

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 240

Criminal Miscellaneous No.M-16050 of 2014 (O & M)

Date of Decision: March 04, 2016

Ripudaman Singh @ Ripu & another

..... PETITIONERS

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. Vipul Jindal, Advocate, for the petitioners.

Mr. Jaspreet Singh Sekhon, Assistant Advocate General,
Punjab.

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Jaspal Singh, J

1. The instant petition has been preferred by petitioners under Section 482 Cr.P.C. for quashing impugned orders dated March 17, 2014 (Annexure P-4) and April 16, 2014 (Annexure P-6) vide which the time for presentation of challan in FIR No.174 dated September 11, 2013 under Sections 21 & 29 of the Narcotics Drugs & Psychotropic Substances Act, 1985 (for short, 'Act'), Police Station, Sadar, Amritsar, has been extended,

respectively, on the sole ground of non-receipt of chemical report from the Forensic Science Laboratory.

2. As per the prosecution case, a secret information from one good person received that Balwinder Singh @ Billa @ Chairman @ Sarpanch and his cousin Kala, resident of village Havellian, District Tarn Taran, are old heroin smugglers and suppliers in different cities. Today they alongwith their friends who are accused – petitioners, are procuring heroin and are about to supply the same in Amritsar city. If a raid is conducted at their place, heavy quantity of heroin can be recovered. On the basis of aforesaid information, FIR was registered. On September 12, 2013, a raid was conducted by a police party headed by Joga Singh, Inspector/SHO, Police Station, Sadar, Amritsar and 1 kg. heroin was recovered from the possession of accused – petitioners, at Plah Sahib Road, Opposite Central Jail, Amritsar. Accused were arrested. Samples collected from the aforesaid contrabad were sent to the Forensic Science Laboratory for examination.

3. Final report could not be presented within time. An application for extension of statutory period for completing investigation under Section 36-A(4) of the Act was moved, in the court of competent jurisdiction, on March 10, 2014, on the ground that report of chemical examiner has not been received in the case so far despite sending various reminders from time to time. The court, vide order dated March 17, 2014 (Annexure P-4) allowed the aforesaid application holding that since it has been moved by prosecution within 180 days from the date of arrest of accused, the same is within period of limitation and the stipulated period for completing the investigation was extended for another 30 days from the

expiry of stipulated period of 180 days i.e. till April 7, 2014. Still, another application dated April 4, 2014 was moved by the prosecution on the ground that report of Chemical Analysis has not been received, with the request for extension of time so that the accused could not be granted bail under Section 167(2) Cr.P.C. The application, supported by reminders, was sent to the office of Chemical Examiner. The application was again allowed vide order dated April 16, 2014 (Annexure P-6) and time for presenting challan was extended by another period of 30 days.

4. While challenging the impugned orders, it has been vehemently contended by learned counsel for the petitioners that the applications for extension of stipulated period for presentation of challan were not maintainable and the orders passed thereon are against the settled canons of law. The impugned orders are violative of the law laid down by Full Bench of this Court in State of Haryana vs. Mehal Singh & others, 1978 PLR 480. Learned counsel has prayed that prosecution against the petitioners be dropped in view of prima facie violation of Section 50 of the Act in view of the law laid down by Hon'ble Supreme Court in case Criminal Appeal No.78 of 2005 titled State of Rajasthan vs. Parmanand & another, decided on February 28, 2014 (Annexure P-16).

5. Per contra, learned State counsel has supported the orders passed by the Special Court whereby applications moved by the persecution have been allowed and stipulated period 180 days for presentation of final report has been extended. Learned State counsel has argued that the orders are absolutely in consonance with the provisions contained in the Act and settled proposition of law.

6. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and scrutinized the record available on file.

7. Before dealing with the matter in controversy, provisions contained in Section 36-A(4) of the Act should be taken note of, which is reproduced as under:-

“36.A. Offences triable by Special Courts-

xx xx xx xx xx xx

(4) In respect of persons accused of an offence punishable under Section 19 or Section 24 or Section 27-a or for offences involving commercial quantity the references in sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety days” where they occur, shall be construed as references to “one hundred and eighty days”.

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period upto one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.”

8. A glance at the aforesaid provision transpires that through the aforesaid proviso, a maximum period of 90 days stipulated under Section 167(2) Cr.P.C. has been enhanced to 180 days for several categories of offences under the act and the proviso appended thereto authorizes yet another period which is extended upto one year provided the conditions prescribed therein are complied with. The necessary conditions are: (i) a report of the Public Prosecutor; (2) indicating progress of investigation; (3) specifies the compelling reasons for seeking detention of the accused beyond the period of 180 days; and (4) prior notice of application to the accused.

9. Undeniably, in the instant case, an application was moved by the Investigating Agency on March 10, 2014 for extension of time for filing

of final report under Section 173(2) Cr.P.C. on the ground that report of Chemical Examiner has not been received so far despite sending various reminders from time to time. But, there is no specific report indicating the progress of investigation furnished by the Public Prosecutor. In the absence of report of the Public Prosecutor indicating the progress of investigation, application for extension of time is not legally maintainable. There is a simple ground mentioned in the application unfolded by the Public Prosecutor that report of the Chemical Examiner has not been received, and on the basis thereof, learned Magistrate dealing with the application has allowed the application and learned Additional Sessions Judge has dismissed the revision. The aforesaid fact, thus, indicative of the fact that there is no strict compliance with the provision contained in Section 36-A(4) of the Act. In **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau & another, 2010(1) RCR (Criminal) 942**, the Hon'ble Apex Court has categorically held that under Section 36-A(4) of the act, extension could be given by the court on the report of Public Prosecutor indicating the progress of investigation and the specific reasons for detention of the accused beyond the stipulated period of 180 days. It was further held that even if application by Investigating Officer for extension of time was either routed through the Public Prosecutor or supported by him, would not make the said application a report of the Public Prosecutor. This Court, while relying upon the above observations made in **Sanjay Kumar Kedia @ Sanjay Kedia's (supra)** has set aside the order of extension and granted concession by invoking provision under Section 167(2) Cr.P.C. In case **Criminal Miscellaneous No.M-8628 of 2013** decided on May 13, 2013;

Criminal Miscellaneous No.M-39703 of 2013 titled as “**Sanjeev Kumar vs. State of Punjab**”, decided on December 4, 2013; and **Criminal Miscellaneous No.M-452 of 2014** titled **Jagjir Singh @ Jaggi vs. State of Punjab** decided on May 12, 2014 has also held that in the absence of report of the Public Prosecutor indicting progress of investigation and the specific reasons for detention of the accused beyond a period of 180 days, the extension of period for presentation of report under Section 173(2) Cr.P.C. is not legally justified.

10. Adverting to the facts of the case in hand, impugned order dated March 17, 2014 (Annexure P-4) passed by learned Magistrate as well as order dated April 16, 2014 (Annexure P-6) passed by learned Additional Sessions Judge are not sustainable in the eyes of law and in view of legal proposition elaborated above. Thus, both these orders are set aside/quashed by way of acceptance of the instant petition.

May 04, 2016
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(Jaspal Singh)
Judge