

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 5809/2021

Shri Amit Agrawal S/o Sh. O.p. Agrawal and Anr.

----Petitioners

Versus

Union Of India

----Respondent

For Petitioner(s)	:	Mr. V.R. Singh Bajwa, Sr. Adv with Mr. Javed Khan Mr. Jaideep Malik Mr. Amar Kumar Mr. Manish Parmar
For Respondent(s)	:	Mr. Tej Prakash Sharma

HON'BLE MR. JUSTICE FARJAND ALI

Order

15/02/2022

By way of filing the instant miscellaneous petition, challenge has been made to the very submission of supplementary complaint dated 23.04.2021 in the Court of learned Special Judge (NDPS Cases), Jaipur Metropolitan-I, Jaipur.

Heard learned counsel for the parties.

What is emanating from the record that earlier for the same set of accusations and substance, at the behest of the same complainant, a criminal complaint came to be submitted in the Court of learned Judge, NDPS Act Cases, Jaipur on 21.02.2021. In pursuance of the proceedings undertaken in that complaint, the learned Judge on 15.03.2021 issued warrant of arrest against the petitioners.

Feeling aggrieved by the very initiation of proceedings as well as the issuance of warrant of arrest, the petitioners filed a

D.B. Civil Writ Petition No. 4074/2021 wherein vide order dated 25.03.2021, the Division Bench of this Court passed order which is reproduced here:-

"25/03/2021

Learned counsel for the petitioners submits that as per second proviso to clause 4(1) of The Narcotics Drugs & Psychotropic Substances (Regulation of Controlled Substances) Order, 2013, the autonomous institutions have been exempted from taking registration to use Acetic Anhydride for educational, scientific and analytical purposes. Being an autonomous body, M/s Therachem Research Medilab (India) Ltd. RIICO Industrial Area, Sitapura is also exempted from taking registration as per above clause of The Narcotics Drugs & Psychotropic Substances (Regulation of Controlled Substances) Order, 2013. Still, a criminal case has been registered in utter violation of the above provisions. Admittedly, no allegation regarding narcotic substances has been levelled against the present petitioners but the respondent-authorities are adamant to arrest them. The action of the respondents is not sustainable in law at all. Therefore, the petition deserves to be allowed and the petitioners should be given interim protection from any sort of coercive action.

Issue notice, returnable by 19/04/2021. Additional copy of the petition be served in the office of Mr. R.D. Rastogi, Additional Solicitor General for Union of India. His name be indicated in the cause list.

Without expressing any opinion on merits, as an interim measure, it is directed that the petitioners shall join the investigation and they shall appear before the investigating officer on or before 30/03/2021 and as and when they are called upon to do so but they shall not be arrested in compliance of the order dated 15/03/2021 passed by the court of learned Special Judge NDPS Cases, Jaipur till the next date.

List the matter on 19/04/2021."

In pursuance of the directions passed by the Division Bench of this Court, the petitioners have appeared before the Investigating Authorities.

Mr. V.R. Bajwa, learned senior counsel assisted by other learned counsels have vehemently and fervently urged that only with a view to defeat the order passed by the Division Bench and to spite the petitioners, a subsequent complaint, on the same set of allegations, has been submitted under the nomenclature of supplementary complaint vide taking resort of Section 299 of Cr.P.C.

It is submitted that pursuant to the directions passed by the Division Bench of this Court, when the accused petitioners have appeared before the Authorities, they have thoroughly been interrogated and their statements have been recorded and there is no material to show that they have made abscondance, still filing the complaint by taking resort under Section 299 of Cr.P.C. is certainly an abuse process of law.

Mr. V.R. Bajwa, learned counsel submits that the course adopted by the agency is totally perfunctory and bad in law. When the Division Bench of this Court has seized of the matter, filing the second/supplementary complaint tantamounts to an abuse of process of law and thus, the very institution of the supplementary or second report deserves to be quashed and set aside.

Mr. Tej Prakash Sharma, learned counsel for Union of India opposed the submissions made by learned counsel for the petitioners. He submits that there is no legal fetter to submit a supplementary report after filing of the first report. He further submits that since the petitioners are not co-operating with the

investigation, therefore, the circumstance led them to submit a subsequent complaint.

Heard. Perused the material made available on record.

In my considered view, during existence of the first complaint, filing the second complaint under the nomenclature of supplementary report is not permissible under law. The apprehension of the accused-petitioner that in the garb of the subsequent complaint, again efforts would be made to make search, seizure and to affect the arrest of the accused; is appears to be well founded in view of filing the complaint by declaring the accused as an absconder. When the facts manifestly reflecting that the petitioners have not made abscondance, they challenged the proceedings by way of filing the writ petition before the Division Bench and thereafter appeared before the agency, thoroughly interrogated and their statements have been recorded, still thereafter, filing the complaint by taking resort of Section 299 of Cr.P.C. prima facie appears to be perfunctory.

The matter requires serious consideration.

Admit.

In the meanwhile, further proceedings, qua the petitioners, in pursuance of the supplementary complaint/subsequent complaint dated 23.04.2021 shall remain stayed. The petitioners are expected to co-operate with the agency in connection with the first complaint dated 21.02.2021.

Put up on 28.03.2022.

(FARJAND ALI),J