

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 1078 of 2015

DECIDED ON: FEBRUARY 10, 2016

Amarjeet Singh

.....Petitioner....

VERSUS

Narcotic Control Bureau, Chandigarh

....Respondent....

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. J.S. Bedi, Sr. Advocate with
Ms. Diya Sodhi, Advocate for the petitioner.

Mr. D.D. Sharma, Advocate for respondent-NCB.

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?*

JASPAL SINGH, J.

Through the instant revision petition, revisionist has sought setting aside of order dated March 07, 2015 passed by the Judge Special Court, Chandigarh whereby an application moved by Narcotics Control Bureau, Chandigarh (for short, "NCB"), has been allowed to take voice samples of petitioner-Amarjeet Singh and others.

2. While assailing the impugned order, it has been contended by Mr. J.S. Bedi, learned senior counsel that the impugned order is absolutely against the legal proposition as well as the settled canons of law and is not sustainable in the eyes of law. Shortly, put the brief facts of the case are that on the basis of a secret information, co-accused of the petitioner namely Ram Niwas Meena and Dinesh Suman were arrested on December 12, 2013, which led to the recovery of 13 kgs. of

opium from them. They also admitted their guilt while making statements under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDSP Act') and on the basis of the aforesaid confession statements, the petitioner was sought to be arrested. However, statement of the petitioner under Section 67 of the NDPS Act was jotted down after he surrendered before the Id. Magistrate but nothing incriminating was recovered from him at that time. However, for obtaining the voice samples of the petitioner, an application was moved by respondent-NCB, which has been allowed. However, the said order deserves to be set aside simply on the ground that there was no jurisdiction with the Id. trial court to issue such a direction during the course of trial. Moreover, the competence of the Court to issue such a direction i.e. to give voice sample was considered and dealt with by the Hon'ble Supreme Court in case ***"Ritesh Sinha vs. State of Uttar Pradesh and another, 2013(1) RCR Criminal (629)*** wherein there was difference of opinion between both the Hon'ble Judges of the Division Bench and the matter was referred to the Larger Bench.

3. On the basis of the reference made to the Larger Bench in the aforesaid judgment, learned counsel for the petitioner contends that instant revision petition be adjourned *sine die* till the question made in the reference is answered by the Larger Bench of the Hon'ble Supreme Court. Learned counsel for the petitioner further contends that the trial court is not competent to give any direction to take the voice sample of the petitioner and, in case, such a direction is given, it would take away the indefeasible right of the petitioner enshrined in Article 220(3) of the Constitution of India and his simple denial to give the voice sample

would greatly prejudice his right. Moreover, the question is already subjudice before the Hon'ble Apex Court with regard to the evidentiary value of the voice sample. Thus, in such circumstances, the impugned order is not sustainable and the same be set aside and in the alternative, the matter in controversy be deferred till the decision of the Larger Bench of the Hon'ble Supreme Court on the issue in question.

4. On the other hand, Mr. D.D. Sharma, standing counsel of the NCB, while controverting the contention put forth by the learned counsel for the petitioner has supported the impugned order. He contends that in the case in hand, the question involved is not that as to what is the evidentiary value of the voice identification of the petitioner. Moreover, the proceedings in the trial court(s) cannot be stalled on the basis of the reference made by the Division Bench to the Larger Bench till it is finally answered. Especially, in the circumstances that no stay has been granted and the trial court has been directed by this Court vide order dated March 26, 2015 to proceed with the trial. Submitting that the instant revision petition is without any merit, learned counsel for the respondent has sought the dismissal thereof.

5. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties and scanning of the impugned order, this Court does not find any merit in the contention(s) put forth by the learned counsel for the petitioner. Rather, is of the view that the impugned order dated March 07, 2015, is absolutely inconsonance with the legal and factual proposition and does not call for any interference by this Court.

6. As per the case of learned counsel for the respondent, Ram

Niwas Meena and Dinesh Suman, co-accused of petitioner-Amarjeet Singh were intercepted, which led to the recovery of 13 kgs of opium. At that time, their statements were also recorded under Section 67 of the NDPS Act during which, they disclosed *participas criminis* of petitioner-Amarjeet Singh that the consignment of opium was to be supplied to the petitioner. As is evident from the contents of the complaint, the petitioner was in touch telephonically with his co-accused named above through telephone numbers i.e. 98551-57573, 9855160410 and 99143-02682, as admitted by him while making statement under Section 67 of the NDPS Act.

7. Moreover, what is the evidentiary value of the evidence of voice identification or that whether it is accurate or not cannot be considered, at this stage, as it is a matter to be argued and taking into consideration by the concerned Court at the time of conclusion of the trial. As such, the judgment relied upon by the learned counsel for the petitioner in ***Ritesh Sinha's case supra*** is not applicable in the facts and circumstances of the case in hand. Moreover, on the basis of the reference made to the Larger Bench, which is otherwise, inapplicable at this stage, in the facts and circumstances of the case in hand, is not suffice to stall the proceedings.

8. In the light of what has been discussed above, this Court does not find any illegality or infirmity in impugned order dated March 07, 2015. Accordingly, finding the instant petition to be without any merit, the same is dismissed.

FEBRUARY 10, 2016

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(JASPAL SINGH)
JUDGE