

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

CRM-M-25285-2015 (O&M)

Date of decision : 07.09.2015

Arvind Kumar

...Petitioners

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rajan Bansal, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

JITENDRA CHAUHAN, J. (Oral)

The present petition under Section 482 of the Code of Criminal Procedure, (for short, 'the Cr.P.C.') is for quashing of order dated 04.05.2015 (Annexure P-1), passed by the learned Judicial Magistrate, 1st Class, Bathinda, whereby, the application moved by the prosecution to draw sample from the case property for the second time has been allowed.

The learned counsel for the petitioner contends that the present FIR under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, came to be registered against the petitioner on 02.07.2013. The recovery of 250 grams of intoxicating powder and

one strip of twenty tablets of Airpro-05 has been allegedly shown to be effected. After the lapse of one year, the prosecution moved an application to draw sample from the case property for the second time, on the basis of letter No.1569 dated 02.07.2014, from the office of the Chemical Examiner, Kharar, stating therein that although the docket was found in the office of Rajwinderpal Singh, but the sample was found missing. It is argued that the impugned order is perverse being contrary to the provisions of the Act which does not permit for re-sampling and re-testing. He cites *Thana Singh Vs. Central Bureau of Narcotics, 2013(2) SCC 590* and *Karan Kakkar Vs. State of U.T., 2014(4) R.C.R. (Criminal) 159*.

On the other hand, the learned State counsel, on instructions, submits that a number of FIRs came to be registered against Rajwinderpal Singh, In-charge of the laboratory in question as he was indulging in unlawful activities by preparing wrong reports. The petitioner's case is one of those cases.

Heard.

In Karan Kakkar's case (supra), this Court, while placing reliance on the Division Bench judgment rendered in Thana Singh's case (supra), held as under:-

“There is also no bar on the Court allowing such application. It does not mean that every

*application moved by accused under the Act is to be allowed. In the present case the application has been moved by the investigating officer for sending sample for retesting/re-sampling but the application has been allowed without mentioning any reason as to what are the exceptional circumstances whether re-sampling/re-testing is necessary. Simply moving of an application by the investigating officer is not sufficient unless the reasons are there. It is the duty of the Court to probe the circumstances and matter at hand while allowing such application. Every application is to be considered keeping in view the interest of justice and in case re-testing/resampling is necessary then it can be allowed but not as a matter of right. Only under extremely exceptional circumstances and for reasons to be recorded in writing by the Court, it can be allowed. In **Thana Singh's case (supra)**, it has been held that under the Act re-sampling/re-testing of the samples are not permissible as there has been a trend that NDPS Court have been consistently obliging applications for re-testing/re-sampling which add to delay the proceedings. It has further been held that application*

should be permitted only under extremely exceptional circumstances and for cogent reasons to be recorded by the Presiding Judge.”

In this case, a letter has been received from the office of the Chemical Examiner, Kharar, stating therein that though the docket of the sample is available, but the sample sent for testing is missing. It is one such exceptional case where the sample itself has been misplaced. It is not a case of re-testing. The case property is available in the judicial Malkhana. No prejudice is going to be caused to the petitioner in case the second sample is allowed to be drawn in the presence of the accused or his counsel and sent for testing to the Chemical Examiner, for chemical analysis.

In view of the above, this Court does not find any reason to interfere in the impugned order and the same is hereby affirmed.

The instant petition is accordingly, dismissed, with the observation that the sample shall be drawn in the presence of the accused or his counsel.

07.09.2015
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(JITENDRA CHAUHAN)
JUDGE