

(2011) 10 SHI CK 0077
In the High Court Of Himachal Pradesh
Case No : CWP No. 7232 of 2011-H

Harjeet Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 24-10-2011

Acts Referred:

Citation : (2011) 10 SHI CK 0077

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in these petitions, the same were taken up together for hearing and are being disposed of by a common judgment.

2. The petitioners were members of the special team investigating F.I.R. No. 288 of 2010, dated 7.9.2010. According to the averments contained in the petitions, the police had seized 3 Kgs. 500 Gms. of charas. However, according to the accused persons, the quantity of charas was more than 5 kgs. In view of this, the petitioners in CWP No. 7274 of 2011 and in CWP No. 7491 of 2011 were transferred to 1st IRB, Bangarh and petitioner in CWP No. 7232 of 2011 was transferred to 6th IRB, Kolar at Sirmaur, on 24.9.2010. These orders were not given effect to, but the petitioners apprehend that these orders are likely to be given effect to and thus, the petitioners have approached this Court. The respondent-State was directed to seek instructions whether the petitioners could be adjusted in the adjoining districts. Mr. Vikas Rathore, learned Deputy Advocate General, on the basis of instructions imparted to him, submits that since serious allegations have been leveled against the petitioners, they cannot be adjusted in the districts.

3. It is not in dispute that petitioner Harjeet Singh, Head Constable, Albel Singh and Purshotam Singh were members of the team who investigated F.I.R. No. 288 of 2010.

4. Mr. Sanjeev Bhushan and Mr. Rakesh Chandel, learned counsel for the petitioners have strenuously argued that the petitioners are honest and up-right officers and nothing adverse has been found against them even after holding the inquiries against them. They also argued that the transfers of the petitioners are not in conformity with the established procedure.

5. Mr. Vikas Rathore, learned Deputy Advocate General has vehemently argued that since serious allegations have been levelled against the petitioners, there is no illegality in the transfer orders.

6. I have heard learned counsel for the parties and gone through the pleadings carefully.

7. Petitioners were members of the special team who investigated F.I.R. No. 288 of 2010. According to them, quantity of seized charas was 3 kgs. 500 gms. and not 5 kgs., as alleged by the accused. The accused have been sentenced for a period of ten years as per the averments contained in CWP No. 7491 of 2011. It is averred in the reply that the Additional Director General of Police, CID has reported that the inquiry report submitted by the Superintendent of Police, Una was based on the statements of officials and accused Ashok Dogra and no foul play has been found. It is thus evident that the petitioners were found innocent after holding the inquiry. It is also stated in the reply that after going through the conversation details of the accused after seizure, it was revealed that some manipulation has taken place in the quantity shown as seized. However, there was no corroborative evidence except the intercepted conversation to prove the manipulation of showing 3.5 kgs. charas against the seizure of 5 kgs.

8. The respondent-State was directed to file supplementary affidavit whether the procedure prescribed has been followed to transfer the petitioners from Una or not. The supplementary affidavit has been filed in CWP No. 7232 of 2011. It is stated in para-3 of the supplementary affidavit that the record of the transfer matter was not placed before the Police Establishment Committee which considers and recommends the transfer cases of the Police personnel.

9. The procedure established was required to be followed scrupulously before transferring the petitioners. The suspicion cannot take place of proof. In the instant case, neither anything adverse has been pointed out during the course of inquiry conducted by the departmental officer(s) nor has the procedure established been followed while transferring the petitioners.

10. Accordingly, in view of the observations and discussions, made hereinabove, the transfer orders dated 24.9.2010 (Annexure P-1) are quashed and set aside. However, it shall be open to the respondent-State to proceed with the matter in accordance with law. The pending application(s), if any, also stands disposed of. No costs.