

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Revision No. 247 of 1993
Date of Decision: 31.7.2007

Puran Singh.

..... Petitioner through Shri
Hitinder Singh Lalli,
Advocate with Shri Manish
Bansal, Advocate.

Versus

State of Punjab.

..... Respondent through Shri
Mehardeep Singh, Assistant
Advocate General, Punjab.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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Mahesh Grover,J.

In this revision petition, the petitioner has challenged judgment dated 9.1.1993 of the Additional Sessions Judge, Ferozepur vide which the appeal preferred by him against judgment of conviction and order of sentence dated 6.2.1992 passed by Additional Chief Judicial Magistrate, Ferozepur, was dismissed.

A secret information was received on 20.2.1982 from B.S.F., Intelligence and CES by Shri Jarnail Singh, Station House Officer, Police Station, Jalalabad. Accordingly, he along with other police officials started in official jeep bearing No.PUW 4677 for holding a Naqa at Canal Bridge,

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Fattuwala. On the way, they met Head Constables Mukhtiar Singh, Anup Singh and Constable Pirthipal Singh of B.S.F., who were also enjoined with the police party. At about 4.00 A.M., petitioner-Puran Singh was seen coming on foot from the side of village Jodha Bhaini. On reaching near the police party, he was stopped by the Station House Officer. At that time, he was carrying a bundle of gunny bag on his head. On search, 15 kilograms of opium wrapped in a glazed paper was recovered from the bundle. One country-made pistol of .12 bore along with two live cartridges of the same bore was also found wrapped in his Chaddar. As the petitioner could not produce any permit or licence for the possession of the opium and the country-made pistol and cartridges, two separate cases were got registered for these recoveries under the provisions of the Opium Act, 1878 (for short, 'the 1878 Act') and Indian Arms Act, 1959 (hereinafter described as 'the 1959 Act' respectively).

A sample of twenty grams was taken out from the recovered opium. Two separate parcels were prepared, one of the sample and the other of the remaining opium which was put in a tin after weighing and the same were sealed with the seal bearing letters 'JS'. The sample was got examined from the Chemical Examiner, who found the same to be opium.

After completion of necessary investigation, a challan was presented against the petitioner. He was accordingly charge sheeted for having committed an offence punishable under Section 9 of the 1878 Act to which he pleaded not guilty and claimed trial.

The prosecution examined the essential witnesses and tendered into the evidence the report of the Chemical Examiner, as also other

supporting material.

The petitioner, in his statement recorded under Section 313 of the Cr.P.C., denied the allegations levelled against him and pleaded false implication. A plea was taken by him that he was arrested from his house; that nothing was recovered; that he was detained in the police station in a case of theft and that later on, he was falsely involved in this case, as also in the case under the 1959 Act. He also tendered into evidence copy of judgment, Ex.DA, vide which he has been acquitted of the charge under the provisions of the 1959 Act.

On appraisal of the evidence on record, the trial Court found the petitioner guilty of the offence punishable under Section 9 of the 1878 Act and accordingly, it convicted and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for four months.

As noticed above, the appeal filed by the appellant against his conviction and sentence has been dismissed by the impugned judgment.

In the present revision petition, learned counsel for the petitioner contended that the petitioner was a juvenile on the date of occurrence and that the proceedings against him were contrary to the provisions of the Juvenile Justice Act, the benefit of which ought to have been afforded to him and since the same was not done, he deserves to be acquitted on this score alone as the entire proceedings would stand vitiated.

The next contention raised by the learned counsel for the petitioner is that the petitioner had been acquitted in the case registered against him under the 1959 Act and since the present case emerged out of

the same transaction, the whole of the prosecution story stands falsified.

The third contention of the learned counsel for the petitioner is that there were no independent witnesses enjoined at the time of search and seizure of the alleged contraband and this should be treated as fatal to the prosecution case, especially when the police party was acting on a secret information.

Lastly, learned counsel for the petitioner argued that there are discrepancies in the statements of the prosecution witnesses as one of the witnesses, namely, PW1-Jagdish Lal, A.S.I. had stated that no effort was made to enjoin the independent witness, whereas PW2-Jarnail Singh, Investigating Officer deposed that he had tried to rope in some independent witness, but none agreed to it.

On the other hand, learned counsel for the State argued that the fact that the petitioner was a juvenile on the day of the incident is incorrect as the record shows that he was not a minor at the time of commission of the offence. Besides, the recovery was effected from his person and it has not been shown as to whether the police was inimical towards him so as to implicate him falsely. He contended that the conviction and sentence as recorded by the Courts below are perfectly justified.

I have heard the learned counsel for the parties and have gone through the whole record.

The contention of the learned counsel for the petitioner that the benefit of the provisions of the Juvenile Justice Act ought to have been afforded to the petitioner on account of his being a minor on the date of occurrence is misplaced. The petitioner did not raise this plea during the

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trial. Moreover, at the time of recording of his statement under Section 313 of the Cr.P.C., the petitioner gave his age as 25 years. Even at the time framing of charge, he got recorded his age as 22 years. In view of this, the contention raised by the learned counsel for the petitioner has to be rejected.

In so far as the effect of the acquittal of the petitioner in the case registered against him under the provisions of the 1959 Act is concerned, it does not enhance his case because the acquittal was awarded to him in that case as the fire-arm seized was found to be not functioning and, therefore, the same did not fall within the definition of 'firearm' as given in the 1959 Act. It does not, in any way, reflect on the prosecution story. There is, thus, no force in the argument raised on this aspect.

The contention that no independent witness was enjoined is also without any substance as it has not been proved that the police was inimical towards the petitioner and merely because no independent witness was enjoined does not ipso facto render the story of the prosecution false so as to entitle the petitioner of any benefit.

The discrepancies pointed out by the learned counsel for the petitioner are also minor and can be attributed to the lapse of time between the date of occurrence and the recording of the statements of the prosecution witnesses.

On the basis of the above discussion, I do not find any infirmity in the impugned judgment and the revision petition deserves to be dismissed.

At this stage, learned counsel for the petitioner prayed that since the matter is of the year 1982 and more than twenty five years have

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elapsed since the petitioner was confronted with the criminal proceedings, the sentence awarded to him may be reduced to that of already undergone.

This prayer was strenuously opposed by the learned counsel for the State, who contended that F.I.R.No.122 dated 19.6.2005, under Sections 22/16 of the Narcotic Drugs and Psychotropic Substances Act,1985 has been registered against the petitioner at Police Station, Sadar Khanna as he was found to be in illegal possession of 2 Kg. heroin.

Learned counsel for the petitioner could not controvert the the above contention of the learned counsel for the State.

Having regard to the fact that the petitioner is involved in similar criminal activities even after the occurrence in the present case , I do not consider it a fit case where leniency can be shown.

Hence, the revision petition, being devoid of any merit, is dismissed.

July 31,2007
“SCM”

(Mahesh Grover)
Judge