

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

**CRM-24029-2019 IN/AND
CRM-A-1959-2019 (O&M)
Date of decision : 06.12.2019**

State of Punjab

...Applicant

Versus

Gurmeet Ram

...Respondents

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. A.A. Pathak, Addl.A.G., Punjab,
for the applicant-State.

JITENDRA CHAUHAN, J.

The applicant-State of Punjab, seeks special leave to appeal against judgment dated 29.11.2018, passed by learned Judge, Special Court, SBS Nagar (for short, 'the trial Court'), thereby, acquitting the accused-respondent in FIR No.41 dated 07.06.2016, registered under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'), at P.S. Mukandpur.

Brief facts of the case as noticed by learned trial Court in para No.2 of the impugned judgment, read thus:-

“2. Prosecution story, in brief is that on 07.06.2016, ASI-Jarnail Singh alongwith HC Amrik Singh, HC Makhan Singh on government vehicle No.PB32-G-5504 being driven by Ct. Tejpal Singh was going from Y Point Aur to village Garhi Ajit Singh in connection with special duty regarding Ghalughara. At about 1.30 PM,

when the police party started checking vehicles after holding Nakabandi near the gate of village Garupar, a Maruti Car came at a high speed and on the basis of suspicion, the said car was stopped by ASI Jarnail Singh and names and whereabouts of the driver of the said car were inquired and the said person disclosed his name as Gurmeet Ram son of Mohan Lal, resident of village Aur, P.S.Mukandpur, District SBS Nagar. Investigating Officer while disclosing his identity told the accused that he suspected that there was some intoxicant substance in his Maruti Car No.DL02-G-4717 and his search and that of his car was required to be conducted. ASI-Jarnail Singh also told the accused that he had a legal right to get his search conducted in the presence of any Gazetted Officer or a Magistrate and the arrangement could be made at the spot but the accused reposed faith in him. Separate consent statement of the accused was recorded. The Investigating Officer tried to join public witness before conducting the search of the accused but everybody shown his helplessness. Thereafter, from the search of right of the pocket of the pant (trouser) worn by the accused, 08 grams heroin and from search of left pocket of the trouser of the accused, 295 grams of intoxicating substance were recovered. Out of the recovered heroin and intoxicating substance, a sample of 05 grams each was taken out and separate parcels of the same were prepared. All the parcels were sealed by Investigating Officer ASI Jarnail Singh with his seal bearing impression "JS". The Investigating Officer also prepared his specimen seal impression in triplicate and form no.29 was partly filled at the spot. The case property was taken into possession. The seal after use was handed over to HC Amrik Singh by the Investigating

Officer. The accused could not produce any permit or license to keep the same in his conscious possession. The ruqa was sent to the police station for registration of FIR through Ct. Tejpal Singh and on the basis of which, FIR was registered against the accused. Rough site-plan of the place of recovery was prepared by the Investigating Officer. The accused was arrested and personal search of accused was also conducted. After completion of investigation at the spot, Investigating Officer produced the case property, specimen seal impressions, form no.29 and accused before Inspector/SHO Balwinder Singh, who verified the facts and investigation of the case and put his seal bearing impression 'BS' on the parcels. The SHO also prepared his specimen seal impression and completed form no.29. Thereafter, the entire case property was deposited with the MHC and the accused was kept in the lock up. On 08.06.2016, above said parcels, specimen seal impressions, form no.29 and the accused were produced before Ms.Aman Sharma, Ld. JMHC, SBS Nagar. Ld. Magistrate also drew a sample of 05 grams of intoxicating substance and 01 gram of heroin from the bulk parcels and sealed the same and remaining case property with her seal bearing impression 'AS'. The entire case property alongwith representative samples was deposited with the MHC. Thereafter, the sample was sent to the office of Chemical-examiner, Mohali through Ct. Sarabjit Singh. On receipt of the report of the Chemical-Examiner and after completion of the investigation, challan against the accused was presented in the Court.”

Upon presentation of final report under Section 173 Cr.P.C.,

accused, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Constable Sarabjit Singh as PW-1; ASI Balwinder Singh as PW-2; ASI Jarnail Singh as PW-3; HC Amrik Singh as PW-4; Inspector Balwinder Singh as PW-5; Santokh Singh as PW-6; Naresh Kumar as PW-7; Gajan Singh as PW-8; Rajan Bhatia as PW-9; and ASI Sukhpal Singh as PW-10.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating evidence appearing against him and pleaded false implication. Though, he opted to lead evidence in defence, but did not examine any witness and closed the same.

After hearing learned counsel for the parties and perusing the record, learned trial Court acquitted the accused-appellant of the charges framed against him.

Hence, the instant application.

