
(2015) 04 P&H CK 0366

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal Nos. 569 and 571 of 2015 (O&M)

Union of India and Others

APPELLANT

Vs

Gurmail Singh and Others

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 68-A, 68-H, 68-Z

Citation : (2015) 3 RCR(Criminal) 323

Hon'ble Judges : Surya Kant, J;P.B. Bajanthri, J

Bench : Division Bench

Advocate : Vivek Singla, for the Appellant

Final Decision : Dismissed

Judgement

Surya Kant, J—This order shall dispose of LPA Nos. 569 and 571 of 2015 as the point in issue in both the appeals is common in nature. For brevity, the facts are being extracted from LPA No. 569 of 2015. The question that arises for consideration is whether the order forfeiting the properties under Section 68-H of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act, 1985"), can be allowed to sustain even after (i) the detention order passed as a preventive measure against the suspect has lapsed and (ii) in the case registered under the NDPS Act, 1985, the suspect has earned acquittal.

2. Before we advert to the merits of the appeal(s), we may refer to the application(s) seeking condonation of delay of 369 days in filing the accompanying appeal. It is averred in para No. 2 of the application that the order passed by learned Single Judge was received by the second appellant on 23.04.2014 and "after analyzing the same, the file was forwarded to the Ministry of Law and Justice on 04.09.2014". In other words, appellant No. 2 took more than four months in "analyzing the judgment" when it is well known that the appeal could be filed within 30 days only. It is further averred that the matter was again sent on 18.11.2014 after obtaining the information to file the appeal.

Thereafter, appellant No. 2 approached the office of Assistant Solicitor General on 20.11.2014 and finally the appeal was filed on 24.02.2015.

3. Despite giving all possible leverages to the appellants, who are central Government authorities, we find no reasonable explanation meriting acceptance of the prayer for condonation of delay. There has been a total casual approach at the level of appellant No. 2 and the appeal appears to have been filed half-heartedly without any intent to raise any substantial question of law. We, thus, dismiss the application for condonation of delay. The accompanying appeal would obviously meet with the same fate.

4. Having held so, in all fairness, we have heard Mr. Vivek Singla, learned counsel for the appellants on merits also. Section 68-Z of the Act, as reproduced by the learned Single Judge, provides as follows:-

"68-Z: Release of property in certain cases:-

1. Where the detention order of a detenu is set-aside or withdrawn, properties seized or frozen under this Chapter shall stand released.

2. Where any person referred to in clause (1) or clause (b) or clause (cc) of sub-section (2) of Section 68-A has been acquitted or discharged from the charges under this Act or any other corresponding law of any other country and the acquittal was not appealed against or when appealed against, the appeal was disposed of as a consequence of which such property could not be forfeited or warrant of arrest or authorisation of arrest issued against such person has been withdrawn, then, property seized or frozen under this Chapter shall stand released".

5. It is the conceded case that the detention order passed against the deceased-detenu had a life of one year which could, at best, be extended for other two years. Assuming that the detention order was extended upto the maximum period, it is undeniable that the said period stood expired way back. In our considered view, the expression, "set-aside" would include the situation where the detention order has lapsed and becomes non-existent due to efflux of time. The seizure of the property of the deceased thus cannot be justified or sheltered under clause-1. As regard to clause-2, it is an admitted fact that the deceased-detenu namely, father of respondent No. 1 was acquitted in the NDPS Act by this Court on 09.04.1996 (Annexure P-3) and the said judgment having not been challenged by the State, has attained finality. The view taken by learned Single Judge, even on merits, therefore, does not call for any interference.

Dismissed.