

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR No.3068 of 2013
Date of Decision : 17.9.2015

Mahavir ParshadPetitioner

Vs.

State of PunjabRespondent

CRR No.1694 of 2015

Krishan Ram and anotherPetitioners

Vs.

State of PunjabRespondent

CRR No.1847 of 2015

Munish Bhargav @ ManishPetitioners

Vs.

State of PunjabRespondent

CrI.Misc.No.M-14234 of 2015

Munish Bhargav @ ManishPetitioners

Vs.

State of PunjabRespondent

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. G.S. Brar, Advocate for the petitioner in CRR Nos.3068 of
2013, 1694 and 1847 of 2015.
Mr. Vipul Jindal, Advocate for the petitioner in CRM No.M-
14234 of 2015.

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

RAMESHWAR SINGH MALIK, J

These three identical criminal revision petitions filed by different

identically placed accused-persons in the same FIR, challenging the same impugned order dated 7.9.2013, framing charge against all the petitioners and also 4th petition filed under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) for quashing of same FIR, as well as the same impugned charge sheet dated 7.9.2013, are being decided together vide this common order. However, for the facility of reference, facts are being culled out from Criminal Revision No.3068 of 2013.

Notice of motion was issued.

Briefly put, facts necessary for disposal of these petitions are that FIR No.72 dated 14.6.2012 was registered against five accused, who are petitioners in all these matters. The FIR was registered at Police Station Julkan under Sections 18/61/85 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short). After conclusion of the investigation, report under Section 173 (2) Cr.P.C. was filed by the investigating agency. The contraband which was recovered from the petitioners was 5 kgs. of opium. Report of chemical examiner had also been received. After going through the report of chemical examiner and on the basis of contents of report under Section 173(2) Cr.P.C., the learned trial court found a prima facie case against the petitioners under Section 18 of the NDPS Act. Accordingly, vide impugned order dated 7.9.2013, petitioners were charge sheeted. Hence these three criminal revision petitions against the same impugned order of framing of charge.

As noted above, two petitioners have filed CRM No.M-14234 of 2015 for quashing of the same impugned FIR No.72 dated 14.6.2012 under Sections 18/61/85 of the NDPS Act, registered at Police Station Julkan, Distt. Patiala and also the impugned order dated 7.9.2013, whereby charge was

framed against the petitioners. Since all these four cases have been filed by the accused of the same FIR, these are being decided together.

The common argument raised by learned counsel for the petitioners in all the four cases is that as per the report of chemical examiner, the recovered contraband would not fall within the definition of opium, as provided under Section 2(xv) of the NDPS Act and in this view of the matter, charge could not have been framed against the petitioners under Section 18 of the NDPS Act. In support of their contention, learned counsel for the petitioners place reliance on the judgement of the Hon'ble Supreme Court in **Harjit Singh Vs. State of Punjab** and also the order dated 8.4.2015 passed by this court in CRM No.M-28978 of 2013 (**Rakesh Kumar Gupta Vs. State of Punjab**) upheld by the Hon'ble Supreme Court, vide its order dated 1.7.2015 in Special Leave Petition (Crl.)No.4257 of 2015. They submit that since the percentage of morphine was 0.10% (zero point one zero percent), the learned trial court has exceeded its jurisdiction, while framing the charge against the petitioners. They also placed reliance on another order dated 11.3.2015 passed by this court in CRR No.373 of 2015 (**Vinay Kumar and another Vs. State of Punjab**) for the purpose of quashing the impugned FIR. Learned counsel for the petitioners in CRM No.14234 of 2015 also places reliance on the judgement of the Hon'ble Supreme Court in the case of **State of Haryana Vs. Bhajan Lal, 1992 AIR 604** and **M/s Pepsi Foods Limited Vs. Special Judicial Magistrate** reported as AIR 1998 SC 128. They pray for quashing the impugned FIR, orders framing charge as well as the criminal proceedings arising therefrom, by allowing all these four petitions.

On the other hand, learned counsel for the State submits that since a commercial quantity of opium was recovered from the petitioners and the

report of chemical examiner has come against the petitioners, the learned trial court have rightly charge sheeted the petitioners, by passing the impugned order and the same deserves to be upheld in all these four cases. Learned counsel for the State further 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 also submits that the ratio of the judgement of the Hon'ble Supreme Court in **Harjit Singh's case (supra)** goes against the petitioners. Learned counsel for the State would next contend that other judgements relied upon by learned counsel for the petitioners are not applicable to the facts of the present case and all the four petitions are liable to be dismissed.

Having heard 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 all these four petitions are misconceived. Revisional jurisdiction of this court is itself a limited one. Further, in view of the peculiar facts of the case, petitioners have not been found entitled for invoking the inherent jurisdiction of this court under Section 482 Cr.P.C., as well, for the following more than one reasons.

