
(2014) 12 SHI CK 0103
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 471 of 2008

State of H.P.

APPELLANT

Vs

Kesar Singh

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 2(xv), 2(xvii), 2(xviii)

Citation : (2014) 12 SHI CK 0103

Hon'ble Judges : Sanjay Karol, J; Piar Singh Rana, J

Bench : Division Bench

Advocate : Shrawan Dogra, Advocate General, B.S. Parmar, V.S. Chauhan, Additional Advocates General and Vikram Thakur, Deputy Advocate General, Advocate for the Appellant; N.K. Thakur, Sr. Advocate and Rahul Verma, Advocate for the Respondent

Judgement

Sanjay Karol, J.—State has appealed against the judgment dated 28.2.2008, passed by the Sessions Judge, Una, Himachal Pradesh, in Sessions Case No. 19 of 2005, titled as State of Himachal Pradesh v. Kesar Singh, challenging the acquittal of respondent Kesar Singh (hereinafter referred to as the accused), who stands charged for having committed offence punishable under the provisions of Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act).

2. Certain facts are not in dispute. In relation to FIR No. 581, dated 21.8.2004, under the provisions of Section 15 of the Act, registered at Police Station, Una, accused was charged to face trial for having found in possessing 5 kg. of poppy husk, in contravention of the provisions of Section 15 of the Act. To establish the said charge, prosecution examined as many as 14 witnesses, including Inspector Surinder Sharma (PW-13), SHO, Police Station Kangra, District Kangra, H.P., who proved on record the Chemical Examiner Report (Ex. PW-13/B).

3. Evidently, the said report reveals that only tests for meconic acid and

morphine were conducted, on the basis of which, expert opined the sealed samples to be poppy husk.

4. A Coordinate Bench of this Court in *Rajiv Kumar alias Guglu Vs. State of H.P.*, , has held as under:-

"7. For appreciation of the argument of the learned Counsel, definitions of "poppy straw" and "opium poppy" given in the Narcotic Drugs and Psychotropic Substances Act, 1985, need to be noticed. The same are reproduced here for ready reference:

"Section 2(xviii), "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom.

Section 2(xvii), "opium poppy" means-

(a) the plant of the species *Papaver somniferum* L; and

(b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act".

8. From the definition of poppy straw, as reproduced hereinabove, it is clear that to understand the meaning of poppy straw, it is essential to refer to the meaning of opium poppy. Poppy straw, when read along with the definition of opium poppy, means (a) all parts (except seeds) of the plant of the species of *papaver somniferum*-L and all parts (except seeds) of the plant of any other species of *papaver* from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may by notification in the official Gazette declare to be opium poppy for the purposes of the Narcotic Drugs and Psychotropic Substances Act, 1985.

9. In the present case, as is clear from the statement of the Chemical Examiner, recorded by us, the two tests conducted by him to ascertain that the stuff examined consisted of the parts of either the plant of the species of *papaver somniferum*-L or a plant of any other species of *papaver* from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may have notified to be the opium poppy for the purposes of the Narcotic Drugs and Psychotropic Substances Act, 1985. If it is so, the report of the Chemical Examiner, Ex. PW-10/L, that the stuff contains contents of poppy husk, which term is similar to the term "poppy straw", cannot be used as enough evidence to hold that the stuff recovered from the appellant, the sample of which was analyzed by the Chemical Examiner, was poppy straw.

10. In this view of the matter, we derive strength from a judgment of the Hon'ble Supreme Court in *Amarsingh Ramjibhai Barot Vs. State of Gujarat*, . Facts of that case were that some black substance, looking like opium, was

recovered from the accused. A sample of the substance was sent to the Chemical Examiner, who reported that the sample was "opium as described in the Narcotic Drugs and Psychotropic Substances Act, 1985, containing 2.8 per cent anhydride morphine and also pieces of poppy flowers (posedoda)". The Hon"ble Supreme Court noticed the definition of opium as given in Section 2(xv) of the Narcotic Drugs and Psychotropic Substances Act, 1985, according to which, "opium" means (a) the coagulated juice of opium poppy; and (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent of morphine. The Hon"ble Supreme Court held that there did not appear any acceptable evidence that the black substance found with the appellant was "coagulated juice of the opium poppy" and "any mixture, with or without any neutral material of the coagulated juice of the opium poppy" and that the opinion given by the FSL that it was opium, as described in the Narcotic Drugs and Psychotropic Substances Act, 1985, was not binding on the Court.

11. In view of the what has been stated hereinabove, we hold that the substance allegedly recovered from the appellant has not been proved to be poppy straw, within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985, and, therefore, he is not liable to conviction and punishment for the offence described in and made punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Consequently the appeal is accepted, judgment of the trial Court convicting and sentencing the appellant for offence under Section 15(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, is set aside and the appellant is acquitted. He being in jail, serving out the sentence awarded by the trial Court, is ordered to be set at liberty forthwith, in case his detention is not required in any other case."

5. Principle laid down in *Guglu* (supra) has been subsequently reiterated by this Court in *State of H.P. v. Des Raj*, 2013 (1) HLR 580.

6. In the instant case, the expert has not stepped into the witness box. Also, only two tests were conducted. Whether the contraband substance, so recovered from conscious possession of the accused was poppy straw or not, so as to fall within the ambit and scope of definition clause of the Act, cannot be said to have been conclusively established, keeping in view of principles of law laid down in *Guglu* (supra).

7. As such, without adverting to other contentions, so raised by learned counsel for the parties, on this short ground alone, we dismiss the present appeal, holding that prosecution has failed to establish recovery of any contraband substance from the conscious possession of the accused. Bail bonds furnished by the accused stand discharged.

Appeal stands disposed of, so also pending application(s), if any.