IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: December 04, 2018

1. **Criminal Appeal No.D-930-DB of 2012 (O & M)**

Rajinder Singh @ Raju

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

. . .

2. **Criminal Appeal No.D-935-DB of 2012 (O & M)**

Balbir Singh @ Bira & another

..... APPELLANTS

VERSUS

State of Punjab

..... RESPONDENT

. . .

3. **Criminal Appeal No.D-938-DB of 2012 (O & M)**

Rajinder Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

. . .

PRESENT: - Mr. Jaswinder Singh and Mr. Arvind Kashyap, Advocate, for the appellants.

Mr. H.S. Grewal, Additional Advocate General, Punjab.

. . .

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Harnaresh Singh Gill

By this common judgment, the three appeals viz. Criminal Appeal No.D-930-DB of 2012, Criminal Appeal No.D-935-DB of 2012 and Criminal Appeal No.D-938-DB of 2012 are being disposed of as they involve similar questions of law and facts.

Facts

The present appeals have been preferred by the appellants – accused challenging their conviction and sentence under the provisions of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, 'Act').

In Criminal Appeal No.D-930-DB of 2012, Rajinder Singh @ Raju – appellant has been convicted in FIR No.171 dated 15.11.2009, Police Station, Sirhind vide impugned judgment dated 11.09.2012 passed by the Special Judge, Fatehgarh Sahib and sentenced under Section 15(c) of the Act, to undergo RI for 12 years alongwith fine to the tune of ₹ 1 lac and in default to further undergo RI for 2 years. In Criminal Appeal Nos.D-935 & 938 DB of 2012, appellants – Rajinder Singh @ Raju, Balbir Singh @ Bira and Balwinder Singh have been convicted in FIR No.104 dated 15.11.2009 vide judgment dated 11.09.2012 passed by the Special Judge, Fatehgarh Sahib, whereby appellants – Balbir Singh @ Bira and Balwinder Singh have been sentenced to undergo RI for 12 years alongwith fine to the tune of ₹ 1 lac and in case of default, to further undergo RI for 2 years under Section 15(c) of the Act, whereas appellant – Rajinder Singh has been sentenced to undergo RI for 12 years alongwith fine to the tune of ₹ 1 lac under Section 25 of the Act and in default, to further undergo RI for 2 years and that, his

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imprisonment will not run concurrently with the sentence passed in FIR No.171 dated 15.11.2009.

In both the judgments under challenge, the informant/complainant is the investigating officer.

Arguments

Learned counsel for the appellants has contended that the impugned judgments of conviction and orders of sentence are liable to be set aside being against law and facts. It has been contended by learned counsel for the appellants that Investigating Officer himself is the Informant in both the FIRs which itself is against the settled cannons of law.

Per contra, learned State counsel has supported the impugned judgments and orders of sentence. It has been argued that the same are absolutely in consonance with the settled propositions of law. Contraband to the tune of 2 Qtl poppy husk was got recovered from the possession of the appellants – accused which is commercial quantity. Report of Chemical Examiner proved the fact that material recovered from the accused was poppy husk.

Consideration

We have heard learned counsel for the parties and gone through the record. The primary question for consideration is whether in a criminal prosecution, it will be in consonance with the principles of justice, fair play and a fair investigation, if the informant and the investigating officer were to be the same person. In such a case, is it necessary for the accused to demonstrate prejudice, especially under laws such as NDPS Act, carrying a reverse burden of proof.

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In the present case, informant/complainant is the Investigating Officer is same in both the appeals. This question has been answered by the Hon'ble Supreme Court in **Criminal Appeal No.1880 of 2011** titled '**Mohan Lal vs. The State of Punjab**', decided on 16.08.2018, wherein, while placing reliance on judgments delivered in cases : **State of Punjab vs. Baldev Singh**, ***(1999) 6 SCC 172***, **Megha Singh vs. State of Haryana**, ***(1996) 11 SCC 709***, **tate by Inspector of Police, Narcotics Intelligence Bureau, Madurai, Tamilnadu vs. Rajangam**, ***(2010) 15 SCC 369*** and **Bhaskar Ramappa Madar & others vs. State of Karnataka**, ***(2009) 11 SCC 690***, it has been observed as under:-

> "14. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.
>
> 15. The discussion in the present case may not be understood as confined to the requirements of a fair investigation under the NDPS Act only carrying a reverse burden of proof. ***Baldev Singh*** (supra) related to a prosecution under Section 165A of the IPC. Nonetheless, it observed that if the informant were to be made the investigating officer, it was bound to reflect on the credibility of the prosecution case. ***Megha Singh*** (supra) concerned a prosecution under the Terrorist and Disruptive Activities (Prevention) Act, 1985. It was held that the Head Constable being the complainant himself could not have proceeded with the investigation and it

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was a practice, to say the least, which should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation. ***Rajangam*** (supra) was a prosecution under the NDPS Act, an objection was taken that PW-6 who apprehended the accused could not have investigated the case. Upholding the objection, relying on ***Megha Singh*** (supra) the accused was acquitted. The view taken by the Madras High Court in ***Balasundaran vs. State***, 1999 (113) ELT 785 (Mad.), was also noticed as follows:

> "16. Learned Counsel for the appellants also stated that P.W. 5 being the Inspector of Police who was present at the time of search and he was the investigating officer and as such it is fatal to the case of the prosecution. P.W. 5 according to the prosecution, was present with PWs 3 and 4 at the time of search. In fact, P.W. 5 alone took up investigation in the case and he had examined the witnesses. No doubt the successor to P.W. 5 alone had filed the charge sheet. But there is no material to show that he had examined any other witness. It therefore follows that P.W. 5 was the person who really investigated the case. P.W. 5 was the person who had searched the appellants in question and he being the investigation officer, certainly it is not proper and correct. The investigation ought to have been done by any other investigating agency. On this score also, the investigation is bound to suffer and as such the entire proceedings will be vitiated."

16. ***Bhaskar Ramappa Madar*** (supra) concerned a prosecution under Section 304B, I.P.C. which also carried a reverse burden of proof. The Trial Court held that the investigating Officer who was also the complainant could not have investigated, and on that ground, held the prosecution to be tainted. The acquittal was reversed by the High Court. In appeal, this Court declined to interfere with the conviction. After referring to ***Bhagwan Singh*** (supra) and ***Megha Singh*** (supra), it was observed that the principles laid down therein had to be confined to the facts of the said case and that the matter would have to be decided on the facts of each case without any universal generalization.

17. ***Hardip Singh vs. State of Punjab***, 2008 (8) SCC 557 concerned a prosecution under the NDPS Ac. The contention was that the Inspector, PW-5 being the complainant himself would be an interested person and should not have been made the investigation officer. The argument was repelled relying on ***State rep. by Inspector of Police, Vigilance and Anti-Corruption,***

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Tiruchirapalli, Tamil Nadu V. Jayapaul, 2004 (5) SCC 223 observing as follows:

> "6…. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased."

In the present case, in two FIRs, informants/complainants themselves are the investigating officers. Keeping in view the aforementioned law laid down on this question, in our opinion, to leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof. Resultantly, the prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation.

Order

i) Impugned judgment of convictions and orders of sentence are not sustainable in the eyes of law and are set aside.

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ii) Appeals are allowed.

iii) The appellants stand acquitted of the charge framed against them.

(A.B. Chaudhari)
Judge

(Harnaresh Singh Gill)
Judge

December 04, 2018
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No

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