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

**CWP No.1247 of 2016
Date of decision:04.07.2018**

Ashok Kumar Jain

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. H.C.Arora, Advocate,
for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

Mr. L.S.Sidhu, Advocate,
for respondents no.4 to 10.

Rakesh Kumar Jain, J.

The basic prayer made in this petition is for the grant of compensation on account of illegal detention of the petitioner in police/judicial custody for a period of 5 months and 10 days in a false case registered by respondents no.4 to 10 vide FIR No.60 dated 10.08.2013, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act") at Police Station Bhikhi, District Mansa.

In brief, the petitioner is running a chemist shop under the name and style of M/s Jain Medical Hall at Bhikhi, District Mansa. On the complaint of ASI Jaswant Singh of Police Station Bhikhi, aforesaid FIR No.60 dated 10.08.2013 was registered against the petitioner. The text of the said FIR No.60, as translated by the petitioner, is reproduced as under:-

“Copy of Ruqa. To Station House Officer, Police Station Bhikhi.

Today I ASI alongwith ASI Balvir Singh No. 663, HC Karnail Singh No. 674, Constable Gurdev Singh No. 861 on Government Vehicle Trax bearing registration No. PB-12-H-2567 which was being driven by HC Sukhwinder Singh No. 668 proceeded towards Bhikhi-Samao, Atla Khurd for the purpose of patrolling and checking of suspicious persons and when the police party was going from village Matti to Atla Khurd and when we reached about ½ K.M. ahead of Electricity Grid within the estate of Village Matti at that time a clean shaved person who was having a white color polythene bag in his right hand was seen coming on the road and on seeing the police party he sat down on the ground on the pretext of urinating towards his left side on the corner of the road then I ASI on the basis of suspicion got the vehicle stopped and apprehended him with the help of all the accompanied officials. The polythene bag which he was holding in his right hand whose mouth was open and it was apparent that the same contained tablets of Aldix 0.5 and packets of Phenotil and on being asked he disclosed his name as Ashok Kumar son of Shri Suraj Bhan Caste Mahajan, resident of ward No. 7, Bhikhi. An effort was made to associate the private witness from the nearby place. However, no one could be found. Thereafter I ASI in the presence of witnesses checked the white color polythene bag which was carried by Ashok Kumar in his right hand and on checking 90 strips of Aldix 0.5 each strip containing 60 intoxicating tablets total 5400 tablets and 5 packets of Phenotil each packet containing 100 tablets total 500 tablets were recovered. Out of the recovered intoxicating tablets, one strip of 60 tablets Aldix 0.5 was separated as sample portion and a parcel was prepared and one packet Phenotil containing 100 tablets was separated as sample portion and a parcel was prepared. Remaining tablets 89 strips of Aldix 0.5 and 4 packets of Phenotil were put in the white colored polythene bag and a separate parcel was prepared. The above mentioned three parcels were sealed with my seal Mark 'JS'. The sample of the seal was prepared separately. After its use the same was handed over to HC Karnail Singh No. 674. The recovered parcel of intoxicating tablets alongwith two samples portions and also the sample seal of I ASI were taken in police possession vide separate recovery memo. From the personal search currency notes of Rs. 26600/- was recovered from the left

pocket of the pant worn by him, which was taken into police possession vide separate recovery memo. Ashok Kumar on being asked could not produce any document justifying the possession of these intoxicating tablets. The above mentioned accused Ashok Kumar by keeping in his possession 5400 tablets of Aldix 0.5 and 500 tablets of Phenotil has committed an offence punishable under Section 22/61/85 of the NDPS Act and therefore, the instant ruqa is being forwarded to the police station through constable Gurdev Singh No. 861 for the purposes of registration of the case and after registration of the FIR the case number be informed. Special reports be also issued. PCR be also informed. I ASI alongwith accompanied officials am busy in investigation at the spot. Sd/- Jaswant Singh, ASI, Police Station Bhikhi 10.08.2013 within the estate of Village Matti at 6.30 PM” on receipt of the ruqa, a case was registered under the aforementioned section against the above mentioned accused. The writing work was got completed and the case file was forwarded to the concerned ASI Jaswant Singh through the incoming constable Gurdev Singh 861 Mansa at the Sport. Special reports are being sent to the higher police officials and Illaqa Magistrate through constable Balwinder Singh No. 1451. PCR Mansa is also being informed through wireless message separately.”

The petitioner was arrested on 10.08.2013. He applied for bail vide CRM-M-36219-2013, in which bail was granted on 14.01.2014 and he was released on 17.01.2014. He, thus, remained in jail for a period of 5 months and 10 days in the case registered vide FIR No.60 dated 10.08.2013.

