

In virtual Court

CRA-S-2560-SB-2017

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

**CRA-S-2560-SB-2017 (O&M)
Date of decision: 07.09.2021**

Harjit Singh @ Hira

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate
for the appellant.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is to set aside the judgment of conviction dated 31.05.2017, vide which the appellant was convicted under Section 22 (c) of Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') and order of sentence of even date, vide which he was ordered to undergo rigorous imprisonment for a period of 10 years along with a fine of Rs.1.00 lac and in default of payment of fine, the appellant was further ordered to undergo R.I. for a period of one year.

Brief facts of the case, as per the prosecution version, are that on 20.03.2015, ASI Prem Singh along with ASI Balwinder Singh and other

police officials were on patrol duty and were going from Village Badhni Kalan towards Village Rauke Kalan. In the meantime, they noticed that accused-appellant Harjit Singh @ Hira was seen coming from the opposite side and on seeing the police party, he tried to ran away towards the fields, but was apprehended by ASI Prem Singh with the help of other police officials. On inquiry, he disclosed his name as Harjit Singh @ Hira. ASI Prem Singh suspecting that the appellant is carrying some intoxicant substance, gave him a notice apprising about his legal right to get his search conducted in presence of a Gazetted Officer or a Magistrate. The appellant reposed confidence in the Investigating Officer himself and in this regard, a consent memo was prepared, which was signed by the appellant and witnessed by ASI Balwinder Singh and HC Gurcharan Singh. Thereafter, personal search of the appellant was conducted and from the left pocket of his pant, intoxicant powder wrapped in a polythene bag was recovered. Out of the same, 20 grams of intoxicant powder was separated to prepare two sample parcels of 10 gram each and residue came out to be 130 grams and a separate bulk parcel was also prepared for that. The sample parcel as well as bulk parcel were sealed by ASI Prem Singh with seal impression 'PS' and CFSL form was also prepared with the same sample seal. The case property was taken in possession vide recovery memo. From personal search of the appellant, Rs.30/- were recovered. The other formalities like preparation of arrest memo, site plan etc. were made at the spot and thereafter, a ruqa was sent by ASI Prem Singh to the police station through Constable Gurdeep

Singh and formal FIR was registered by ASI Balraj Masih. The case property was taken in possession by the police; statements of the witnesses were recorded at the spot. On receiving the report from the Chemical Examiner, challan was presented in the Court. Copies of the challan were supplied free of cost to the accused. The trial Court framed charge under Section 22 of NDPS Act. The accused-appellant did not plead guilty and claimed trial.

The prosecution, in its evidence, recorded the statement of PW1 Constable Sukhvir Singh, who tendered in evidence his affidavit Ex.P1. As per his affidavit Ex.P1, on 26.03.2015, ASI Balraj Masih handed over two parcels of 10 grams each with seal 'PS+BM' to him and after obtaining the docket from the office of SSP, he deposited the same with FSL on 27.03.2015.

PW2 ASI Prem Singh stated that after the appellant was apprehended, he was apprised about his right to get his personal search conducted in presence of a Gazetted Officer or a Magistrate, however, he reposed confidence in him and he prepared a consent memo Ex.P2, which was signed by him and witnessed by ASI Balwinder Singh. From the left pocket of lower worn by the accused, intoxicant powder wrapped in a polythene bag was recovered. He further stated that by arranging computer scale, he prepared two sample parcels of 10 grams each and converted into two parcels. Remaining powder weighing 130 grams was kept in a bulk parcel. He put his seal impression 'PS' on both the parcels and prepared sample seal impression on CFSL form Ex.P3. The case property was taken in

possession vide recovery memo Ex.P4 and as per personal search memo Ex.P5, Rs.30/- were recovered from the appellant. Thereafter, he sent ruqa Ex.P6 to the police station, on the basis of which, formal FIR Ex.P7 was registered by ASI Balraj Masih. At the spot, he prepared site arrest memo of accused Ex.P8 and intimation of arrest memo as Ex.P9 and thereafter, he prepared site plan as Ex.P10. On returning to the police station, he handed over the case property i.e. two sample parcels, a bulk parcel, CFSL form along with custody of the accused to ASI Balraj Masih, who was officiating SHO of the police station. On comparing the seal impressions, he put his own seal impression 'BM' on the sample parcels, bulk parcels and CFSL form and took in possession the case property vide memo Ex.P11. This witness further proved that report of the Chemical Examiner was received, which is Ex.P12.

