

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 112

Criminal Revision No.M-1809 of 2015 (O & M)

Date of Decision: *May 18, 2015*

Harkamaldeep Singh

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

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CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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1. Whether Reporters of local papers 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?

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PRESENT: - Mr. Arnav Sood, Advocate, for the petitioner.

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Jaspal Singh, J

1. By way of this revision petition, petitioner has challenged order dated April 29, 2015 passed by Judge, Special Court, Hoshiarpur, whereby an application moved by prosecution to produce Memo of Entrustment dated February 7, 2014 prepared by the SHO has been allowed after presentation of report under Section 173(2) Cr.P.C. in case bearing FIR No.11 dated February 7, 2014 under Section 22 of the Narcotics Drugs & Psychotropic Substances Act, 1985 (for short, 'Act'), registered at Police Station, Mehtiana.

2. Briefly stated the facts giving rise to instant petition are that a case under Section 22 of the Act was registered against the petitioner and his co-accused Manpreet Singh @ Money at Police Station, Mehtiana, District Hoshiarpur, and after completion of investigation, report under Section 173(2) was presented on May 7, 2014 before learned jurisdictional Magistrate, who committed the case to the Court of Sessions under Section 209 Cr.P.C. after having complied with provisions contained in Section 207 Cr.P.C. Subsequent thereto, petitioner as well as his co-accused were charged to face trial under Section 22 of the Act. During the course of evidence, prosecution examined ASI – Avtar Singh (Investigating Officer) as PW-1 and HC – Gulshan Mohd., a recovery witness, as PW-2. Both the witnesses were thoroughly cross examined by learned defence counsel. Thereafter, prosecution examined ASI – Bhupinder Singh, SHO, Police Station, Mehtiana. But, after examining him in part, learned Public Prosecutor intended to move an application to produce Memo of Entrustment which was not earlier annexed with report under Section 173 (2) Cr.P.C., and also, copy of which was not supplied to petitioner under Section 207 Cr.P.C. Accordingly, further examination of aforesaid witness ASI – Bhupinder Singh was deferred. Thereafter, an application was moved by prosecution for placing on record Memo of Entrustment which was allowed vide impugned order and same has been challenged by the petitioner through instant petition.

3. Contention of learned counsel for the petitioner is that allowing of application moved by prosecution for placing on record Memo of Entrustment, copy of which, was not supplied to petitioner under Section 207 Cr.P.C., is illegal and erroneous, and is liable to be set aside simply on the ground that it was not made a part of report under Section 173(2) Cr.P.C. Supply of copy of report under Section 173 (2) Cr.P.C. as well as documents annexed with it, is to ensure that accused is apprised of the exact nature of material that has been found against him during investigation of the case so as to defend himself as well as to shatter the prosecution case.

4. While referring to the provisions contained in Section 207 Cr.P.C., it has been submitted by learned counsel that it is amply clear that prosecution was duty bound to supply copy of Memo of Entrustment to petitioner while supplying report under Section 173(2) Cr.P.C. as well as documents annexed with it, and Memo of Entrustment alleged to have been prepared by SHO cannot be allowed to be produced on record which would greatly prejudice the case of petitioner, especially in the circumstances that Avtar Singh (Investigating Officer) has already been examined and cross examined, and petitioner shall have no opportunity to further cross examine the said witness. Learned counsel has also placed reliance upon the pronouncement of this Court captioned as Mrs. Justice Nirmal Yadav (Retired) Vs. Central Bureau of Investigation, 2013(3) RCR (Criminal) 538.

5. This Court has given a deep thought to the aforesaid submissions made by learned counsel but find the same to be of no legal weight.

6. The intention of provisions contained in Section 173 Cr.P.C as well as Section 207 Cr.P.C. is not to debar the prosecution to produce any document which could not be produced at the time of presentation of challan due to inadvertence or over-sight. Though, it is incumbent upon the prosecution or investigating agency to supply copy of report under Section 173(2) Cr.P.C. as well as documents which have been relied upon by it just to make the accused aware of the evidence appearing against him or likely to be produced against him during the course of trial.

7. The authority relied upon by learned counsel for the petitioner, referred to above, is not applicable in the facts and circumstances of the case in hand. A perusal of the said authority transpires that in the said case, accused had intended to bring on record certain documents which were in the dominion of prosecution or investigating agency and were not made part of report under Section 173(2) Cr.P.C. Moreover, petitioner shall be at liberty to cross examine ASI – Bhupinder Singh who is author of Memo of Entrustment which has been allowed by learned Trial Court vide impugned order. Thus, this Court does not find any merit in the revision. As such, same is dismissed.

8. However, petitioner shall be at liberty to move an application before learned Trial Court in case he intends to further cross examine the witnesses already examined by prosecution with regard to Memo of Entrustment.

May 18, 2015
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(Jaspal Singh)
Judge