

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

Criminal Writ Petition No. 232 of 2016
Date of decision: August 26, 2016

Satbir SinghPetitioner

Versus

State of HaryanaRespondent

Criminal Writ Petition No. 557 of 2016

Rajbir SinghPetitioner

Versus

State of HaryanaRespondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present: Mr. R.S.Kundu, Advocate, for petitioner-Satbir Singh

Mr. Ravi Sodhi, Advocate, for petitioner-Rajbir Singh

**Mr. Munish Sharma, Assistant Advocate General, Haryana
for respondent-State**

Fateh Deep Singh, J.

Both the aforesaid criminal writ petitions preferred under
Articles 226/227 of the Constitution of India whereby respective petitioners

Rajbir Singh and Satbir Singh have sought quashment of the orders Annexure P/1 dated 29.1.2003 passed by the court of learned Additional Sessions Judge, Sirsa in criminal case bearing case FIR No. 149 dated 7.8.2002, under sections 17/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (in short, the Act), Police Station Sadar Dabwali, District Sirsa whereby while acquitting the accused, the learned trial court by virtue of its judgment has passed orders convicting the petitioners in exercise of its powers under section 58(1) (c) of the Act. Since the matters are co-joint, interlinked arising out of the same very order are thus being decided together for the sake of brevity.

Upon hearing learned counsel for the respective petitioners as well as the State and on perusal of the records.

The undisputed factual genesis which has led to the passing of the impugned orders stems from registration of a criminal case bearing case FIR No. 149 dated 7.8.2002, under sections 17/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Sadar Dabwali, District Sirsa, titled State vs Hanuman. The precise allegations therein were to the effect that the accused in the said criminal case namely Hanuman was apprehended by the police headed by SI Rajbir Singh, then SHO of Police Station Sadar Dabwali, petitioner in Cr.W.P. No. 557 of 2016 on 7.2.2002 on the basis of secret information and from the conscious possession of this accused, it is alleged that 05 kgs of opium was recovered. In the said case

the prosecution has examined petitioner SI Rajbir Singh and Satbir Singh, the latter then Tehsildar Dabwali, petitioner in Cr.W.P. No. 232 of 2016 besides other witnesses to corroborate the allegations and to prove its case. It is through judgment dated 29.1.2003, the learned trial court of Additional Sessions Judge, Sirsa came to the conclusion that the accused in that case had been vexatiously and unnecessarily arrested and has been framed in a totally false case and thus acquitted the accused and at the same time exercising powers under section 58 of the Act and taking recourse to section 41, 59 and 68 of the Act holding that these two government officials who were public servants as well had contravened the provisions and thus held them guilty for commission of offence under section 58 of the Act and issued show cause notice upon them under section 340 of the Code of Criminal Procedure (in short, Cr.P.C.). The same was sought to be implemented by issuance of warrants of arrest vide orders dated 29.1.2003 by learned Additional Sessions Judge, Sirsa. It was thereafter subject matter of challenge before this Court which was disposed of vide judgment dated 21.4.2004, Annexure P/5, dismissing the same and subsequently the criminal appeal was filed before the Hon'ble Supreme Court of India wherein their Lordships were pleased to pass orders dated 26.5.2009, Annexure P/6, directing the present petitioners then appellants to appear before the trial court and raise all available pleas factually as well as legal issues with directions to the trial court to consider the same reasonably in

accordance with law. It is consequent thereupon the petitioners appeared before the trial court and filed an application in the light of the orders of the Hon'ble Supreme Court for recalling orders dated 29.1.2003 and their conviction consequent thereupon in their absence along with supplement application. The court of learned Additional Sessions Judge, Sirsa in a detailed order dated 8.2.2016 holding that this Court cannot modify/review or alter the findings given by the then court which delivered judgment dated 29.1.2003 convicting the petitioners under section 58(1)(c) of the Act and therefore, dismissed the application of both the present petitioners. It is against this very finding, the present petitions forms part of the subject matter of dispute.

The State though has sought to refute the submissions of the petitioners in their stand taken in the reply and so is the stand taken in the arguments but factually have not disputed the legal maze through which parties have undergone through this recourse. The perusal of the records in the light of the submissions of the counsel for the petitioners and the settled preposition of law laid down in **State of West Bengal and ors. Vs Babu Chakroborty, 2004 (4) R.C.R. (Criminal) 252** whereby their Lordships of the Hon'ble Apex Court were of the view that without giving an opportunity of being heard to explain their stand such an order of conviction cannot be passed by the courts and is against the tenets of criminal jurisprudence. More-so the well enshrined principle of *Audi-Alteram-partem* which

means that no one should be condemned unheard a golden rule of administrative law certainly needs to be followed by the courts in such matters as well which squarely is accepted by the learned State counsel. Had it been so interested to prosecute the petitioners who were the prosecution witnesses by virtue of violation of section 58 of the Act, the Court ought to give reasoned order how it finds that the search, arrest and seizure were either vexatious or unnecessary and then ought to have afforded reasonable opportunity to these PWs to explain their stand and which as is abundantly reflected from the records have never been adhered to by the court below. Even if the trial court was of the opinion that there has been perjury or false testimony of witnesses comprising of the petitioners, an inquiry in terms of section 340 Cr.P.C. for commission of offence under section 195 Cr.P.C. needs to have been undertaken and it was incumbent upon the learned Presiding Officer to have filed such a complaint against such a person so sought to be prosecuted and that to the same needs to satisfy the requirements of section 195 Cr.P.C. and therefore, ought to be legitimate legal reasons why it is so expedient and necessary and it should not be mere empty formality and needs to elaborate due application of mind by the court. In the present case it is sad to note that there has been total ignorance by the court below that the provisions of sections 195 and 340 Cr.P.C. which were to be read together to supplement each other in arriving at a conclusion and in the absence of any cogent and

reliable direct evidence passing the responsibility upon these persons so sought to be charged and the conclusion that there was a deliberate falsehood of material substance by these witnesses to mislead the court for a motivated reason till then it was highly un-called-for by the court below to have resorted to such means. What meets the eye is more of a well ingrained backlash by the court but without bothering to file a complaint has resorted to such a means. Nothing is apparent from the impugned findings how come the re-course to apply section 158 of the Act was taken by the court below and merely on account of some misapplication of the provisions of law or an infraction which could even be a bonafide one, the court need not jump to such a conclusion and thus at the very back of the petitiones could have taken cognizance of offence without having due recourse to law. In the light of the same, the impugned order certainly suffer from serious legal infirmity and cannot sustain the test of law and needs to be set aside by way of acceptance of the present writ petitions to that extent. However, the matters are remanded back to the trial court to proceed ahead into the matter afresh as per law after adopting due process of law. Both the petitions stand disposed of in those terms.

August 26, 2016
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No