

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

CRA-S-1174-SB-2012 (O&M)

Date of Decision:-01.12.2018

Dharampal

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Mr. R.S. Gill, Advocate for
Mr. P.S. Sekhon, Advocate for the appellant.

Mr. K.S. Sidhu, DAG Punjab.

JITENDRA CHAUHAN. J.

This appeal is directed against the judgment dated 04.02.2012 and order dated 06.02.2012 passed by Judge Special Court, Ludhiana vide which the appellant and co-convict Surjit Singh were convicted for offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- (One lac) each with default stipulation.

The facts of the case, as noticed in the judgment passed by the trial Court in paragraph No.2, are reproduced as under:-

“Prosecution story in brief is that on 21.6.2001 police party headed by Inspector Balbir Chand of Police Station Div. No.2 Ludhiana was present in the area of Vishwkarma Chowk and at that time Inspector Balbir Chand received secret information that accused Surjit Singh, Kuldeep Singh, Inderjit Singh sons of Ajmer Singh resident of village Daulatpur and Dharampal

son of Bhagat Ram resident of village Natha Nangal were travelling in Tata Sumo No. HR01E 5386 alongwith poppy husk and that they were coming towards Ludhiana city. That information being reliable, ruqa was sent to the police station for registration of the case against the accused. That then police party headed by Inspector Balbir Chand laid naka in the area of Vishwkarma chowk. That independent witness Paramjit Singh was associated in the police party. That after some time TATA Sumo No.HR 1E 5386 was seen coming from the side of Sahnewal and immediately the said vehicle was stopped by the naka party. That two of the occupants namely Kuldeep and Inderjit succeeded in running away, while the driver of TATA Sumo disclosed his name as Dharampal and one another person who was traveling in said TATA Sumo disclosed his name as Surjit Singh. That accused Dharampal and Surjit Singh were apprised of their right of search in presence of gazetted officer or Magistrate. That non consent statements of Dharampal and Surjit Singh were recorded in which they stated that some gazetted officer be called at the spot. That then message was sent to DSP Satinder Singh who was locally posted. That after some time DSP Satinder Singh reached there and accused Surjit Singh and Dharampal resposed confidence in him and got recorded their separate consent statements. That then the search of TATA Sumo was effected on which six bags of poppy husk were recovered. That two samples of 250 gms each of poppy husk were separated from each of the

said six bags and the remaining bulk on weightment in each bag came out to be 40.5 KG of poppy husk. That the said 12 samples and six bags containing remaining bulk were sealed by Inspector Balbir Chand with his seal bearing impression BC and also by DSP Satinder Singh with his seal bearing impression SS and separate sample seal slips were also prepared. I.O. handed over his seal after use to independent witness Paramjit Singh. That then the entire case property was taken into possession vide separate recovery memo which was attested by DSP Satinder Singh, ASI Surjit Singh and independent witness Paramjit Singh. That above said TATA Sumo No. HR-01E-5386 was also taken into possession vide aforesaid memo. The rough site plan of the place of recovery was prepared and statements of PWs were recorded. That on return to police station IO deposited the case property with MHC Baldev Singh while the accused were sent to police lock up. That on 22.6.2001 both the accused and case property were produced before the concerned Magistrate. That samples relating to each bag were also sent for their analysis to the office of Chemical Examiner Patiala through HC Mahesh Kumar. That during investigation of the case accused Kuldeep Singh and Inderjit Singh were also arrested. That on completion of investigation challan was presented against the accused.”

The appellant was charge sheeted under Section 15 of the

Act to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 ASI Surjit Singh, PW-2 Inspector Balbir Chand (Retd.), PW-3 HC Baldev Singh, PW-4 HC Mahesh Kumar and PW-5 Satinder Singh, S.P. City, Amritsar and closed its evidence.

Statements of the accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied the same and pleaded false implication.

In defence, Zulfi Ram retired ASI was examined as DW-1 and HC Gurmeet Singh as DW-2.

After appraisal of the evidence, the learned trial Court vide impugned judgment dated 04.02.2012 and order 06.02.2012, convicted and sentenced the accused as narrated in paragraph No.1 of the judgment.

Feeling dis-satisfied, the present appeal has been filed.

It is contended by the learned counsel for the appellant that in this case, Inspector Balbir Chand (PW-2) is himself the complainant and the Investigating Officer as well. As the complainant himself was the Investigating Officer of the case, the entire proceedings stood vitiated in view of the law laid down by Hon'ble the Supreme Court in **Mohan Lal vs. State of Punjab 2018 AIR(SC) 3853 and Gannu vs. State of Punjab 2017(3) RCR(Criminal) (P&H) 566.**

It is further contended that though the secret information was reduced into writing but the same was not sent to the senior officer

by the investigating officer which violates Section 42 of the Act. There is delay of 12 days in sending the sample to CFSL. Though Paramjit Singh son of Sh. Inder Singh was joined as independent witness but he was not examined before the trial Court. It is further contended that even before effecting recovery, the Sections of the FIR had been already mentioned on the consent form Ex.PA, PB and PC.

It is further contended that the police party was on patrol duty in a private vehicle however the details of the said vehicle were not mentioned anywhere in the police proceedings.

On the other hand, the learned State counsel could not refute the factual aspect of the matter with regard to the investigation made by Inspector Balbir Chand. However, it is contended that all the procedural formalities enumerated under the Act were complied with. The judgment and order have been rightly passed by the trial court.

Heard.

The paragraph No.25 of the judgment rendered in **Mohan Lal' case (supra)** is reproduced as under:-

“25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. 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.”

Further, in Gannu's case (supra), it has been held by this

Court as under:-

*“Another aspect of the matter is that in sheer violation of the principles of fair and impartial investigation, the complainant and the investigating officer is the same person, which makes the prosecution case doubtful. In **Laltu Prasad Vs. State of West Bengal, 2017(2) R.C.R. (Criminal) 237 (Calcutta) (DB)**, it was held that the complainant himself acting as the investigating officer violating the principles of fair and impartial investigation is a practice, to say the least, should not be resorted to and it is a disturbing feature. To the same effect, is a Division Bench judgment of Hon'ble Himachal Pradesh High Court reported as **State of Himachal Pradesh Vs. Atul Sharma and others, 2015 (6) R.C.R. (Criminal) 949**, wherein, it has been held that where the complainant himself conducts investigation, it causes miscarriage of justice to accused qua fair investigation.”*

It is an admitted position of fact that the investigation in the instant case was conducted by Balbir Chand (PW-2) who was the complainant as well in the matter. It has also come on the record that after reducing the information into writing, the same was not sent to the senior officer which is in clear violation of the provisions contained under Section 42 of the Act. Taking into consideration the cumulative effect of the serious flaws, the case of the prosecution stands vitiated. The entire investigation is against the principles of fair and impartial justice.

Consequently, the present appeal is allowed. The impugned judgment dated 04.02.2012 and order 06.02.2012 passed by the trial Court are set aside. The accused is acquitted of the charges. He be released forthwith, if not required in any other case.

01.12.2018
SN

(Jitendra Chauhan)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No