

(2008) 05 P&H CK 0151

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 956 of 2007 (O and M)

Ms. Bharti Arora

APPELLANT

Vs

The Presiding Officer, Special Court, Kurukshetra and others

RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 36, 401
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 42, 43, 44, 58, 69

Citation : (2008) 4 RCR(Criminal) 236

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : Gagandeep S. Wasu, for the Appellant; Tarun Aggarwal, Senior DAG, Haryana and Mr. P.K.S. Phoolka, Advocate, for the Respondent No. 3, for the Respondent

Judgement

Vinod K. Sharma, J.—This petition u/s 401 of the Code of Criminal Procedure has been moved by the petitioner against the notice issued to the petitioner u/s 58 of the Narcotic Drugs & Psychotropic Substances Act (for short the "Act").

2. An FIR No. 8 dated 6-01-2005 was registered u/s 8 of the Act at Police Station, Shahbad, in which commercial quantity of opium weighing 8.700 Kgs was recovered from the conscious possession of accused Ran Singh on 6-01-2005.

3. The petitioner herein is said to have procured an undated application/complaint allegedly thumb marked by accused Ran Singh, on 8.01.2005 without being forwarded by the Superintendent, District Jail, Kurukshetra, though the accused Ran Singh was in custody. The petitioner marked the said application to DSP Ramphal and got conducted the inquiry through him and on the same day he submitted a detailed inquiry report to the petitioner holding therein that Ran Singh accused was innocent and it was also recommended that he be exonerated or discharged and action against Surjit Singh, Angrej Singh and Mehardeen, be

taken. Those persons were arrested on the allegations that they had planted commercial quantity of opium outside the house of Ran Singh.

4. The learned trial Court did not accept this version and Ran Singh stands convicted for an offence under NTDPs Act. However, in view of the findings recorded by the learned trial Court in the judgment dated 22/24-2-2007 a was issued the petitioner to show cause as to why proceedings u/s 58 of the Act be not initiated against her on the following allegation:

1. On the asking of accused Ran Singh a twist was given by you in the prosecution version and accused Surjit Singh, Angrej Singh and Mehardeen were arrested on the pretext that they had planted commercial quantity of opium outside the house of Ran Singh, and the said accusation was found to be false.

2. It has been observed in the judgment that a manipulation was made by you with the help of Ram Phal, Deputy Superintendent of Police and Inspector Ram Kumar, Investigating Officer of the case.

3. Accused Surjit Singh remained in custody w.e.f. 8.1.2005 to 29-8-2005 and accused Angrej Singh and Mehardeen remained in custody from 8-1-2005 to 25-5- 2005,

Section 58 of the Act reads as under:

"58. Punishment for vexatious entry, search, seizure or arrest

(1) Any person empowered u/s 42 or Section 43 or Section 44 who -

(a) without reasonable ground of suspicion entered or searched any building, conveyance or place;

(b) vexatiously and un-necessarily seizes the property of any person on the pretence of seizing or searching for any narcotic drug or psychotropic substance or other article liable to be confiscated under this Act, or of seizing any document or other article liable to be seized u/s 42, Section 43 or Section 44; or

(c) Vexatiously and un-necessarily detains, searches or arrests any person, shall be punishable with imprisonment for a term, which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(2) Any person wilfully and maliciously giving false information and so causing an arrest or a search being made under this Act shall be punishable with imprisonment for a term, which may extend to two years or with fine or with both."

5. Learned counsel for the petitioner seeks quashing of the impugned notice on the plea that conviction of Ran Singh is under challenge before this Court and, therefore, the findings recorded by the learned trial Court have not attained finality so as to prosecute the petitioner u/s 58 of the Act.

6. It is also the contention of the learned counsel for the petitioner that the bail

has been granted to Ran Singh and this Court prima facie, therefore, is of the view that the allegations against the accused are not correct. There is no occasion for the learned trial Court to have issued notice to the petitioner under the Act.

7. Learned counsel for the petitioner also contends that the impugned notice has been issued on the basis of conjectures and surmises as there is no evidence available on record to connect the petitioner with the offence u/s 58 of the Act.

8. The next contention of the learned counsel for the petitioner is that the petitioner had merely marked the inquiry to the subordinate officer and, therefore, no offence u/s 58 of the Act can be said to have been committed as her act is protected u/s 69 of the Act.

9. Learned counsel for the petitioner also makes reference to Section 36 of the Code of Criminal Procedure to contend that a superior officer has superintendence power over his/her subordinate officer, can exercise all the powers which are vested in the subordinate officer. The contention is that a combined reading of Sections 36 and 157 Cr. P.C. leaves no manner of doubt that the act done by the petitioner was as per powers vested in her, which does not call for her prosecution u/s 58 of the Act.

10. Learned counsel for the petitioner further contends that the petitioner only marked an inquiry to her subordinate officer as it was for her either to conduct the inquiry herself or to get it conducted through her subordinate officer and therefore, act done by her cannot attract the provisions of Section 58 of the Act.

11. On a consideration of the matter, I find no force in the contentions raised by the learned counsel for the petitioner.

12. Prima-facie the allegations made against the petitioner cannot be said to be false or not based on material on record.

13. It is not in dispute that Ran Singh was caught red handed with conscious possession of commercial quantity of opium which was found to be 8.700 Kgs. Merely on the basis of the application procured by the petitioner which was not sent through the Superintendence of Jail, though Ran Singh was in custody on 8-1-2005, the inquiry was marked to the subordinate officer by her which is said to have been completed within one day, wherein he (Ran Singh) was shown innocent and the persons, who were actually innocent, were directed to be arrested and put behind the bars. The facts speak for itself and it cannot be said that prima-facie the petitioner acted in good faith so as to claim protection u/s 69 of the Act.

No ground for interference in the impugned order is made out.

Dismissed.

It is made clear that nothing stated above shall be construed as an expression of opinion on the merit of the case.