In cross-examination, this witness has stated that the police party was on a private car, however, he has not mentioned registration number and make of the same in any of the investigating documents prepared by him. He also stated that even in the DDR, he has not mentioned the car number before leaving the police station. He further stated that at around 6.30 pm, when he was on a patrol duty, lights of the car were on, the police party spotted the accused. This witness further stated that he had a personal computer scale, which he purchased two years ago. No private person was present at the place of recovery and no efforts were made to arrange for an independent witness from the nearby village. He further stated

that after recording consent of accused, he was not taken to any Gazetted Officer or a Magistrate.

PW3 Inspector Gurpal Singh (retired) tendered into evidence his affidavit Ex.PW3/A and stated that on 21.03.2015, ASI Balraj Masih produced accused along with two sample parcels of 10 grams each with seal impression PS+BM, Form 29, Rs.30/- recovered from personal search of the appellant and bulk parcel of 120 grams. On 26.03.2015, sample parcels were handed over to Constable Sukhvir Singh No.1152 of Moga vide Rapat No.98 for taking it to the office of SSP, Moga, who after getting a docket, deposited the same with FSL, Mohali on 27.03.2015.

In cross-examination, this witness stated that on 20.03.2015, case property was handed over to him by ASI Prem Singh, however, he handed over the same to MHC on 21.03.2015. This witness further stated that he has not made any entry regarding case property in Register No.19 maintained in the police station. On 26.03.2015, MHC handed over the sample parcels to him for sending the same to Chemical Examiner. This witness also stated that when the case property was produced before him by ASI Balraj Masih, he has not put his seal.

PW4 ASI Balwinder Singh, after giving details of the investigation, as stated by PW2 ASI Prem Singh, stated that he was also part of the investigating team. In cross-examination, this witness stated that the police party started from police station at 6.30 pm and the accused was apprehended at 7.30 pm. It was further stated that it was dark at that time.

This witness further stated that while leaving the police station, in the DDR, vehicle number was not entered. The police party remained at spot about three and half hours and nobody was sent to nearby village for bringing an independent witness.

PW5 ASI Balraj Masih stated that on 20.03.2015, he was officiating SHO and ASI Prem Singh produced before him accused, witnesses, sample parcels, bulk parcel and CFSL form. After verifying the facts, he put his seal impression BM on all the above documents and took the case property in possession vide Ex.P11. This witness further stated that he kept the case property in his safe custody and on the next day, on 21.03.2015, he produced the same along with accused before the Court of Sh. Parinder Singh, SDJM, Nihal Singh Wala by moving applications Ex.PW5/A and Ex.PW5/B. The Court conducted the inventory proceedings and sent the accused to the police custody till 22.03.2015 vide order Ex.PW5/C. Vide order Ex.PW5/D, the Court directed to deposit the case property in judicial malkhana. In cross-examination, this witness stated that HC Harjinder Singh was MHC on that day and he deposited the sample parcels and bulk parcel with him. This witness further stated that he did not send any report under Section 57 of NDPS Act to higher authorities.

Thereafter, the Public Prosecutor gave up PWs ASI Sewak Singh, HC Gurcharan Singh, Navkiran Singh, HC Gurmeet Singh and HC Jagtar Singh as unnecessary by making a statement on 17.05.2017. The trial Court, thereafter, recorded statement of the accused-appellant under Section

313 Cr.P.C. and put all the incriminating evidence against him. The appellant stated that he has been falsely implicated and the witnesses are deposing falsely. He further stated that he was taken by the police from the shop of a doctor named Kaka and one Inderjit Singh was also present and from there, the police brought him to the police station and false case has been registered against him.

