

CRM-A-103-MA-2012

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-103-MA-2012 (O&M)

Date of decision : 21.10.2015

U.T. Chandigarh

...Applicant

Versus

Rakesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sandeep Kumar, Advocate,
for Mr. J.S. Toor, APP, U.T. Chandigarh,
for the applicant.

Ms. Divya Sharma, Advocate for the respondent.

JITENDRA CHAUHAN, J.

CRM-8935-2012

Heard.

Keeping in view the circumstances explained in the application, the same is allowed and the delay of 117 days in filing the application under Section 378(3) Cr.P.C., is condoned.

CRM-A-103-MA-2012

The applicant, U.T. Chandigarh, has sought leave to appeal against the impugned judgment dated 30.07.2011, passed by the learned Special Court, Chandigarh, thereby, acquitting the accused-respondent in case FIR No.32 dated 04.02.2010, registered under

Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act), as Police Station Sector 26, Chandigarh.

Brief facts of the case, as noticed in para No.2 of the impugned judgment, are reproduced as under:-

“2. Prosecution case, in brief, is that on 04.02.2010, Assistant Sub Inspector Harish Kumar along with police officials was on patrolling duty and held Naka near Chowk of Sectors 19/27/20/30 on the side of Sector 27, Chandigarh while carrying a white coloured bag in his right hand and on seeing the police party, said person got perplexed and tried to slip away. On the basis of suspicion, that person was apprehended by Assistant Sub Inspector Harish Kumar. On query that person disclosed his identity as Rakesh Kumar son of Padam Bahadur Thapa, resident of House No.2573, Sector 27-C, Chandigarh. During the course of search of abovesaid bag, charas was recovered. Above said contraband was weighed on the spot and its weight came to 500 grams. Out of said contraband, two samples of 100 grams each were taken and then, samples as well as residue were separately sealed with the seal bearing inscriptions “SS”. The entire case property was taken into possession vide

recovery memo Ex.PF. On these allegations, ruqqa Ex.PN was sent to Police Station Sector 26, Chandigarh, for registration of case and on the basis of which FIR Ex.PO was recorded. In view of intimation sent to Special Crime Investigation Cell, Chandigarh for sending another police official at the spot for carrying out further investigation, after sometime Assistant Sub Inspector Mehar Singh reached on the spot and carried out further investigation. Accused along with case property and documents were produced before Assistant Sub Inspector Mehar Singh. Personal search memo of accused (Ex.PJ) was prepared and then the said accused was formally arrested. Rough site plan Ex.PI of the place of recovery was prepared by Assistant Sub Inspector Mehar Singh. Thereafter, Assistant Sub Inspector Mehar Singh had produced accused, witnesses as well as case property before Sub Inspector Sukhwinder Singh, the then working SHO, who after verifying the facts from accused and witnesses had affixed seal bearing inscriptions "SS" on the samples as well as residue. Thereafter, case property was deposited in the Malkhana of Police Station Sector 26, Chandigarh. On 09.02.2010 in compliance of provisions of Section 52-A of the Act vide application Ex.PK, case property was

produced before Ms. Anshul Berry, the then learned Additional Chief Judicial Magistrate, Chandigarh, who after verifying the samples as well as residue and inventories thereof (Ex.PL and Ex.PM) attested the seals and to that effect order (Ex.PD) was passed by the Magistrate. Sample duly sealed was sent to Central Forensic Science Laboratory, Sector 36, Chandigarh (hereinafter referred to as C.F.S.L.) on 10.02.2010 for analysis. Vide C.F.S.L. report Ex.PE, it was found that the contents of sample to be that of charas. On 24.02.2010 scaled site plan Ex.PA of place of recovery was got prepared from Constable Yash Paul, Draftsman. Statements of witnesses were recorded. After completion of investigation of the case, challan was presented against accused in the Court.”

On finding a prima facie case against the accused, he was charged under Section 20 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In order to substantiate its case against the accused-respondent, the prosecution examined PW-1 Constable Yash Pal, PW-2 Assistant Sub Inspector Sadhu Singh, PW-3 Sub Inspector Sukhwinder Singh, PW-4 Constable Satish Kumar, PW-5 Head Constable Balbir

Singh, PW-6 Sub Inspector Mehar Singh and PW-7 Sub Inspector (Retired) Harish Kumar, whereas, the remaining witnesses were given up as unnecessary. The prosecution also tendered in evidence the report of the Central Forensic Science Laboratory.

