

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 1172 of 2016 (O&M)

Date of decision : 12.10.2017

...

Kulwinder Singh @ Shailley

.....Petitioner

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Gurmohan Singh Bedi, Advocate for the petitioner

Ms. Samina Dhir, Deputy Advocate General, Punjab.

...

H. S. Madaan, J. (Oral)

This revision petition has been filed against order dated 3.2.2016, passed by Judge, Additional Sessions Judge, Sangrur, vide which he had allowed an application filed by Additional PP, under Section 193 Cr.P.C. for summoning of petitioner Kulwinder Singh @ Shailley as an accused to face trial.

Briefly stated, facts of the case as per prosecution version are that on 14.6.2014, a police party headed by ASI Pawan Kumar from Police Station City Sangrur, was going from city Sangrur, through Uppli Road to Railway crossing, Sangrur, in connection with patrol duty and checking of suspicious elements. At

about 2.30 P.M., when the police party reached near Park Avenue, Uppli Road, Sangrur, then a person was spotted coming on foot from the side of Guru Teg Bahadur Colony, Uppli Road, Sangrur, carrying a plastic bag in his right hand. On seeing the police party he got nervous and tried to turn back. He was apprehended and on being enquired, he disclosed his name as Kulwinder Singh @ Shailley s/o Sukhdev Singh r/o Uppli Raod, near Fire Brigade office, Sangrur. On being searched, the plastic bag being carried by him was found to contain 10 Rexcof cough syrup 100 ml each of Cipla, kept in the form of small plastic bottles; 15 leaves of intoxicant tablets Carisoma, containing 10/10 tablets in each leaf i.e. total 150 intoxicant tablets were recovered from him. Samples were collected and thereby samples and remaining recovered material were converted into sealed parcels. Accused was arrested in this case. *Ruqa* was sent to the Police Station, on the basis of which formal FIR was registered.

Interrogation of Kulwinder Singh @ Shailley revealed that Jai Bhagwan r/o of Lehra, had been supplying those medicines. According to accused Kulwinder Singh @ Shailley he had met with an accident in February 2014, in which his leg was fractured and he had been taking medicines proscribed by the doctor regularly from Jai Bhagwan due to his supplying them at a rate cheaper than the prevalent market rate, Jai Bhagwan had in fact given him such medicines. Jai Bhagwan was nominated as an accused. He was arrested on 16.6.2014. During investigation it came out that Jai Bhagwan was engaged in trade of intoxicating substances. Kulwinder Singh @ Shailley had moved an application to SSP pleading his

innocence, which was marked to DSP Sangrur for enquiry, who came to the conclusion that Kulwinder Singh @ Shailley is patient of Swine flu and mental illness and was undergoing treatment and the medicines recovered from him had in fact been supplied by Jai Bhagwan, who had handed over those to Kulwinder Singh @ Shailley saying that persons who are to be delivered those medicines would meet him after 2-3 hours and Kulwinder Singh @ Shailley had no knowledge about those medicines. Therefore, as a result of investigation only Jai Bhagwan was challaned, whereas name of Kulwinder Singh @ Shailley was placed in column No.2.

On an application having been filed by the Investigating Officer, for discharge of accused Kulwinder Singh @ Shailley, on the basis of enquiry conducted by DSP, Kulwinder Singh @ Shailley was released from custody by Judge, Special Court, Sangrur, vide order dated 21.7.2014.

At a later stage, Additional PP moved an application under Section 193 Cr.P.C. for summoning of Kulwinder Singh @ Shailley, the operative part of application reads as under :-

“ 2. That in report u/s 173 Cr.P.C. accused Kulwinder Singh @ Shailley has been placed on column No.2 of the report and he is not challaned.

3. On 14.6.2014 at about 2.30 P.M. in the area of Park Avenue, Uppli Road, Sangrur 150 tablets of Carisoma and 10 vial (bottles) of Rexcof cough syrup are recovered from the accused Kulwinder Singh @ Shailley.

4. Kulwinder Singh @ Shailley is by name in the FIR.

There is sufficient evidence against the accused Kulwinder Singh @ Shailley.

It is therefore, respectfully prayed that accused Kulwinder Singh @ Shailley may kindly be summoned to face trial alongwith other accused Jai Bhagwan @ Meetu.”

Thereafter, on this application Judge, Additional Sessions Judge, Sangrur, passed an order which is to the following effect:-

“1. The Additional PP moved an application under Section 193 of Cr.P.C. for summoning Kulwinder Singh son of Sukhdev Singh resident of Uppali Road, Opposite Karam Singh Nagar, Sangrur as co-accused. It is pleaded that Kulwinder Singh has been kept in Column No.2 of the challan. As per version of prosecution on 14.6.2014, 10 vials of Rexcoff and 150 tablets of carrisoma were recovered from the possession of Kulwinder Singh. There is sufficient evidence against Kulwinder Singh.

2. Heard. File perused. As per version of prosecution the contraband material was recovered from the possession of Kulwinder Singh @ Shailley. However, inquiry was conducted on his plea of innocence and it was found that he was

suffering from some ailment including mental problem. Co-accused Jai Bhagwan had given him medicine and has also handed over the packet containing contraband and he has no knowledge if this packet contained contraband.

3. The Additional PP for the State argued that Kulwinder Singh can take plea in his defence. Once the recovery was effected from him, a prima facie case for summoning him as co-accused is made out. There is no reason to differ from this arguments raised by the Additional PP for the State. There are sufficient ground to proceed against Kulwinder Singh as co-accused. Thus application filed by prosecution under Section 193 Cr.P.C. is allowed and Kulwinder Singh @ Shailley is ordered to be summoned as co-accused. Let he be summoned for 29.2.2016.”

Feeling aggrieved by the said order, Kulwinder Singh @ Shailley has approached this Court by way of filing the present revision petition.

Notice of the petition was given to the respondent – State.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record of the case and I find that there is not merit in this revision petition.

As per own case of the prosecution, the petitioner-

accused was found in possession of the intoxicant medicines though as per the conclusion arrived at during the investigation, petitioner was not having the conscious possession of the same. Even if it be so, his possession was there. It is for the petitioner to show that he was not aware of what was there in the polythene bag and the bag had been handed over to him by Jai Bhagwan without informing him regarding the contents. It is the matter of trial whether petitioner Kulwinder Singh @ Shailley was in conscious possession of the contraband or not. He could not possibly be given a clean chit by the Investigating Agency in the manner in which it was so done. After receipt of the challan, the Judge Special Court could very well summon a person whose involvement in the crime could prima facie be gathered from the material which was available on record.

There is nothing wrong with the trial Court summoning the petitioner as an accused to face trial alongwith Jai Bhagwan who was forwarded by the police to face trial in the Court. The order does not suffer from any illegality or infirmity and is certainly not perverse. It cannot be said to have been passed in violation of settled principles of criminal jurisprudence, rather the revision petition is found to be without any merit and is dismissed accordingly.

(H.S. Madaan)
Judge

12.10.2017

chugh

Whether speaking / reasoned

Yes/ No

Whether reportable

Yes/ No