In defence, the appellant produced HC Sikander Singh as DW1, who produced Register No.19 dated 21.03.2015, according to which, at Sr. No.868, case property containing one parcel weighing 120 grams with inventory along with one parcel 10 grams with seal PS and one parcel weighing 10 grams with seal PS+BM and one more parcel weighing 10 grams with seal impression PS+BM were deposited in the police malkhana by ASI Prem Singh with MHC Harjinder Singh. The appellant also produced DW2 Roshan Singh @ Kaka, who stated that he is a doctor by profession and the appellant was present at his clinic for taking medicines, when the police, in civil dress, came here and nothing objectionable was recovered from the appellant and thereafter, the appellant was taken to police station. When this witness along DW3 Inderdeep Singh inquired from the police, they informed that he will be released after some time. Later on, this witness along with father of appellant, Inderdeep Singh and Sarpanch of the village made inquiry and found that the appellant is involved in the present case and thereafter, they went to meet SSP and gave a complaint, but no action was taken. Similar is the statement of DW3 Inderdeep Singh, who deposed that

police picked the appellant from shop of DW2 and later, a false case is planted on him. Thereafter, the defence evidence was closed.

The trial Court, vide judgment of conviction dated 31.05.2017, held the appellant guilty of offence under Section 22 (c) of NDPS Act and vide order of sentence of even date, sentenced him to undergo R.I. for a period of 10 years and to pay a fine of Rs.1.00 lac and in default of payment of fine, he was ordered to further undergo R.I. for a period of two years.

Learned senior counsel for the appellant has argued that it is clear from statement of PW2 ASI Prem Singh that he himself is the complainant as well as Investigating Officer. While referring to his statement, learned senior counsel has submitted that when the notice was served by this witness, giving an option to be searched before a Gazetted Officer or a Magistrate, the accused reposed confidence in him. It is further submitted that the second Investigating Officer was required to be called at the spot to conduct fair and impartial investigation, therefore, no proper procedure was followed and the complainant himself conducted the entire investigation.

It is further argued that it is clear from statement of PW2 that after the entire investigation was completed and documents were prepared at the spot, a ruqa Ex.P6 was sent to the police station for registration of the FIR, on which PW5 ASI Balraj Masih registered a formal FIR Ex.P7. It is thus submitted that investigation has not been conducted in a proper manner.

It is also argued that no independent witness was joined despite

the fact that recovery was effected on a public path. It is further submitted that in the search memo Ex.P5, it is mentioned that when the accused was produced before the SDJM on 21.03.2015, an application under Section 52-A of NDPS Act was filed and the case property with seal impression PS+BM was produced, however, learned Magistrate did not put his own seal to verify the same, therefore, no proper procedure has been followed and rather, a sample of 10 grams was taken in the Court, which was sealed with seal of the Court 'PS'. It is next submitted that no direction was given in this order that sample parcels be sent to CFSL and further, there is no direction as to which sample is to be sent, as admittedly, the sample taken by the police in the Court with seal 'PS', was never sent to CFSL.

Learned senior counsel then referred to Form No.29, where two seals of ASI Prem Singh and ASI Balraj Masih as 'PS & BM' were affixed and the SDJM, instead of verifying the same, only put his signatures with the remarks 'seen'. It is thus submitted that the very purpose of preparing the sample parcel in presence of Judicial Magistrate with his own seal 'PS' stood frustrated, as sample parcels prepared by the police officials only was sent to CFSL.

It is relevant to mention here that seal 'PS' on Form No.29 is of ASI Prem Singh, whereas on the sample parcel taken by the police in the Court with seal impression 'PS' is of Sh. Parinder Singh, SDJM.

Learned senior counsel has further referred to report of FSL, Mohali, to submit that at Sr. No.2, it is stated that the sample parcel was

containing one seal of 'GS'. The operative part of the report regarding reference number reads as under: -

“On opening the parcel sealed with one seal of ‘DPO Moga, it was found to contain one parcel bearing secret code No.2 sealed with one seal of ‘GS’. On opening the parcel bearing secret code No.2, it was found to contain the following.”

