

**2022 LiveLaw (SC) 978**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**SANJAY KISHAN KAUL; J., ABHAY S. OKA; J.**

**Criminal Appeal No. 1726/2019; 17<sup>th</sup> November, 2022**

**INTELLIGENCE OFFICER, THIRUVANANTAPURAM versus NAUSHAD K.K. & ORS.**

**Narcotic Drugs and Psychotropic Substances Act, 1985; Section 21 - The quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances. Referred to [Hira Singh v. Union of India, AIR 2020 SC 3255](#)**

*For Appellant(s) Mr. Sanjay Kumar Tyagi, Adv. Mr. Shetty Uday Kumar Sagar, Adv. Mr. Arvind Kumar Sharma, Adv. Mr. Gurmeet Singh Makker, AOR*

*For Respondent(s) Mr. E. M. S. Anam, AOR*

**ORDER**

The only issue pending before this Court arose out of the quantity of contraband recovered i.e. whether it should be labeled as a small quantity or commercial quantity depending on the percentage of diacetylmorphine. The High Court opined that the purity of the total content would have to be examined and on the basis of the chemical analysis report ( Exhibit P-19) proved vide the testimony of PW-2, it was not possible to come to the conclusion whether contraband articles seized would come under one or the other category. The case of conviction was upheld but the sentence imposed, treating it as a small quantity was of six months and since the parties have already undergone sentence for more than 3½ years it was restricted to the period undergone.

The special leave petition preferred by the State remained pending on account of the question of law being examined. The interesting part is that out of the three accused, in case of one accused, the notice in special leave petition could not be served and thus it was dismissed. Thus the person who absconded could not be served and is out of Court while the two respondents who were served will have to face the consequences of the decision in the present appeal.

There is no cavil to the issue that the judicial pronouncement now settles the issue in "Hira Singh & Anr. Vs. Union of India & Anr." reported as 2020 SCC Online SC 382 opining that the decision of this Court relied upon in the impugned judgment- "E. Micheal Raj V. Intelligence Officer, Narcotic Control Bureau, (2008) 5 SCC 161" is no more good law and in determining as to what is the quantity, the neutral substance quantity is not be ignored.

The aforesaid being the position, there is little choice with us but to allow the appeal and uphold the sentence as imposed by the Trial Court of 10 years. Though we do realize the travesty of the situation arising from prolonged pendency of the present appeal where the impugned judgment is of vintage 28.3.2007 i.e. 15 years old.

We do note statement of learned counsel for the respondents that he is not even in touch with the two respondents concerned despite all endeavors.

The appeal is accordingly allowed leaving parties to bear their own costs in terms aforesaid qua the issue of sentence.