

(1982) 07 P&H CK 0040

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Sukhdev Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 12, 1982**Acts Referred:**

- Constitution of India, 1950 - Article 37, 39A
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Prevention of Food Adulteration Act, 1954 - Section 13

Citation: (1983) CriLJ 1217**Hon'ble Judges:** S.S. Sandhawalia, C.J; Surinder Singh, J**Bench:** Division Bench

Judgement

S.S. Sandhawalia, C.J.

A veiled doubt about the correctness of the view of the Division Bench in Joginder Kaur v. State of Punjab 1979 Chand LR (Cri.) 101 P&H , has necessitated this reference to the larger Bench.

2. Sukhdev Singh petitioner is Standing his trial before the Judicial Magistrate, Phul, u/s 9 of the Opium Act for having been allegedly in possession of a large haul of 30 kg. of opium on the 10th April, 1978. After the prosecution evidence in the case had been concluded and the statement of the accused-petitioner duly recorded u/s 313, Criminal P.C. an application was presented on behalf of the petitioner praying that another sample of opium be taken from the tins Exhibits P. 1 and P. 2 and sent to the Chemical Examiner for a fresh analysis. This application was contested on behalf of the respondent-State on the ground that the accused was not inflexibly entitled under the law to claim a second chemical analysis from fresh samples drawn from the contraband opium. Relying mainly on Joginder Kaur"s case the learned trial Magistrate rejected the application on the 9th Aug., 1980, Aggrieved thereby the petitioner has come up by way of this revision.

3. This Criminal Revision had originally come up before my learned brother Surinder Singh J., sitting singly. Before him, the king-pin of the petitioner's stand (as is evident from the lucid reference order was that Joginder Kaur's case 1979 Chand LR (Cri) P&H 101 required reconsideration on the anvil of Article 39A of the Constitution of India and this aspect had not at all been considered by the Division Bench.

4. However, before us the matter has been ultimately reduced to a narrow compass. Mr. Shergil appearing for the petitioner had to fairly concede that in view of Article 37 the Directive Principles are not enforceable by a Court of law. Article 39A, recently inserted by the Forty-second Amendment of the Constitution (with effect from the 3rd of Jan., 1977) which is contained in Part IV therefore, stands on no different footing. Apart from the fair stand of the learned Counsel for the petitioner it seems to be otherwise well-settled by precedent also that enforceability is not the essence of Directive Principles. Reference in this connection may instructively be made to [The State of Madras Vs. Srimathi Champakam Dorairajan](#), ; [In Re: The Kerala Education Bill, 1957. Reference Under Article 143\(1\) of The Constitution of India](#), ; and [Deep Chand Vs. The State of Uttar Pradesh and Others](#), . In Deep Chand's case it has been categorically observed as follows :

* * * We do not see any relevancy in the reference to the directive principles; for, the legislative power of a State is only guided by the directive principles of State Policy. The directions, even if disobeyed by the State, cannot affect the legislative power of the State, as they are only directory in scope and operation.

5. learned Counsel for the petitioner was equally candid in conceding that he could cite no precedent where either the constitutionality of a criminal statute has been tested or nullified on the basis of Article 39A and for that matter any other Article contained in the Chapter of Directive Principles of State Policy. Counsel for the respondent-State in fact was dogmatic that not only there was no precedent to this effect but on principle also it would be unwarranted to test the Opium Act which admittedly is a valid piece of legislation on the touchstone of Directive Principles, once it is conceded that these are not enforceable stricts sensu. We must, therefore, reject the challenge originally sought to be raised on the basis of Article 39A.

6. Adverting now to the ratio in Joginder Kaur's case 1979 Chand LR (Cri) P&H 101 (supra) it calls for pointed notice that the learned Counsel for the petitioner even when invited to do so did not pose any meaningful challenge to the said judgment. An examination thereof would reveal that the Bench had taken into fullest consideration the four earlier single Bench judgments and after discussing them took a contrary view overruling the same. In particular they noticed the specific provisions of Section 13 of the Prevention of Food Adulteration Act which conferred a statutory right upon an accused person to have the sample in his custody analysed afresh by the Central Food Laboratory, Significantly no such corresponding provision or right exists under the Opium Act nor anything even remotely analogous thereto. On a closer analysis we are,

therefore, inclined to agree entirely with the view of the Division Bench in Joginder Kaur's case which is hereby affirmed.

7. It is common ground that the only issue herein was the aforesaid one and no other challenge was posed to the impugned order of the trial Court, which is in consonance in Joginder Kaur's case.

Affirming the same we dismiss this revision.