The petitioner had also filed CRM-M-30557-2013 under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) for handing over the investigation of FIR No.60 dated 10.08.2013 to some independent agency outside the State of Punjab. In the said petition, a short affidavit was filed by Bhupinder Singh Khattri, PPS, Senior Superintendent of Police, Mansa, in which the following averments were

made:-

- “1. That the police party headed by ASI Jaswant Singh respondent No. 6 registered case FIR No. 60 dated 10.08.2013 U/S 22/61/85 NDPS Act Police Station Bhikhi, District Mansa against the petitioner by changing the place of occurrence and had shown the recovery being effected within the area of village Matti and whole documents were prepared while sitting at the Police Station.
- “2. That during the enquiry, the matter was investigated through Special Investigation Team headed by Superintendent of Police (Detective) Mansa and revealed that the petitioner was picked up from his shop with contraband and changed the place of occurrence, so cancellation report was prepared in this case and submitted in the Court of Ld. Special Judge, Mansa which was accepted vide order dated 07.08.2014. The concerned Police Officials were held guilty and suspended vide order No. 301-10/Steno dated 23.01.2014 and initiated departmental enquiry against respondent Police Officials of Police Station Bhikhi.
3. That after completion of the departmental enquiry, the said officials were punished according to Rules and their two years permanent service was forfeited vide order dated 96-112/Steno dated 16.01.2015 and copy of the same is appended herewith as Annexure R-1 and R-I/T.”

In CRM-M-30557-2013, counsel appearing on behalf of the State of Punjab, on instructions from ASI Shivji Rana, Police Station Bhikhi, District Mansa, had submitted that an effective investigation was conducted in the matter and on conclusion thereof, cancellation report was presented to the learned Court of competent jurisdiction, which has been accepted. Accordingly, the following order was passed by this Court on 19.05.2015 while disposing of CRM-M-30557-2013 as infructuous:-

“Petitioner, by way of instant petition under Section 482 Cr.P.C., seeks handing over the investigation in FIR No.60 dated 10.08.2013 under Section 22 of NDPS Act, 1985, registered at Police Station Bhikhi, District Mansa, to some independent agency

like Central Bureau of Investigation or any other independent agency outside the State of Punjab.

Notice of motion was issued and pursuant thereto, reply has been filed on behalf of the respondents.

Learned counsel for the State, on instructions from ASI Shivji Rana, Police Station Bhikhi, District Mansa, submits that an effective investigation was conducted and on conclusion thereof, cancellation report was presented to the learned Court of competent jurisdiction, which has been accepted by the learned Court. He submits that in this view of the matter, present petition does not survive and the same may be disposed of, as having been rendered infructuous.

On the other hand, learned counsel for the petitioner submits that against the order passed by learned trial Court accepting the cancellation report, a revision petition has been filed by the State which is pending consideration. He still insists for handing over the investigation in the abovesaid FIR, to the CBI. He refers to the averments taken in para 7 of the affidavit dated 25.01.2015, to contend that the petitioner has been falsely implicated in the present case.

After hearing the learned counsel for the parties at considerable length, careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that since the cancellation report has been prepared and presented to the learned Court of competent jurisdiction which has been duly accepted by the learned trial Court, present petition does not survive and the same is disposed of, as having been rendered infructuous.”

Against the aforesaid order passed by this Court, the petitioner had approached the Supreme Court by way of SLP (Crl.) No.8786 of 2015, in which the following order was passed on 26.10.2015:-

“Heard the learned counsel for the petitioner and perused the relevant material.

We are not inclined to entertain this special leave petition on the ground that the petitioner has got appropriate alternative remedies for the redress of his grievances. The special leave

petition is accordingly dismissed. Naturally, the petitioner will be at liberty to avail all such remedies as may be open to him in law.”

The petitioner has alleged that because of his false implication in the case registered vide FIR No.60 dated 10.08.2013, he remained in judicial custody for 5 months and 10 days, before he was released on bail, which had an adverse effect upon his business and social reputation as the said incident of his arrest was widely reported in the local newspapers and in this regard, he has appended translated copy of the news paper “Bathinda, Mansa Bani” dated 12.08.2013. He has also prayed that respondents no.1 to 3 may also be directed to initiate proceedings against respondents no.4 to 10 under Section 182 of the Indian Penal Code, 1860.

