

Naresh Kakkar Vs. the State

Naresh Kakkar Vs. the State

SooperKanoon Citation : sooperkanoon.com/686883

Court : Delhi

Decided On : Sep-07-1994

Reported in : 1994IIIAD(Delhi)1508; 1995CriLJ3062; 1994(3)Crimes504; 56(1994)DLT53

Judge : Dalveer Bhandari, J.

Acts : Indian Penal Code (IPC) - Sections 71, 212, 219 and 477A; Code of Criminal Procedure (CrPC) - Sections 220, 222(2), 235(1) and 482; Narcotic Drugs Psycho. Sub. Act - Sections 21

Appeal No. : Criminal Misc. (M) No. 508 of 1994

Appellant : Naresh Kakkar

Respondent : The State

Advocate for Def. : Mr. R.D. Jolly, Adv.

Advocate for Pet/Ap. : Mr. R.K. Naseem and; Ms. Neelam Grover, Adv

Judgement :

DALVEER BHANDARI, J.

1. This petition under Section 482 of the Cr. P.C. has been filed for clubbing the charges framed in the cases F.I.R. 35/88 and 37/88 pending in the Court of Mr. V.

S. Aggrawal, A.S.J., Delhi. Brief facts necessary to dispose of this application are recapitulated as under :

2. Sub Inspector Prithvipal Singh of Police Station Chandni Mahal received a secret information that a person named Bhajan Singh was distributing Heroin through his agents. The information was passed on to the concerned S.H.O. by Prithvipal Singh, Sub Inspector. A raiding party was formed joining Police Officials and two persons from the public. The police vehicles were left at police post Turkman Gate and the raiding party was left to Chowk Ghaday Wailan near DDA Park. At about 1:15 P.M. the said Sub Inspector and Head Constable Ram Diya apprehended the petitioner who was allegedly carrying a green coloured attachi case was going on foot towards bazar Chitli Kabar. From that attachi case 10 packets of polythene bags wrapped in a white towel containing Heroin were recovered.

3. The police arrested the petitioner and thereafter the petitioner made a disclosure statement to the effect that he had kept 2 Kgs. of Heroin out of total quantity of 12 Kgs. in his house which was given to him by co-accused Pinki Gulzar at 9:30 A.M. on 15-3-1988 and he further mentioned in his statement that he could get that packet recovered from his house. The petitioner opened the lock of his house with the keys which he allegedly took from underneath a flower-pot in front of his house and then from a store inside the bed-room of the house he allegedly produced a packet of polythene paper which contained the 2 Kgs. of Heroin. S.H.O. S. K. Ahuja of police station Rajindar Nagar also reached there along with his police staff. A separate case was registered against the petitioner for this alleged recovery at police station Rajinder Nagar vide F.I.R. 37/88 and separate challan was filed at Police Station, Rajinder Nagar, Delhi.

4. Mr. Nasseem, learned counsel appearing for the petitioner submitted that both these F.I.Rs relate to the same transaction. The police instead of filing one composite F.I.R. had filed two separate F.I.Rs. Consequently, two separate sessions trials have been initiated against the petitioner for one offence.

5. The petitioner moved the Additional Sessions Judge for clubbing of two cases and prayed for one composite trial for committing one offence. Though the learned

Sessions Judge ordered that both the cases would be tried by one Court but the main grievance of the petitioner has not been remedied as to why the petitioner be compelled to face and he is facing two separate criminal trials for committing one offence. The clubbing of both the cases has been left to the discretion of the learned Trial Court.

6. On 29th, January, 1994, Mr. V. S. Aggrawal, learned Additional Sessions Judge framed a separate charge under Section 21 on NDPS Act in the case F.I.R. 35/88.

7. It is submitted by learned counsel for the petitioner that it was argued by him before the learned Additional Sessions Judge though the recoveries were separate but it related to one transaction, therefore, only one charge ought to have been framed according to the provisions of Section 220 of the Cr.P.C. Section 220 reads as under :

220. Trial for more than one offence :- (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of Section 212 or in sub-section (1) of Section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial, for every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when

combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect Section 71 of the Indian Penal Code (45 of 1860).

8. On the basis of the interpretation of Section 220 of the Cr.P.C. learned counsel submitted that in the instant case there is only one offence, i.e., unlawful possession of Heroin by the petitioner and according to the legislative intention of Section 220 of the Cr.P.C. for one offence there should be one trial, to avoid multiplicity of the proceedings and harassment to the accused. Learned counsel submitted that recovery of the second packet of Heroin from Rajinder Nagar was part of the same transaction as the total quantity of Heroin was given to the petitioner and a part of the same transaction was to be handed over to somebody.

9. Mr. Naseem, learned counsel appearing for the petitioner placed reliance on *Dinkarraaj Raghunath v. The State*, : AIR1963 Guj15 . Relevant portion is as under :

'Under Section 222(2) several defalcations made at different times, provided they are made within the course of one year, can be joined together as one offence of criminal breach of trust; and such a charge can be joined with another charge or charges under Section 477-A Penal Code even though there may be a number of false entries made to cover several acts of defalcations, provided the case falls under Section 235(1). If false entries are made for the purpose of covering a defalcation their plurality would not preclude them from being joined in one charge, a charge under Section 477-A is one of falsification of accounts and not for making false entries. False entries made for screening an offence of criminal breach of trust may, therefore, constitute one offence.'

10. Learned counsel has also placed reliance on Division Bench judgment of this Court in *Jai Narain v. State*, : 5(1969)DLT648 . In this judgment, the court has defined same transaction. The court has laid down as under :

'The words same transaction connote that the acts are so related to one another in point of purpose, or as cause and effect, or as principal and ancillary so that they

constitute one transaction or a continuous action. Continuity of action contemplated is not in the sense that one act follows the other without any connection but in the sense of intimate connection between the different acts. There must be a community of purpose and a concert. The accused persons even committing offences of the same kind but separately may not be regarded as having committed those in the course of the same transaction.'

11. Mr. Jolly, learned counsel appearing for the State submitted that there were two separate transactions and the petitioner must face two trials.

12. The short question of law which arises for the consideration of the Court is whether in the peculiar facts and circumstances of this case the petitioner be directed to face one trial or two trials.

13. When the law declared in various judgment is applied to the facts and circumstances of this case the conclusion become irresistible. The second recovery of Heroin from Rajinder Nagar was part of the same transaction. The second recovery was effective on the basis of the disclosure statement of the accused, therefore, in the facts and circumstances of this case and in the interest of justice, I direct that both the charges be clubbed together and consequently the petitioner is directed to face a single composite trial before the Court of learned Additional Sessions Judge.

14. The petition is allowed in terms of the order indicated above. The petitioner is directed to appear before concerned Trial Court on 26th September, 1994 for further directions.

15. The petition is disposed of.

16. Petition allowed.