

(2009) 05 SC CK 0020

In the Supreme Court Of India

Case No : Criminal Appeal No. 1232 of 2004

Rajbir Singh and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 17, 18, 58, 58(1), 69

Citation : (2011) 1 SCC(Cri) 1048

Hon'ble Judges : Mukundakam Sharma, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and order dated 21.4.2004 passed by the Punjab and Haryana High Court dismissing the criminal miscellaneous petition filed by the two Appellants herein u/s 482 of the Code of Criminal Procedure, praying for quashing the order dated 21.9.2003 whereby the Appellants were convicted u/s 58 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("Narcotic Drugs and Psychotropic Substances Act").

2. The case in hand has a chequered history. Appellant No. 1 herein was Sub Inspector Rajbir Singh of P.S. Sadar, Dabwali and Appellant No. 2 - Satbir Singh, was the then Tehsildar of Dabwali, District Sirsa, Haryana. They were both prosecution witnesses in connection with a case registered as FIR No. 149 dated 7.8.2002 u/s 17 & 18 of the Narcotic Drugs and Psychotropic Substances Act against one Hanuman son of Net Ram, on the ground that the said Hanuman was in possession of opium in contravention of the aforesaid provisions.

3. Appellant No. 1 Rajbir Singh investigated the aforesaid case and filed a charge-sheet against said Hanuman, on the basis of which the trial started. After the trial was concluded, the learned Trial Court not only found that the accused was not guilty of the charge and consequently acquitted him, but also found that the

aforesaid initiation and registration of the case against Hanuman was the result and outcome of a conspiracy hatched by S.I. Rajbir Singh and Satbir Singh (PW-2), who was the then Tehsildar of Dabwali, District Sirsa, for putting pressure upon Satpal son of accused Hanuman, to abandon his rights over 75 Kanals of land under his tenancy. The Trial Court held that due to the aforesaid conspiracy for putting pressure upon Satpal, it was decided by the Investigating Officer Rajbir Singh in collusion with the then Tehsildar Satbir Singh, to implicate Hanuman, the father of Satpal in a false case. The Trial Court has referred to the aforesaid conspiracy in its findings in the following manner:

It is evident from the case discussion that a conspiracy was hatched by SI Rajbir Singh, then SHO, Police Station Sadar Dabwali and PW Satbir Singh, then Tehsildar-cum-Executive Magistrate, Dabwali for putting pressure upon Shri Satpal son of accused Hanuman Bishnoi to abandon his rights over 75 Kanals of and under his tenancy. It was decided to implicate his father in a totally false case. They perhaps wanted independent corroboration to the official version and hence began the search for the convenient man. The choice naturally fell on PW Duli Chand, the old warhorse who had participated in many a legal battle in the Courts of law and had come to believe by then that he could walk into the Court-room, depose the tutored version and then walk out without remorse, he decided as usual to oblige the SHO of his area and so was implicated a poor, hapless and innocent man in a case under the Narcotic Drugs and Psychotropic Substances Act. A huge quantity of 5 kgs. of opium was planted upon him so that the Court would not ever grant him bail and that the sword of minimum imprisonment of Teh Years and a huge fine of Rs. One Lac would continue hanging over his head for many years. But mysterious are the ways of nature. The trial concluded in less than six months time and overwhelming evidence appeared on record not only to prove the innocence of a hapless victim of brute conspiracy but also the pre-arranged plan crafted by SI Rajbir Singh, SHO, Police Station Sadar, Dabwali and Satbir Singh, Tehsildar-cum-Executive Magistrate, Dabwali, whose primary duty is to check injustice being done to the people. It is a fit case to attract the provisions of Section 58 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The players in the conspiracy must have the feel of the noose which they had so skillfully created and they must taste the portion which they had so thoughtfully prepared for innocent Shri Hanuman Bishnoi. SI Rajbir Singh, then SHO, Police Station Sadar, Dabwali and Satbir Singh, Tehsildar-cum-Executive Magistrate, Dabwali are hereby convicted for the commission of an offence punishable u/s 58(1)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. They shall be heard on the quantum of sentence as and when they are produced before this Court.

4. The Appellants were aggrieved by the aforesaid findings and order of the Trial Court as they were straightway convicted for commission of an offence punishable u/s 58(1)(c) of the Narcotic Drugs and Psychotropic Substances Act without going through the process and procedure of a trial. It is the stand of the Appellants that the Trial Court did not have the power and jurisdiction to pass an

order of conviction for the alleged commission of offence u/s 58(1)(c) of the Narcotic Drugs and Psychotropic Substances Act, without going through the process of trial and without giving them due opportunity of hearing and defending themselves.

