

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No. 99 of 2007.

Judgment reserved on:21.9.2007.

Date of decision:28.9.2007

Rajinder SinghPetitioner
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Versus

State of H.P.Respondent

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ? No

For the Petitioner: Mr.D.S.Dalee, Advocate.

For respondent: Mr.J.S.Guleria, Law officer.

Deepak Gupta, J.

This Revision petition under Section 397 Cr.P.C. has been filed for quashing the order dated 26th April, 2007 passed by the Presiding Officer, Fast Track Court, Mandi, H.P. whereby he has framed the following charge against the petitioner:

"Charge

I, T.S.Kaisth, Special Judge, (Presiding Officer, Fast Track Court, Mandi), District Mandi, H.P. do hereby charge you accused Rajinder Singh as under:

That on 20.1.2007 at 3.10 P.M. on National Highway-21 at place five 'Meal' near Pandoh, Tehsil Sadar, District Mandi, H.P. you were found in exclusive and conscious possession of 2 kg. 700 gram of charas while you were driving the Car Indica No.PB-13-R-1880 and co-accused Manjeet Kaur was sitting with you on the front seat, who had kept one packet of charas on her right Axilla, one packet on her left Axilla and one packet on her

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back and thus you thereby committed an offence punishable under section 20 of the Narcotic Drugs and Psychotropic Substances Act and within the cognizance of this Court.

And I hereby direct that you be tried for the said offence.

Sd/
Special Judge,
P.O. F.T.C. Mandi, H.P."

The case of the petitioner is that the charge as framed shows total non application of mind by the Presiding Officer, Fast Track Court and no charge could have been framed on the basis of the material which was available with the Presiding Officer.

I have heard Sh.D.S. Dalee learned counsel for the petitioner and Sh.J.S. Guleria, learned Law Officer on behalf of the State.

According to Sh.D.S.Dalee even as per the case set out by the police in the FIR, the Ruqua and the Challan there is no material whatsoever to indicate that the petitioner was in exclusive conscious possession of the Charas in question.

The prosecution case as set-out in the FIR itself reads as follows:

"Brief Facts:-That on 20.1.07 HC Anand Kishor No.1621/O P.S. Sadar, HC Sham Lal No.411, HC Chaman Lal No.909, L/c Suman no.322 alongwith at about 3 PM on Maruti Van on place 5 miles in connection with patrolling on old otray check post were present, then I received secret information from reliable informer that one black car bearing no.PB-13-R-1880 in which one male and female coming from Pandoh side who having charas. Information is

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reliable. On the same time Rajinder Kumar s/o Sh.Jagdish Chander, H.No.3/3 Ganpati Road, Mandi present whom told the circumstances of the case and join with the police party, and in this connection information u/s 42(2) NDPS Act prepared and was sent through HC Chaman Lal no.909 to DSP HQ Mandi. On 3-10 P.M. above said car Indica bearing no.PB-13-R-1880 came from the said of Pandoh which was stopped and on asking the person sitting on driver seat disclose his name as Rajinder Singh s/o Pritam Singh caste Goldsmith r/o Ram Basti, Gali no.6 B, H.no.194, ward no.2 Sangrur tehsil and police station, Sangrur Distt.Sangrur and sitting on front left side lady disclose her identity as Manjit Kaur w/o Late Bahadur Singh caste Mistry (Sikh) r/o H.No.194, Gali no.2 ward no.6 B and police station Sadar, Sangrur, Distt Sangrur. Then consent statements about search were taken differently. During search nothing was recovered from Rajinder Singh and from Indica Car. When Manjit Kaur was searched by Suman Laldy constable no.322 then under the both arms in Axilla under the shirt one packet and one packet from the back side under the shirt color khakhi was recovered and opened and checked and found charas with plastic rappers which smelled by Rajinder Kumar and given consent of charas then on the road side on highway NH-21 all the three packets were opened and mixed and after weighing with scale already with us then found total weight was 2 k.g. 700 grms from which two samples of 25 grms each were taken both samples was packed in the boxes of Four square boxes and both were sealed with cloth and marked with seal bearing word K with three seals and marked with P1 and P2 after that remaining charas 2-650 grams were packed with same khakhi packets and with police cloth was marked as P and parcel was sealed with seal bearing word K of five seals and sample seal was separately prepared.

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NCB-1 form, sample seals, and car bearing no.Pb-13-R-1880 alongwith RC were taken into police possession vide separate memo and KC Cham Lal no.411, L.C. Suman Devi no.322 and Sh.Rajinder Kumar signatures as witness and copy of same was given to Manjit Kaur and Rajinder Singh free of cost on the spot and signature as receipts. Manjit Kaur and Rajinder Singh commit the offence u/s 20 of NDPS Act so Ruqa against Manjit Kaur and Rajinder Singh sent through HC Sham Lal no.411 for registration of case and I am busy with investigation of case and inform me about the no. of the case.

Sd/-
Anand Kishor no.16
I/o Police Station Mandi.
20-1-2007 at 5.30 PM"

According to Sh.Dalee this FIR does not disclose any offence against the petitioner and the offence, if any, is disclosed against Manjit Kaur only who was also travelling in the Car. The charas was found on the person of Manjit Kaur and not on the person of the petitioner. He further submits that there is no allegation of conspiracy and therefore the petitioner has wrongly been charged for having committed an offence punishable under Section 20 of the NDPS Act.

Normally in a case where only the charge has been framed by the trial Court this Court would be very reluctant to interfere. However, in the present case it is apparent that there is total non-application of mind by the learned trial Court while framing the charge. The charge as framed is that the petitioner was found in exclusive and conscious possession of 2 kg. 700 gms of

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charas while driving the Car in question. This was not even the case set out by the prosecution. The petitioner was not found in possession of the charas. In fact the FIR clearly depicts that nothing was recovered from the petitioner or from the Car and the recovery was made only from Manjit Kaur.

Sh.J.S.Guleria, learned Law Officer appearing for the State submits that even if it is assumed that charge under Section 20 of the Act could not have been framed against the petitioner he should be charged with criminal conspiracy under Section 29 of the Act. For that material has to be on record to show that there is any allegation of criminal conspiracy against the petitioner. In my opinion, it would not be appropriate for this Court to look into this aspect of the matter. Accordingly the charge as framed against the petitioner by the Special Judge, Presiding Officer, Fast Track Court, Mandi on 26.4.2007 under Section 20 of the NDPS Act is quashed. The matter is remanded to the Presiding Officer who shall consider whether there is material on record to frame a charge under Section 29 of the Act against the petitioner. The Presiding Officer shall consider on the basis of the material before him whether any charge can be framed against the petitioner or not.

The case is fixed before the trial Court for PWS on 8.10.2007. In view of the fact that the charge against the petitioner has been quashed and the learned trial Court has been directed to reconsider the matter

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whether any charge is to be framed against the petitioner or not the evidence shall not be recorded on the said date and on the said date the learned Presiding Officer shall reconsider the matter with regard to the framing of the Charge against the petitioner.

The petition is allowed in the aforesaid terms.

September 28 , 2007.
PV

(Deepak Gupta) ,
Judge