

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

Sr. No.111

**CRR No.21 of 2017 (O&M)
Date of decision: 16.02.2017**

Kamal and another

....Petitioners

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sandeep Kotla, Advocate
for the petitioners.

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DEEPAK SIBAL, J. (Oral)

The present petition has been filed to challenge therein the order dated 28.09.2016 through which the petitioners have been charged by the trial Court for having committed an offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'Act').

Laying a challenge to the impugned order, learned counsel for the petitioners submits that in the case in hand the recovery of 3.50 kgs of charas was effected from one Rajender and as no recovery was effected from the petitioners they could only have been charged under Section 29 and not Section 20 of the Act.

After hearing learned counsel for the petitioners and after examining the record of the case, I am of the opinion that the present petition must fail.

The FIR depicts that on basis of secret information received by the police, they raided the house of one Rajender, where six boys were seen present. Out of them, Rajender son of Jai Singh, Mohd. Irfan son of Mohd. Akhtar and Ansh son of Moharam Ali were apprehended while three of them, on seeing the police party, fled from the spot. On questioning by the police, Rajender disclosed that his house could be searched only in the presence of a Gazetted Officer. Mohd. Irfan and Ansh also gave in writing that they be searched only in the presence of some Gazetted Officers. Accordingly, on request, Deputy Superintendent of Police, Crime Branch, reached the spot and in his presence search of premises of Rajender and of the aforesaid two persons namely Mohd. Irfan and Ansh was conducted. Such search resulted in the recovery of 3.50 kgs of charas from the house of Rajender. On being questioned, Rajender told the police that the charas was brought by the petitioners alongwith Mohd. Irfan and Ansh in a Tata Safari Car and that they amongst themselves were bargaining for the purchase/sale of the same.

Investigations revealed that at the time the police conducted the raid at Rajender's house, the three persons who had fled from the spot were the petitioners and one Raju. It was further found that it was the petitioners who along with Mohd. Irfan, Ansh and Raju had brought 3 kg 500 gms of charas for sale/purchase purposes. On the basis of such investigations a report under Section 173 Cr.P.C. was filed by the prosecution before the trial Court.

After considering the evidence collected by the investigating agency, the Court being of the view that there was enough material on record to prosecute the petitioners, through the impugned order charge-

sheeted them to be tried for committing an offence under Section 20 of the Act.

Section 20 of the Act, reads as under:-

“20. Punishment for contravention in relation to cannabis plant and cannabis.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,—

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable—

[(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to [one year], or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be

liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]” (emphasis supplied)

Section 20(b) of the Act clearly provides that any person who contravenes the provisions of this Act by selling or purchasing cannabis is punishable under the Act. Since the investigation has found the petitioners to be indulging in sale/purchase of cannabis, no fault can be found in their being charged for the same under Section 20(b) of the Act.

The argument of learned counsel for the petitioners that the petitioners could have only been charged under Section 29 of the Act, carries no weight.

Section 29 of the Act reads as under:-

“29. Punishment for abetment and criminal conspiracy.”-(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which-

(a) would constitute an offence if committed

within India; or
(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

A perusal of the afore-quoted provision shows that the same would apply to a person who abets, or is a party to a criminal conspiracy to commit an offence punishable under chapter IV of the Act. The investigating agency has not found the petitioners to be abetting or to be part of any criminal conspiracy. They have been found indulging in sale/purchase of cannabis for which they have rightly been charged under Section 20 of the Act.

Dismissed.

(DEEPAK SIBAL)
JUDGE

February 16, 2017

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(i) Whether speaking/reasoned	Yes/No
(ii) Whether reportable	Yes/No