5. The Appellants, however, did not accept the notice which was issued by the Trial Court along with the non-bailable warrants and instead, they approached the High Court by filing a criminal misc. petition u/s 482 of Code of Criminal Procedure. It was submitted before the High Court by the Appellants that since a non-bailable warrant was issued by the Trial Court, they were not in a position to appear before the Trial Court and contest the matter only relating to sentencing. The High Court considered the pleas raised by the Appellants before it and on consideration of the facts and circumstances of the case, dismissed the petition after recording certain observations which are extracted below:

Before proceedings further it is important to note that the conduct of the defence of this petition by the State is not what is expected of an independent and fair minded police officer. The Trial Court had returned a specific finding that S.I. Rajbir Singh and Tehsildar Satbir Singh were guilty of offence u/s 58(1)(c) of the Act and called upon them to be heard on the quantum of sentence. If the two Petitioners were dissatisfied or wished to challenge this finding they could take recourse of either appearing before the Court and seeking a hearing or filing an appeal or revision petition to have the finding reversed or set aside. The Petitioners opted to take a short cut by challenging the warrants instead of challenging the order of the trial Judge. As long as the findings stand the Petitioners have no option but to appear before the Court and submit to its jurisdiction. If the Petitioner have anything to submit in their defence they are at liberty to do so before the Court concerned. The Petitioners have not challenged the findings against them. Therefore, this Court cannot interfere suo moto.

The Petitioners must submit to the trial court and raise whatever plea they are advised to raise in their defence. Criminal Misc. No. 4895 M of 2003 is disposed of with the above direction.

6. The aforesaid observations and the order dismissing the criminal misc. petition filed by the Appellants u/s 482 Code of Criminal Procedure, are under challenge in this appeal, on which we have heard the Learned Counsel for the parties.

7. Mr. Mahabir Singh, learned senior counsel appearing on behalf of the Appellants has submitted before us that the Trial Court was not justified in convicting the Appellants in a case which was instituted and registered against a different accused person in which the trial took place for consideration of only the said allegation against the accused persons therein. It is further submitted that in the same trial and at the conclusion of the same, no order of conviction could have been passed against the Investigating Officer, namely, SI Rajbir Singh and against one of the prosecution witnesses, namely, Satbir Singh, without framing

the charges against them under the relevant law and without going through the due process of trial and without giving an opportunity to the Appellants to raise their defence. It is his further submission that the Appellants could have validly raised the issue of sanction and also could have brought to the notice of the Trial Court the provisions of Section 69 of the Narcotic Drugs and Psychotropic Substances Act which gives a protection to the Investigating Authority to the effect that the investigation and prosecution carried out under the Act should be deemed to be bona fide. The learned senior counsel submits that these aspects are necessarily valid defences and could have been effectively raised by the Appellants provided a fair trial was conducted against them.

8. We have considered the aforesaid submissions of Mr. Mahabir Singh. It is, however, disclosed from the records that the Appellants have not challenged the findings recorded by the Trial Court even before the High Court, nor have they challenged the order of conviction as such before the High Court. The Appellants have been directed by the High Court to raise all the issues and also challenge the findings against them before the Trial Court.

9. While making such observations, we feel that the High Court has given a reasonable opportunity to the Appellants to raise all those issues which would be available to them before the Trial Court when they appear before it pursuant to the notice issued to them. We also feel that the Appellants should and could be allowed to raise all available pleas, both factual as also legal issues, before the Trial Court when they appear before the Trial Court in terms of the order passed by the High Court. All those issues which are raised by the Appellants should be considered by the Trial Court fairly, reasonably and in accordance with law. We are of the opinion that High Court has committed no error in passing the impugned order. We are also unable to consider the legality of the said order as it was not challenged either before the High Court or before us specifically.

10. The Appellants are, therefore, granted two weeks" time to appear before the Trial Court and, if necessary, to file an application raising all pleas in terms of the order of the High Court in that regard as stated hereinbefore. Such pleas shall be considered by the Trial Court and the application shall be disposed of in accordance with law.

11. If the Appellants are still aggrieved, they will be at liberty to take recourse to further appropriate remedy in accordance with law and as may be available, including the prayer for granting them interim bail.

12. Any observation made herein shall not be construed as expressing any opinion or views by this Court on merit.

13. The appeal is disposed of with the aforementioned observation and direction.