

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S No. 1574 of 2003 (O&M)
Date of decision : January 28, 2015

Karam Singh,

..... Appellant.

v.

State of Punjab,

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Ms. GK Mann, Advocate
for the appellant.

Mr. Deepak Garg, AAG Punjab

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

This appeal has been filed against the judgment/order dated 25.7.2003, vide which the trial Court convicted the appellant under Section 21 of the NDPS Act, and sentenced him to undergo RI for 10 years and to pay a fine of ₹ 1 lac, in default of payment of fine, to undergo further RI for one year.

Brief facts are that while the appellant was in police custody in another case, during investigation, he revealed that he had hidden one packet containing 300 grams heroin under a bridge in the vicinity of village Chung. On this disclosure statement, the appellant was sent for trial and having been convicted and sentenced, he is before this Court.

Counsel for the appellant has raised three fundamental arguments. First one is that the statement made by the appellant under Section 313 of the Cr.P.C was not signed. In this connection, she has relied upon a judgment of this Court in Pali Ram v. State of Haryana, CRA-S No.1156 SB of 2003, decided on 01.02.2010, wherein it was held as follows:-

“ The glaring flaw in this case is that the statements recorded under Section 313 Cr.P.C either in Hindi or in English do not bear the signatures/thumb impressions of any accused. So, legally speaking, these cannot be treated as their statutory statements. That being so, it cannot be said that any piece of prosecution evidence has been put to them. If it be so, such evidence cannot be read against them.....”

The second argument is that though the recovery was made on 20.9.1988, samples were sent to the CFSL only on 12.10.1988 and during this time there is possibility that the sanctity of the samples was not maintained. Apart therefrom, it is stated that the official who was deputed to transport the samples to the CFSL stated in his evidence that he had taken the samples on 12.10.1988, yet as per the endorsement of the SSP, samples were handed over to him on 11.10.1988. This unexplained custody, as per the counsel, also vitiates the sanctity of the samples.

Counsel for the appellant has further argued that form M-29 is not available on the court file and the same was not put to the accused under Section 313 of the Cr.PC. In this regard, she has relied upon a judgment of this Court in Babu Singh v. State of Punjab, CRA-S No.2401 SB of 2004, decided on 18.10.2012, wherein it was held as follows :-

“ Besides above, there are other material discrepancies such as sample was taken on 7.6.2002 but it reached the laboratory on 13.6.2002 whereas as per the

instructions on the subject sample must be sent within 72 hours. No explanation has been furnished for six days delay in forwarding the sample to CFSL. On the sample, signatures of the accused and the witnesses were not obtained, as are required under the instructions. Two gunny bags containing contraband of poppy husk were allegedly recovered but sample was taken only from one bag. This also leads to the conclusion that prosecution has failed to connect the second bag and whether it contained poppy husk or not.

The CFSL form M-29 was not prepared at the spot. In fact, it was not prepared at all and the said form as per the instructions is required to be prepared in triplicate and it must carry specimen seal. Nor this form was exhibited nor put to the appellant in statement under Section 313 Cr.P.C. This also creates doubt in the prosecution case. In support of this contention, learned counsel for the appellant has placed reliance on the judgment of this Court in the case of *Mohmed Salim vs State of Haryana, 2008(2) RCR (Crl) 128.*”

Counsel for the respondent has countered these arguments by stating that on the very next day of the recovery, the appellant was produced before the Magistrate and the Magistrate countersigned the sealed packet of the contraband and the samples and these signatures were intact when the samples reached the CFSL. In this regard, he has relied upon a decision of this Court in Jagiro @ Jagir Kaur v. State of Punjab, 2014(3) RCR (Criminal) 717, wherein it was held that delay of 11 days in sending the samples to the CFSL is not itself fatal more particularly once the witness stated that the seals were intact.

However, counsel for the appellant has countered this by arguing that the witness from the CFSL only mentioned that two seals were intact but he did not say any thing about the counter signatures of the Magistrate thereon.

After considering all the facts and circumstances of the case, in my considered opinion, the arguments raised by counsel for the appellant,

are more weighty. It cannot be lost sight of the fact that in the present case, there is unexplained delay of 22 days in sending the samples. Even if this may not by itself be fatal yet the discrepancy regarding custody of the samples between 11th and 12th of October, 1988 cannot be wished away by the prosecution merely by saying that the seals are intact especially when no evidence was given regarding counter signatures of the Magistrate. In these circumstances, counter signatures would have more probative value than the seals of the prosecution. The fact that form M-29 was not available on the record also goes to show that an important link of piece of evidence is missing. In view of the stringent provisions of the NDPS Act, the issues raised do cast a reasonable doubt on the prosecution story and the benefit thereof has to be given to the appellant. Consequently, this appeal is allowed, the judgment/order of the trial Court is set aside and the appellant is acquitted of the charge framed against him.

January 28, 2015
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(AJAY TEWARI)
JUDGE