

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1147 of 2019
Date of Decision: 04.9.2019

State of Punjab

.....Applicant

Vs.

Mangal Ram @ Arun

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. H.S.Sullar, DAG, Punjab.

HARNARESH SINGH GILL, J.

1. This application has been filed by the State under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 12.2.2019 passed by the learned Judge Special Court, Amritsar, vide which respondent Mangal Ram @ Arun, was acquitted of the charge under Sections 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short) in FIR No. 80 dated 25.5.2015, registered at Police Station 'C' Division, Amritsar.

2. As per the case of the prosecution, on 25.5.2015, SI Palwinder Singh along with other police officials was on patrolling duty. They received a secret information that Mangal Ram @ Arun, had been selling and supplying 'Charas' at a large scale and he would be coming on foot from Tarn Taran road towards graveyards of Mai Jeevan and if a naka was laid, he could be caught red handed. The police party started checking the spot

and after 10-15 minutes, a young man carrying a black coloured bag on his

left shoulder, was seen coming on foot from the side of Tarn Taran road. On seeing the police party, he tried to turn back, but was apprehended. On asking, he disclosed his name as Mangal Ram @ Arun. SI Palwinder Singh disclosed his identity and rank to the respondent and informed him that they suspected him to be carrying some intoxicant substance. The Investigating Officer had also apprised him of his right to be searched before a Gazetted Officer or a Magistrate. The respondent did not repose confidence in the Investigation Officer. Accordingly, on his wish, a Gazetted Officer, namely, Mrs. Jaswant Kaur, PPS, ACP, Amritsar, was called at the spot and personal search of the respondent was conducted in her presence. From the black coloured bag carried by the respondent, 'Charas' wrapped in a polythene bag was recovered. Out of the same, a sample of 20 grams was separated and the same was put into a separate plastic container. The remaining 'Charas', on weighment, came to be 480 grams, which was also put in a separate plastic container. Both the samples and the bulk parcels were sealed bearing seal impression 'PS' and 'JK'. Accordingly, the FIR in question was registered. On receipt of chemical examiner's report and after completing the other requisite formalities, challan was presented.

3. Since the respondent was found in conscious possession of 6 kgs. of 'Charas' without any permit or licence, charge under Section 20 of the NDPS Act was framed against him to which he pleaded not guilty and claimed trial.

4. The prosecution had examined as many as five witnesses.

5. In the statement recorded under Section 313 Cr.P.C., the respondent denied the prosecution case and pleaded false implication. In defence, the respondent had examined DW-1 HC Paramjit Singh.

6. After hearing the learned State counsel as well as counsel for the respondent, the trial Court, vide impugned judgment dated 12.2.2019 acquitted the respondent of the charge framed against him.

7. Aggrieved against the said judgment, the present application seeking leave to appeal has been filed by the State.

8. Learned Deputy Advocate General has drawn our attention towards the recovery of 6 kgs. of charas from the conscious possession of the respondent and submits that the mandatory provisions of NDPS Act had been strictly complied with by the Investigating Officer and the Gazetted Officer Jaswinder Kaur, ACP (South), Amritsar (City).

9. It is further argued that during the cross-examination of the prosecution witnesses, nothing substantial could be extracted except certain minor discrepancies which were bound to occur with the passage of time. It has been further argued that the respondent had raised a simple plea of innocence and false implication in his statement recorded under Section 313 Cr.P.C. and recovery of 6 kgs. of charas from the conscious possession of the respondent, falls under the commercial quantity. It has been prayed that the judgment of the Court below may be set aside and the respondent be convicted.

10. We have heard the learned State counsel and do not find any illegality or perversity in the judgment passed by the trial Court. The prosecution had miserably failed to prove the strict compliance of mandatory provisions of Section 42 of the NDPS Act. It was incumbent upon the Investigating Officer to reduce the secret information into writing and to send the same to his higher officers, but in the present case the said provision had not been complied with and the Investigating Officer, while

stepping into the witness box as PW-3, had admitted that neither the secret information was reduced into writing nor the same was sent to the higher authorities or the concerned Police Station. In our opinion, while passing the impugned judgment, the trial Court has rightly relied upon the judgment in case '**Karnal Singh versus State of Punjab 2009 (5) RCR (Criminal) 515 SC**' wherein the Supreme Court in para 17(d) observed as under:-

“While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or nonsending a copy of such information to the official superior forthwith, may not be treated as violation of section 42, but if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 of the Act or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001.”

11. In the present case, the mandatory provisions of Section 50 of the NDPS Act had also not been complied. Once the strict compliance was not made and defective offer was given to the respondent, the factum of the search of the respondent being carried out on the basis of search consent

becomes inconsequential. As per the Investigating Officer (PW-3), it was

the wish of the respondent to get himself searched from a Gazetted Officer and accordingly Jaswant Kaur ACP (PW-5) was called at the spot to carry out the search. But as per Ex. P-1 i.e. the consent memo, the Investigating Officer (PW-3) had asked the respondent if he wanted to get searched from him or from any Gazetted Officer or Magistrate. The Investigating Officer had included himself as one of the choices in addition to a Gazetted Officer or Magistrate. Since the legal right of the respondent had not been apprised to him, which is a mandatory provision, the offer made by the Investigating Officer being defective has rightly been ignored.

12. The trial Court had also rightly discussed that on being confronted with the compliance of Section 50 of the NDPS Act, the said material witness of the prosecution, being Gazetted Officer of the police, had categorically deposed that no notice under Section 50 of the NDPS Act was given to the respondent either by her or by the Investigating Officer. PW-5 Jaswant Kaur, ACP had shown total ignorance with regard to the provisions of Section 50 of the NDPS Act. Since no notice under Section 50 of the NDPS Act was given to the respondent, the mandatory provisions of Section 50 of the NDPS Act had not been complied. Even the presence of PW-5 Jaswant Kaur, ACP at the spot is doubtful because in her cross-examination, she had specifically deposed that no document was prepared at the spot in her own hand nor she had signed any document or fixed the stamp on any document prepared by the Investigating Officer.

13. In the present case, the link evidence was missing and there was failure of the prosecution to prove safe custody, transportation of case property and sanctity of the seals on the case property. The Investigating Officer had secret information that respondent was carrying 'Charas' and can

be caught red handed but this secret information was not reduced into writing which is mandatory. From the facts of the present case, it is clear that provisions of Section 42 and Section 50 of the NDPS Act had not been complied with. Basic principle of criminal jurisprudence is that prosecution has to prove its case beyond reasonable doubt which has not been done in the present case.

14. Learned State counsel has failed to point out any material illegality or perversity in the impugned judgment of acquittal. Nothing has been shown as to the misreading and misinterpretation of the evidence by the learned trial Court, while passing the impugned judgment. We do not find any reason to interfere with the well reasoned judgment passed by the trial Court.

15. Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

September 04, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes