

Shubh Chandra Jain Vs. State

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Court : Delhi

Decided On : Jul-13-1983

Reported in : 24(1983)DLT259

Judge : H.L. Anand, J.

Acts : Punjab Excise Act

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 355 of 1983

Appellant : Shubh Chandra Jain

Respondent : State

Advocate for Pet/Ap. : B.B. Lal,; D.C. Mathur and; D.R. Sethi, Advs

Judgement :

H.L. Anand, J.

(1) Shubh Chandra Jain, an Advocate, challenges his prosecution under the Punjab Excise Act, arising out of F.I.R. No. 344, April 4, 1982, on allegations that, following disclosure made by one John Richard, a British national, who was staying in the guest house, being . run by the petitioner, 150 grams of charas was recovered from the pocket of the petitioner when the Police party went to the guest house to search the room in which John Richard was staying. The allegation that charas was found from the person of the petitioner was characterised by him as

being false and attributed to the Police Officer concerned on account of alleged improper motivation. The petitioner made a complaint as early as April 15, 1982 that he had been falsely implicated. Certain other allegations were also made against the Police Officer concerned, of harassment, undue delay in release on bail, as also of disregard of the physical disability from which the petitioner suffered and of his heart condition. The complaint eventually led to a vigilance inquiry against the police officer concerned and it appears from the proceedings of the Inquiry that the Inquiry Officer in his report of May 22, 1982, expressed the view that from the material available, it appeared that the story of recovery of the contraband from the person of the petitioner was 'doubtful'. It was further pointed out that the charas was recovered from one of the rooms of the guest house and the recovery was shown from out of the pocket of the petitioner to prove it a case of conscious and exclusive possession of the petitioner. It was also pointed out that in any event, there was no independent witness of the recovery. It was, therefore, recommended that the case be treated as 'untraced'. The report was endorsed by the D.C.P. (Vigilance) on June 8, 1982 and it was directed that the case be sent as untraced. For reasons which are quite oblique, the challan was filed in Court on or about the 23rd May, 1982, after the report had been made but before the final order of the D.C.P. Meanwhile, the British national from whose person, as also from the room in his possession, charas had been recovered confessed to the guilt and was convicted and has since left the country. So have the other guests who were staying in other rooms of the guest house.

(2) True, the validity of the prosecution has to be examined in the light of the material on record and the allegations of false implication, the proceedings of the vigilance inquiry, as also the outcome of the inquiry, do not at present form part of those records and may eventually be brought on record in defense. It is equally true that in the ultimate analysis the trial Court would be influenced by such material as may be placed before the court in the course of the trial and would be bound to come to its own conclusion independently of the result of the vigilance inquiry. It is nevertheless not possible to ignore that in the course of the vigilance inquiry conducted by the Police itself, the allegations against the petitioner have been found to be false and it is unfortunate that the filing of the prosecution was almost rushed on or about 23rd May, 1982, within days of the report of the

vigilance, but before it had been finally processed. It is equally unfortunate that even if the prosecution had been meanwhile filed, steps were not taken, for some reason which is not clear, to withdraw the prosecution in view of the important disclosure made in the course of the inquiry. It is true that it would be open to the petitioner to substantiate his defense of false implication at the trial. The petitioner is, however, an Advocate of over 30 years standing and has clean antecedents. If in the circumstances he is allowed to be subjected to a full-length trial irretrievable damage would have been done to his reputation and he would have also suffered both in body and mind, even if he is ultimately exonerated. In the peculiar circumstances of this case. it would be a gross abuse of the process of the court to allow such a prosecution to continue where the Police Inquiry itself shows that the petitioner was falsely implicated and, what is more, the recovery without two respectable witnesses suffers from a fatal infirmity and the prosecution must eventually fail on that ground.

(3) Having regard to all the circumstances, I would accept the petition and quash the prosecution of the petitioner arising out of F.I.R. No. 344 of April 4, 1982. The records of vigilance inquiry be returned to the appropriate authority.