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

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CRM-M-38856-2021

Date of decision : 29.11.2023

Jagdish Singh**..... Petitioner**

versus

State of Punjab**..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Himmat Singh Sidhu, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed directed against order dated 11.08.2021 (Annexure P-1) passed by the Additional District Judge, Jalandhar allowing the application filed by the prosecution under Section 193 Cr.P.C. summoning the petitioner to face trial qua offence punishable under Sections 22/61/85 of NDPS Act, 1985.

2. As per the facts pleaded by the prosecution on 01.09.2013, ASI Gian Ishwar alongwith party was present in connection with patrolling and checking when he found the present petitioner riding a motorcycle. When he was asked to stop, he tried to turn the motorcycle back, but was apprehended. It is claimed by the prosecution that after giving him legal options, his search was conducted in accordance with law on which one polythene containing intoxicant powder was recovered from right pocket of the trouser he was wearing. The same weighed 270 gms. The same was later on found to be

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Dextropropoxyphene on the basis of report received from chemical examiner.

3. Vide order dated 16.02.2013, the petitioner was discharged from custody observing as under:-

“Prosecution has moved an application for the discharge of accused which is forwarded by S.P. (D) (Rural), Jalandhar. In the said application, it has been submitted that during investigation, accused was found innocent. In this regard, statement of ASI Gian Ishwar, belt No.219, P.S. Kartarpur has also been recorded.

In view of the contents of application as well as statement of ASI Gian Ishwar, accused Jagdish Singh son of Amarjit Singh be discharged from custody. Ahlmad to retain these papers in his safe custody and be put up as and when challan is presented.”

4. The petitioner was admittedly not challaned. During the course of trial, present application was filed under Section 193 of the Code. The same was allowed vide order dated 10.05.2017 and the petitioner was ordered to be summoned to face trial. The petitioner challenged the same before this Court by way of CRM-M-23031-2017. The order was set aside and the matter was remanded back observing as under:-

“xx xx xx

A perusal of the application dated 15.02.2013 (Annexure P3), filed for discharge of the petitioner shows that the police has sought the discharge of the petitioner from the case. Even the statement of ASI Gian Ishwar (PW4), is to the effect that the petitioner is to be discharged from the case. Even

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subsequently, when the inquiry was conducted on the application filed on behalf of the other accused Jaswant Singh @ Bobby, the earlier inquiry report was re-affirmed by the Senior Superintendent of Police, Jalandhar (Rural). In view of the same, the trial Court was required to pass a detailed order explaining the compelling circumstances to exercise the power under Section 193 Cr.P.C . and to record its satisfaction that the conditions provided in the statutory provisions of Section 193 Cr.P.C. stand fulfilled.

The summoning of petitioner on the basis of proceedings initiated under Section 299 Cr.P.C.against co-accused Jaswant Singh @ Bobby, who was later on declared as a proclaimed offender, cannot be made sole basis to invoke power under Section 193 Cr.P.C., as per the other enabling provisions of Cr.P.C. as held by Hon'ble Supreme Court.

In view of the same, the present revision petition is allowed, the impugned order dated 10.05.2017 is set aside and the matter is remanded back to the trial Court to pass a fresh order in the light of the guidelines issued by the Hon'ble Supreme Court in Dharam Pal's, Hardeep Singh's and M.C.Mehta's cases (Supra) after affording opportunity of hearing to the petitioner. The petitioner is directed to appear before the trial Court on 04.10.2018. Since the impugned order dated 10.05.2017 is set aside, the subsequent order dated 01.06.2017 initiating proclamation proceedings against the petitioner is also set aside.”

5. The Special Court has now passed order afresh wherein after relying upon ***Hardeep Singh vs. State of Punjab and others***

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2014(1) RCR (Criminal) 623, the trial Court observed as under:-

“ XX XX XX

16. From this judgment, it is clear that the person who has been discharged stands on a different footings, than a person who was never subjected to investigation or if, subjected to, but not charge sheeted. Therefore, there must exist compelling circumstances to exercise power under Section 193 Cr.P.C. while doing so, the court should keep in mind that the witness when giving evidence against the person so, discharged, is not doing so, merely, to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and tried to separate the chaff from the grain. If after such careful examination of evidence, the court is of the opinion that there does exist evidence to proceed against the person, so discharged, it may take steps but only in accordance with Section 398 Cr.P.C. without resorting to the provision of Section 319 Cr.P.C. directly.

