

Ajay Kumar Singh Vs. the State of Jharkhand

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Court : Jharkhand

Decided On : Feb-23-2010

Judge : D.K. Sinha, J.

Appellant : Ajay Kumar Singh

Respondent : The State of Jharkhand

Disposition : Petition dismissed

Judgement :

D.K. Sinha, J.

1. This criminal revision is directed against the order impugned dated 28.1.2009 passed by the learned Sessions judge, Deoghar in G.R. No. 942 of 2007, arising out of Deoghar P.S. Case No. 392 of 2007 by which the petition filed on behalf of the petitioner for his discharge under Section 227 of the Code of Criminal Procedure was rejected. Petitioner was arrayed for the alleged offence under Sections 20/22 of the Narcotic Drugs and Psychotropic Substances Act.

2. It was alleged that on 2.9.2007, the informant - Sub Divisional Police Officer, Deoghar on tip off when raided the private bus stand, Deoghar at about 5:00 a.m., petitioner was found in possession of a bag and on its search, about 8 Kg. cannabis (Ganja) was recovered in presence of independent witnesses, though he tried to run away at the sight of the police party.

3. The main contention of the petitioner was that no report from the forensic science laboratory was obtained as to whether the material alleged to be seized from the possession of the petitioner was narcotic drugs or psychotropic substance and charge-sheet was submitted after investigation of the case only on suspicion and without authentic proof.

4. The learned Counsel for the petitioner submitted that the petition filed on behalf of the petitioner under Section 227 of the Code of Criminal Procedure for his discharge as well as a separate petition filed on behalf of the Inspector of Police, Town Circle, Deoghar before the Sessions Judge, Deoghar seeking permission for sending the seized materials to the forensic science laboratory for test and report were disposed of by the common impugned order, different issues were involved therein. The request of the Inspector of Police, by way of petition dated 22.1.2003 for sending the seized materials to the forensic science laboratory was allowed by way of allowing the reinvestigation of the case in contravention of the provisions of Section 173 of the Code of Criminal Procedure. Simultaneously, petition filed on behalf of the petitioner for his discharge was rejected on the ground that the seized packet was examined by the authorities of the Excise Department and from the smoke of the burning of the sample of the seized article, it was opined that the article seized was cannabis, though the sample was not sent to the forensic science laboratory before submission of charge-sheet.

5. Having regard to the facts and circumstances of the case, I observe that the learned Sessions Judge, Deoghar should have restrained passing the common order on both the petitions by impugned order as two separate issues were involved which should have been dealt with separately. The petitioner had preferred a petition under Section 227 of the Code of Criminal Procedure for his discharge on the ground that though the cognizance of the offence was taken under Sections 20/22 of the Narcotic Drugs and Psychotropic Substances Act, but there was no material at all on the record in support of the allegation that the material allegedly seized from his possession was cannabis. Since the petitioner has not challenged the first part of the impugned order by which the learned Sessions Judge permitted the prosecution for sending the seized article to the forensic science laboratory for test and report, this part of the order is beyond the

purview of scrutiny under the instant revision. As regards second part is concerned, I find that it was drawn on the subjective satisfaction of the learned Sessions Judge, Deoghar on the basis of the prima facie materials available in the case diary as also on the ground that the smoke formed from the burning of sample of article seized was snuffed by the experienced personnel of the Excise Department who opined that the smoke could be out of burning of cannabis (Ganja) and therefore, I do not find any illegality or irregularity in the order impugned so as to call for interference in the proposed charge.

6. With these observations, this criminal revision is dismissed.

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