

**Durga Prasad Vs. State**

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**Court :** Delhi

**Decided On :** May-08-2000

**Reported in :** 2000IVAD(Delhi)728; 2000(56)DRJ368; 2000(70)ECC403

**Judge :** M.S.A. Siddiqui, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 362; [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20 and 29

**Appeal No. :** Criminal Revision No. 123 of 2000

**Appellant :** Durga Prasad

**Respondent :** State

**Advocate for Def. :** Mr. M.S. Butalia, Adv.

**Advocate for Pet/Ap. :** Mr. P.R. Thakur and; Mr. Naveen Thakur, Adv

**Judgement :**

ORDER

CrI. R. No. 123/2000

1. After hearing learned counsel for the parties, I propose to dispose of the revision at the stage of admission itself.

2. Briefly stated, the facts giving rise to this revision are that a charge-sheet under Section 20/29 of the Narcotics Drugs and Psychotropic Substances Act (for short 'the Act') was filed against the petitioner and others. On a consideration of the materials collected by the prosecuting agency, Shri R.K. Sharma, Special Judge, Delhi discharged the petitioner vide orders dated 2.1.1997. After recording evidence in the case, the case was transferred to the Court of Mr. Naipal Singh, Special Judge, Delhi. By the order dated 13.3.2000 Mr. Naipal Singh reviewed the order dated 2.1.1997 passed by his predecessor on the ground that the order of discharge was patently illegal. He, therefore, set aside the order of discharge and issued non-bailable warrant of arrest against the petitioner. Aggrieved thereby, the petitioner has come up in revision before this Court.

3. Assailing validity of the impugned order, the learned counsel for the petitioner contended that the impugned order dated 13.3.2000 passed by Mr. Naipal Singh, learned Special Judge, Delhi has manifestly resulted in miscarriage of justice and the same is illegal improper and unjustified. The question to be considered is that in view of Section 362 of the Code of Criminal Procedure, the learned Special Judge had jurisdiction to review or recall the order of discharge. It is undisputed that on 2.1.1997, Shri R.K. Sharma, Special Judge, on consideration of the materials collected by the prosecuting agency discharged the petitioner and the prosecuting agency did not take the appropriate proceedings for setting aside the said order. In *Sohan Lal and others Vs . State of Rajasthan*, : 1990 CriLJ2302 , it was held that the word 'discharge' means discharge of an offence relating to charge within the meaning of Sections 227, 239, 245 and 249 Cr.P.C. It is well settled that the order of discharge is a final order within the meaning of Section 362 Cr.P.C. (*A.S. Gauraya and Another v. S.N.Thakur and Another*, 1986 SCC 249. Learned Special Judge has observed that the order of discharge is not a final order and so it does not attract the provision of Section 362 Cr.P.C. In my opinion, this approach of the learned Special Judge is wholly erroneous. So far as the petitioner is concerned, the order of discharge dated 2.1.1997 is a final order and in view of the provision of Section 362 Cr.P.C., the learned Special Judge had no jurisdiction to review or recall the said order of discharge on any ground whatsoever. In these circumstances, therefore, recalling the order dated 2.1.1997 discharging the petitioner was entirely without jurisdiction. This being the position,

all subsequent proceedings following upon recalling the said order would fall to the ground including the impugned order dated 13.3.2000 summoning the petitioner and detaining him in custody which must also be treated to be a nullity and destitute of any legal effect.

4. For the foregoing reasons, the revision is allowed and the impugned order dated 13.3.2000 is set aside. The petitioner is in jail. He be set at liberty forthwith if not wanted in any other case.

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