In the reply filed by Bahadar Singh, PPS, Deputy Superintendent of Police (HQ), Mansa, the following averments have been made:-

“2. That the police party headed by ASI Jaswant Singh respondent No. 4 got registered the above said case against the petitioner by changing the place of occurrence and had shown the recovery being effected within the area of village Matti through respondent No. 6. However, it is submitted here that a Special Investigating Team headed by Superintendent of Police (D) Mansa, Deputy Superintendent of Police, Sub Division, Mansa and Incharge, CIA, Mansa was constituted for inquiry in the abovesaid case and during inquiry it has been found that the intoxicant medicines were recovered from the shop of the petitioner, but later on Sub Inspector Gurdarshan Singh (respondent No. 4) through ASI Jaswant Singh (respondent No. 6) changed the place of recovery and it was also found by the SIT that the accused indulged in selling the intoxicating material at his shop. So, the SIT was of the opinion for filing the challan report under Section 173 of Cr. P.C.

But, the then SSP, Mansa did not agree and he recommended for cancellation of the FIR, which was ultimately filed in the Court of Special Judge, Mansa and the Special Judge,

Mansa, also accepted the same vide order dated 07.08.2014.

3. That the concerned police officials were held guilty by the then SSP, Mansa and they were suspended vide order No. 301-10/Steno dated 23.01.2014 and initiated departmental inquiry against the erring police officials of the above said case.

4. That after completion of the departmental inquiry, the said officials were punished according to the Rules and their two year permanent service has been forfeited vide order 96-112/Steno dated 16.01.2015. It is made clear that there is no violation of the fundamental rights of the petitioner as envisaged under Articles 21 of the Constitution of India. Hence, the petitioner is not entitled for any relief and as such, the petition of the petitioner is liable to be dismissed as the petitioner was not kept in illegal custody and he remained in Police and judicial custody as per law and he was remanded to judicial custody by the Court from time to time till the date of his production in the Court.”

In the reply filed by respondents no.4 to 10 separately, it is categorically admitted that the Investigating Officer had changed the place of recovery. As a matter of fact, the Investigating Team had propounded two stories for registering the case against the petitioner. In one of the stories, the place of recovery has been shown in the area of village Matti, which has been elaborately mentioned in the FIR, and the other story is in regard to the recovery of the intoxicant drugs from the shop of the petitioner. The said story, as mentioned in by respondents no.4 to 10 in their reply, is also reproduced as under:-

“i) On dated 10.08.2013, a secret informer informed SI Gurdarshan Singh (Respondent No. 4) Station House Officer, P.S. Bhikhi that Ashok Kumar (Petitioner) is habitual of selling intoxicating medicine at his shop and some cases regarding sale of intoxicating medicine have already been registered against him and now he has started selling even smack to his customers. Upon this SI Gurdarshan Singh (Respondent No. 4), alongwith the

police party, at about 3.00 p.m. carried out a raid at the shop of Ashok Kumar (petitioner). The search of the shop was carried out but no objectionable material was found.

- ii) SI/SHO Gurdarshan Singh (Respondent No. 4), alongwith his police party, came back to the Police Station but he also brought Ashok Kumar (petitioner) to the police station and interrogated him regarding the sale of intoxicating substance.
- Iii) During interrogation, Ashok Kumar (petitioner) admitted that he has kept concealed intoxicating medicine at his shop.
- iv) After carrying out interrogation, of the petitioner, SI/SHO Gurdarshan Singh (Respondent No. 4) sent ASI Bhagwant Singh (Respondent No. 5) ASI Balvir Singh (Respondent No. 7), Havaladar Ramphal, Havaladar Karnail Singh (Respondent No. 9) and Constable Gurdev Singh (Respondent No. 10) to the shop of Ashok Kumar (petitioner) for recovery of the intoxicating medicine, as was disclosed by Ashok Kumar (petitioner).
- v) On the basis of disclosure made by Ashok Kumar (petitioner), the search of shop of Ashok Kumar (petitioner) was carried out and 90 leafs of Aldix 0.5 (each leaf containing 60 intoxicating tablets, in total 5400 tablets of Aldix 0.5) and 5 packets of Phenotil tablets (each packet containing 100 tablets, in total 500 tablets of phenotil) were recovered from the shop of Ashok Kumar (the petitioner).
- vi) The intoxicating tablets, so recovered, were brought to the Police Station by the police party headed by ASI Bhagwant Singh (respondent No. 5) and the same was produced before SI/SHO Gurdarshan Singh (Respondent No. 4).
- vii) Upon this SI/SHO Gurdarshan Singh (Respondnet No. 4) ordered ASI Jaswant Singh (Respondent No. 6) to register a case against accused Ashok Kumar (the petitioner).
- viii) In this manner FIR No. 60, dated 10.08.2013, under Sections 22/61/85 NDPS Act came to be registered against Ashok Kumar (petitioner) at Police Station Bhikhi.
- ix) During the registration of the case, the recovery has been shown to have been affected from the area of village Matti,

whereas, in fact the intoxicating medicine was recovered from inside the shop of Ashok Kumar (petitioner) on the basis of his own disclosure during interrogation by SI/SHO Gurdarshan Singh (Respondent No. 4)

