

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-4263-2015(O&M)
Date of Decision: 23.09.2022

RAJ KUMAR @ RAJU AND OTHERS

.....Petitioners

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Veneet Sharma, Advocate
for the petitioners.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J.(Oral)

The present petition has been filed challenging the impugned order dated 28.09.2015 passed by the learned Judge, Special Court, Amritsar vide which the petitioners have been summoned to face trial under Sections 21, 22, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 while exercising powers conferred under Section 193 Cr.P.C.

2. The brief facts of the case are that an FIR was registered on 04.11.2018 on the statement of the Sub-Inspector Vavinder Kumar, Police Station B-Division, Amritsar on the basis of secret information that Raj Kumar alias Raju owner of Raju Medical Store, Chopra the owner of Chopra Enterprises near Raju Medical Store, Sanjay alias Shambu (petitioners Nos.1 to 3 herein) and Satnam Singh alias Satta owner of B.K. Pharmaceuticals do the business of selling loose intoxicating tablets etc. after getting the same from Pawan Medical Agency, Bhatti, Near

Bhindi Market and Dadda Distributors, Jagdembey Complex, Bhatti Market, Ludhiana through New Bharat Goods Carrier Transport Nagar, Amritsar and out of them, one shopkeeper answering the description of Raj Kumar alias Raju (petitioner No.1) was waiting at Pataka Market along with the goods and in case a raid was conducted, he could be arrested.

On the basis of the secret information, a raid was conducted and a person according to the appearance given by the secret informer ran away from the spot and goods and boxes which were six in number were recovered from the spot which contained one lakh capsules of Amphetamine, 01 kg powder and 2000 empty capsules shells. The copy of the FIR No.242 dated 04.11.2008 registered under Sections 21, 22, 25, 29 NDPS Act at Police Station B-Dvision, Amritsar is annexed as Annexure P-1 to the petition.

3. An investigation began and petitioner No.1-Raj Kumar alias Raju was declared innocent by the Superintendent of Police (Detective) Amritsar City, when after verification, it was found that on the day of the alleged occurrence the petitioner No.1 was admitted from 03.11.2008 to 07.11.2008 in S.B.S. Memorial Hospital, Tarn Taran. The said inquiry was approved by the Senior Superintendent of Police, Amritsar. The copy of the inquiry report dated 15.12.2008 is annexed as Annexure P-2 to the petition. Meanwhile, one Satnam Singh alias Satta, who had been named in the FIR along with the petitioners was arrested in this case on 11.01.2009, while he was in custody in some other case.

4. Thereafter, petitioner No.2-Jatinder Kumar along with the two other chemists i.e. Om Trading Company and Puri Brothers were

declared innocent by the Superintendent of Police (Detective), Amritsar

City. The said untraced report was also accepted by the Senior Superintendent of Police, Amritsar. It was the finding during investigation that firstly, the medicines received by the accused firms were all purchased by way of valid bills and all the medicines were of daily use. Secondly, there was no evidence that any firm had in fact ordered the intoxicating medicines recovered from the spot. The copy of the report dated 23/24.09.2009 is annexed as Annexure P-3 to the petition.

5. Meanwhile, Satnam Singh alias Satta was granted bail by this Court in Criminal Revision bearing No.CRR-2188-2009 under Section 167(2) Cr.P.C. on 15.10.2009.

6. Pursuant thereto, an application was moved by the prosecution for discharging the accused Satnam Singh alias Satta as no evidence had been found against him. However, the Trial Court ordered reinvestigation on the grounds that the Investigating Officer, S.I. Vavinder Kumar had made a statement that during interrogation Satnam Singh alias Satta had suffered a disclosure statement that he along with the other accused used to indulge in selling narcotic capsules and he (Investigating Officer) did not agree with the inquiry report and if the present accused were not the accused, then the real culprits ought to be traced after conducting investigation. On the statement having been recorded of the Investigating Officer, the Special Court concluded that the Investigating Officer had not agreed with the inquiry report, whereby the accused had been exonerated and it appeared that the police was acting in a hasty manner by not bringing into notice the facts of the case to the higher authorities. In fact, the untraced report had not been

therefore, the accused could not be discharged merely on the whims of the Station House Officer (SHO). Therefore, Satnam Singh alias Satta was sent to judicial custody till 01.04.2011 and the Station House Officer (SHO) was to conduct investigation and submit the results thereof to the Court after seeking further remand of the accused. The copy of the said order on the discharge application dated 18.03.2011 is annexed as Annexure P-4 to the present petition.

7. In compliance with the aforementioned order, reinvestigation was carried out by the then Station House Officer (SHO) of Police Station 'B' Division, Amritsar who again found no evidence against the accused and recommended presentation of an untraced report. The copy of the report dated 10.09.2011 is annexed as Annexure P-5 to the petition.

It was once again found that the accused persons had received medicines by way of valid bills and there was no evidence to suggest that the contraband had been ordered by any of the accused.

8. Based on the recommendations, an untraced report was prepared in the present case, wherein it was mentioned that even petitioner No.3-Sanjay Sharma alias Shambhu had been joined in the investigation and interrogated by S.I. Vavivder Kumar and since no evidence had come on record against him, he was to be released from investigation. Effectively, all the petitioners were found to be innocent after a detailed investigation and Satnam Singh alias Satta was to be got discharged through an appropriate application to be moved in this regard. The copy of the untraced report dated 28.10.2014 is annexed as Annexure P-6 to the petition.

