

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. **Crl. Revision No.373 of 2015(O&M)**
Date of Decision: March 11 , 2015.

Vinay Kumar and another PETITIONER(s)

Versus

State of Punjab RESPONDENT (s)

2. **Crl. Revision No.305 of 2014(O&M).**

Vinay Kumar PETITIONER(s)

Versus

State of Punjab RESPONDENT (s)

3. **Crl. Revision No.419 of 2014(O&M).**

Karu Lal PETITIONER(s)

Versus

State of Punjab RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vipul Jindal, Advocate
for the petitioners.

Mr. Gurinder Jeet Singh, DAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This order shall dispose of Crl. Revision No.373 of 2015 (Vinay Kumar and another v. State of Punjab), Crl. Revision No.305 of 2014 (Vinay Kumar v. State of Punjab) and Crl. Revision No.419 of 2014 (Karu Lal v. State of Punjab).

Vide CRR No.305 of 2014 and CRR No.419 of 2014, petitioners pray for quashing of the impugned charge-sheet dated 11.11.2013 in FIR No.100 dated 11.07.2012, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act'), police station Shambhu, District Patiala.

In CRR No.373 of 2015 challenge is to the amended charge-sheet dated 03.06.2014 under Sections 18/21 of the NDPS Act in the abovesaid FIR against petitioners, Vinay Kumar and Karu Lal.

Brief facts of the case are that, the abovesaid FIR was registered against the petitioners, Vinay Kumar, Karu Lal and co-accused Randhir Singh (non-applicant). As per prosecution version, the police party was on patrol duty and had erected baricades (Nakabandi) on the main highway GT road, near Vardhwan factory for checking persons coming from Ambala side. At about 12.15 p.m. a truck bearing registration No. HP-55H-6690 was signalled to stop. Three persons were sitting in the cabin of the truck. Three bags were found lying in cabin. On suspicion of their carrying some contraband, all the three persons were asked to come down with the bags. They alighted from the truck, each holding one bag. Driver of the truck revealed his name as Randhir

Singh (non-applicant), the other two persons were Vinay Kumar and Karu Lal, present petitioners. They were apprised of their rights to get themselves searched before a Magistrate or gazetted officer. On which they opted to be searched before a gazetted officer. Consequently, DSP Devinder Singh circle Ghanour was called at the spot, in whose presence the search of all the three persons was conducted. From petitioner-Karu Lal as well as petitioner-Vinay Kumar opium weighing 10 Kg. each was allegedly recovered and from Randhir Singh 5 Kg. opium and 100 grams smack was allegedly recovered.

Petitioner-Karu Lal approached this Court for grant of bail on the ground that as per the chemical examiner's report, the quantity of morphine detected was below 0.2 per cent as stipulated under the Act. This Court on suspicion being raised by the State on the correctness and validity of the report, directed retesting of the sample in order to decide the real controversy. Consequently, it was directed on 27.08.2013 in CRM No.M-18861 of 2013 (Karu Lal v. State of Punjab) to draw a fresh sample in accordance with the relevant rules from the bulk of the opium recovered from the accused and it be sent to Central Laboratory, Chandigarh for retesting.

As per the second report, the morphine content was 4.18%, 3.07% and 4.13% instead of 0.10%, 0.14% and 0.16%, respectively.

Petitioner – Karu Lal preferred an appeal impugning the abovesaid order dated 27.08.2013 passed by this Court on the ground that second sample could not be directed to be drawn. Hon'ble Supreme Court on 16.12.2013 in Criminal Appeal No.2103 of 2013 (Annexure P2 with CRR No.373 of 2015) set aside the said order while observing as under:-

“..... In the present, we find that the State has failed to show any ground to doubt the earlier chemical test of the seized opium and no ground given to re-test and re-sampling of the opium. It is subsequent stage of trial such direction has been given to go for second sampling. For the reasons aforesaid, we set aside the order dated 27th August, 2013 and direct the court not to rely on the second report which was ordered to be provided without any valid ground.”

Petitioners, Vinay Kumar and Karu Lal challenged the charge framed against them on 11.11.2013 in FIR No.100 dated 11.07.2012, under Section 18 of the NDPS Act by way of Crl. Revisions No.305 and 419 of 2014, respectively. Both the petitioners specifically pleaded that once the Hon'ble Supreme Court has held that second report of the Chemical Examiner is not be relied upon, the charges against the petitioners for being in possession of 10 kg. opium each cannot be sustained. In the interregnum, the Review application filed by the State of Punjab qua decision dated 16.12.2013 was also dismissed by the Hon'ble Supreme Court on 23.09.2014 (Annexure P8 with CRR No.305 of 2014).

