REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1085 OF 2015
(@ SLP(Crl) No. 2623 of 2015)

State of Rajasthan ... Appellant

Versus

Jainudeen Shekh and Anr. ... Respondents

J U D G M E N T

Dipak Misra, J.

The pivotal issue that emanates for consideration in this appeal, by special leave, is whether the learned Special Judge was justified in granting compensation of an amount of Rs.1,50,000/- to each of the respondents who had been arraigned as accused for the offences punishable under Sections 8/21(B) and 8/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, "the NDPS Act") on the foundation that there was delay in obtaining the report from the Forensic Science Laboratory and further the test showed that the seized items did not contain any

contraband article and, therefore, they had suffered illegal custody, and whether the High Court has correctly appreciated the fact situation to affirm the view expressed by the learned trial Judge by opining that the grant of compensation is not erroneous.

2. The facts which are necessary to be stated for adjudication of the limited issue are that on 02.11.2011, PW-5 Nemichand, SHO, PS Bhimganj along with PW4, Umrao, Constable and PW6, Om Prakash, Head Constable while carrying on patrolling duty, noticed the two accused persons together and seeing the police vehicle, accused Jainuddin speedily moved towards the kachcha passage near Mangal Pandey circle and on a query being made, he could not give any satisfactory reply. The accused was searched in presence of other persons and during the search a polythene bag allegedly containing intoxicant material was found in the back pocket pant of the accused-respondent no.1 but he had no licence for it. The polythene bag weighed 31 gram 170 milligrams. The police prepared two samples of alleged smack weighing 5 grams each and the remaining was kept in the polythene bag and

sealed. Thereafter the accused-respondent no. 1 was arrested at the spot and seizure memo was prepared. At that time accused Shabbir was also taken into custody. Thereafter, an FIR was registered and after investigation, charge sheet was filed under Section 8/21(B) of the NDPS Act against the accused-respondent no.1 and under Section 8/29 of the NDPS Act against the accused Shabbir.

3. The accused persons denied the charges and stated in their statement under Section 313 CrPC that they had been falsely implicated.

4. The prosecution in order to establish the charges, examined six witnesses. Be it noted, the sample that was sent for examination to the Forensic Science Laboratory on 8.11.2011, chemical analysis thereof was done on 9.9.2013 and the report was submitted to the court on 28.9.2013 and it was exhibited as Exhibit P-11. The said document revealed that the sample contained "caffeine" and "paracetamol" and it did not contain Diacetylmorphine (heroine) or alkaloid of "Afeem" (Opium). As the report indicated that the said items were not covered under the category of intoxicant under NDPS Act, the trial court came

to the conclusion that the charges were not established in any manner.

5. Learned trial Judge, while recording the said conclusion observed thus:

> "In the present case certainly it is the matter of concern that the officer executing the seizure has no experience with respect to intoxicant material. Although PW5, Nemi Chand, had found the material as intoxicant in his testimony merely by checking. Certainly it shows ignorance of the officer about identification of intoxicant who executed seizure. No attempt was made by the officer making seizure that he should have either tasted the material, which was seized, or same should have been provided to other persons, who were present at the time of seizure, to ensure whether such material is intoxicant or not. The officer making seizure identified same as smack merely after smelling the material.
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> In this perspective it shall be in the interest of justice to mention that in case there being suspicion over the material being intoxicant or not, then it is the responsibility of the State Government that immediately such material should be subjected to chemical analysis, but in the present case the aforesaid report of Forensic Science Laboratory was submitted into the court on 28.09.2013 and the chemical analysis was done by the laboratory on 09.09.2013. So it is clear that aforesaid material was subjected to chemical analysis about 2 years after the occurrence on 02.11.2011 that is after the period of two years, so certainly it cannot be held as just and proper procedure."

