

# SUPREME COURT OF INDIA

Hoffman Andreas

Vs.

Inspector of Customs

Crl.A.No. 815 of 1998

(K.T. Thomas and A.P. Misra, JJ.)

16.09.1999

## ORDER

**K.T. Thomas, J.**

1. The appellant, a German national stands convicted under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”). He was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs 1,00,000. He preferred an appeal before the High Court against the conviction and sentence, but a learned Single Judge of the High Court confirmed the conviction and sentence and dismissed the appeal filed by him. Hence he has come up with this appeal by special leave.

2. The case against the appellant, in short, is that he was intercepted on 28-4-1996 by PW 1 Inspector of Customs on suspicion and a search was conducted by PW 2 Superintendent of Customs Department, during which time 1600 grams of “charas” had been detected and recovered from his possession, i.e. from the tool box fixed beneath the motorcycle on which he was riding.

3. Three witnesses were examined for the prosecution and they were cross-examined by the counsel engaged by the appellant (Mr Kailash Samuel). After the stage of cross-examination of those three witnesses was over, unfortunately the said Mr Kailash Samuel passed away. The appellant then engaged Mr S.S. Chahal, Advocate for defending him in the trial. The new advocate filed a petition on 9-4-1997 invoking the power of the Court under Section 311 of the Code of Criminal Procedure (hereinafter referred to as “the Code”) for recalling the three witnesses for the purpose of further cross-examination. The ground urged by the new counsel for recalling those witnesses was the following:

“His case was conducted by Mr Kailash Samuel, Advocate who had died during the pendency of the trial and that it has now transpired that Kailash Samuel, Advocate was not keeping well and was under some mental pressure and he could not

concentrate during the proceedings and as such, he failed to cross-examine the prosecution witnesses on material points.”

4. But the trial court dismissed the said application on the premise that “there is nothing on the record to show that Mr Kailash Sammuel, Advocate was under mental pressure or that he was not keeping well or he could not concentrate during the proceedings of the case or that he failed to cross- examine the prosecution witnesses effectively”.

5. Learned counsel for the appellant submitted before us that one of the grounds taken up before the High Court was that proper opportunity was not given to the defence to further cross-examine the prosecution witnesses. We have noticed that such a ground has been taken up in the appeal petition. But the impugned judgment of the High Court does not show that the said ground was urged before the High Court, though Mr Rajiv Dawar, Advocate submitted before us that he had addressed arguments before the High Court on that ground also. We do not wish to go into question whether the aforesaid point was properly urged before the High Court or not.

6. Normally, at this late stage, we would be disinclined to open up a closed trial once again. But we are persuaded to consider it in this case on account of the unfortunate development that took place during trial i.e. the passing away of the defence counsel midway of the trial. The counsel who was engaged for defending the appellant had cross-examined the witnesses b but he could not complete the trial because of his death. When the new counsel took up the matter he would certainly be under the disadvantage that he could not ascertain from the erstwhile counsel as to the scheme of the defence strategy which the predeceased advocate had in mind or as to why he had not put further questions on certain aspects. In such circumstances, if the new counsel thought to have the material witnesses further examined the c Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.

7. We think that the plea of the defence that a further opportunity to put ^ more questions to the three prosecution witnesses can be permitted on account of the unfortunate death of the defence counsel pendente lite, and a new counsel has to evolve his defence strategy afresh.

8. We make note of the fact that the new defence counsel filed the said petition for recalling the prosecution witnesses even before the accused was called upon to enter on his defence.

9. For the aforesaid reasons, without entering into the merits of the contentions raised before us we deem it necessary, in the interest of justice, to afford an opportunity to the accused to further cross-examine the three prosecution witnesses who were already examined. We, therefore, set aside the conviction and sentence passed on the appellant and remit the case to the f trial court with the following directions:

(2000) 10 SCC 430

10. The Court shall summon PW 1, PW 2 and PW 3 to be cross- examined again on behalf of the accused.

11. The evidence already brought on record will remain as part of the evidence in the case. After the defence counsel availing himself of the opportunity to further examine the three witnesses, if the prosecution g wants to adduce further evidence, it is open to the Court to grant permission for the same. The accused shall then be called upon to enter on his defence.

12. After collecting such evidence, if any adduced by the accused, the trial Judge shall dispose of the case afresh in accordance with law and untrammelled by any findings or observations made in the judgment of h the trial court or that of the High Court.

13. We make it clear that the accused shall remain in custody till the disposal of the case. It is needless to say that the trial Judge shall recall the witnesses at the earliest, so that this old case may be disposed of as expeditiously as possible and on a priority basis.