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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 3707 of 2015 (O/M)

Date of decision : 24.5.2016

Bhim Sain Kansal

..... Petitioner

Versus

State of Punjab through District Drug Inspector, Sangrur Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Gurcharan Dass, Advocate, for the petitioner.

Mr. Ashish Sanghi, Deputy A.G. Punjab.

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

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KULDIP SINGH J. (ORAL)

The petitioner has challenged the order dated 7.9.2015, passed by the learned Sessions Judge, Sangrur, vide which in an appeal filed by the petitioner against his conviction and sentence, the case was remanded back to the Court of trial Magistrate with a direction to amend the notice of accusation, as per the allegations made against him in the complaint and dispose of the same in accordance with law, within a period of four month from the date of receipt of order.

Briefly stated, the petitioner was tried and convicted under Sections 27 (d), 28 and 28B of the Drugs and Cosmetics Act, 1940, and was sentenced to undergo various imprisonments by the learned Chief Judicial Magistrate, Sangrur, vide judgment of conviction and order of sentence dated 27.5.2013. The petitioner preferred an appeal, which came up for hearing before the learned Sessions Judge, Sangrur, who vide judgment

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dated 7.9.2015, observed as under :-

“10. Perusal of the file reveals that allegations against the accused-appellant were that he stocked for sale and sold drug which was declared not of standard quality and misbranded by the Government Analyst, Punjab and thus, contravened provisions of Section 18 (a) (i) of the Act, which is punishable under Section 27 (d) of the Act; that he did not disclose name, address and other particulars of person/firm (s) from whom he acquired the sample drug and thus, contravened provisions of Section 18-A of the Act, which is punishable under Section 28 of the Act; and that sample drug had also come under the definition of banned drug being combination of Diphenhydramine and Diazepam and thus, he contravened provisions of Section 26-A of the Act, which is punishable under Section 28-B of the Act. However, at the time of serving notice of accusation upon the accused-appellant, he was called upon that he failed to show purchase record of six type of allopathic drug before the raiding party but he was not called upon by the learned Magistrate that sample drug was also banned by the Government, though relevant Sections of the Act in this behalf were mentioned in the notice. In the situation, it is apparent that in the notice of accusation, complete substance of the accusations i.e. non-production of purchase record of the drugs and sample drug having been found within the ambit of banned drugs, was not mentioned, in the notice of accusation and thus, serving of the accused-appellant with notice of accusation was not proper being incomplete.”

While observing so, the impugned order was passed.

I have heard the learned counsel for the petitioner, the learned State counsel and have also carefully gone through the file.

The learned counsel for the petitioner has stated that the sample in this case was taken on 16.8.2004 and the complaint was filed on 3.4.2008. Now, more than 8 years have elapsed. The prosecution cannot be

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allowed to fill in the lacuna in its case. The reliance has also been placed on the authority of this Court in Balbir Versus State of Haryana, 2010 (1) RCR (Criminal) 449, wherein this Court in a case of defective recording of statement under Section 313 Cr.P.C. quashed the order of the trial Court and remitted the case for re-trial.

I am of the view that when an appeal is filed before the appellate Court, the appellate Court can examine the same. If some defect is found, the appellate Court is not powerless to remand the case for afresh decision. Here, some necessary details were not given at the time of serving the notice of accusation. It is not a case of filling up the lacuna in the prosecution case, but putting the accused to notice regarding correct accusation. It is not an appeal, filed by the State, but the Court of its own motion found defect in the notice of accusation. In order to avoid the delay, a direction has already been issued to dispose of the case within four months from the date of receipt of order. It being so, I am of view that it is not a case of filling up the lacuna. The concern of delay has already been taken care of by the learned Sessions Judge, Sangrur. Therefore, exercising the revisional powers, this Court does not find any illegality or infirmity in the impugned order. Hence, the present revision is dismissed.

(KULDIP SINGH)
JUDGE

24.5.2016
sjks