It is thus argued that this observations raises a serious doubt, as it is mentioned that on opening the sealed parcel, there is a seal of DPO, Moga and there was a secret code No.2 with seal of 'GS', which is not explained by the prosecution. It is further submitted that both the sample parcels received by FSL mentioned at Sr. No.6 of the report reveal that they were having seal of 'PS' and 'BM' i.e. sample parcels prepared in presence of Magistrate was never sent to FSL. It is further argued that at Sr. No.4 of this report, the sample parcels were received on 27.03.2015 i.e. after 07 days of date of recovery dated 21.03.2015. Learned senior counsel has referred to statement of PW1 as well as the person, who carried the parcel to FSL as well as PW3 Inspector Gurpal Singh, who handed over the same to him on 26.03.2015. It is thus argued that the prosecution has miserably failed to explain that once a sample parcel was handed over to PW1 on 26.03.2015, why these were handed over to FSL on next day and in between, nothing has come on record, where these parcels remained.

Learned senior counsel has submitted that a perusal of statements of PW1 and PW3 would reveal that on the intervening night of

26.03.2015 and 27.03.2015, the same remained in custody of Constable Sukhvir Singh, though as per order of SDJM, the same was required to be kept in judicial malkhana, therefore, it raises a suspicion whether the sample parcels were in safe custody or not. It is thus argued that as per statement of PW2 ASI Prem Singh, it has come that after the entire investigation was complete, then ruqa Ex.P6 was sent for registration of FIR. A perusal of Ex.P6 would show that it was received in the police station at 8.30 pm and thereafter, present FIR No.20 was registered at 8.30 pm and it was received by the Investigating Officer at 10.50 pm through Constable Jagtar Singh as per two endorsements on ruqa Ex.P6 and FIR Ex.P7.

It is next submitted that the documents, which were prepared prior to sending of ruqa i.e. recovery memo Ex.P4, personal search memo Ex.P5, arrest memo Ex.P8, intimation of arrest memo Ex.P9 and site plan Ex.P10, all bear complete details of FIR No.20 dated 20.03.2015 under Section 22/61/85 of NDPS Act, Police Station Badhni Kalan. It is further submitted that these documents were prepared prior to sending of information, which was received in the police station at 8.30 pm and thereafter, FIR Ex.P7 was registered, therefore, there was no occasion for the Investigating Officer to refer FIR number on all the documents, which were prepared in between 6.30 pm and 8.30 pm. It is thus submitted that this raises a suspicion that the appellant was falsely implicated in the case, as the documents were prepared in defence.

It is also argued that the trial Court has not looked into the

defence set up by the appellant that he was picked up from the shop of DW1 Dr. Roshan Singh @ Kaka and proved by DW3 Inderjit Singh that he was picked up from the shop and was taken to police station and later on, was involved in the case at 6.30 pm. It is lastly argued that as per statement of DW1 HC Sikander Singh, who produced Register No.19, it has come that at Sr. No.868, case property i.e. one parcel of 120 grams, one parcel of 10 grams with seal PS and two parcels of 10 grams each with seals 'PS+BM' were deposited by ASI Prem Singh. It is thus submitted that in this Register No.19, there is no mention that the residue parcel was having any seal on the same. For this reason, in cross-examination, PW3 Inspector Gurpal Singh stated that he has not made any entry in Register No.19. It is also submitted that if this entry was produced by the prosecution, the same would have gone against them, therefore, it was produced in defence and raises a suspicion about identity of the residue parcel.

Learned State counsel, in reply, has argued that the judgment of conviction and order of sentence passed by the trial Court is based on appreciation of evidence and it was proved that the appellant was found in conscious possession of 150 grams of alprazolam powder and therefore, the appeal should be dismissed.

After hearing learned counsel for the parties, I find merit in the present appeal, for the following reasons: -

- (a) Considering defence of the appellant-accused that he was picked up from the shop of DW2 Roshan Singh @ Kaka at

about 11.00 am and was taken to the police station, where he was later on implicated in the present FIR No.20; on scrutiny of the prosecution evidence finds merit, as there are number of discrepancies leading to this conclusion.

