

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 285

Criminal Revision No.4468 of 2015 (O & M)
Date of Decision: May 09, 2016

Gurbhej Singh @ Bheja

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

. . .

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. D.S. Pheruman, Advocate, for the petitioner.

Mr. J.S. Sekhon, Assistant Advocate General, Punjab.

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Jaspal Singh, J

1. Challenge in this revision petition is to order dated October 17, 2015 passed by the Special Judge, Tarn Taran, whereby he has allowed an application moved under Section 36-A(D)(4) of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, 'Act') for extension of period for filing report under Section 173 (2) Cr.P.C.

2. The petitioner has been arrested on the allegations that he has been found in possession of 255 grams of Heroin without any permit or license on April 22, 2015 in the area of village Johra, District Tarn Taran and since then, he is suffering incarceration.

3. Undeniably, prior to the expiry of statutory period of 180 days in presentation of report under Section 173(2) Cr.P.C., an application under Section 36-A(D)(4) of the Act for extension of period for filing the report was moved on October 12, 2015 by learned Additional Public Prosecutor on the ground that despite the fact that sincere efforts were made for obtaining Chemical Examiner's report by sending the special messenger to the office of Chemical Examiner, Kharar, the report has not been received. Thus, prosecution is unable to present the challan, and therefore, period of 90 days be extended for the said purpose. That application was allowed vide impugned order dated October 17, 2015. Infact, 180 days were going to expire on October 17, 2015 if calculated from the date of arrest of the petitioner.

4. The only question for determination is that whether non-receipt of chemical report is a sufficient ground for grant of extension of time for presentation of report under Section 173(2) Cr.P.C. and in view of settled principles of law, answer to this question is in the negative.

5. The Division Bench of this Court in case **Krishan Lal vs. State, 1989 (39) ILR (Delhi) 446** has categorically observed that there is no mandate that the police report must enclose the document purporting to be report of a Government Scientific Expert. Merely in the absence of Expert report, investigation cannot be said to be incomplete.

Otherwise also, the report of Public Prosecutor for extension of time under Section 36-A(4) of the Act is a legal requirement as envisaged in authority **Radhakrishnan vs. State of Inspector of Police, 2005(2) RCR (Criminal) 581**. In that authority, Madras High Court, while relying upon **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau & another, 2010(1) RCR (Criminal) 942**, has observed that where an application for extension of time is not accompanied by a separate report of the Public Prosecutor indicating the progress of investigation and the reasons for extension, in that case, the order of extension is invalid. This aspect has been further considered by this Court in case **Criminal Miscellaneous No.M-6515 of 2013** titled as “**Mohinder Singh vs. State of Punjab**” and concluded that application for extension of time without report of the Public Prosecutor cannot be allowed. Similarly in **Criminal Miscellaneous No.M-39703 of 2013** titled as “**Sanjeev Kumar vs. State of Punjab**”, decided on December 4, 2013, while placing reliance upon the pronouncement of **Sanjay Kumar Kedia @ Sanjay Kedia’s case (supra)**, it has been observed that merely because the report of Chemical Examiner has not been received, was no ground to decline the concession of bail to the petitioner. A bare perusal of the Proviso to Section 36-A(4) of the Act reveals that in the event of investigation not being completed within a period of 180 days, the court concerned could extend the period on the report of Public Prosecutor indicating the progress of investigation and the specific reasons for detention of the accused beyond the period of 180 days. Since there were no reasons, much less specific reasons, the extension was set aside.

6. Adverting to the facts of the case, a glance at the impugned order reveals that extension of 90 days has been accorded by learned Special Judge simply on the ground that Chemical Examiner report could not be obtained by the prosecution, that too, in the absence of any specific report of the Public Prosecutor indicating the progress of the case or any cogent reasons. In this case, there is another glaring circumstance which reflects omission or negligence on the part of investigating agency. The report of Chemical Examiner was complete and conclusive on October 5, 2015 with the Forensic Science Laboratory and the application for extension was moved by learned Public Prosecutor on October 12, 2015 which was allowed vide impugned order dated October 17, 2015. Thus, taking into consideration all these aspects, this court is of the considered view that impugned order dated October 17, 2015 is not sustainable in the eyes of law. As such, the same is quashed/ set aside by way of acceptance of the instant petition. Consequently, application for extension stands dismissed.

May 09, 2016
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(Jaspal Singh)
Judge