It is contended that the accused-appellant has been acquitted by learned trial Court only on the basis of the law laid down by Hon'ble the Supreme Court in ***Mohan Lal Vs. State of Punjab, 2018(2) R.C.R. (Criminal) 931***, wherein, it has been held in the cases where the complainant himself is the investigating officer, it violates the constitutional right of the accused to have a fair trial. However, in the case of Varinder Kumar Vs. State of Himachal Pradesh, Criminal Appeal No.2450-2451 of 2010, Hon'ble the Supreme Court has held that the decision of Mohal Lal's case cannot be applied retrospectively. Therefore, the accused is liable to be convicted on this ground alone. Further states that the mandatory provisions of Section 50 of the NDPS Act, were duly complied with. Further, all the

prosecution witnesses have fully supported its case, particularly, with regard to the fact that efforts were made to join independent witness but no one was willing to join.

Heard learned State counsel and perused the record.

It is not in dispute that Hon'ble the Supreme Court in Mohan Lal's case (supra) has held that the investigation stands vitiated in case the complainant and the investigator are one and the same person. However, in a subsequent judgment in Varinder Kumar's case (supra), it was clarified that the the decision on Mohan Lal's case cannot be applied retrospectively. Now, the issue has been further referred to a larger bench of Hon'ble the Supreme Court in SLP (Criminal) Diary No.(S) 39528 of 2018, which is still pending adjudication. Be that as it may, the acquittal of the accused is not based on this solitary ground alone.

In the instant case, the mandatory provisions of Section 50 of the NDPS Act have not been complied with. It is so apparent from the statement of PW-4, HC Amrik Singh, to the effect that while giving option to the accused, Investigation Officer, Inspector Jarnail Singh offered the accused to be searched by himself apart from a Gazetted Officer or a Magistrate. Thus, the accused was not brought before any Gazetted Officer or Magistrate. For this reason, the search and seizure proceedings get vitiated as the very purpose of introducing an independent official witness in the form of a Gazetted Officer or a Magistrate during the search and seizure gets defeated. Even the consent of the accused to be searched by the investigating officer pales into insignificance being against the very intent of Section 50 of the NDPS Act. Reliance in this regard can be placed on a

judgment of Hon'ble the Supreme Court in **Arif Khan @ Agha Khan v. State of Uttarakhand, 2018 AIR (SC) 2123**, wherein, it has been so held by their Lordships:-

“22. Indeed, the latter Constitution Bench decision rendered in the case of Vijaysinh Chandubha Jadeja (supra) has settled the aforementioned questions after taking into considerations all previous case law on the subject.

*23. Their Lordships have held in Vijaysinh Chandubha Jadeja (supra) that the requirements of Section 50 of the NDPS Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the Police Officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a Gazetted officer or a Magistrate. It is held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate. (See also **Ashok Kumar Sharma v. State of Rajasthan, 2013(2) R.C.R.(Criminal) 1 : 2013 (2) SCC 67** and **Narcotics Control Bureau v. Sukh Dev Raj Sodhi, 2011(3) R.C.R.(Criminal) 370 : 2011 (6) SCC 392**)*

24. Keeping in view the aforementioned principle of law laid down by this Court, we have to examine the question

arising in this case as to whether the prosecution followed the mandatory procedure prescribed under Section 50 of the NDPS Act while making search and recovery of the contraband "Charas" from the appellant and, if so, whether it was done in the presence of a Magistrate or a Gazetted Officer so as to make the search and recovery of contraband "Charas" from the appellant in conformity with the requirements of Section 50.

25. In our considered view, the evidence adduced by the prosecution neither suggested and nor proved that the search and the recovery was made from the appellant in the presence of either a Magistrate or a Gazetted Officer."

Further, it is true that the non-joining of an independent witness alone is not a sufficient ground to discard the entire prosecution story. However, it is equally true that in such circumstances, the testimony of the official witnesses should be able to inspire confidence and trustworthy. In the present case, admittedly, no independent witness was joined. Even there is contradiction in the statements of prosecution witnesses with regard to the names and addresses of the persons who were asked by the Investigating Officer to join the investigation. Such contradictions cannot be ignored.

It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair, 2002(4) R.C.R. (Criminal) 750*** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption of innocence; and secondly, the accused having secured an

acquittal, the Court will not interfere until it is shown conclusively that the

inference of guilt is irresistible.

Thus, besides the fact that the complainant and the investigator are one and the same person in the instant case, there are other material infirmities in the prosecution story which render it doubtful. The finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record which would warrant interference by this Court.

Resultantly, the instant application is dismissed.

Application for condonation of delay is also declined being bereft of any merits.

Special leave declined.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

06.12.2019

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Whether speaking / reasoned : Yes No

Whether Reportable : Yes No