- (b) It is case of the Investigating Officer/PW2 ASI Prem Singh that the appellant was apprehended around 6.30 pm in the evening and thereafter, he was given an option to be searched before a Gazetted Officer or a Magistrate, upon which he gave consent to be searched by the complainant/Investigating Officer himself and then recovery of 150 grams of intoxicant powder was effected. This witness stated that in continuation of the investigation, he later on prepared certain documents at the spot, which includes recovery memo Ex.P4, personal search memo Ex.P5, arrest memo Ex.P8, intimation of arrest memo Ex.P9 along with site plan Ex.P10. A perusal of the FIR clearly shows that after this stage, a ruqa Ex.P6 was sent to the police station for registration of the FIR and endorsement on this ruqa Ex.P6, made at the police station shows that it was received at 8.30 pm, that is to say, prior to 8.30 pm, PW2 ASI Prem Singh or PW4 Balwinder Singh had no information as to what would be the FIR number, however, all the aforesaid documents reveal that it bear complete details of the FIR i.e. FIR No.20 dated 20.03.2015 under Section 22/61/85 of NDPS Act, Police Station

Badhni Kalan. This raises a reasonable suspicion leading to defence of the appellant that he was picked in the morning and falsely implicated in this case, wherein the police has already prepared certain documents giving complete details of the FIR.

Even perusal of FIR Ex.P7 would reveal that it was registered at 8.30 pm on receiving the ruqa Ex.P6. This Court in **Ajay Malik and others Vs. State of U.T. Chandigarh, 2009 (3) RCR (Crl.) 649**, while relying upon some judgments of other High Courts, held that in such circumstances, where on several spot documents like search memo, recovery memo, rough site plan etc., there is a reference to the FIR number, it is inconceivable as to how the memos prepared at the spot could bear reference to the FIR, which came to be registered after two hours of preparation of such documents. It is held in this judgment that two inferences could be settled; either the FIR was registered prior to the alleged recovery of contraband or number of FIR was inserted in the documents after its registration. In both these situations, it seriously reflects upon integrity of the prosecution version. In the instant case, neither PW2 nor PW4 could explain how FIR number was entered later on, as their statements are absolutely silent in this regard.

- (c) It is case of the prosecution that when the appellant was apprehended, two sample parcels with seal 'PS' of ASI Prem

Singh were prepared with 10 grams of intoxicant powder each and later on, when the case property along with accused were presented before PW5 ASI Balraj Maish, he had put his seal 'BM' on the entire case property including sample parcels. The statement of PW5 ASI Balraj Masih further reveals that on the intervening night of 20.03.2015/21.03.2015, he kept the case property with him without putting it in the police malkhana and on the next day i.e. 21.03.2015, it was produced before the SDJM along with application under Section 52-A of NDPS Act, therefore, there is no explanation as to why the case property was not deposited in the malkhana of the police station and kept by PW5 ASI Balraj Masih in his own custody.

- (d) On 21.03.2015, when the case property was produced before the SDJM, from the residue bulk parcel, a 3rd sample parcel of 10 grams was prepared with seal 'PS' of Sh. Parinder Singh, SDJM, however, this sample parcel was never sent to FSL for testing and rather the sample parcels, which were in possession of PW5 ASI Balraj Masih, were sent. This again raises a suspicion as to why the sample parcel, which was prepared in presence of SDJM, was not sent to FSL.
- (e) The order dated 21.03.2015 passed by the SDJM reads as under:-

"The remaining case property and sample taken today in

the Court sealed with the seal of this Court PS, with a direction to deposit the same in the police Malkhana. Three photographs of the inventory proceedings also clicked by photographer Navkiran Singh. Four copies of Form No.29-M also produced out of which three were returned to ASI Balraj Masih No.27 Moga, P.S. Badhni Kalan and one retained.”

A perusal of this order would show that even the SDJM did not follow the proper procedure. No direction was given to PW5 ASI Balraj Masih as to which sample parcel is to be sent to FSL and rather, no direction was issued to send it to FSL, therefore, by not sending the sample parcel drawn in presence of SDJM to FSL is a suspicious circumstance.

