

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

CRR-3792-2015

Date of decision : 27.09.2017

Court on its own motion

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. B.S. Aulakh, Advocate as Legal Aid
Counsel for accused – Naveen Kumar.

Ms. Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

Naveen Kumar an accused in FIR No. 119 dated 26.06.2014 under Section 20 NDPS Act registered with Police Station Basti Bawa Khel, Jalandhar faced trial by Judge Special Court, Jalandhar; that on 26.06.2014 at about 5:10 p.m. in the area of 120 feet road, Basti Mithu, Jalandhar, he was found in possession of 500 grams of Charas without any permit or licence; that trial ended in his conviction and vide judgment dated 05.03.2015 he was convicted for offence under Section 20 of NDPS Act, 1985 vide order of same day. He was sentenced to undergo imprisonment for 08 months already undergone and to pay fine of ₹600/-, in default of

payment of fine to undergo further imprisonment for 10 days.

Subsequently learned Public Prosecutor, Jalandhar moved an application for amendment and correction in the judgment and setting aside the sentence passed by the Court contending that accused was apprehended while carrying 1 kg. 500 grams Charas, which was commercial in nature under the NDPS Act and minimum sentence is 10 years and fine of ₹1 lac. However, inadvertently the Court considered the quantity from possession of accused 500 grams instead of actually recovery of 1 kg. 500 grams, therefore, appropriate sentence be passed against the accused persons.

Judge Special Court, Jalandhar has made a reference to this Court under Section 395 Cr.P.C. seeking permission to conduct *de novo* trial contending that while framing of charge, she inadvertently misread the recovery as 500 grams Charas instead of 1 kg. 500 grams and in the FIR as well as in the ruqa recovery wroth 1 kg. was written in Punjabi language i.e. '*Tk Kilo*' whereas 500 grams were written in digits and all the said documents were in Punjabi language and she could not read word '*Tk Kilo*'; that due to this reason, she inadvertently mis-read the recovery as 500 grams instead of 1 kg. 500 grams and charge was accordingly framed. The trial started on 05.03.2015, the accused moved an application for confession of his guilt. He was suffering from various ailments and he was unable to walk. She perused the file and found that accused even during the remand period remained in hospital and this fact was also mentioned in the judicial order dated 17.07.2014, so keeping in view his serious medical condition and after following the due procedure, he was allowed to confess his guilty and considering the recovery of non-commercial in nature, he was sentenced

to undergo rigorous imprisonment for 08 months and was directed to pay a fine as mentioned in the judgment; that accused was so poor and was unable to engage any counsel, hence a free legal aid counsel was provided to him; that abovesaid the mistake came to her notice when an application having been moved by Addl. P.P., then the original file was summoned and factual position came to be there. According to the Officer, mistake was bona fide and she has tendered her apology. She stated that in terms of Section 363, she herself is not competent to alter the judgment and cannot review the same, as such, she be allowed to conduct *de novo* trial after rectifying the charge-sheet.

This letter received from Judge Special Court, Jalandhar in this Court was to be treated as revision petition on the judicial side and notice thereof was given to the accused, who had put in appearance through counsel.

I have heard learned counsel for the parties, besides, going through the record.

Section 401 Cr.P.C. deals with High Courts' Powers of revisions. It provides that in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307. Exercising the revision power this Court is to see the correctness, legality or propriety of any finding, sentence or order recorded or passed so also to regularity of any proceeding of such inferior Court. In the instant case the Judge Special Court, Jalandhar inadvertently

took the contraband recovered to be 500 grams Charas when actually it was 1.5 kgs. forming commercial quantity, charge was framed mentioning the recovery to be 500 grams Charas. Accused had confessed his guilty and he was sentenced to undergo rigorous imprisonment for 8 months and to pay fine as mentioned in the judgment. It was subsequently when the Additional Public Prosecutor moved an application that factual position came to notice of the Judge Special Court, Jalandhar and then she made a reference. The mistake on the part of Judge Special Court, Jalandhar does not appear to be intentional but comes out to be having made inadvertently without any element of mala fide, such wrong can be corrected by this Court while exercising revisional jurisdiction and direct that a fresh trial be conducted in the matter.

Learned counsel appearing for the accused stated that it cannot be done in view of ratio of authority **Hari Singh Mann vs. Harbhajan Singh Bajwa, 2000(4) RCR (Criminal) 650** by the Apex Court, but such contention of counsel for accused is wrong. Though the Court by itself cannot review its judgment but the High Court exercising revisional jurisdiction can certainly correct the mistake committed by any Court inferior to it. Therefor, this authority does not help the accused in any manner, resultantly, the revision petition is accepted. The impugned judgment is set aside and Judge Special Court, Jalandhar is directed to conduct *de novo* trial by mentioning the contraband actually recovered in the charge-sheet and then fix the case for prosecution evidence. Thereafter to proceed further with the trial.

Since the matter has got prolonged the trial Court is directed to give short dates so as to conclude it expeditiously, the accused through counsel is directed to appear in the trial Court on **23.10.2017**. The State counsel has been informed accordingly so that the Public Prosecutor comes to know about

this direction.

A copy of order be sent to the trial Court immediately through
District and Sessions Judge, Jalandhar.

Lower Court record be returned immediately.

27.09.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**