mentioned above. In fact, the learned

Judge should have initially confined his consideration to the police report submitted before him. He should not have jumped to the application submitted by the petitioner. The learned Judge should have first mentioned the evidence gathered by the police against the petitioner, if any, and only then referred to the application moved by the petitioner. Instead, the learned Judge has placed the cart before the horse. This court has asked the learned Public Prosecutor if there was any evidence gathered by the police against the petitioner. The learned Public Prosecutor fairly conceded, and in the opinion of this court rightly so, that there is not an iota of evidence collected by the police against the petitioner. In such a scenario, it is rather surprising that the learned Judge has taken the cognizance against the petitioner. Clearly, the learned Judge has over-stepped his jurisdiction.

23. The learned Judge has also over-looked the fact that the police had submitted the charge-sheet against Jabbar Singh for offence under Section 25 of the Act, besides other offences. Interestingly, the learned Judge has taken cognizance of the offence under Section 25 of the Act against the petitioner also. Curiously, if Jabbar Singh and the petitioner, both of whom are brothers, have committed the offence under Section 25 of the Act, then the learned Judge should have also taken the cognizance for offence under Section 29 of the Act which lays down the punishment for abetment and criminal conspiracy. However, the learned Judge has failed to do so. Thus, the learned Judge has ignored a provision of the Act."

(Emphasis supplied)

The Bombay High Court in the case of **NICHOLAS JOHN FERNANDES v. STATE**⁴ while quashing the proceeding on

⁴ 2021 SCC OnLine Bom.2980

interpretation of Sections 25 and 27A of the Act has held as follows:

“... ..”

11. *Having read the written complaint as well as the charge-sheet, it admits of no doubt that there is no iota of allegation against any of the petitioners of having committed any offence. The petitioners' involvement is sought to be attracted by reference to a single document, i.e., the communication dated 24/8/2017 of the complainant, by which Sections 25 and 27A of the NDPS Act were added. Even such communication does not refer to any single overt act which could attract Section 27A. Very fairly, and in our view quite rightly, Mr. Bhoje did not endeavour to support the prosecution case from that angle. As has been noticed above, he has referred to Section 35 of the NDPS Act to sustain the charge-sheet which invokes Section 25. It would, therefore, fall for our consideration as to whether even a case of suspicion that the petitioners were involved in the alleged offences can be said to have been set up in the charge-sheet by the officer who investigated the FIR.*

12. *In our considered opinion, the investigating officer has lifted the word 'knowingly' from Section 25 of the NDPS Act and inserted it in the communication to suggest the petitioners' involvement in the crime. Without anything more, it cannot even be said that this is a valid ground for suspecting the petitioners' involvement. It is presumed that the said officials had proposed to raid the said restaurant, with the intention to keep a check that those involved in running the said restaurant maintains the standards mandated by the relevant enactments for food safety and prevention of food adulteration. There is no material to suggest that they, or the complainant, had any prior knowledge or information of activities in dealing with contrabands being carried on in the said restaurant. It is by chance that "the white colour plastic bag" which the said officials found out in course of the raid was suspected to contain ganja. It is impossible to form an opinion in this factual*

background to uphold that there are reasons to suspect that the petitioners 'knowingly' permitted their premises to be used for commission of any offence by any person punishable under the NDPS Act. Mr. Bhohe has sought to salvage the situation by contending that the prime accused is the husband of the licensee. However, nothing substantial turns on it. First, we do not find any material in the charge-sheet to the effect that the prime accused is the husband of the licensee. Secondly, there must be some material based whereon a suspicion could arise that 'knowingly' the petitioners allowed the prime accused to use part of the petitioners' premises for illegal and unlawful activities including commission of any offence under the provisions of the NDPS Act.

13. The presumption referred to in Section 35 of the NDPS Act could be drawn by the Court at the stage of trial, only after some evidence led by the prosecution would prove that the petitioners 'knowingly' allowed their premises to be used for commission of an offence by any person for attracting Section 25 of the NDPS Act. We may draw guidance in this behalf from the decision of the Supreme Court in *Bhola Singh v. State of Punjab [(2011) 11 SCC 653]*, wherein it has been held as follows:

"11 Applying the facts of the present case to the cited one, it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting narcotics still lay on the prosecution, as would be clear from the word 'knowingly', and it was only af-ter the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opin-ion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn. The only evidence which the prosecu-tion seeks to rely on is the appel-lant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana while registering the offending truck

cannot by any stretch of imagination fasten him with the knowledge of its misuse by the driver and others.”