- (f) A perusal of statement of PW1 Constable Sukhvir Singh, who took the sample parcels from SI Gurpal Singh on 26.03.2015 read with statement of PW3 Inspector Gurpal Singh, SHO, under whose direction PW1 Constable Sukhvir Singh was deputed to deposit the sample parcels with FSL, Mohali, would reveal that on 26.03.2015, the sample parcels with seals ‘PS+BM’ were handed over to PW1 Constable Sukhvir Singh and thereafter, he attended the office of SSP, Moga, where a docket was prepared and then on the next date i.e. 27.03.2015, he handed over the case property to FSL, Mohali.

There is no explanation that in the intervening night of 26.03.2015/27.03.2015, the case property, which remained in possession of PW1 Constable Sukhvir Singh, was not tampered with, as it was never deposited in the malkhana of police station on 26.03.2015, as it is own case of the prosecution that it was handed over to FSL on the next day i.e. 27.03.2015, which again is a suspicious circumstance.

- (g) A perusal of Sr. No.2 of FSL report Ex.P12 reveals that the sample parcel was containing one seal of 'GS', as per report reproduced above, which reads that on opening the parcel, one seal of 'DPO MOGA' was found with a secret code seal of 'GS'. None of the prosecution witness could explain as to how the re-seals were put on the sample parcels. At the cost of repetition, it is relevant to observe that sample parcel drawn in presence of SDJM, with his own seal 'PS' was never sent to FSL, Mohali.
- (h) Nothing is stated in the order of SDJM that two sample parcels, which were prepared at the spot along with residue parcel, were attested by putting his own seal on the same, when it was opened in his presence to prepare a third sample parcel with seal 'PS'. Even on the previous two sample parcels, SDJM had made an endorsement 'seen' and never put his own seal as an authentication. The SDJM was required to issue specific direction to PW5 ASI Balraj Masih to send the sample parcel

drawn in his presence with his own seal 'PS', however, this procedure was not followed.

- (i) Though it is settled law that the complainant himself being an Investigating Officer, is not sufficient to dispel the prosecution version, however, the circumstances of this case show that PW2 ASI Prem Singh himself being the complainant, when gave offer to the appellant to be searched before the Gazetted Officer or a Magistrate, then he obtained consent of the appellant in his own favour vide consent memo Ex.P2. Both PW2 ASI Prem Singh and PW4 ASI Balwinder Singh have stated in examination-in-chief that the appellant was never taken before a Magistrate or a Gazetted Officer, before conducting the search.

Even statements of both these witnesses further reveal that the complainant/Investigating Officer did not opt for second Investigating Officer, after apprehending the appellant on suspicion and rather he himself completed the investigation and after two hours, he had sent the ruqa Ex.P6 to the police station.

As noticed above, all the documents, prepared at the spot by the complainant/Investigating Officer, have complete details of the FIR, dispel the presumption that complainant/Investigating Officer had conducted the investigation in a fair manner.

It has come in the statements of both PW2 and PW4 that

they were on a private vehicle. Both these witnesses have clearly stated that while leaving the police station, in the DDR register, for their departure, the details of the vehicle including its number were not mentioned. In the DDR register, even for their arrival, there is no mention of using of private vehicle. It is well settled principle of law that in order to use a private vehicle, while doing the investigation, the Investigating Officer must inform this fact to the SHO and in absence of the same, it again raises a suspicion that the investigation was conducted in a fair manner.

- (j) Even otherwise, PW2 ASI Prem Singh further stated that he had not even made any entry regarding case property in Register No.19 maintained in the police station, which again raises a suspicion that the case property, on 20.03.2015, was, in fact, handed over to PW5 ASI Balraj Masih and rather there are discrepancies in the statements of PW2 and PW5, as PW2 stated that he handed over the case property to MHC, whereas PW5 stated that he handed over to him and he kept the same with him before producing before the SDJM next day. This witness further stated that he had not sent any notice under Section 57 of NDPS Act to higher authorities.
- (k) Though it is settled law that mere non-joining of independent witness is not fatal to the prosecution version, however, in the

light of defence taken by the appellant regarding his false implication, statements of both PW2 ASI Prem Singh and PW4 ASI Balwinder Singh reveal that they have made a specific statement that neither any witness from public was available nor they made any effort to call a witness from the nearby village, therefore, non-joining of an independent witness in this case is a relevant factor.

- (1) The trial Court had not at all discussed defence of the appellant. As per statement of DW1 HC Sikander Singh, in Register No.19, relating to 21.03.2015, at Sr. No.868, case property containing 01 parcel measuring 120 grams along with one parcel of 10 grams with seal 'PS' and one parcel of 10 gram with seals 'PS+BM' and two more parcels were deposited in the police malkhana by ASI Prem Singh with MHC Harjinder Singh. This statement depicts that on 20.03.2015, no case property was deposited with MHC and even on 21.03.2015 i.e. date of FIR, the case property is shown to be deposited by ASI Prem Singh, whereas in the order of SDJM, it reflects that the case property was produced by ASI Balraj Masih with a direction to him to deposit the same with MHC of police station. As noticed above, PW2 ASI Prem Singh, in his examination-in-chief, stated that he had not made any entry in Register No.19 on 20.03.2015 itself shows that the case property was never

deposited with MHC on that day and thus, the prosecution had left a big lacuna in its evidence by not following the proper procedure.

- (m) The trial Court even ignored the statement of DW2 Roshan Singh @ Kaka that he is a doctor by profession and on 20.03.2015 at about 11.00 am, Inderdeep Singh @ Janta and Harjit Singh @ Hira (appellant) had come to his clinic for taking medicine and at that time, the police, in civil dress, came and conducted search of appellant Harjit Singh @ Hira, however, nothing was found and then took him along with them to the police station. On the inquiry, they told that he will be set free after some time. This witness informed father of the appellant and later on, came to know that the appellant had been involved in an NDPS case. This witness stated that he along with father of the appellant and Sarpanch of the village had gone to meet SSP and gave complaint regarding registration of false case against the appellant, but no action was taken. Similar is the statement of DW3 Inderdeep Singh that the appellant was picked up by the police from the shop of Dr. Roshan Singh @ Kaka in his presence, on the pretext that he will be released after inquiry, however, he was involved in the present case later on, in the evening. The defence evidence led by the appellant that he had been falsely implicated in this case, as he was picked up

prior in time of his arrest, shown by PW2 ASI Prem Singh, appears to be a plausible defence and if an equilibrium is maintained between the prosecution version and the defence version, in view of the various flaws and defective investigations lead to a conclusion that the prosecution has failed to prove its case beyond doubt.

- (n) It is held by the Hon'ble Supreme Court of India in **Crl. Appeal No.504 of 2020 (Gangadhar @ Gangaram Vs. State of Madhya Pradesh)** as under: -

“14. In view of the nature of evidence available it is not possible to hold that the prosecution had established conscious possession of the house with the appellant so as to attribute the presumption under the NDPS Act against him with regard to recovery of the contraband. Conviction could not be based on a foundation of conjectures and surmises to conclude on a preponderance of probabilities, the guilt of the appellant without establishing the same beyond reasonable doubt.

15. The police investigation was very extremely casual, perfunctory and shoddy in nature. The appellant has been denied the right to a fair investigation, which is but a facet of a fair trial guaranteed to every accused under Article 21 of the Constitution. The consideration of

evidence by the Trial Court, affirmed by the High Court, borders on perversity to arrive at conclusions for which there was no evidence. Gross misappreciation of evidence by two courts, let alone poor investigation by the police, has resulted in the appellant having to suffer incarceration for an offence he had never committed.”

Similar view is taken by the Hon’ble Supreme Court in **Noor Aga Vs. State of Punjab and another, Crl. Appeal No.1034 of 2008, decided on 09.07.2008** that where discrepancies in prosecution evidence is lacking in credibility, the accused can be acquitted.

Accordingly, the present appeal is allowed and judgment of conviction and order of sentence dated 31.05.2017 passed by the trial Court are set aside. The appellant is acquitted of the charge framed against him.

Since sentence of the appellant was suspended vide order dated 07.03.2018, his bail/surety bonds shall stand discharged.

[ARVIND SINGH SANGWAN]
JUDGE

07.09.2021
vishnu

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