6. After so holding, the learned trial Judge opined that despite the Supreme Court giving the guidelines in Criminal Appeal No. 1640 of 2010 to the State Governments and Central Government that every State should have forensic science laboratory at the level of the State as well as the Division, no appropriate action had been taken by the State Government. The learned trial Judge also opined that the State Government had not been able to discharge the responsibility and there should have been an arrangement to obtain the report from the Forensic Science Laboratory within a reasonable time. Being of this view, he recorded a judgment of acquittal in favour of the accused. Thereafter the learned trial Judge referred to Section 250 of the Code of Criminal Procedure, 1973 (for short, 'the Code') and opined that a Court of Session can award compensation to the accused in a case of malicious prosecution and accordingly directed payment of Rs.1,50,000/- each to both the accused persons.

7. We have heard Mr. S.S. Shamshery, learned AAG for the State of Rajasthan. Despite notice, there has been no appearance on behalf of the respondents.

8. Section 250 of the Code confers powers on the Magistrate to grant compensation on certain conditions being satisfied. A procedure has been engrafted in the said provision. There are certain cases in which the learned Sessions Judge can grant compensation. In this context we may refer with profit to the decision in ***Daulat Ram v. State of Haryana***[1]. The appellant therein was convicted by the learned Additional Sessions Judge under Section 25 of the Arms Act, 1959 read with Section 6(1) of the Terrorist & Disruptive Activities (Prevention) Act, 1985 (for short, 'TADA'). The defence taken by the accused was that he had been falsely implicated at the instance of one Hans Raj Lambardar of the village. He had examined four witnesses in his defence. He was acquitted under Section 6 of the TADA but convicted under Section 25 of the Arms Act. The Court analyzing the evidence on record and taking note of the plea of the defence, dislodged the judgment of conviction and while doing so, this Court opined that:-

> "....It is unfortunate that the police officers, namely, Head Constable, Randhir PW 2 and the then Head Constable Jai Dayal, PW 3 foisted a

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1 (1996) 11 SCC 711

> false case on the appellant for reasons best known to them, which is a very serious matter. We are informed that the appellant was in custody for a few days in connection with this case. We, therefore, direct the respondent-State to pay a sum of Rs. 5000 as compensation to the appellant within two months. The respondent-State may however recover the said amount from the police officials, Randhir PW 2 and Jai Dayal, PW 3 (Rs. 2500 each), who are responsible for false implication of the appellant."

9. In ***Mohd. Zahid v. Govt. of NCT of Delhi***[2], the appellant had preferred an appeal under Section 19 of the TADA. The designated court had found him guilty and convicted him for the offence under Section 5 of TADA and sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and, in default of payment of fine, to undergo rigorous imprisonment for two months more. The Court allowed the appeal and recorded an order of acquittal. In course of analysis, the Court has opined that certain documents had been interpolated, the evidence of certain witnesses was absolutely false and that the appellant therein made a victim of prolonged illegal incarceration due to machination of PWs 5 and 6 and other

[2] (1998) 5 SCC 419

police personnel and accordingly directed payment of Rs.50,000/- as compensation.

10. In this context reference to certain other decisions would be appropriate. In ***State, represented by Inspector of Police and others v. N.M.T. Joy Immaculate***[3], a three-Judge Bench was dealing with the judgment and order passed by the learned Single Judge of the High Court of Madras in a Criminal Revision which was allowed and revision was disposed of with certain directions. The High Court had granted Rs.1 lakh compensation on the basis of an affidavit. G.P. Mathur, J., speaking for the learned Chief Justice and himself, after quashing the order of the High Court has opined that:-

> "The High Court has also awarded Rs. 1 lakh as compensation to the accused on the ground that she was illegally detained in the police station and the police personnel committed acts of molestation, obscene violation, etc. It is noteworthy that after investigation, the police has submitted charge-sheet against accused Joy Immaculate. Her application for bail was rejected by the learned Sessions Judge and thereafter by the High Court on 18-1-2002 prior to the decision of the revision. There is absolutely no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has

[3] (2004) 5 SCC 729

> commenced. This direction, therefore, deserves to be set aside."

Dr. A.R. Lakshmann, J. in his concurring opinion has laid down:-

> "Above all, the learned Judge has committed a grave error in awarding a compensation of Rs 1 lakh on the ground that the police personnel committed acts of obscene violation, teasing the respondent herein. The learned Judge has relied upon only on the basis of the affidavit filed in the case for coming to the conclusion and also on the basis of the assumption that the respondent was not involved in the incident which will foreclose the further enquiry ordered by the learned Judge in the matter. There is no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has started."

