

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-28978 of 2013
Date of Decision : 8.4.2015

Rakesh Kumar Gupta

.....Petitioner

Vs.

State of Punjab

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Vikram Chaudhary, Sr. Advocate with Mr. Manish Verma,
Advocate for the petitioner.
Mr. D.S.Virk, AAG, Punjab.

...

1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) seeks quashing of FIR No.82 dated 18.7.2012 under Sections 18/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short) registered at Police Station Model Town, Ludhiana City and consequential proceedings arising therefrom, including the police report under Section 173 Cr.P.C., as well as the order of framing of charge and the charge sheet against the petitioner.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 10.9.2014 was filed on behalf of the State.

Learned Senior counsel for the petitioner submits that the petitioner was falsely implicated in the present case. Placing reliance on the report of

chemical examiner at Annexure P-5, learned Senior counsel for the petitioner submits that since the percentage of Morphine was found less than 0.2% from the sample taken out of the alleged recovered contraband from the petitioner, the same cannot be termed as opium as contemplated under the provisions of NDPS Act. To substantiate his contention, learned Senior counsel for the petitioner places reliance on a Division Bench judgement of the Delhi High Court in **Ravinder Kumar Vs. State (NCT of Delhi)**, 2010 (4) RCR (Crl.) 664 and a judgement of this court in **Tejinder Singh @ Montu Vs. State of Punjab**, 2012 (1) RCR (Crl.) 678. Referring to different definitions under Section 2 of the NDPS Act, learned Senior counsel for the petitioner concluded by submitting that there was no scope of claiming that the contraband allegedly recovered from the petitioner was opium. Learned Senior counsel for the petitioner also submits that in view of the report of chemical examiner at Annexure P-5, no charge could have been framed against the petitioner and the learned Special Judge has committed patent illegality, while passing the impugned orders Annexures P-6 and P-7. He prays for allowing the petition.

Per contra, learned counsel for the State submits that a commercial quantity of opium i.e. 1 kg. 300 gms. was recovered from the petitioner. The case was investigated properly and report under Section 173 Cr.P.C., was presented to the learned court of competent jurisdiction. The learned Special Judge was fully justified on facts as well as in law, while passing the impugned orders Annexures P-6 and P-7, whereby charge was rightly framed against the petitioner. Opposing the contention raised by learned Senior counsel for the petitioner, about alleged less percentage of Morphine in the sample taken out of the total opium recovered from the petitioner as per Annexure P-5, learned counsel for the State submits that the entire substance was to be considered as

opium and the same will definitely fall within the definition of opium as provided under Section 2 (xv) of the NDPS Act. He next contended that in such a situation, the case will be covered under entry 92 of the notification dated 19.10.2001 issued by the Government, which deals with opium and not under entry 77, which deals with Morphine. Learned counsel for the State places reliance on the judgement of the Hon'ble Supreme Court in **Harjit Singh Vs. State of Punjab**, 2011 (4) SCC 441. He prays for dismissal of the petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noticed above, present one has not been found to be a fit case for exercising the inherent powers under Section 482 Cr.P.C., at the hands of this court. To say so, reasons are more than one, which are being recorded hereinafter.

The star argument raised by learned Senior counsel for the petitioner that the percentage of Morphine in the report of chemical examiner (Annexure P-5) was less than the required one has been duly considered. This argument seems very attractive at the first blush, but when considered in view of the law laid down by the Hon'ble Supreme Court in **Harjit Singh's case (supra)**, the same has been found without any substance.

So far as the judgement relied upon by learned Senior counsel for the petitioner are concerned, the same are of no help to the petitioner. In **Tejinder Singh's case (supra)**, the order passed by this court was based on concession and, thus, cannot be made applicable to the fact situation of the present case. In **Ravinder Kumar's case (supra)**, the Division Bench of Delhi High Court was not considering a petition for quashing of FIR under Section 482

Cr.P.C., but it was deciding an appeal. Although, there is no dispute about the law laid down by the Hon'ble Division Bench of Delhi High Court in **Ravinder Kumar's case (supra)**, but keeping in view the different fact situation, the same is of no help to the petitioner.

Further, it is the settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judge made law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in *Padmausund Rao and another Vs. State of Tamil Nadu and others*, 2002 (3) SCC 533.

After a careful perusal of the record of the case, this court has come to the conclusion that the present case is squarely covered against the petitioner by the law laid down by the Hon'ble Supreme Court in **Harjit Singh's case (supra)**. The relevant observations made by the Hon'ble Supreme Court in paras 24 and 25 of the judgement, which can be gainfully followed in the present case, read as under :-

“ The notification applicable herein specifies small and commercial quantities of various narcotic drugs and psychotropic substances for each contraband material. Entry 56 deals with Heroin, Entry 77 deals with Morphine, Entry 92 deals with Opium, Entry 93 deals with Opium Derivatives and so on and so forth. Therefore, the notification also makes a distinction not only between Opium and Morphine but also between Opium and Opium Derivatives. Undoubtedly, Morphine is one of the derivatives of the Opium. Thus, the requirement under the law is first to identify and classify the

recovered substance and then to find out under what entry it is required to be dealt with. If it is Opium as defined in clause (a) of Section 2(xv) of Narcotic Drugs and Psychotropic Substances Act then the quantify of morphine contents become relevant.

25. Thus, the aforesaid judgement in E. Micheal Raj (supra) has no application in the instant case as it does not relate to a mixture of narcotic drugs or psychotropic substances with one or more substances. The material so recovered from the appellant is opium in terms of Section 2(xv) of the Narcotic Drugs and Psychotropic Substances Act. In such a fact situation, determination of the contents of morphine in the opium becomes totally irrelevant for the purpose of deciding whether the substance would be a small or commercial quantity. The entire substance has to be considered to be opium as the material recovered was not a mixture and the case falls squarely under Entry 92. Undoubtedly, the FSL Report provided for potency of the opium giving particulars of morphine contents. It goes without saying that opium would contain some morphine which should be not less than the prescribed quantity, however, the percentage of morphine is not a decisive factor for determination of quantum of punishment, as the opium is to be dealt with under a distinct and separate entry from that of morphine.”

Further, after treating the allegations levelled in the impugned FIR

against the petitioner to be true on their face value, without adding anything thereto or without subtracting anything therefrom, it cannot be said, under any circumstances, that no case is made out against the petitioner, No doubt, the powers under Section 482 Cr.P.C., are wide enough, but it is equally true that such discretionary powers are to be exercised sparingly and with circumspection.

The Hon'ble Supreme Court in the case of **State of Haryana and others Vs. Bhajan Lal**, 1992 AIR 604 laid down the broad principles for quashing the criminal prosecution arising out of the FIR and the same read as under :-

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the

Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in **Bhajan Lal's case (supra)** as well as in **Harjit Singh case (supra)**, this court feels no hesitation to conclude that present one is not a fit case for quashing of the FIR and the subsequent criminal proceedings arising therefrom.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the present petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above said observations made, instant petition stands dismissed, however, with no order as to costs.

8.4.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE