

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-2397-2017

Date of decision: 11.09.2018

Jatinderpal @ Mangu

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. JPS Sarao, Advocate for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Through this revision, challenge has been laid to order dated 31.05.2017 of the Judge, Special Court, Patiala, whereby application of the prosecution for sending second sample to the FSL Authorities, was allowed.

In nutshell, petitioner is facing trial, in case FIR No. 98 dated 09.05.2013 (Annexure P-1) registered under Sections 18, 21 and 22 of the NDPS Act at Police Station Patran, District Patiala, being apprehended with conscious possession of 5 Kgs of intoxicant powder and 300 grams of opium on 09.05.2013. Samples of both the aforesaid contrabands were sent to FSL Authorities on 14.05.2013. After completion of investigation, final report under Section 173(2) Cr.P.C., was filed against the petitioner to face trial under the aforesaid sections.

During its pendency, prosecution moved application for

sending second sample of opium allegedly recovered from the petitioner, on the ground that first sample sent to the Chemical Examiner, lost in transit or misplaced from the Forensic Science Laboratory, as per information received through letter No. 42 dated 21.01.2016, which after hearing both the sides was allowed.

Learned counsel for the petitioner *inter alia* contends that the application dated 15.03.2017 (Annexure P-2) for sending second sample to the FSL Authorities, was moved by the prosecution after 14 months of the receipt of aforesaid letter from the FSL Authorities. Referring to the judgment of Hon'ble Apex Court in Thana Singh Vs. Central Bureau of Narcotics, 2013(2) SCC 590, he contends that the Apex Court, has debarred the prosecution for sending second sample after expiry of 15 days of the receipt of FSL report with regard to analysis of first sample. In support of his contentions, he also relied upon judgments in (i) Tejpartap Singh @ Tabbu Vs. State of Punjab, 2015(2) RCER (Criminal) 806; (ii) Karan Kakkar Vs. State of U.T., Chandigarh, 2014(4) RCR (Criminal) 159 and (iii) State of Himachal Pradesh Vs. Pyare Lal, 2013(27) RCR (Criminal) 522.

On the other hand, learned State counsel vehemently opposing the submissions of learned counsel for the petitioner contends that in the instant case, the judgment of Hon'ble Apex Court in Thana Singh's case (supra), has no application, in view of the fact that no FSL report was ever received in this case qua opium recovered from the petitioner as the first sample had misplaced from the FSL Laboratory or

lost during transit. Therefore, application of the prosecution for sending second sample enabling it to prove its case to the hilt has rightly been allowed by the learned Judge, Special Court, Patiala. In support of his contentions, learned State counsel has relied upon a judgment of this Court in Amarjit Singh Vs. State of Punjab, 2013(4) RCR (Criminal) 524.

Having given thoughtful consideration to the rival submissions of both the sides, this Court finds the instant revision completely devoid of any merit for the reasons to follow:

Learned counsel for the petitioner has miserably failed to show as to what prejudice is going to be caused to the petitioner in case, the opium allegedly recovered from him is got analysed from the FSL Authorities.

The facts and circumstances of this case are completely distinguishable from the facts and circumstances of Thana Singh's case (supra), relied upon by learned counsel for the petitioner, inasmuch, as no FSL report was ever received in this case qua opium allegedly recovered from the petitioner. Therefore, it was bounden duty of the prosecution to send second sample of the same to the FSL Authorities to prove its case beyond any shadow of doubt.

The facts and circumstances of instant case are entirely covered by the judgment of this Court relied upon by learned State counsel in Amarjit Singh's case (supra), inasmuch, as in that case also, sample of contraband sent for analysis had lost in transit or could not be

traced before analysis.

I have carefully gone through the impugned order and find no illegality or perversity in the same.

Dismissed.

September 11, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**