

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-39396 of 2014

Date of Decision: October 12, 2015

Sohan Singh

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Harinder Singh, Advocate
for the petitioner.

Mr.B.S.Bhullar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of FIR No.118 dated 28.06.2014 under Section 20 of the NDPS Act registered at Police Station Zira, District Ferozepur, challan under Section 173 Cr.P.C., order of framing charge dated 25.08.2014 and subsequent proceedings arising from the FIR.

Notice of motion was issued and learned State counsel appeared and contested the petition. Reply on behalf of respondent No.1-State has also been filed.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that in the present case, FIR has

been registered on the basis of secret information against the accused Sohan Singh that he after making pakoras of Cannabis (Bhang), is selling to the addicts and in case an immediate raid is conducted at his shop, then from his possession heavy quantity of Cannabis can be recovered. On the basis of this information, raid was conducted and 52 kgs. 500 grams of Cannabis (Bhang) was recovered.

After necessary investigation, challan was presented under Section 173 Cr.P.C. and charge under Section 20 of the NDPS Act has been framed.

At the time of arguments, learned counsel for the petitioner argued that the possession of Cannabis (Bhang) dry leaves is not an offence under NDPS Act. In support of his arguments, learned counsel for the petitioner cited judgment passed by this Court in **Arjun Singh vs. State of Haryana, 2004(4) RCR (Criminal) 506**, in which it is held as under:-

“5. After hearing the arguments of the learned counsel for the parties, I am of the opinion that this appeal deserves to be allowed and the conviction and sentence of the appellant are liable to be set aside. In all the aforesaid three judgments, it has been held by different High Courts, including this Court, that bhang (hemp) does not fall under the definition of cannabis (hemp) as defined under Section 2 (iii) of the act. Thus, its possession does not constitute an offence punishable under the Act.

9. In view of the afore-stated authoritative position of law, the Bhang is not covered under the definition of cannabis (hemp), therefore, the conviction and sentence of the appellant under Section 20-B of the Act is wholly illegal and without jurisdiction. In the instant case, from the possession of the appellant, 15-1/2 kgs. bhang was recovered for which he has been charged and convicted under Section 20-B of the Act.”

Learned counsel for the petitioner further cited judgment passed by Division Bench of the Hon'ble Calcutta High Court in ***Sri Promodh Jha vs. State of West Bengal, 2008(2) AICLR 193***, in which it is held as under:-

“17. It is nobody's case that psychotropic substance was seized from the possession of the petitioner herein. What was seized was 'BHANG' even according to the chemical report submitted by Senior Scientific Officer, Narcotic Section, State Drug Control and Research Laboratory, Calcutta. 'BHANG' as already noticed is that part of Cannabis plant which consists of seeds and leaves not accompanied by the flowering or fruiting tops.

19. According to the chemical report what was seized was 'Bhang'. 'Bhang' does not appear to have been included in the definition of cannabis (hemp) which reads as follows:

Cannabis (hemp) means-

a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;.

20. Therefore, we can safely conclude that 'Bhang' is not a narcotic drug and as such the prohibition engrafted in Section 8 of the Act cannot apply to possession or sell or purchase of Bhang. We would not however be understood to have held that possession or sell or purchase of Bhang is legal. What we have held is that this item is not covered under the Narcotic Drugs and Psychotropic Substances Act.”

I have gone through the above-cited judgments and the same fully apply to the facts of the present case.

Keeping in view the law laid down in aforesaid cited

judgments, I find that the FIR registered under NDPS Act as well as charge framed under Section 20 of the NDPS Act are liable to be quashed as possession of *bhang* alone is not an offence under NDPS Act.

In view of the above discussion, I find merit in the present petition and the same is allowed. Resultantly, FIR No.118 dated 28.06.2014 under Section 20 of the NDPS Act registered at Police Station Zira, District Ferozepur, challan under Section 173 Cr.P.C., order of framing charge dated 25.08.2014 and all other subsequent proceedings arising therefrom, are hereby quashed.

October 12, 2015
Vgulati

(INDERJIT SINGH)
JUDGE