14. There being absolutely no material whatsoever collected by the investigating officer to connect the petitioners with the crime, it would amount to grave injustice if the proceedings are allowed to proceed further against them.”

(Emphasis supplied)

The Punjab and Haryana High Court in a judgment reported in **HARWINDER SINGH v. STATE OF PUNJAB**⁵ on interpretation of Section 25, acquitted the accused. The High Court in the said judgment has held as follows:

“

12. Sections 25 & 35 of the NDPS Act reads as follows:

“25. Punishment for allowing premises, etc., to be used for commission of an offence-

Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.”

35. Presumption of culpable mental state-

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged

⁵ 2023 SCC OnLine P & H 2217

as an offence in that prosecution. Explanation.-In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

13. The crucial words that the Legislature used in section 25 of the statute of NDPS Act, 1985 are "knowingly permits it to be used for the commission of the offense by any other persons." Section 35 of the NDPS Act deals with the presumption of culpable mental. However, the intent of Section 25 and Section 35 is parametria the same but carves a special role upon the investigation while proving an offense under 25 of the NDPS Act because of the usage of the word "knowingly." Thus, the presumption under Section 35 of the NDPS Act is similar to the intent of Section 25 of the NDPS Act, and as such, Section 35 of the NDPS Act would not dilute the burden that the Legislature had put upon the investigator in section 25 of the NDPS Act. Resultantly, the presumption under Section 35 of the NDPS Act would not apply in the case under Section 25 of the NDPS Act if there is not even an iota of evidence regarding knowingly permitting the usage of the things mentioned in Section 35 of the NDPS Act for the commission of the offence.

14. *After appreciating the evidence gathered and proved by the prosecution against the appellant regarding his knowledge and permission to use the tractor-trolley for transporting poppy husk, it is clear that the prosecution could not bring its case, against the appellant, within the purview and scope of Section 25 of NDPS Act, and the essential requirements to prove knowledge are missing. There is not even an iota of evidence that the appellant knew about the other two convicts transporting the poppy husk in his tractor trolley or that he had permitted them to do so for this purpose. A perusal of the impugned judgment does not refer to the intent of the legislature as explicitly clarified in Section 25 of the NDPS Act.*

Thus, the prosecution has failed to prove its case beyond a reasonable doubt, and the impugned judgment convicting the appellant under section 25 of the NDPS Act is not in consonance with the law.

***15.** Accordingly, the present appeal is allowed. The order passed by the trial Court is set aside. The appellant stands acquitted. Bail bonds stand discharged."*

(Emphasis supplied)

9. The afore-mentioned are the judgments of the Apex Court and that of other High Courts which on interpretation of Section 25 of the Act have clearly held that knowledge is conscious knowledge. There should be more than *prima facie* material to hold that the owner or occupier of the premises was in complete knowledge of what was happening in the premises, as Section 25 creates a vicarious liability against the person who is the owner who has knowingly permitted usage of premises, knowledge pervades the provision of law. Therefore, the judgments of the Apex Court in the case of **BHOLA SINGH** and **HARBHAJAN SINGH** *supra* would clearly cover the issue on all fours, as the petitioner, even according to the search party, did not know what was happening in the premises, as it is at the time of investigation, preliminary though, reveals that the petitioner who sits elsewhere did not know

for what purpose the premises was taken for rent on the said date. Therefore, it would be unjust to permit to be tried under Section 25 of the Act, on the score that Section 35 of the Act raises a presumption against the petitioner.

10. In the light of unequivocal facts narrated hereinabove and the judgments rendered by the Apex Court and other High Courts, interpreting Section 25, as also *prima facie* view of the prosecution that the petitioner was not within the knowledge of what was happening in his property, I deem it appropriate to obliterate the proceedings against the petitioner, failure of which, would become an abuse of the process of law and result in miscarriage of justice.

11. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) Crime registered in Crime No.329 of 2024 of Hebbagodi Police Station stands quashed.

- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the investigation/proceedings against other accused.

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:SS