11. In this context, we may usefully refer to a two-Judge Bench decision in ***Hardeep Singh v. State of Madhya Pradesh***[4]. In the said case, the appellant was engaged in running a coaching centre where students were given tuition to prepare them for entrance tests for different professional courses. The appellant was arrested and a case under Section 420 read with Section 34 IPC and other sections was instituted. He was brought to the police station in handcuffs and his photographs in handcuffs

[4] (2012) 1 SCC 748

appeared in the local newspapers. The trial went on for several years and eventually, he was acquitted after 12 years. Thereafter he filed a complaint before the Magistrate which was dismissed for lack of sanction. The High Court being moved had held that complaint was not maintainable and dismissed the same in limini. Thereafter, the victim moved the Government for grant of sanction under Section 197 CrPC for prosecuting the Collector and other government servants which was refused. The said order of refusal came to be assailed in W.P. No.4777 of 2007. The writ petition was dismissed by the High Court. On an intra-court appeal preferred, the High Court dismissed the same.

12. Be it stated, after the acquittal, the appellant had filed writ petition no. 4368 of 2004 contending, inter alia, that he was taken to the police station and was kept there in custody in the night handcuffed by the police without there being any valid reason and his photographs in handcuffs in daily newspapers were published as a consequence of which his elder sister who loved him like a son, died due to shock. It was also contended that the prosecution knew from the

beginning that the cases registered against him were false and it purposefully caused delay in conclusion of the trial causing great harm to his dignity and reputation and violating his fundamental right to speedy trial guaranteed under Article 21 of the Constitution. A learned Single Judge of the High Court had admitted the writ petition on the limited question of grant of compensation to the appellant for the delay in conclusion of the criminal case against him. Another Single Judge who finally heard the matter opined that there was no case for compensation. In intra-court appeal, the Division Bench reversed the same and granted compensation of Rs.70,000/- which was enhanced by this Court to Rs.2 lakhs. The analysis made by the Division Bench which has been approved by this Court is to the following effect:-

> 'The Division Bench further held that there was no warrant for putting the appellant under handcuffs. His handcuffing was without justification and it had not only adversely affected his dignity as a human being but had also led to unfortunate and tragic consequences."

And while enhancing the compensation, the Court held that:-

> "..... we find that in the light of the findings arrived at by the Division Bench, the compensation of Rs 70,000 was too small and did not do justice to the sufferings and humiliation undergone by the appellant."

13. Regard being had to the aforesaid enunciation of law, the factual matrix of the case at hand is required to be appreciated. On a close scrutiny of the judgment of the learned trial Judge, it is evident that he has been guided basically by three factors, namely, that the State Government has not established Forensic Science Laboratories despite the orders passed by this Court; that there has been delay in getting the seized articles tested; and that the seizing officer had not himself verified by using his experience and expertise that the contraband article was opium. As far as the first aspect is concerned, it is a different matter altogether. As far as the delay is concerned that is the fulcrum of the reasoning for acquittal. It is apt to note that the police while patrolling had noticed the accused persons and their behaviour at that time was suspicious. There is nothing on record to suggest that there was any lapse on the part of the seizing officer. Nothing has been brought by way of evidence to show that the prosecution

had falsely implicated them. There is nothing to remotely suggest that there was any malice. The High Court, as is noticed, has not applied its mind to the concept of grant of compensation to the accused persons in a case of present nature. There is no material whatsoever to show that the prosecution has deliberately roped in the accused persons. There is no malafide or malice like the fact situation which are projected in the case of ***Hardeep Singh*** (supra). Thus, the view expressed by the learned trial Judge is absolutely indefensible and the affirmance thereof by the High Court is wholly unsustainable.

14. In view of the foregoing analysis, the appeal is allowed and the order of the trial Judge granting compensation and that of the High Court giving stamp of approval to the same are set aside.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi
August 25, 2015.