The thrust of common and star argument raised by learned counsel for the petitioners in all the four cases, is that the percentage of morphine in the report of chemical examiner was less than the required one, because of which no charge could have been framed against the petitioners under Section 18 of the NDPS Act. The argument seems to be very attractive at the first blush, but when the said star argument is 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 wholly misconceived. It is so said, because the Hon'ble Supreme Court has made it crystal clear that the percentage of morphine is not the decisive factor. Having said that, this court feels no hesitation to conclude that since the judgment of the Hon'ble Supreme Court in **Harjit Singh's case (supra)** is the complete answer to the arguments raised by learned counsel for the petitioners and squarely covers the matter against the petitioners, all these petitions are liable to be dismissed and the impugned FIR, as well as the impugned order framing charge against the petitioners, deserve to be upheld.

So far as the other judgements relied upon by learned counsel for the petitioners are concerned, there is no dispute about the law laid down and observations made therein. However, on close perusal of the cited judgements, none of them have been found to be of any help to the petitioners, being distinguishable on facts. Further, it is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

In fact, the basic fallacy, which lies in the arguments raised on behalf of the petitioners is that the learned counsel for the petitioners wanted this court to ignore altogether the law laid down by the Hon'ble Supreme Court in **Harjit Singh's case (supra)**. Morphine is dealt with under entry 77, whereas entry 92 deals with Opium. During the course of arguments, when a pointed question was put to learned counsel for the petitioners, as to how the opium recovered from the petitioners does not qualify its definition provided

under Section 2(xv) of the NDPS Act, as per the report of chemical examiner, they had no answer and rightly so, it being a matter of record. In this view of the matter, it can be safely concluded that the learned trial court committed no error of law, while framing the charge against the petitioners and the impugned order challenged by way of all the three criminal revision petitions deserves to be upheld. Similarly, a bare perusal of the impugned FIR would show that cognizable offence raising triable issues was clearly disclosed against the petitioners, because of which the impugned FIR also deserves to be upheld.

It is not even the argued case before this court, on behalf of the petitioners, that if the allegations levelled against them in the impugned FIR are taken to be true on their face value, without adding anything thereto and without subtracting anything therefrom, still no offence would be made out against the petitioners. As per the broad principles laid down by the Hon'ble Supreme Court in **Bhajan Lal's case (supra)**, an FIR can be quashed by this court, while exercising its inherent powers under Section 482 Cr.P.C., only when uncontroverted allegations levelled in the FIR disclose no cognizable offence. Once it is not even the argued case before this court, on behalf of the petitioners, as noticed herein above, this court would be exceeding its jurisdiction, while quashing the legitimate prosecution, therefore, the quashing petition as well as all the three criminal revision petitions have been found without any merit.

The above said view taken by this court finds support from the law laid down by the Hon'ble Supreme Court in **Harjit Singh's case (supra)**. In fact, these petitions are squarely covered against the petitioners by the law laid down 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 :-

“24. 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.”

Again, the principles of law laid down by the Hon'ble Supreme Court for quashing the criminal proceedings arising out of FIR in **Bhajan Lal's case (supra)**, 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.”

Similar controversy fell for consideration of this court in CRM

No.M-28978 of 2013 (Rakesh Kumar Gupta Vs. State of Punjab) decided on 8.4.2015. Relying upon the law laid down by the Hon'ble Supreme Court in **Bhajan Lal's case (supra)** as well as in **Harjit Singh's case (supra)**, petition filed by the above said Rakesh Kumar Gupta under Section 482 Cr.P.C., for quashing of FIR was dismissed. Contention raised on behalf of the petitioners therein was similar that the opium recovered from him was not having required percentage of morphine, because of which FIR was liable to be quashed.

Order dated 8.4.2015 passed by this court, dismissing the said CRM No.M-28978 of 2013 filed by Rakesh Kumar Gupta was challenged before the Hon'ble Supreme Court by way of Special Leave to Appeal No.(Crl.) 4257 of 2015, which also came to be dismissed by the Hon'ble Supreme Court, vide its order dated 1.7.2015 and the same reads as under :-

“ The special leave petition is dismissed.

The petitioner would be at liberty to raise the issue that was raised before the High Court at the stage of trial and the trial court shall decide the same on the basis of evidence brought on record and not be influenced by any of the observations made by the High Court, as it pertains to an order declining to discharge the accused.”

Coming back to the peculiar fact situation obtaining in the present case 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's case (supra)**, it is unhesitatingly held that the learned trial court has not exceeded its jurisdiction, while passing the impugned order dated 7.9.2013 framing charge against the petitioners and the same deserves to be upheld. In view of

what has been discussed herein above, there is no scope left for this court for exercising its inherent powers under Section 482 Cr.P.C., for the purpose of quashing the impugned FIR. In fact, the impugned FIR does disclose cognizable offence against the petitioners, because of which criminal proceedings arising therefrom, including the impugned order framing charge deserve to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case, coupled with the reasons aforementioned, this court is of the considered view that all these four petitions have been found to be 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, all the above said criminal revision petitions i.e. Crl. Revision No.3068 of 2013, (Mahavir Parshad Vs. State of Punjab), Crl.Revision No.1694 of 2015 (Krishan Ram and another Vs. State of Punjab), Crl. Revision No.1847 of 2015 (Munish Bhargav @ Manish and another Vs. State of Punjab) and Crl.Misc.No.M-14234 of 2015 (Munish Bhargav @ Manish and another Vs. State of Punjab) stand dismissed, however, with no order as to costs.

17.9.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE