

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

CRR No.660 of 2013

Date of Decision:- **12.1.2015**

Court on its own motion

....Petitioner

Versus

Umesh Kumar @ Chotu & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR

Present:- Mr.P.S.Ahluwalia, Advocate as amicus curiae.

Mr.K.S.Dhaliwal, Advocate for respondent No.1.

Mr.R.P.S.Sidhu, AAG Punjab for the State.

Mehinder Singh Sullar, J. (Oral)

The matrix of the facts & material, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant revision petition, emanating from the record and as claimed by the prosecution, is that on 13.5.2011, in the wake of search, 30 kg. of Poppy husk (for brevity “first recovery”) was recovered from the possession of respondent-accused Umesh Kumar alias Chotu son of Ram Naryan, without any permit or licence. Consequently, on the basis of writing (ruqqa), a criminal case was registered against him, vide FIR No.41 dated 13.5.2011, on accusation of having committed an offence punishable u/s 15 of The Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act”) by the police of Police Station Samana, District

Patiala.

2. During the course of investigation, the respondent-accused made a disclosure statement on 14.05.2011 to the effect that he had kept concealed three plastic bags containing poppy husk in the field near the canal (place of recovery). In pursuance thereof, three plastic bags containing 90 kgs. (30 Kgs. each) of poppy husk (commercial quantity) (for short “the second recovery”) were also recovered and were taken into possession, vide recovery memo by the police of the same police station.

3. After completion of the investigation, the police submitted the final police report (challan) in respect of 1st and 2nd recoveries against the accused. However, only the charge, pertaining to 1st recovery was framed against him, by means of order dated 4.5.2012 by the trial Court. Inadvertently, the trial Court did not frame the charge of illegal possession of 2nd recovery of 90 Kg. of poppy husk. Thereafter, the case was slated for evidence of the prosecution by the trial court.

4. Sequelly, when the prosecution, in order to substantiate the charge framed against the accused, examined PW1 MHC Avtar Singh, PW2 Dharminder Singh & PW3 Vinod Kumar Clerm, Registration Authority, then, he confessed his guilt. Consequently, he was convicted & sentenced to already undergone by him, by way of judgment of conviction and order of sentence dated 23.1.2013 by the Judge, Special Court, the operative part of which is as under (paras 5 to 7):-

“5. I have considered the confessional statement made by the accused, which appears to has been made by him without any threat, inducement or promise. Therefore, on the basis of concessional statement suffered by the accused, he is held guilty for the offence under section 15 of the NDPS Act. Accused is already in custody. Let he be heard on the question of sentence.

6. I have heard the convict in person as well as Ld. Counsel for the convict on the question of sentence. Ld. Counsel for convict stated that the convict remained in custody for one year, eight months and 10 days and as such, lenient view be taken in the matter of awarding the sentence.

7. *Keeping in view the nature of the recovery of 30 Kg. of poppy husk and the fact that accused remained in custody for sufficient long time, he is sentenced to undergo rigorous imprisonment for the period, for which he has already undergone the sentence and also to pay fine of Rs.1000/- and in default of payment of fine, he shall to further undergo SI for one month. Fine paid. Case property be destroyed after the expiry of period of appeal or revision, if any. File be consigned to the record room.”*

5. Thereafter, as soon as, the mistake came to the notice, meanwhile, the trial court has made the present reference (treated as revision petition), vide order dated 26.02.2013, by a Co-ordinate Bench of this Court (Ranjit Singh, J), which, in substance, is as under:-

“In reference to above cited subject, it is submitted that as per the case of prosecution, on 13.5.2012, the accused was apprehended on the ground of secret information and from his possession 30 kilograms of poppy husk was recovered. After completion of formalities, ruqa was sent to the police station for recovery of 30 kilograms of poppy husk, on the basis of which, formal FIR was registered. Thereafter, on the next date i.e. on 14.5.2011, the accused was interrogated and he suffered a disclosure statement under Section 27 of the Indian Evidence Act, which led to recovery of three bags, each containing 30 kilograms of poppy husk, which were also taken into possession of police.

After presentation of the challan, on the basis of ruqa and FIR, the charge for recovery of 30 kilograms of poppy husk was framed against the accused. Inadvertently, at the time of framing of the charge, the documents regarding recovery of 90 kilograms of poppy husk on next day, could not be perused. After examination of three formal witnessess, the accused moved an application confessing his guilt, on the basis of which he was convicted and sentenced for a period of 1 year 8 months and 10 days and the confiscation proceedings against the motorcycle which was being used in carrying the contraband, were also ordered to be initiated.

It is further submitted that after signing the judgment and issuance of the custody warrants, it has come in the notice of undersigned that the charge with respect to subsequent recovery of 90 kilograms of poppy husk on 14.5.2012 was not framed and as such, no conviction order could be passed with respect to that recovery.

It is submitted that the recovery of 90 kilograms of poppy husk is separate one and separate proceedings were initiated with respect to that recovery and separate sample was sent to the office of Chemical Examiner and as such, humble request is made that permission be granted for retrial of the accused for the subsequent recovery of 90 kilograms of poppy husk.”

6. Notice of the petition was issued to the respondent-accused, who has opposed the prayer. That is how I am seized of the matter.

7. Having heard the learned counsel for the parties, having gone

through the trial court record, with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant revision petition deserves to be accepted in this context for the reasons mentioned here-in-below.

8. As is evident from the record that initially, 30 kg. of poppy husk was recovered from the possession of the respondent-accused on 13.5.2011, whereas 90 kg. of poppy husk (commercial quantity) was also recovered in pursuance of his disclosure statement on 14.5.2011 in the manner depicted here-in-above. After completion of the investigation, the trial Court had only framed the charge with respect to first recovery of 30 kg. of poppy husk and inadvertently omitted to frame charge in regard to 2nd recovery. Consequently, the respondent-accused was convicted & sentenced to the imprisonment, already undergone by him, vide pointed judgment of conviction and order of sentence dated 23.1.2013, by the trial Court.

9. At the very outset, the contention of learned counsel that since the respondent-accused has already been tried and convicted, so, he cannot be tried again as his case would be prejudiced in this regard, is not only devoid of merit but misplaced as well, as Section 300 Cr.P.C. would not come to his rescue at this stage. He was neither charge-sheeted nor tried for 2nd recovery of 90 kg. of poppy husk at any stage.

10. Not only that, Section 218 Cr.PC postulates that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately. Provided that where the accused person, by any application in writing, so desires, and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate **may** try together all or any number of the charges

framed against such person. Sequel, Sections 219 and 220 Cr.PC further posits that the trial court may charge a person for offence of same kind within one year or the offence arising out of one series of the acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for, every such offence.

11. A conjoint and meaningful reading of these provisions would reveal that the court has the discretion to try the offences in the manner as contemplated therein. At the same time, the court is not legally debarred to conduct separate trial of distinct offence by framing a separate charge as contemplated u/s 218 Cr.PC. Meaning thereby, the trial court has the vast power to try the accused by framing a separate charge of illegal possession of 90 kg. of poppy husk (second recovery) recovered on the next day, but it has omitted to do so. This matter is no more res integra and is now well settled.

12. An identical question came to be decided by Hon'ble Apex Court in case Mohinder Singh v. State of Punjab **1999(1) RCR (Criminal) 131**. Having interpreted the relevant provisions, it was ruled that section 220 Cr.PC permits the Court to try more than one offence in one trial and it is only an enabling provision. The Court may or may not try all the offences together in one trial. Therefore, the ratio of law laid down in the aforesaid judgment "mutatis mutandis" is applicable to the facts of the instant case and is the complete answer to the problem in hand. Thus, the contrary arguments of learned counsel for respondent-accused "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

13. In the light of aforesaid reasons, the instant petition is accepted.

The trial Court is directed to separately charge-sheet and try the respondent-accused for 2nd recovery of 90 kg. of poppy husk (commercial quantity) in accordance with law.

14. The parties through their counsel are directed to appear before the trial court on 9.2.2015 for further proceedings.

15. At the same time, the Registry is directed to send the record to the trial Court forthwith.

12.1.2015
AS

(Mehinder Singh Sullar)
Judge

Whether to be referred to reporter? **Yes/No**