9. The aforementioned report came up for consideration before the Court of Judge, Special Court, Amritsar, who while disagreeing with the contents of the report exercised powers under Section 193 Cr.P.C. and summoned the petitioners to face trial along with Satnam Singh @ Satta who was facing trial under Sections 21, 22, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act. It is this order dated 28.09.2015, which is impugned in the present petition.

10. During the pendency of the present proceedings, a reply dated 16.05.2019 came to be filed by way of an affidavit of Jaspreet Singh, PPS, Assistant Commissioner of Police East, Amritsar City on behalf of respondent No.1-State of Punjab.

11. The learned counsel for the petitioners firstly contends that the impugned order dated 28.09.2015 has not considered the material on record in its correct perspective and has therefore, wrongly summoned the accused. It is contended that the Court has wrongly assumed that a disclosure statement of Satnam Singh alias Satta was recorded during the course of investigation and it had intentionally not been placed on the file by the Investigating Agency to save the accused.

It is contended that merely because a huge recovery had been effected, which was more than the commercial quantity the same would not be a ground to summon the accused in the absence of any evidence available against them. In fact, the Investigating Agency had clearly found that the medicines ordered by the petitioners' firms were on the basis of valid bills and the contraband found from the spot had not been ordered by any of the accused firms.

He contends that the Court has erroneously come to the

was facing trial in the present case and therefore, had summoned the petitioners to face trial along with Satnam Singh alias Satta. In fact, Satnam Singh alias Satta had also been found to be innocent as per the various inquiry reports referred to in the petition.

It is thus, contended that there was no admissible evidence on the file to summon the accused under the provisions of Section 193 Cr.P.C. and mere recovery of commercial quantity of contraband cannot lead to the culpability of the petitioners without any evidence connecting them to the recovery.

12. The learned State counsel has referred to the reply dated 16.05.2019 to contend that in fact, the accused had been declared to be innocent by way of various inquiry reports referred to in the petition. When Satnam Singh alias Satta was arrested, he suffered a disclosure statement inculcating the petitioners as being accused along with him. However, it was admitted that there was no separate disclosure statement of the accused Satnam Singh alias Satta recorded in this regard. It was admitted that the petitioners had received medicines from time to time on valid bills and there was no evidence to suggest that any of them had ordered the contraband recovered. In fact, no recovery had been effected from any of the accused during the course of investigation. It was stated in the reply that as the petitioners had been summoned, they ought to face trial in the present case.

13. I have heard the learned counsel for the parties at considerable length.

14. A perusal of the impugned order dated 28.09.2015 would reveal that the first ground on which the Court has chosen to summon the

Satta was not placed on the file intentionally by the Investigating Agency just to save the accused.

This observation of the Court is completely fallacious. A perusal of the reply of the State would clearly establish that SI Vavinder Kumar has clearly stated that no separate disclosure statement was recorded of the said Satnam Singh alias Satta and nor was any recovery effected from him. Thereafter, Satnam Singh alias Satta and the present petitioners had been found to be innocent. It may also be mentioned that assuming that there was a disclosure statement of Satnam Singh alias Satta on the file inculcating the present petitioners, the same by itself would be insufficient to summon the accused as his statement made to the police during investigation has no evidentiary value. Be that as it may, in the present case, there is no such written disclosure statement of Satnam Singh alias Satta.

15. The impugned order dated 28.09.2015 thereafter refers to the fact that commercial quantity of contraband has been recovered and no bill of any kind has been brought on record to prove the innocence of the petitioners. This observation is once again fallacious. It is the categorical finding in the various inquiry reports leading to the filing of the cancellation/untraced report that there was absolutely no evidence on the file that the petitioners had ordered the contraband in question. In fact, it was conclusively found through verification of bills that the medicines received by the petitioners from time to time were through valid bills and were daily use medicines. There was nothing to suggest that any firm had ordered the intoxicating medicines. Therefore, mere recovery of commercial quantity of contraband in the absence of any connecting/link

evidence with the petitioners would be insufficient to fix liability upon the petitioners.

16. The Court has erroneously come to the conclusion that the petitioners ought to face trial with Satnam Singh alias Satta, the co-accused of the petitioners who as per the Court was facing trial in the present case. A perusal of the untraced/cancellation report would clearly show that not only the petitioners but Satnam Singh alias Satta had been declared innocent in the present case and therefore, it was not a case where a challan had been presented against Satnam Singh alias Satta or that he was facing trial leading the Trial Court to invoke its powers under Section 193 Cr.P.C. to summon the petitioners as additional accused to face Trial with Satnam Singh aliasa Satta.

17. It is thus apparent that the petitioners have been summoned vide impugned order dated 28.09.2015 based on absolutely no admissible evidence and merely on conjectures and surmises.

18. In view of the above discussion, I find considerable force in the contention of the learned counsel for the petitioners and therefore, the impugned order dated 28.09.2015 2015 passed by the learned Judge, Special Court, Amritsar under Sections 21, 22, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 along with all subsequent proceedings arising therefrom is hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

23.09.2022

JITESH

Whether speaking/reasoned Yes/No

Whether reportable Yes/No