The statement of the accused under Section 313 Cr.P.C. was recorded by putting all the incriminating material/evidence coming against him, to which he denied and pleaded false implication. However, he did not lead any evidence in defence.

After hearing learned counsel for the parties and perusing the material evidence on record, the learned trial Court acquitted the accused-respondent of the charge framed against him.

Hence, the present application for leave to file appeal against the impugned judgment of acquittal.

The learned counsel for the applicant/appellant contends that the prosecution has successfully proved its case against the accused-respondent. 500 grams of contraband (charas) was recovered from the accused. It is a case of chance recovery, therefore, the question of false implication does not arise. As far as the non-joining of any independent witness is concerned, it is apparent from the bare reading of the FIR as well as from the testimonies of the witnesses that sincere efforts were made by the Investigating Officer to join the independent witnesses. The accused has not alleged any enmity with the police officials. He has also not rendered any explanation,

whatsoever, with regard to his false implication in the statement recorded under Section 313 Cr.P.C.

On the other hand, the learned counsel for the accused-respondent contends that the learned trial Court, after considering the evidence brought on record, has acquitted the accused-respondent. Thus, she prays for dismissal of the present application.

I have heard learned counsel for the parties and gone through the record carefully.

In the present case, the accused-respondent was apprehended by ASI Harish Kumar along with other police officials, who was on patrolling duty near the roundabout of Sectors 19/27/20/30. He was allegedly carrying a white coloured bag in his right hand, which contained 500 grams of charas. The place of occurrence is a very busy road. There was ample opportunity with the Investigating Officer to associate an independent witness. Although, it has come in the statements of the prosecution witnesses that the Investigating Officer tried to join some independent witness, but there is no mention of their names or identity. The Investigating Officer has admitted that no proceedings were initiated against such persons who refused to join as witness.

The seals bearing inscriptions 'SS' and 'SS' were retained by the police officials after use and remained with them till the sample parcel was dispatched to the CFSL, thus, the possibility of the seals

having been tampered with, cannot be ruled out, which makes the case of the prosecution doubtful. Furthermore, PW-7, SI Harish Kumar, the Investigating Officer, used seal bearing inscriptions 'SS' of different nomenclature of his name, and no explanation has been put forth on his behalf in this regard. It was incumbent upon the Investigating Officer to explain in the ruqa the reasons for using the seal of some other person.

In this case, there is a delay of six days in sending the samples to the CFSL. The alleged recovery was effected on 04.02.2010, whereas, the samples were sent to the CFSL on 10.02.2010, i.e. after a delay of six days. No cogent reasons have been cited by the prosecution to explain this inordinate delay.

There are material discrepancies in the statements of the prosecution witnesses. Head Constable Balbir Singh, PW-5, has specifically stated that ASI Mehar Singh reached the spot at about 9.00 PM and the entire police party along with the accused returned to the Police Station at about 9.45 PM. On the contrary, PW-6, SI Mehar Singh has stated that the Police party returned back to the Police Station at about 11.00 PM.

The punishment provided under the NDPS Act is severe, therefore, it is imperative upon the Investigating Officer to strictly adhere to the statutory requirements provided under the Act to safeguard the interests of the accused. In the instant case, the alleged

recovery being non-commercial, the chances of plantation thereof, cannot be ruled out. Therefore, it was the bounden duty of the Investigating Officer to observe all the safeguards provided under the act, at the time of search and seizure. When the entire facts and circumstances of the case are considered together, it cannot be said that the prosecution has been able to prove its case against the accused-respondent beyond a shadow of reasonable doubt. The evidence of the prosecution witnesses does not inspire confidence. Thus, this Court is of the considered opinion that the impugned judgment of acquittal recorded by the learned trial Court is a well reasoned judgment and there is no scope for interference in the same.

In view of the above, the present application is dismissed.

Leave declined.

21.10.2015
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Note : Whether to be referred to the Reporter ? : Yes / No