



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Revision No. 1473/2017

Shashi Kumar S/o Shri Madanlal B/c Kanjar Sansi, age 23 years,
R/o Dalelpura, P.S. Khetri, District Jhunjhunu (Raj.) at present
residence Indira Colony, Jwalaji, P.S. Jwalaji, District Kangra,
Himachal Pradesh.(at present in Judicial Lockup Central Jail,
Jaipur).

-----Petitioner

Versus

State Of Rajasthan Through Pp

-----Respondent

For Petitioner(s)	:	Mr. Anil Upman Mr. Rajveer Singh
For Respondent(s)	:	Mr. V.S. Godara, PP

HON'BLE MR. JUSTICE DEEPAK MAHESHWARI

Judgment / Order

14/05/2018

Heard learned counsel for the petitioner as also learned
Public Prosecutor.

This revision has been preferred against the order dated
18.08.2017 whereby learned trial Court proceeded to frame
charge against the petitioner for the offence under Section 8/20
(b)(ii)(c) and Section 8/25 of the NDPS Act.

Learned counsel for the petitioner contends that the order by
which learned trial Court directed to frame the charge does not
contain any factual basis on which the direction to frame charge
has been given. The order does not give any justification/reason
to come to the conclusion aforesaid. His further contention is that
as per the prosecution story, 12 kgs of Ganja was recovered from
the possession of accused Ravi Kumar who was holding it in one
bag lying between his legs and 14 kgs of Ganja was recovered



from the dicky of the car No.DL-4C-AB-0488 which was allegedly driven by the petitioner at the time it was intercepted by police. Counsel contends that both the quantities of the Ganja recovered from the car cannot be clubbed together to frame the charge against the petitioner for the commercial quantity of intercepted contraband, as 12 kg of Ganja being in possession by co-accused Ravi Kumar. There is no evidence available on record to show that petitioner Shashi Kumar was having conscious knowledge about the possession of 12 kg of Ganja by Ravi Kumar. In support of his contention, learned counsel has relied upon the judgment referred to by Co-ordinate Bench of this Court in **Akhilak @ Vilasan & Anr. Vs. State of Rajasthan** reported in **2010(2) Cr.L.R. (Raj.) 1542**. He has also relied upon judgment passed by Hon'ble Supreme Court in **Amarsingh Ramjibhai Barot Vs. State of Gujarat** reported in **(2005) 7 SCC 550** which was passed in the criminal appeal.

Per contra, learned Public Prosecutor has stated that as per the rojnamcha report dated 11.10.2016, both the quantities of Ganja i.e. 12 kg and 14 kg were recovered from the vehicle No.DL-4C-AB-0488. Both the accused persons namely Shashi Kumar & Ravi Kumar were found in the car No. DL-4C-AB-0488. There is no dispute to the fact that the recovery was affected of the alleged quantity of contraband from the aforesaid car. He contends that from the aforesaid facts and circumstances, it can be safely inferred that they were having joint possession of the contraband recovered in the car.

I have given thoughtful consideration to the rival arguments advanced and gone through the relevant document.



On perusal of the order dated 18.08.2017, whereby learned trial Court ordered that the charge is to be framed for the offence under Section 8/20 (b)(ii)(c) and Section 8/25 of NDPS Act against the petitioner, it is found that this order does not contain any analysis on factual matrix. In the present situation, no ground exists for framing the charge for the aforesaid offence when the rojnamcha report mentions that 12 kg of Ganja was recovered from the possession of Ravi Kumar himself, which he was holding between his legs and 14 kg of Ganja was found in dicky of the car. The trial Court ought to have discussed and given its reasons as to why both the quantities of contraband are considered to have been recovered from the conscious possession of the petitioner. Without giving any reason for coming to this conclusion, order framing the charge against the petitioner of commercial quantity of Ganja, cannot be sustained.

In so far as the issue of framing of charge for the offence under Section 8/25 NDPS Act is concerned, it is found that when the Car No.DL-4C-AB-0488 was intercepted by police, petitioner, who is said to be registered owner of the vehicle, was found driving the car. It is not the case of the prosecution that the petitioner has knowingly permitted the car to be used for the commission of the offence by any other person. When the prosecution story was that the owner of the vehicle was himself driving the car, there appears no justification to frame the charge for the offence under Section 8/25 of NDPS Act.

In view of the discussion made above, order dated 18.08.2017 passed by learned trial Court cannot be sustained and is quashed and set aside. Direction is given to the learned trial Court to hear both the sides on the question of framing the charge



afresh and in light of the discussion made above to arrive at its conclusion again on the issue of framing the charge on the basis of the material made available by the prosecution.

The petition stands allowed in above terms. The trial Court is further directed to pass the order afresh within a period of one month from today.

(DEEPAK MAHESHWARI),J

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RAJASTHAN HIGH COURT



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