- x) With an intention to strengthen its case, the police changed the place of recovery of intoxicating medicine from inside the shop of the accused to within the area of village Mati and the case was got registered through ASI Jaswant Singh (respondent No. 6)
- xi) SI/SHO Gurdarshan Singh has himself probably shown the wrong place of recovery of intoxicating medicine for the reason that nobody from the vicinity of the shop of the accused was ready to act as an independent witness against the accused.
- xii) It has transpired that only the place of recovery of intoxicating medicine has infact been changed and it is not a case where the intoxicating medicine has been implanted upon Ashok Kumar (the petitioner).”

Counsel for the petitioner has vehemently argued that the SIT has found that the Investigation Officer had changed the place of recovery and the said report of the SIT was not challenged rather the Senior Superintendent of Police, Mansa, after receiving the report of the SIT, was convinced that the prosecution would fail to get the petitioner convicted on the basis of the story propounded in the FIR, therefore, he advised for cancellation of the FIR instead of presenting the challan and the said cancellation report was accepted by the Court.

On the other hand, counsel for the respondents has submitted that it was only a case of change of place of recovery, otherwise SIT has also concluded that the recovery of intoxicant drugs was effected from the shop of the petitioner on his disclosure. However, it is not disputed that the FIR was cancelled by the Court of Special Judge, Mansa on 07.08.2014. The

concerned police officials were held guilty by the SSP, Mansa and were also punished by forfeiting their two years' permanent service. The respondents have further asserted that the petitioner was not detained in illegal custody for which he is asking for compensation rather he was kept in judicial custody as per law because he was arrested after registration of FIR against him.

I have heard learned counsel for the parties and examined the available record with their able assistance.

It is not a case in which the police was misguided by some complainant, on account of which a person is taken into custody for having committed an offence but it is a case in which the police itself has propounded two parallel stories for the purpose of registration of case against the petitioner. Had the SIT not been constituted, then the secret would not have been unearthed that as to how the police had tried to implicate the petitioner in a case under the NDPS Act in which even the bail is a far cry. The respondents-police have been so casual and very conveniently taken a stand in the reply that because they wanted to strengthen the case against the petitioner and had they shown the place of recovery from the shop of the petitioner, then there could have been a probability of not joining of some independent witness, therefore, they have changed the place of recovery from the shop of the petitioner to the road in village Matti and concocted a entire new story, i.e. with regard to the manner in which the petitioner was found on the road and the manner in which the recovery was effected from him etc. etc.

This, of course, is not the role of the police even if they had strong suspicion against the petitioner about his indulgence in selling intoxicant drugs or even smack from his shop. It is a sample of highhandedness on the part of

the police who had virtually implicated the petitioner in a case concocted by them and as a result thereof, the petitioner had to remain behind the bars for a period of 5 months and 10 days before he was ultimately released on bail. It is altogether different matter that the FIR registered against the petitioner was got cancelled by the police and the cancellation report was accepted by the Special Judge.

In the case of **Dr. Rini Johar & Anr. vs. State of M.P. & Ors.**, Writ Petition (Criminal) No.30 of 2015, decided on 03.06.2016, the Supreme Court has held that the constitutional courts, taking note of suffering and humiliation, are entitled to grant compensation, which has been regarded as a redeeming feature. The Supreme Court has referred to the public law remedy which has been postulated in the case of **Nilawati Behera vs. State of Orissa**, (1993) 2 SCC 746, **Sube Singh vs. State of Haryana**, (2006) 3 SCC 178 and **Hardeep Singh vs. State of M.P.**, (2012) 1 SCC 748. In the said case, the Supreme Court had awarded ₹5 lacs as compensation, which was to be paid by the State, with liberty to it to proceed against the erring officials, if so advised.

Thus, keeping in view of the aforesaid facts and circumstances, I am of the considered opinion that the petitioner deserves compensation, which is quantified to the tune of ₹5 lacs, which shall be paid by the State of Punjab to the petitioner within a period of one month from the date of receipt of certified copy of this order. However, the State may, if so advised, recover the said amount from the erring officials, in accordance with law.

July 04, 2018
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No