

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2374-2013 (O&M)
Date of decision: 20.08.2015

State of Punjab

... Petitioner

Vs.

Resham Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. K.D. Sachdeva, Addl. AG, Punjab
for the petitioner.

None for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant criminal revision petition, at the instance of the State, is directed against the order dated 17.11.2012 passed by learned Special Court, Sangrur, whereby accused-respondent was discharged in case arising out of FIR No.48 dated 23.05.2012 under Sections 22/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), registered at Police Station Longowal, District Sangrur.

Notice of motion was issued and pursuant thereto, Mr. Rajbir Singh, Advocate put appearance on behalf of the respondent-accused on 28.11.2014.

Learned counsel for the State-petitioner submits that the learned trial Court has misdirected itself, while passing the impugned order which is a cryptic one on the face of it. He further submits that the prosecution has been illegally denied its right to prove its case. On merits, learned counsel for the

State places reliance on the judgment of this Court in **Vinod Kumar Vs. State of Punjab, 2013 (1) RCR (Crl.) 428**. He also submits that the learned trial Court has passed the impugned order, while placing reliance on an outdated notification dated 14.11.1985, whereas the same had been later on superseded vide notification dated 18.11.2009. He concluded by submitting that since the impugned order is an order without jurisdiction, the same cannot be sustained and is liable to be set aside. He prays for setting aside the impugned order, by allowing the present petition.

Having heard the learned counsel for the petitioner, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the learned trial Court fell in serious error of law, while passing the impugned order which is not only non-speaking but also patently illegal. It is so said because the impugned order is based on notification dated 14.11.1985 which was no more in operation. Learned counsel for the State has been found well-justified in contending that the notification in operation at the relevant point of time was dated 18.11.2009. Having said that, this Court feels no hesitation to conclude that the impugned order cannot be sustained. To say so, reasons are more than one, which are being recorded hereinafter.

A similar question fell for consideration of this Court in Vinod Kumar's case (supra). Tracing the legislative history of NDPS Act, this Court has discussed in detail each and every relevant provision of the Act. A long series of judgments of the Hon'ble Supreme Court as well as this Court have also been referred and followed by this Court, in Vinod Kumar's case (supra). Under these circumstances, it can be safely concluded that the learned trial

Court failed to take into consideration the law laid down by this Court in Vinod Kumar's case (supra), while passing the impugned order and the same cannot be sustained, as it runs counter to the law laid down by this Court in Vinod Kumar's case (supra).

A bare perusal of the impugned order would show that the learned trial Court miserably failed to apply its judicious mind, while passing the impugned order. No sufficient reasons have been assigned by the learned trial Court, while passing the impugned order. In this view of the matter, it is unhesitatingly held that the impugned order suffers from patent illegality and the same is liable to be set aside, for this reason also.

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 impugned order cannot be sustained. Consequently, the impugned order dated 17.11.2012 passed by the learned Special Judge, Sangrur is hereby set aside. The case is remanded back to the learned trial Court, with a direction to proceed further in the matter, in accordance with law.

With the abovesaid observations made and directions issued, present petition stands allowed, however, with no order as to costs.

20.08.2015
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE