

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

CRM-M-20507-2016

Date of Decision: 19.11.2019

Kamaljit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vipin Mahajan, Advocate for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

HARNARESH SINGH GILL, J

The petitioner has filed this petition under Section 482 Cr.P.C. for quashing the order dated 15.10.2012 (Annexure P-5) whereby, the second sample of the alleged contraband was ordered to be sent for re-analysis.

Learned counsel for the petitioner has submitted that there is no provision in the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') for sending the second sample for re-testing. In support of his contention, the learned counsel for the petitioner has placed reliance on judgment of the Hon'ble Supreme Court in Thana Singh Vs. Central Bureau of Narcotics, (2013)2 SCC 590, wherein it has been held as under:-

“25. Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the concerned laboratories, results of the same must be furnished to all parties

concerned with the matter. Any requests as to retesting/re-sampling shall not be entertained under the NDPS Act as a matter of course. These may however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge. An application in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-testing/re-sampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any form of re-testing/re-sampling is strictly prohibited under the NDPS Act.”

Learned State counsel, on the other hand, has opposed the petition.

In the present case, admittedly, the report of the Chemical Analyst (Annexure P-2) was received by the investigating agency on 3.9.2012. Thereafter, the learned trial Court recorded the statement of the Drugs Inspector on 3.10.2012 that as per the report of the Chemical Examiner, the drug recovered is ‘Pheniramine Maleate’ and the same does not fall within the purview of NDPS Act. Thereafter, the application moved by the Investigating Agency on 10.10.2012 was allowed by the learned trial Court vide order dated 15.10.2012. In view of the decision of the Apex Court in Thana Singh's case (supra), the second application was not maintainable as the same had been moved after fifteen days of the receipt of the first report.

In view of the above, the present petition is allowed.
The impugned order dated 15.10.2012 (Annexure P.5) is set aside.

(Harnaresh Singh Gill)
Judge

19.11.2019
ds

Whether Speaking/ Reasoned:	Yes/ No
Whether Reportable:	Yes/ No