

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-A-492-2019

Date of Decision: 12.10.2022

State of Punjab

... Applicant

VS.

Varinder Kumar @ Sodhi

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Shubham Kaushik, AAG Punjab, for the applicant

Sandeep Moudgil, J. (Oral)

This application has been filed by the applicant-State under Section 378(3) CrPC for permission to file the accompanying appeal against the judgment dated 24.08.2018 passed by learned Special Court, Gurdaspur whereby the respondent-respondent has been acquitted in case FIR No.15 dated 29.05.2015 under Section 22-61-85 of the Narcotics Drug and Psychotropic Substances Act, 1985 Act registered at Police Station Kotli Surat Malhi.

Briefly stated, the applicant story is that on 29-05-2015, a police contingent, headed by ASI Jatinder Singh, was on patrolling duty and they were going from police station towards village Athwal, Dehar, Gawar etc., and when the police party reached bridge drain Athwal, a clean shaven person was seen coming from the side of Kalanaur and on seeing the police party when he tried to turn towards his backside and was about to throw a polythene bag from his right hand, the Investigating Officer with the help of his police officials apprehended him and on being inquired, he disclosed his name as Varinder Kumar alias Sodhi – the respondent herein. The

Investigating Officer checked the polythene envelop and intoxicant powder was recovered from it. Out of the recovered intoxicant powder, two parcels of sample of intoxicant powder weighing 10 grams each, were separated, and on measurement of rest of residue in the polythene envelop, it came to be 230 grams of intoxicant powder. The above said case property was sealed with the seal bearing impression JS and was taken into police possession, vide recovery memo. A ruqa was sent to the police station for registration of case against the respondent. Rough site plan of place of recovery was prepared. Statements of witnesses were recorded. The case property was deposited with the judicial Malkhana.

Learned counsel for the applicant/State submits that the judgment of trial court is erroneous and against law and facts. While referring to the testimonies of applicant witnesses, learned counsel for the applicant/State has urged that on evaluating the applicant evidence with great care and caution, it transpires that the recovery of intoxicant powder from the respondent stands fully proved which fact has been ignored by learned trial court. He further submits that the fact that such a huge quantity, by no stretch of speculation, could be planted upon him has not been given due consideration and further contended that applicant has been able to prove its case to the hilt. He further argued that all material witnesses have entered into witness box and they have fully supported the case of applicant and corroborated on each and every aspect of the case. He further submitted that the link evidence is also found to be in existence and all the relevant documents have been duly proved. Learned counsel further contended that

this is a case of chance recovery and the provisions of Section 43 of the NDPS Act are attracted and the requirement as per notification dated 03.09.1987 pertains to the offences covered under Sections 42 and 67 of the NDPS Act.

Having heard learned counsel for the applicant/State, this Court is of the considered view that the application deserves to be dismissed. I say so for the reason that firstly, the ASI Jatinder Singh, Investigating Officer was not competent to effect recovery from the respondent because at the time of alleged recovery he was not a regular ASI and was only a Head Constable though he was promoted on 02.09.2015 w.e.f. 28.05.2015 but in view of the law laid down in **Bikkar Singh vs. State of Punjab 2006(3) RCR (CrI.) 16** and **Gursewak Singh vs. State of Punjab 2016(3) RCR (CrI.) 1031**, it cannot be inferred that ASI Jatinder Singh, who was Head Constable on the date of incidence, was competent to exercise the powers and perform duties specified in Section 42 and 67 of the NDPS Act.

Secondly, no attempt was made to join any independent witness, at the time of recovery. Even no request was made to any of the person present at the time of recovery for their joining, in the raiding party. It is not the case of the investigating officer that the public persons refused to join. It seems that for not calling an independent witness despite availability is a deliberate lapse on the part of the Investigating Officer, PW-3, ASI Jatinder Singh. It is, no doubt, true that evidence of the official witnesses, cannot be distrusted and discarded, merely on account of non-joining of an independent witness. In the present case, it is evident that no sincere efforts have been

made by the Investigating Officer to join an independent witness at the time of alleged recovery from the respondent. In case any person had declined to join the police party, the Investigating Officer could have later on taken a legal action against the said person because he could not have escaped the rigors of law while declining to perform his legal duty to assist the police in the investigation as a citizen which is an offence under Indian Penal Code.

Secondly, learned trial court has rightly observed that the applicant failed to bring on record any departure entry as regards the patrolling which is required as per Chapter 22 Rule 49 of the Punjab Police Rules which mandates that an entry is required to be made as regards the hour of arrival and departure of police personnel on duty. The applicant was under an obligation to prove on record the above said DD entry vide which PW-3, ASI Jatinder Singh along with other police officials had left the police station so as to prove the possibility of availability of police team at the place of apprehension of respondent.

Thirdly, the learned trial court is rightly in observing that the investigation was not conducted in a logical manner as the applicant/State has failed to meet out the source from where the intoxicant powder used to be arranged or procured by the accused.

Lastly, learned trial court was rightly in doubting the conduct of the prosecution as no justifiable reason has been assigned as to why the samples were not sent immediately after 30.05.2014 and for what reason the sample parcels were kept in the police station till 15.06.2015. There is an unexplained delay of 16 days and in the peculiar facts and circumstances of

the case, delay of 16 days in sending the samples adversely affects the veracity of the prosecution case.

In view of the above, this Court does not find any ground to grant leave to appeal and the application is accordingly dismissed.

12.10.2022

V.Vishal

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No
Yes/No