

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Jeevan Singh @ Lambu, and anr. Vs. Intelligence Officer, Narcotics Control Bureau, South Zonal Unit,

Jeevan Singh @ Lambu, and anr. Vs. Intelligence Officer, Narcotics Control Bureau, South Zonal Unit,

SooperKanoon Citation : sooperkanoon.com/904158

Court : Chennai

Decided On : Aug-25-2010

Judge : T. Sudanthiram,J.

Acts : Code of Criminal procedure (CRPC) - Sections 397, 401

Appeal No. : Crl.R.C.No.51 of 2009

Appellant : Jeevan Singh @ Lambu, and anr.

Respondent : intelligence Officer, Narcotics Control Bureau, South Zonal Unit,

Advocate for Def. : Mr.R.Dhanapalraj, Adv.

Advocate for Pet/Ap. : Mr.C.Deivasigamani, Adv.

Judgement :

1.The petitioners herein are the accused Nos.2 and 3 in C.C.No.99 of 2007 on the file of the learned Special Judge for N.D.P.S. Act cases, Additional Sessions Court, Coimbatore and they have filed an application before the trial Court under Section 239 of Cr.P.C. seeking discharge. The said application was dismissed by the learned trial Judge. Aggrieved by the order of the learned trial Judge, the petitioners have preferred this Criminal Revision Petition before this Court.

2. Mr.C.Deivasigamani, learned counsel appearing for the petitioners submits that the Chemical Analyst report does not reveal or disclose the percentage of the alleged contraband and as such, it cannot be termed as heroin. The learned counsel has also relied on a decision of the Rajasthan High Court reported in E.T.R. 1999 page 72 (Girdhar Nath v. State of Rajasthan).

3. The learned Special Public Prosecutor appearing for NCB Cases submitted that the Chemical Examiner has given a report stating that the samples, which were analyzed, were found to contain Di-Acetyl-Morphine, which is also called as heroin.

4. This Court has considered the submissions made by both parties and perused the records.

5. The case of the prosecution is that the petitioners were travelled in a Tata Indica Car from Madhya Pradesh with 16.055 kgs of heroin through Tamil Nadu to be transported to Sri Lanka and they were caught red handed along with other two accused, who are A.1 and A.4 in the case near Alankar Cinema Hall at Ooty. The voluntary statements of the petitioners are also recorded by the officials.

6. As per Section 2(xi) of the Narcotic Drugs and Psychotropic Substances Act, 1985, "manufactured drug" means- "(a) all coca derivatives medicinal cannabis, opium derivatives and poppy straw concentrate; (b)"

7. As per Section 2(xvi) of the Narcotic Drugs and Psychotropic Substances Act, 1985, "opium derivative" means- "

(a) ...

(b)...

(c) ...

(d) diacetylmorphine, that is the alkaloid also known as dia-morphine or heroin and its salts and (e) ..."

8. In this case, as per the Chemical Analyst Report, 16 sample pockets were opened and analysed and they found to contain sample of brown powder and on analysing those samples as per the procedure given under "Recommended method for testing Heroin-Manual for use by National Narcotics Laboratories" published by United Nations, the presence of diacetylmorphine (heroin) was found. As each sample contained diacetylmorphine, which is also called as heroin, the contraband which was seized is a diacetylmorphine.

9. To establish the fact that the contraband, which is seized, is opium derivative or not, on analysing the sample if diacetylmorphine is found it is enough. Then the contraband, which was seized, is only Narcotic Drug. It is not necessary to find out the percentage of the diacetylmorphine present in the sample analysed to establish the fact that the contraband seized is narcotic drug. As per the decision of the Hon'ble Supreme Court reported in (2008) 5 Supreme Court Cases 161 (E.Micheal Raj v. Intelligence Officer, Narcotic Control Bureau) only to decide whether the contraband which was seized comes under the category of commercial quantity or not, the percentage of diacetylmorphine is required. Therefore, the percentage of diacetylmorphine is not given is not a ground for discharging the accused.

10. The decision cited by the learned counsel for the petitioners in E.T.R. 1999 page 72 is not applicable to the facts of the present case since the contraband alleged to have been seized in that case comes under the category of opium wherein the contraband seized in this case comes under the category of opium derivative.

11. In this case, according to the prosecution, 16.055 kgs of heroin has been seized. Therefore, it is open to the prosecution to seek the permission of the Court to send the samples once again to the Chemical Analysis to find out the percentage of diacetylmorphine so as to establish whether the total contraband seized comes within the category of commercial quantity or not.

12. Therefore, the order passed by the learned Special Judge for N.D.P.S. Act cases, Additional Sessions Court, Coimbatore, in dismissing the application filed by the petitioners does not suffer from infirmity. There is no merit in the criminal

revision petition. Hence, this Criminal Revision Petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com