In this case, prosecution has amended the charge against the petitioners as well as co-accused Randhir Singh on 03.06.2014 wherein all of them were alleged to be in illegal possession of 25 Kg. opium as well as 100 grams smack. Petitioners were released on bail vide order dated 12.01.2015 passed in Crl. Misc. No.M-47073 of 2013 (Annexure P6 with CRR No.373 of 2015).

On 20.01.2015 learned State counsel sought time in Crl. Revisions

No.305 and 419 of 2014 for placing on record the amended charge-sheet which was stated to have been filed against the petitioners.

Crl. Revision No.373 of 2015 was then filed by the petitioners challenging the amended charge-sheet dated 03.06.2014 against them. Delay of 152 days in filing CRR No.373 of 2015 has been condoned vide separate order of even date.

Learned counsel for the petitioners vehemently submits that once the Hon'ble Supreme Court has authoritatively held that the second report of the Chemical Examiner is not be relied upon, amended charge against the petitioners is unsustainable qua the alleged recovery of opium. Admittedly, as per the first report of the Chemical Examiner Annexure P7 with CRR No.373 of 2015, morphine content was below 0.2 per cent.

Furthermore, the prosecution has displayed its mala fide by charging all the accused persons for being in illegal possession of 25 Kg. opium as well as 100 grams smack. This is in total contradiction to their own stand taken earlier, reflected in the status report filed by way of affidavit dated 12.11.2013 of Ms. V.Neeraja IPS, Director General, Vigilance Bureau, Punjab, Chandigarh in CRM No.M-18861 of 2013 (Annexure R6 (Colly)(i) with Annexure P3 in CRR No.373 of 2015). Para 2 of the said affidavit reads as under:-

“2. That on 11.07.2012, after completing all the statutory provisions of NDPS Act, 1985 10 kg of opium was recovered from the possession of petitioner (Karu Lal). In addition to this 10 kg of opium was also recovered from the possession of Vinay Kumar and 5 kg opium and 100 gm smack was recovered from the

possession of Randhir Singh and FIR no.100 dated 01.07.2012 was registered against all the above accused by the Police Station Shambhu, Distt. Patiala.”

In this situation, it is urged that the charges qua petitioners, Vinay Kumar and Karu Lal as contained in charge-sheet dated 03.06.2014 are not sustainable. Amendment has been effected after the passing of order dated 16.12.2013 by the Hon'ble Supreme Court.

Learned counsel for the State vehemently argues that very heavy quantity of narcotics has been recovered from the petitioners-accused. In the second sample drawn, morphine content runs to the extent of 4.18%, 3.07% and 4.13% instead of 0.10%, 0.14% and 0.16% in the first report. Vide the amended charge-sheet, all the accused have been charged with illegal possession of 25Kg. of opium but also 100 grams of smack. They were all travelling together and, therefore, charge-sheet has been suitably and rightly amended.

Learned counsel for the State vehemently contends that trial is at its penultimate stage. There is only one prosecution witness left to be examined. Therefore, it would not be in the interest of justice to quash the charge-sheet, at this stage.

I have heard learned counsel for the parties and gone through all the three files.

It is an admitted position that the Hon'ble Supreme Court vide order dated 16.12.2013 directed that no reliance is to be placed on the second report of the Chemical Examiner which was ordered to be provided without any

valid ground. In this view of the matter, the fact situation is that the morphine content detected in the recovered opium is less than the stipulated 0.2% under the NDPS Act.

The definition of 'opium' as per the NDPS Act, reads as under:-

“2.(xv) "opium" means

(a) the coagulated juice of the opium poppy; and

(b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent of morphine”

Therefore, the charge in respect to illegal possession of opium is clearly unsustainable.

Learned counsel for the State is unable to deny the stand of the State as reflected in the affidavit dated 12.11.2013 of Ms. V.Neeraja IPS, Director General, Vigilance Bureau. There is no explanation as to why and on what basis the amended charge has been framed. Once the State itself has taken a stand that 100 grams of smack alongwith 5 Kg. opium has been recovered from co-accused Randhir Singh, who is not petitioner before this Court, there is no plausible reason forthcoming to justify this volte-face. It appears to be a clumsy attempt on the part of the prosecution to circumvent decision dated 16.12.2013 by the Hon'ble Supreme Court.

Keeping in view the facts and circumstances of the case, impugned charge-sheet dated 03.06.2014 is quashed qua the petitioners.

Crl. Revision No.373 of 2015 is consequently allowed.

Crl. Revision No.305 of 2014 and Crl. Revision No.419 of 2014

have been rendered infructuous as the earlier charge-sheet dated 11.11.2013 merged with the subsequent amended charge-sheet dated 03.06.2014. They are disposed of accordingly.

March 11 , 2015.
'om'

(LISA GILL)
JUDGE