

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

**CRR No.986 of 2014 (O&M)
Date of decision: 05.02.2015**

Tejpartap Singh @ Tabbu

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS JUSTICE SABINA.

Present: Mr. S.S. Gill, Advocate
for the petitioner.

Mr. Deep Singh, AAG, Punjab.

SABINA J.

Petitioner has filed this petition challenging the order dated 03.01.2014, whereby application moved by the prosecution for sending the second sample to the Laboratory for chemical analysis, was allowed.

Learned counsel for the petitioner has submitted that petitioner was not arrested at the spot but was involved in the case on the basis of statements made by his co-accused during investigation. As per the prosecution case, 2 kilograms intoxicant powder and 80 grams smack was recovered from the petitioner. As far as the sample drawn from the intoxicating powder is concerned, the report of the Chemical Analyst dated 05.10.2012, was that it contains Pheniramine Maleate.

Thus, the sample failed. Thereafter, on 16.12.2013, application was

moved by the prosecution for sending the second sample of the intoxicant powder for chemical analysis in view of order passed by this Court on 08.10.2013, in case titled as “Karu Lal Vs. State of Punjab”. However, the Apex Court vide order dated 16.12.2013 had set-aside the order passed by this Court dated 27.08.2013 in Criminal Miscellaneous No.M-18861/2013 and had held that the Court shall not rely on the second report which was ordered to be provided without any valid ground. Learned counsel has further placed reliance on decision of the Apex Court in **“Thana Singh Vs. Central Bureau of Narcotics” (2013) 2 SCC 590**, wherein it was held as under:-

“Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the laboratories concerned, results of the same must be furnished to all parties concerned with the matter. Any requests as to re-testing/re-sampling shall not be entertained under the NDPS Act as a matter of courts. These may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge. An application in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-testing/re-sampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any form of re-testing/re-sampling is strictly prohibited under the NDPS Act.”

Learned State Counsel, on the other hand, has opposed the petition.

Admittedly, in the present case, application was moved for

sending the second sample of the intoxicant powder for chemical analysis in view of order passed by this Court in Criminal Miscellaneous No.M-18861 of 2013. The Apex Court vide order dated 16.12.2013, directed the Court not to rely on the second report which was ordered to be provided without any valid ground. As per the decision of the Apex Court in Thana Singh's case (*supra*) no application for re-testing/re-sampling shall be entertained, if it is made after 15 days of the receipt of the test report. In the present case, admittedly the test report was received by the prosecution on 05.10.2012 whereas, the application for re-testing was made on 16.12.2013. Thus, the application for re-testing the sample of intoxicant powder was made after a long delay.

In these circumstances, the trial Court fell in error while allowing the application moved by the prosecution for chemical analysis of the second sample. This petition is liable to be allowed, in view of the decision given by the Apex Court in Thana Singh's case (*supra*).

Accordingly, this petition is allowed and the impugned order dated 03.01.2014, is set-aside.

(SABINA)
JUDGE

05.02.2015
yakub