

(2008) 01 P&H CK 0265

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 757-SB of 1998

Raj Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Jan. 7, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 50

Citation: (2008) 2 RCR(Criminal) 312

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Kapil Aggarwal, Amicus Curiae, for the Appellant; Shalini Attri, AAG, Haryana, for the Respondent

Final Decision: Allowed

Judgement

K.S. Ahluwalia, J.

Mr. Kapil Aggarwal has stated that the appellant has undergone 5 years 3 months and 15 days of sentence for a meagre recovery of 10.5 Kgs of poppy husk, which according to him, after amendment of the Narcotic Drugs and Psychotropic Substances Act (in short to be referred to 'the Act') is a non-commercial quantity. He has further stated that after amendment of the Act, persons who were seized with such meagre recovery, are normally awarded one year or six month's sentence, whereas the appellant has undergone more than five years.

2. I am not impressed with this argument as the provisions of the amended Act cannot be applied retrospectively. Therefore, Sh. Kapil Aggarwal, learned counsel for the appellant, was called upon to address arguments on merits.

3. Appellant Raj Kumar is being prosecuted in case FIR No. 56 dated 26-1-1997 by the police of police station GRP Faridabad.

4. The case set out in the FIR is that ASI Prem Kishore along with HC Prem Raj and other members of the police party were present on the platform of railway station Faridabad in connection with the trains" checking, general patrolling and excise checking. It is stated that Satya Dev son of Dan Singh met them by chance and he was joined in the police party as a witness. It is stated that when train bearing No. 2627 DN bound for Delhi stopped, he started checking in the second class compartment and on suspicion they apprehended the accused/appellant, who disclosed his name as Raj Kumar son of Mani Ram caste Khatri. It is stated in the FIR that he was carrying a bag. An offer in terms of Section 50 of the Act was given to him and from the said bag 10 Kgs-500 grams of poppy husk was recovered.

5. FIR was investigated. Challan was submitted. Thereafter the accused was charged. He pleaded not guilty and claimed trial.

PW1 SI Ramphal was SHO of the concerned police station at the relevant time. In his deposition in Court, he stated that he recorded formal FIR. He verified facts of the case and appended his signatures on the report u/s 173 Cr.P.C.

PW2 Dhani Ram Constable and PW3 Jasbir Singh Head Constable being formal witnesses tendered their affidavits to prove link evidence.

PW 4 Prem Raj HC has been examined to corroborate the testimony of ASI Ram Kishore PW-5, the Investigating Officer regarding the search, seizure and recovery.

6. Statement of the accused was recorded u/s 313 Cr.P.C., wherein he denied the incriminating circumstances put to him. He has opted not to examine any witness in defence.

7. Mr. Kapil Aggarwal, appearing as amicus curiae for the appellant, who has preferred his appeal from the Jail, has stated that in the statement u/s 313 of the Code of Criminal Procedure, the affidavits submitted by PW2 Dhani Ram and PW3 Jasbir Singh have not been put to the accused. Therefore, the link evidence has not been brought to the notice of the accused/appellant. He has further argued that Sukhdev Singh, who was joined as an independent witness, has been given up on the lame excuse of having been won over. According to Mr. Aggarwal, since the recovery was effected at the railway station, which was frequented by many passengers, it is necessary that the version of the police officials is corroborated from some independent source. He has further argued that since the recovery is only 10.5 Kgs of poppy husk, which is meagre same could be planted upon any body.

I have given my thoughtful consideration to the submissions made by Mr. Aggarwal.

8. The Courts have been insisting that it is incumbent upon the investigating/prosecuting agency to prove link evidence, which is essential to ensure that the sample taken was properly kept and despatched to the Chemical Examiner, as it is on the basis of the report of the Chemical Examiner the accused is to be

proved guilty. It is for this reason that the Courts insist that the contents of the affidavits should be put to the accused, being a vital incriminating circumstance. Since the affidavits have not been put to the accused, a prejudice has been caused to him. The occurrence pertains to the year 1997. 11 years have passed. I do not find any justification to remand the matter, especially when the accused-appellant has already undergone more than 5 years of actual sentence for a meagre recovery of poppy husk.

9. For the lapse on the part of the prosecution in not putting the affidavits to the accused/appellant in his statement u/s 313 of the Code of Criminal Procedure, I set-aside the sentence and conviction awarded by the Court below and acquit him of the charges.

10. This Court will not hesitate in accepting that after amendment of the Act, had the appellant been prosecuted, he would have been dealt with very lightly by the Courts.

With the aforesaid observation, the appeal stands accepted.

Sh. Kapil Aggarwal Advocate, who has appeared as amicus curiae for the appellant, deserves appreciation of this Court for vehemently pursuing the case of the appellant, who evidentially is a very poor man. Conduct of Shri Kapil Aggarwal Advocate is laudable.