

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-29728 of 2016 (O/M)
Date of decision : 12.7.2017

Gaurav Kumar and another Petitioners

Versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vaibhav Narang, Advocate, for the petitioners.

Mr. C.L. Pawar, Senior Deputy Advocate General, Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J. (ORAL)

The petitioners have filed the present petition under Section 482 Cr.P.C. for transfer of investigation in FIR No. 63 dated 2.8.2016, registered under Section 22 of NDPS Act, 1985, at Police Station Kathu Nangal, District Amritsar Rural, to Central Bureau of Investigation or some other independent agency.

Petitioner No. 1 is admittedly a registered pharmacist. He claims that he is having a valid license to keep the drugs and run the shop. He claims that he was having enmity with the Sarpanch belonging to the ruling party. Therefore, FIR in question was registered against him alleging that while, on 2.8.2016, he (petitioner No. 1) was coming on foot and on seeing the police party, he threw a packet, from which 1000 tablets of DIAZEPAM and 540 tablets of ALPRACAD 0.5 were recovered. Petitioner No. 1 claims that he has got CCTV camera footage, which shows that on 2.8.2016, he was picked up from his shop and this case was planted upon

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him. The copy of CD was placed on file. During hearing on the earlier dates, it was alleged by the learned counsel for the petitioners that in pursuance to the directions of this Court, petitioner had gone to the investigating officer to hand over the CD, but the investigating officer refused to accept the copy of the same. Therefore, the CD was taken on record and the same was supplied to the learned State counsel. However, it comes out from order dated 27.3.2017 that the said CD was misplaced by the investigating officer. Therefore, another copy of CD was ordered to be supplied.

The State, in the reply, has maintained that the recovery was infact effected. However, it was not denied that petitioner No. 1 is a registered pharmacist and is having a Schedule 'H' drug license to keep the said medicines at his shop. The State has tried to demonstrate that they have recorded the statement of Gulshan Kumar, owner of Bawa Dairy, which is located near the shop of petitioners, where the CCTV camera was installed, by stating that said Gulshan Kumar had denied to have any such recording or CCTV camera footage. Vide order dated 29.9.2016, a coordinate bench of this Court had stayed the presentation of the challan.

I have heard the learned counsels for both the parties and have also carefully gone through the file.

After going through the facts and circumstances, I am of the view that the plantation of a case under the NDPS Act is a serious matter. This act of defaulting officials itself is punishable under Section 58 of the NDPS Act. The reply of the State shows that the State is not ready to properly examine the CD and find out the truth about the persons, who are the police officials, who are seen visiting the shop of the petitioners

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between 6:00 PM to 8:00 PM on 2.8.2016 to pick up petitioner No. 1. If the contents of the CD are found to be true, it will falsify the FIR in question.

In these circumstances, I am of the considered view that the matter needs to be investigated by some independent agency, other than the Punjab Police. As such, the investigation of the case pertaining to FIR in question is withdrawn from the investigating officer of Police Station Kathu Nangal, District Amritsar Rural, and is entrusted to Crime Branch of Chandigarh Police, for further investigation, with a direction that the contents of CD be also examined to find out the truth in the matter. The police of Police Station Kathu Nangal, District Amritsar Rural, is directed to hand over all the papers to the Crime Branch, Chandigarh, for further investigation. The Crime Branch, Chandigarh, shall carry out the investigation expeditiously and present the final report before the learned Chief Judicial Magistrate, Chandigarh. If it is found that the case is planted, necessary penal action against the defaulting officials/officers be also taken under the relevant provisions of the law.

In view of the matter, the present petition is allowed.

(KULDIP SINGH)
JUDGE

12.7.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No