



S.B. Cr. Revision Petition No.342/2010
Akhlak @ Vilsan And Anr. VS. State of Raj.

Dated of Order ::: 2nd April, 2010

HON'BLE MR. MAHESH BHAGWATI, J.

Mr. AK Khan, for the petitioners.
Mr. Amit Punit, PP., for the State.

Challenge in this criminal revision petition is to the order dated 9th March, 2010 whereby the learned Additional Sessions Judge No.1, Kota, dismissed the application under Section 36A of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'N.D.P.S. Act, 1985).

The accused petitioners Akhlak @ Vilsan and Monu are alleged to have been found in the possession of 65 grams and 60 grams 2.40 mg *charas* respectively.

Heard the learned counsel for the accused revisionists, learned Public Prosecutor appearing for the State and carefully perused the impugned order.

Learned counsel for the revisionists canvassed that on 24th June, 2009, 65 grams *charas* is alleged to have been recovered from the possession of accused Akhlak and 60 grams 2.40 mg *charas* in a packet is alleged to have been recovered from the possession of accused Monu during their search. As per the table appended to the N.D.P.S. Act, 1985, 100 grams *charas* has been determined to be the small quantity and *Charas* 1 Kg or above





has been defined to be commercial quantity. If any accused is found to be in possession of *Charas* which is small quantity, the offence is punishable with six months' imprisonment which is triable by the Court of Judicial Magistrate and not by the Special Court. From both the accused persons less than 100 grams *charas* is alleged to have been recovered and as such their offence is triable by the Court of Judicial Magistrate-First Class. Despite that being the tangible legal position, the learned trial Court arbitrarily held that since more than 100 grams *charas* has been recovered from the possession of the two accused persons, the case was not triable by the Court of Judicial Magistrate and dismissed their application under Section 36A of N.D.P.S. Act vide impugned order, which deserves to be set aside.

E-contra, the learned Public Prosecutor very leisurely argued that the impugned order was correct in the eye of law and the revision is liable to be dismissed.

Having reflected over the submissions made at the bar and carefully perused the relevant provisions of law including the impugned order, it is noticed that 65 grams *charas* is alleged to have been recovered from the possession of the accused Akhlak and 60 grams 2.40 mg *charas* is alleged to have been recovered





from the possession of the accused Monu. The terms 'commercial quantity' and 'small quantity' have been defined under Section 2(viia) and 2(xxiiia) of NDPS Act, 1985 respectively. As per the Notification issued by the Central Government under this Section the small quantity of *charas* has been defined to be 100 grams and commercial quantity as 1 KG and above.

Section 36A of NDPS Act, 1985 envisages as under:

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Court than one for such area, by such one of them as may be specified in this behalf by the Government;

From bare reading of Sub Section (a) of Section 36-A, it is revealed that only those offences under this Act, shall be triable by the Special Court, which are punishable with imprisonment for a term more than three years. If any offence under this Act is punishable with imprisonment for a term of three years or less than three years, then the case shall be governed by II classification of offences against - other laws given under first schedule of Cr.P.C. 1973. Classification of offences against other laws contemplates that if the offence is





punishable with imprisonment for less than three years or with fine only, it shall be triable by any Magistrate which leads to hold that the offence which is punishable with imprisonment of six months' only, that offence shall be triable by a Judicial Magistrate First Class.

Section 20 of NDPS Act, 1985 envisages that where the contravention relates to sub-clause (b) of Section 20 and involves small quantity, being an offence, shall be punishable with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both; In the instant case, *charas* allegedly recovered from the possession of both the accused persons separately is found to be less than 100 grams, which undeniably and un-disputedly falls in the category of small quantity and the punishment prescribed for the possession of small quantity with rigorous imprisonment for a term which may extend to six months, or with fine or both. Thus, by no stretch of imagination, it can be said that such offence is triable by the Special Court. The learned trial Court has taken into consideration the total quantity of *charas* allegedly recovered from the possession of both the accused persons. Nowhere it has been stated that total amount of charas weighing 125 gms 2.40 mg was found in the joint possession





of both the accused persons, E converso, the prosecution has come out with the case that 65 grams *charas* was recovered from the possession of accused Akhlak and 60 gms 2.40 mg *charas* was allegedly recovered from the accused of Monu separately during their search. Under Section 223 of Cr.P.C., both the accused persons can be tried for the same offence committed in the course of the same transaction. Since both the accused persons were going on Motorcycle and on their search the aforesaid quantity of *charas* is alleged to have been recovered from their separate possession, it cannot be said that for the purpose of determining the quantity of recovered *charas* the total quantity of *charas* recovered from both the accused persons shall be taken into consideration. The order of the learned trial Court is per se erroneous, capricious and contrary to the provisions of law which is not liable to be sustained. The arguments advanced by the learned counsel for the revisionist are found to have contained force and thus tenable.

In view of the above legal position, the criminal revision petition filed by the accused revisionists is allowed. The impugned order dated 9th March, 2010 passed by Special Judge, N.D.P.S. Act Cases and Additional Sessions Judge No.1, Kota is set aside.

The learned trial Court is





directed to pass an order afresh pursuant to the observations of this Court and transfer the case for trial to the Court of Judicial Magistrate Ist Class having jurisdiction.

(MAHESH BHAGWATI)J.

Pcg

