

S.B. CRIMINAL LEAVE TO APPEAL No.140 OF 2011

State of Rajasthan v. Ratan Lal & another

Date of Order: 27th September 2011

HON'BLE MR JUSTICE NARENDRA KUMAR JAIN-II

Mr O.P. Singaria, Public Prosecutor

This Leave to Appeal has been filed by State of Rajasthan (prosecution) under sec.378 (iii) & (i) CrPC, seeking leave to file appeal against judgment dated 07th May 2011 passed by Sepcial Judge, NDPS Cases, Ratangarh, district- Churu in Special Case No.02/2009.

By the impugned judgment, the learned Special Judge acquitted present-respondent-accused from charge of commission of offence under sec.8/18 of the NDPS Act.

The respondents-accused (Driver) Ratan Lal s/o Ram Lal Dholi r/o Pachpahad and (Owner) Mukesh Kumar Suthar s/o Rodu Lal, r/o Bhawani Mandi (Jhalawar) were prosecuted for having committed offence under sec.8/18 of the NDPS Act. As stated above, the learned Special Judge acquitted both the accused persons and set them free from the aforesaid charge for which they were prosecuted.

Concisely, the facts of the case are that on 22nd June 2009 a vehicle- TATA Sumo bearing registration No.RJ20-8525 was seized in connection with FIR No.151/2009 by Police Station Ratangarh and the vehicle was stationed in the Police Station. On 30th June 2009, the SHO, Police Station Ratangarh received an information that the persons, who were injured in aforesaid vehicle were doing illegal trafficking of opium while hiding the opium in the chassis of the vehicle and now Driver and Owner of

the vehicle are attempting to get said vehicle released on superadaginama.

Thereafter, Driver Ratan Lal and Owner Mukesh Kumar came at the Police Station and showing RC of the seized vehicle, told that said vehicle has been in their possession for last six months. Thereupon, after giving notice and after taking their consent, chassis of the aforesaid seized vehicle TATA Sumo was got opened by mechanic Banshi Lal. Then in the backside gate of said vehicle 31 packets in white plastic bags were found and upon checking, substance contained in said packets was found to be opium. Weight of total opium so recovered was 61 kilogram. Samples were sealed on the spot and sent to the Forensic Science Laboratory for chemical analysis. In the FSL report, the substance recovered was found opium. After due investigation, challan was filed against the accused-respondents for offence under sec.8/18 of the NDPS Act.

I have perused the impugned judgment of acquittal and considered submission made by the learned Public Prosecutor for deciding whether the State (prosecution) should be granted leave to appeal to challenge the order of acquittal against accused-respondents in the present matter.

Without detailing into the issue at this stage, taking into account judgment of the trial court as also evidence of PW5 Gopal Singh, in my view it would be proper to grant the leave to appeal to the State for filing appeal against judgment of acquittal passed by the court below. In fact, looking to nature of offence committed and keeping in view the evidence adduced by the

prosecution vis-a-vis impugned judgment of the court below, it is a fit case where leave to appeal deserves to be granted to the State within the meaning of sec.378 CrPC.

At this stage, It would not be proper to consider and appreciate the evidence adduced by the prosecution as the same will be done only at the time of final hearing of the appeal.

Accordingly and in the light of aforesaid discussion, the application made by the State (prosecution) seeking leave to file appeal against the impugned judgment is allowed. The State is permitted to file an appeal as required under sec.374 ibid against the impugned judgment.

The Registry to register the appeal at regular number.

Let bailable warrant be issued against the respondent-accused Ratan Lal and Mukesh Kumar, to enable them to furnish bail bonds in the sum of Rs.25000/- with one surety of like amount.

The respondent accused are directed to remain present before this Court on 20th October 2011 and thereafter whenever called upon to do so.

[NARENDRA KUMAR JAIN-II],J.