

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

230

CRR-2383-2019 (O&M)
Date of decision: 15.09.2023

Harvinder Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sanjeev Manrai, Sr. Advocate with
Mr. Nandan Jindal, Advocate and
Ms. Neha, Advocate for the petitioner.

Mr. Karan Jindal, AAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner by way of the instant revision petition is impugning the order dated 21.05.2019 passed by learned Additional Sessions Judge, Karnal whereby he was charge sheeted and charged under Section 18 read with Section 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') in case FIR No.0541 dated 25.06.2018 registered under Section 18 of the NDPS Act at Police Station Karnal Civil Lines, District Karnal.

2. Affidavit of Pushpa Khatri, HPS, Additional Superintendent of Police, Karnal, District Karnal, has been filed in the Court today which is taken on record subject to all just exceptions. A copy of the same has been supplied to the counsel opposite.

3. Learned senior counsel for the petitioner has *inter alia* submitted that the impugned order is patently illegal and deserves to be set aside as the Trial Court in a routine manner and without application

of mind went ahead to frame charge under Section 18 read with Section 25 of the NDPS Act against the petitioner. While drawing his attention of this Court to the FSL report annexed as Annexure P-2, learned counsel has argued that a perusal of the FSL report shows that the alleged contraband (opium) which was recovered from the petitioner was not covered under the NDPS Act as Morphine, Codeine, Thebaine, Narcotine, Papaverine and Meconic, which are the essential ingredients, as per Section 2(xv) of the NDPS Act, to constitute 'opium' were not found in the samples sent to it. Learned counsel has submitted that in the sample sent to the FSL, only the presence of the Paracetamol, Diclofenac and Theobromine had been detected, which did not fall under the NDPS Act. He has submitted that Theobromine was a cocoa material which was generally found in chocolates. Thus, it was evident and there could be no manner of doubt that no offence, much less under Section 18 read with Section 25 of the NDPS Act, was made out against the petitioner and the learned Trial Court erred in framing charges under Section 18 read with Section 25 of the NDPS Act against the petitioner. A prayer was, therefore, made for setting aside of the charge sheet as well as the charges framed against the petitioner vide the impugned order.

4. Per contra, learned State counsel while opposing the prayer of the counsel opposite, has submitted that a secret information was received qua the involvement of the petitioner in the sale of opium. On being intercepted, the petitioner tried to flee from the spot, however, he was nabbed by the police. After due compliance of the mandatory provisions of Section 50 of the NDPS Act recovery of the contraband

i.e. opium, was effected from the petitioner.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. Some discrepancy was noticed by this Court with respect to the number of the FIR mentioned in the FSL report (Annexure P-2), for which a clarification was sought for, from the State. Pursuant thereto, affidavit dated 11.08.2023 of Pushpa Khatri, HPS, Additional Superintendent of Police, Karnal, District Karnal was filed by the learned State counsel. Learned State counsel clarified that the samples sent to the Forensic Science Laboratory, qua which it had sent its report (Annexure P-2) indeed pertained to FIR No.541 dated 25.06.2018 registered under Section 18 of the NDPS Act (i.e. the case in hand) and not to FIR No.641 dated 31.07.2018 (wrongly mentioned in the FSL report annexed as Annexure P-2), which in fact had been registered under Section 346 of the IPC.

7. The prime object behind framing of a charge(s) is to enable the accused to have a clear idea as to for what he is being tried for, by the Court and the essential facts that he would have to address at the time of the trial. The Court while framing charge(s) has to form its opinion on the basis of the material brought before it including the final report under Section 173(2) of the Cr.P.C. While hearing a prayer for quashing of charge(s), the principle to be adopted by a Court is that if the evidence produced by the prosecution is believed in its entirety, would it constitute an offence or not.

8. Coming to the case in hand, the petitioner has been charged under Section 18 read with Section 25 of the NDPS Act. No

doubt, at the stage of framing of charge(s) or hearing a prayer for quashing of charge(s) and charge sheet, the Court is not required to conduct a mini trial to determine the culpability of an accused, however, at the same time the Court has to be satisfied qua the existence of the ingredients of the offence(s) alleged and this satisfaction of the Court is *sine qua non* at the time of framing of charge(s). In cases under the NDPS Act, FSL report qua the nature of the substance recovered and sent to it would not only go to the root but would be a document of utmost and crucial importance which the Court must consider while framing a charge. Unless and until a definite opinion is received from the FSL, qua the samples sent to it, mere smell and sight of the alleged recovered substance by the investigating agency, would be deemed to be an inconclusive piece of evidence. Thus, any claims by the investigating agency qua some recovered substance falling under the NDPS Act, without it being supported by an FSL report, would be nothing but an opinion given by a lay person. In the instant case, a perusal of the FSL report (Annexure P-2), and as also not disputed by the learned State counsel, leaves no manner of doubt that none of the essential ingredients of 'opium' i.e. Morphine, Codeine, Thebaine, Narcotine, Papaverine and Meconic were detected in the samples sent.

9. It would be apposite to reproduce the definition of the 'opium' as contained in Section 2(xv) of the NDPS, which is reproduced hereinunder:-

“2(xv) “*opium*” means—

(a) *the coagulated juice of the opium poppy; and*

(b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent. of morphine;

(xvi) “opium derivative” means—

(a) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

(b) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;

(c) phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts;

(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; and

(e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine;

(xvii) “opium poppy” means—

(a) the plant of the species Papaver somniferum L; and

(b) the plant of any other species of Papaver from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act;”

10. Thus, the prime ingredients to constitute an offence under Section 18 read with Section 25 of the NDPS Act are amiss in the case in hand. In the absence of any corroborative opinion of the FSL qua the samples sent to it, the petitioner could not have been charged under Section 18 read with Section 25 of the NDPS Act. The learned State counsel has not been able to controvert and dispute that the sample sent to the FSL had tested negative for opium as Morphine, Codeine,

Thebaine, Narcotine, Papaverine and Meconic were not detected therein. Learned State counsel has also fairly conceded that Paracetamol, Diclofenac and Theobromine which were detected in the samples sent to the FSL, were not listed as narcotic substances under the NDPS Act.

11. As a sequel to the above, the instant petition is allowed and the impugned order dated 21.05.2019 is set aside.

15.09.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No