17. Whereas, in the present case, court is not extorted to invoke the provisions of section 319 Cr.P.C. but ordered to summon accused Jagdish under section 193 Cr.P.C. for having been found sufficient evidence against him. Moreover, in the present case, Jagdish Singh was not discharged. In fact, on 16.09.2013, he was discharged from custody on the application moved by the prosecution and forwarded by SP(D) (Rural) Jalandhar. Moreover, there is no such evidence, which could be said to have been given merely to seek revenge from accused Jagdish Singh. In fact,

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story of the prosecution is that on 01.09.2013, ASI Gian Ishwar along with his police party consisting of C-Sainder Singh, HC Surinder Pal Singh and C-Amanpreet Singh in connection with patrolling and checking of bad elements was going on private motorcycles from Kartarpur to village Nagza while patrolling when police party reached near Nagza gate, then from the side of village Nagza, one Hindu gentleman was seen coming on Platina motorcycle no. PB08-CD-3334. When he was given signal to stop, he tried to return the motorcycle back. On this, ASI Gian Ishwar along with his police officials apprehended him and asked his identity on this, he disclosed his name as Jagdish Singh @ Jaggi son of Amarjit Singh, resident of Nagza, PS Kartarpur. After giving his introduction, and legal option of search. His personal search was conducted and from the right pocket of his wearing trousers, one polythene containing intoxicant powder was taken out. Out of which, two sample parcels of 10 grams were separated. The remaining on weighment, came to be 250 grams.

18. Whereas, it is not the plea of the prosecution that no recovery was effected from him. However, it is alleged that during investigation, he was found innocent on the ground that on the said day, Jaswant Singh @ Bobby on the pretext that it is a medicine for his father, handed over the same to him at Bus Stand, Kartarpur. Jaswant Singh is a bad element whereas, entire panchyat of village Nagza has given undertaking about the good character of Jagdish Singh so, he was got discharged. Only, on the plea of the accused that intoxicant material was given to him by Jaswant

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Singh on the pretext that it is a medicine for his father so take it. By taking this plea, accused has admitted the recovery of this intoxicant powder from his possession which is found to be Dextropropoxyphene on its examination by Chemical Examiner, Kharar. Other than this, there is nothing on record attached by the prosecution to prove the innocence of accused Jagdish. In fact, it is his defence, which he can take after the evidence of prosecution is over. However, at this stage, his simple plea cannot be accepted as a gospel truth. Moreover, if he did not know what was handed over to him, then what was the reason that on seeing the police party, he tried to return back. Therefore, a prima-facie case for putting him to trial is made out as there is his own admission about the recovery of Dextropropoxyphene powder.

19. Whereas, this court in view of the above said judgments and the discussion, is competent to summon the accused by exercising powers under Section 193 Cr.P.C. So, application under Section 193 Cr.P.C. is allowed and accused Jagdish Singh is ordered to be summoned to stand trial under section 22/61/85 of NDPS Act. Since, accused is not present today. Now, he be summoned to appear in this court on 26.08.2021.”

6. Learned Counsel for the petitioner while assailing the impugned order has heavily relied upon the inquiry wherein he claims that the petitioner was found to be innocent and was challaned in column No.2 in the supplementary challan. Further contention raised is that the provision under Section 193 is not attracted in the present case as the trial was never committed.

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7. *Per contra*, Mr. Vinayak submits that the order is well reasoned and the trial Court after applying its mind in terms of the order of remand passed by this Court, has passed a well reasoned speaking order.

8. Having heard rival contentions of the counsels and after carefully perusing the records of the case, this Court is of the considered opinion that the impugned order deserves to be maintained. 1985 Act is a Special enactment which works on reverse presumption. Section 54 of the Act reads as under:-

“54. Presumption from possession of illicit articles. In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of

- (a) any narcotic drug or psychotropic substance or controlled substance;
- (b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;
- (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or
- (d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account

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satisfactorily.”

9. From the perusal of the facts of the present case, it is evident that as per case of the prosecution, the petitioner was found to be in possession of illicit article. The question is whether the explanation being offered by him can earn him clean chit or not. Obviously, the explanation being offered by him is his defence and the same has to be proved in accordance with law before the trial Court. So far as plea raised by counsel for the petitioner with respect to non-applicability of Section 193 of the Code is concerned, it will be apt to peruse the same:-

“193. Cognizance of offences by Courts of Session. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

10. A bare perusal of the provision would reveal that the same in fact authorizes the Session Court to take cognizance of the offence. The only rider put upon is that the trial ought to be committed to him by the Magistrate which is in fact in sync with the scheme of the Code as the session trial travels to the domain of the Session Judge only after it is committed by the Magistrate. In the present case, admittedly, the trial has to be conducted by the Special Court and as per notification, Additional Sessions Judge are notified to be the Special Court by way of notification dated 30.09.2012. Thus, it falls within exceptions as carved out in Section 193 of the Code and will not be hit for lack of

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commission of trial.

11. Resultantly, the said bar as contained in Section 193 of the Code would not be applicable. It cannot be said that the power as contemplated under Section 193 of the Code has not been vested in the Session Court.

12. In view of above, present petition is dismissed.

13. Needless to say anything observed herein would constitute any expression on the merits of the case.

(PANKAJ JAIN)
JUDGE

29.11.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No