

Puran Mal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-20-2006

Reported in : RLW2006(2)Raj1052

Judge : R.S. Chauhan, J.

Acts : Narcotic Drug and Psychotropic Substances Act - Sections 8 and 15; Code of Criminal Procedure (CrPC) - Sections 161, 216 and 227

Appeal No. : S.B. Criminal Revision Petition No. 1274 of 2005

Appellant : Puran Mal

Respondent : State of Rajasthan

Advocate for Def. : S.N. Gupta, P.P.

Advocate for Pet/Ap. : Anil Upman, Adv.

Disposition : Petition allowed

Judgement :

R.S. Chauhan, J.

1. Faced with a trial under the NDPS Act (henceforth to be referred as 'the Act'), and wanting to protect his liberty and reputation, the petitioner is running from pillar to post. Even earlier the petitioner had challenged the charge order dated

12.1.2005 framed by the learned Trial Court by filing a Criminal Revision Petition No. 211/2005. Since, the directions given by this Court vide Order dated 2.6.2005 have not been complied by the learned Special Judge (NDPS Cases), Jaipur, the petitioner has again challenged the charge order, which was framed vide order dated 14.10.2005.

2. The brief facts of the case are that on 21.12.2003, a truck had turned turtle on National Highway No. 8 near Kotputali, which was causing a serious traffic jam. When the police reached the spot, they could discover neither the driver nor the 'Khalasi' of the said truck. When the police emptied the truck, they discovered that besides carrying white limestone powder, the truck was also carrying 120 bags of powder of crushed 'Doda Post'. They also recovered the registration papers, and the insurance papers of the truck. The said papers and the truck were Seized by the police and a case under NDPS Act was registered against unknown persons. Subsequently, during the course of the investigation, the police arrested the petitioner ostensibly on the ground that during the course of searching the truck, they had discovered the petitioner's driving licence. Vide order dated 12.1.2005 the learned Special Judge framed charges against the petitioner for offences under Section 8/15 of the Act. Since, the petitioner was aggrieved by the said charge order, he filed a criminal revision petition, S.B. Criminal Revision Petition No. 211/2005. Vide order dated 2.6.2005 this Court was pleaded to allow the petition and to direct the learned Special Judge to hear both the parties and to consider the contention raised by the petitioner and to re-frame the charge order, if necessary. It is pertinent to point out that during the course of argument, the petitioner had contended that neither in the FIR nor in the Rojnamcha, nor in the statement of Kushal Singh, the then SHO, Kotputali is there any indication that the petitioner's licence was discovered on 21.12.2003 when the police searched the said truck. According to the petitioner, in order to falsely implicate the petitioner in the case, Malkhana Register was interpolated by the police to show that the petitioner's driving licence was, indeed, recovered on 21.12.2003 itself. It is these contentions that the learned Special Judge was required to consider while re-hearing the parties on the point of framing of charges. However, vide order dated 14.10.2005, the learned Special Judge has re-framed the charge for the same offences without considering these points. Hence, this petition before us.

3. Mr. Anil Upman, the learned Counsel for the petitioner has reiterated the contentions raised by him in the earlier petition and has argued that the directions given by this Court have not been followed by the learned Special Judge. Instead of considering the apparent manipulation made in the Malkhana Register, instead of considering the statement of Kushal Singh, the Recovery Officer, the learned Special Judge has framed the charges on the basis of the statement of the recovery witness, who has subsequently not supported the case of the prosecution during the trial. He has further contended that unless and until grave suspicious is aroused, charges should not be framed by the Trial Court. In order to support his contention, he has relied on the case of Dilawar Balu Kurane v. State of Maharashtra 2002 WLC (SC) Criminal 182 : RLW 2002 (1) SC 157.

4. On the other hand, the learned Public Prosecutor has supported the impugned order.

5. We have heard both the learned Counsels for the parties and perused the impugned order.

6. The principles governing the framing of charge were enunciated by the Hon'ble Supreme Court as early as 1979 in the case of Union of India v. Prafulla Kumar Samal : 1979 CriLJ154 . In the said case the Hon'ble Supreme Court has observed that while exercising the jurisdiction under Section 227 of the Code, the Court is not to act as a mouthpiece or as a post office for the prosecution. The Court is to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, and to examine any basic infirmities appearing in the case. For this limited purpose, the Court is empowered to sift through the evidence to find out whether or not prima facie case is made out against the accused. In case, two views are possible and in case the evidence give rise to only some suspicious but not to a grave suspicious, then he would be justified in discharging the accused. However, in case, grave suspicious is created about the commission of the alleged crime by the accused, then charges should be framed. Similar view has also been expressed by the Hon'ble Supreme Court in the case of Dilawar Balu Kurane (supra).

7. In the present case, the petitioner has consistently raised the plea of false implication by the police. Even on the earlier occasion, the petitioner had argued that neither in the FIR nor in the Rojnamcha is there any mentioning of the fact that the petitioner's driving licence was recovered from the truck on 21.12.2003. Even the SHO, Kushal Singh does not mention such recovery in his statement under Section 161, Cr.P.C. Moreover, the Malkhana Register prima facie seems to be manipulated as the entry about the depositing of the licence has been written in a different ink altogether. Considering these glaring facts vide order dated 2.6.2005 this Court had directed the learned Special Judge to examine and discuss these facts and to re-hear the parties on the point of charge. However, a bore perused of the impugned order dated 14.10.2005 clearly reveals that instead of discussing the statement of Kushal Singh, and instead of discussing the omissions in the FIR and in the Rojnamcha, the learned Special Judge has merely stated that such evidence cannot be discussed at the moment. Once a specific direction was given by this Court, the learned Special Judge was duty bound to examine and discuss these specific aspects of the case of the prosecution. However, he has singularly failed to do so.

8. In the result, we again direct the learned Special Judge, (NDPS Cases), Jaipur City, Jaipur to re-hear the parties and to specifically examine and discuss the glaring defects with regard to the recovery of the petitioner's driving licence by the police and to frame the charges in accordance with law. Even if, testimonies have been recorded by the Trial Court, the Trial Court is still empowered under Section 216, Cr.P.C. to alter or add to any charge at any time before the judgment is pronounced. Hence, the exercise of re-hearing the parties on the point of charge should be carried out within two weeks of the receipt of the certified copy of this order.

9. With these observations, this petition is allowed.