

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE -VII,
ERNAKULAM

Present :-

**Sri. V P M Suresh Babu, Additional District & Sessions
Judge VII.**

Thursday, the 27th day of June, 2024/6th Ashada , 1946.

SESSIONS CASE No.253/2017

(Crime. No.356/2016 of Panangad Police Station)

Complainant :

State of Kerala,
represented by the Inspector of Police,
Ernakulam Town South Police Station

By Adv. Jolly George Addl. Public Prosecutor

Accused:

Sojith, aged 23/16, S/o.Mohanan, Chethikkattuveli Veedu,
Kayippuram Bhagom, Muhamma Kara,
Thanneermukkam Village, Cherthala Taluk, Alappuzha

By Advs. Manu Vilsan

This Sessions Case coming on for hearing on 18.06.2024 in the presence of the Addl. Public Prosecutor and counsel for the accused and after having stood over for consideration till this day, and the Court on 27.06.2024 delivered the following:

O R D E R

on framing of New Charge

This is a case in which the accused is prosecuted

for an offence punishable under Section 20(b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, in Crime No. 353/2016 of Panangad Police Station.

2. Brief facts :- The prosecution case is that on 19.03.2016 at about 3.50 PM., the accused was found in conscious possession of 1.137 Kgs. of ganja near Kammoth Library. The accused possessed intermediate quantity of ganja in violation of Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act. Thus he committed the offences punishable under Sections 20(b)(ii)B of the Narcotic Drugs and Psychotropic Substances Act.

3. After the trial is completed and at the time of final hearing, the learned Advocate for the accused pointed out that in the instant case, the charge was framed and plea was recorded by a court which is not competent to try the offence. The learned counsel also filed an argument note in which it is pointed out that the entire trial is vitiated as the charge was framed and plea recorded by an incompetent court.

4. When the case was taken up for Judgement, records were perused in view of the objection regarding irregularity in the charge. On perusal of the records, it is seen that the police report was originally filed before the Principal District and Sessions Court, Ernakulam, which is a court notified under Section 36 of the Narcotic Drug and Psychotropic Substances Act. The case was thereafter

transferred for trial and disposal to Additional District Court No. VI. It is not a court notified under Sec. 36 of the NDPS Act. That court had proceeded with the case. The accused was heard under Section 227. The charge was framed and the plea of the accused was also recorded.

After recording the plea, the case was scheduled for trial and thereafter it was transferred to this court as per Order No. 16831/2021 dated 25-01-2022 of the Hon'ble District and Sessions Court, that is a Special Court. Therefore, it is clear that the charge was framed and trial commenced by a court which is incompetent to try the offence. This court is notified as a special court under Section 36 of the NDPS Act as per Notification No. GO(M.S) No. 167-2005 dated 10-06-2005. Therefore, though the examination of the witness was done by this court, which is notified as a Special Court under Section 36 of the NDPS Act, the charge was framed and plea was recorded by a court which had no jurisdiction to deal with the case. Therefore, I am of the view that once it is pointed out to the court that the charge is framed and plea was recorded by an incompetent court, this court cannot rely on Section 462 of the Code of Criminal Procedure to say that the trial has to be proceeded.

In Willy (William) Slaney v. State of Maharashtra AIR 1956 SC 118, a Constitution Bench of Hon'ble Supreme Court dealt with the absence or irregularity of charge

under the corresponding provision of the old Code. It was held that though the omission or irregularity in charge will not vitiate the trial , it is not proper for the trial court to proceed without a proper charge. The charge framed and plea recorded by the Additional District Court VI cannot be considered as a charge. In fact there was no charge by a court competent to try the offence. Therefore, I am of the view that fresh charge is liable to be framed against the accused.

Dictated to the Confdl. Asst., transcribed and typed by her corrected by me and pronounced in open court on this the 27th day of June, 2024.

Id/-
Addl. Sessions Judge -VII