

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42486 of 2015

DATE OF DECISION: FEBRUARY 20, 2018

RAM GOPAL SHARMA

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

PRESENT: MR. A.D.S. SUKHIJA, ADVOCATE FOR THE PETITIONER.
MR. TANVIR JOSHI, AAG, PUNJAB.

MAHABIR SINGH SINDHU, J.

The petitioner has filed the present petition for quashing the impugned order dated 16.10.2015 (Annexure P-1) vide which the application filed under Section 193 Cr.P.C. by the prosecution has been allowed and he has been ordered to be summoned as additional accused.

Learned counsel for the petitioner contended that he was declared innocent by the Deputy Superintendent of Police in his enquiry dated 8.1.2015, (Annexure P-2) and further that in the report under Section 173 Cr.P.C., he has been put in column No.2. It was further contended that without there being any evidence or material on record, the learned trial Court has allowed the application which is not permissible in view of the provisions contained under Section 193 Cr.P.C. To substantiate his contentions, learned counsel has placed reliance on a judgement of this Court in **Kapil Dev and Anr. vs. State of Punjab, 2015(8) RCR (Criminal) 969.**

On the other hand, learned State counsel opposed the prayer of the petitioner and submitted that as per the FIR, the petitioner was found

in possession of the alleged contraband and thus, the trial Court has rightly summoned the petitioner under Section 193 Cr.P.C.

Heard learned counsel for the parties.

A bare reading of the FIR reveals that the same was registered against three persons including the petitioner on the allegation that on 28.11.2014, upon checking of a car stopped by the police party, the petitioner was found sitting on the rear seat holding a white plastic bag in his lap containing 28 bottles (100 ml. each) labeled as Rexcof Syrup and was arrested from the spot alongwith the co-accused.

A perusal of the impugned order reveals that the petitioner has been summoned by learned trial Court on the basis that his name found mentioned in the FIR and recovery has been effected from him as he was carrying a plastic bag containing bottles labelled at Rexcof, sitting behind the driver of the car. Therefore, he was in conscious possession of the contraband. Further, a perusal of the order reveals that learned trial Court has rightly expressed its opinion that despite the above factual position, how and under what circumstances the Deputy Superintendent of Police gave a clean chit to the petitioner.

Although there was no other material available before the learned trial Court except the police papers, but that is sufficient in view of the fact that the name of the petitioner was found mentioned in the FIR and recovery had also been effected from him on the spot and was arrested. Therefore, the learned trial Court has adopted the right course while summoning the petitioner as an accused.

Still further after passing of the impugned order, the petitioner joined the proceedings and he was charged for the offence under Section 22/61/56 of NDPS Act alongwith the other co-accused. The prosecution evidence is going on. It is an undisputed fact that the charges framed by learned trial Court has not been challenged by the petitioner.

A perusal of the judgement in **Kapil Dev's case (supra)**, shows that the petitioners in that case was summoned on the basis of inadmissible evidence and it was held by this Court that there was overwhelming evidence forming foundation of the report of the police declaring the petitioners as innocent. But the facts in the present cases are altogether different to the judgement relied upon by learned counsel for the petitioner and as such clearly distinguishable and not helpful to the petitioner. In the present case, the petitioner was arrested on the spot having been found in conscious possession of the alleged contraband.

The Hon'ble Supreme Court while answering the issue “*Can the Sessions Judge issue summons under Section 193 Cr.P.C. as a court of original jurisdiction*” in **Dharam Pal and others vs. State of Haryana and another, (2014) 3 Supreme Court Cases 306**, has held as under:-

“40. *In that view of the mater, we have no hesitation in agreeing with the views expressed in Kishun Singh case that the Sessions Court has jurisdiction of committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evidence from the materials available on record. Hence, even without*

recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in Column 2 of the police report to stand trial along with those already named therein.

41. *We are also unable to accept Mr. Dave's submission that the Sessions Court would have no alternative, but to wait till the stage under Section 319 Cr.P.C. was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by learned Magistrate while committing the case to the Court of Session.*

42. *The reference to the effect as to whether the decision in Ranjit Singh case was correct or not in Kishun Singh case, is answered by holding that the decision in Kishun Singh case was the correct decision and the learned Sessions Judge, acting as a court of original jurisdiction, could issue summons under Section 193 on the basis of the records transmitted to him as a result of the committal order passed by the learned Magistrate.”*

Therefore, keeping in view that the fact that the petitioner was allegedly found in conscious possession of the contraband, which is commercial and was arrested on the spot and in view of the law laid down by the Hon'ble Supreme Court in **Dharam Pal's case (supra)**, this Court finds no infirmity in the impugned order passed by learned trial Court summoning the petitioner as an accused under Section 193 Cr.P.C.

The petition lacks merit and the same is accordingly dismissed.

Nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

February 20, 2018
Gulati

(MAHABIR SINGH SINDHU)
JUDGE

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes