

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

CRM-A-495-2021

Reserved on: 10.11.2022

Date of decision: 21.11.2022

Union Territory of Chandigarh through APP

....Appellant(s)

Versus

Kamli Devi @ Kamla

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Yashwant Singh Rathore, Additional Public Prosecutor,
with Ms. Sudha Singh and Yuvraj Singh Rathore, Advocates,
for the appellant.

G.S.SANDHAWALIA, J.

The present application has been filed under Section 378(1)(b) Cr.P.C. for grant of leave to appeal against the judgment of acquittal passed by the Special Court, Chandigarh dated 11.09.2019, whereby acquittal has been recorded of the respondent in FIR No. 124 dated 05.07.2017 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act'), P.S. Maloya, Chandigarh.

Counsel for the U.T., Chandigarh has vehemently submitted that the recovery was of 20 kgs and 800 grams of *Ganja* and, therefore, the Special Court was not justified in granting the benefit of acquittal by giving the benefit of doubt as such. It is submitted that the search as such was conducted as per the moment of suspicion and the contraband had been recovered and there was no such reason to falsely implicate the accused-respondent. The Special Court has noticed that the case of the police party

was that they had reached H.No. 196, Daddu Majra Colony at 8.15 p.m. on

05.07.2018 and had seen the accused carrying the plastic bag on her head. She had started going towards the back side of the *Majaar* of *Peer* and, thus, was apprehended by PW-4 S.I. Satwinder Singh alongwith the help of the lady constable and the recovery of the plastic bag had led to the contraband being discovered and taken into possession.

The said story was doubted on account of the defence which was produced by way of DW-1 H.C. Sunder Lal, who had produced the report (Ex.DW-1/A), which proved that S.I. Satwinder Kumar from the CIA staff had raided the H.No.91, Housing Board Flats, Maloya, Chandigarh. The same was on account of the phone call received from M.No. 95178-54455 which was proved to be belonging to the daughter-in-law of the accused. It was, thus, concluded by the trial Court that when S.I. Satwinder Singh had reached the house of the accused at 6.42 a.m., the question of the apprehension of the accused near the *Majaar* of *Peer* was not possible as the police party would not go again by 8.00 a.m. Accordingly, it was held that the prosecution witnesses PW-1 and PW-4 were telling a lie regarding the recovery of contraband and were concealing the truth of the raid on the house in the morning of 05.07.2017 to wriggle out of their liability.

The fact of the lady constable Manjit having not been examined and the mandatory provisions under Section 50(4) of the Act that a female could not be searched by anyone except a female was also kept in mind to ensure that the case of the prosecution is vitiated. It was noticed that a suggestion had also been put to PW-1 HC Balkar Singh and PW-4 Satwinder Singh that the son and the nephew of the accused had been taken by the CIA staff in the Balero Car and, thus, it was held that a doubt had been created in the mind of the Court regarding the recovery of the contraband. The

different hand writings and not written by one and the same person. Accordingly, keeping in view the fact that the provisions of Act are stringent, it was held that the prosecution witnesses could not inspire confidence and keeping in view the doubt in the mind of the Court, the benefit was extended.

We have gone through the record of the case and find that the reasoning given by the trial Court is well justified. The charge was framed on 07.12.2017 under Section 20 regarding being in conscious possession of 20 kgs and 800 grams of *Ganja*. PW-1 HC Balkar Singh's specific case was that there was patrolling at 8.15 a.m. in the open area of Daddu Majra Colony and the accused was coming on the foot with white plastic *katta* bag on her head. On seeing the police party, she had turned back and tried to hide herself on the side of *Peer Majaar* and, therefore, there was suspicion that she was carrying some stolen property. Upon search, the white colour bag which she was carrying on her head was found containing the contraband, which was weighed and then sealed at 2 places. It is the case that the *ruqa* was sent at 10.20 a.m. for registration of FIR and a message was sent for calling second Investigating Officer from Crime Branch, Sector 11, Chandigarh and, therefore, S.I. Ashok Kumar from the Crime Branch had come at 10.40 a.m. and S.I. Satwinder had handed over the accused alongwith the parcel to him. The case was that the accused was arrested and was got personally searched by the lady constable vide Ex.P-4 and the case property was produced before the Inspector SHO Baljit Singh at about 2.30 p.m. The SHO had denied the fact of lodging of the DDR Nos.16 and 19 with regard to the visit of ASI Vidya Nand at H.No.91, which is the house of the accused at about 6.46 a.m. and 7.29. a.m. He admitted that her son Vicky alongwith his brother Sawariya and nephew Shambhu were brought to

the CIA staff in Balero car. He denied the knowledge whether FIR No. 125 was lodged in the same police station under Section 22 of the Act against Vicky.

It is a matter of fact that Vicky was also acquitted by the same Special Judge on 23.01.2010 and the allegations were that he was found in possession of 40 injections, out of which 20 were of Pheniramine (10 ml each) and 20 injections were of Buprenorphine (2 ml each). The Special Court also noticed the fact that DW-4, the present accused, had stated that some persons forcibly entered the house after breaking the door and starting beating them and S.I. Satwinder Singh had told his name and H.C. Pradeep Kumar had come from the police station control room in pursuance to the call given on number 100. It was noticed that the apprehension of Vicky near the Dhanas Road, Motor Market, Section 38 West Turn, Chandigarh at 3.15 p.m. was incorrect. Rather, they were apprehended in the morning on the same day, which stood corroborated from the contents of the FIR No. 124 in the present case, in which the present accused was implicated. Ashok Kumar, the second Investigating Officer also, in examination, had admitted that the personal search of the accused was conducted by the lady constable Manjit and denied the fact that any raid was conducted at H.No.91 at around 6.00 a.m. He admitted the fact that the ink of the pen was different in the search memo and denied the fact that the additions had been made after the accused had made a complaint in the Court that police officials had taken money and gold ornaments from the house and a false case had been planted. He admitted that no Gazetted Officer/Magistrate was called at the spot at the time of recovery, which is in contradiction to the fact that a second Investigating Officer was also called namely Askok Kumar. The statement

of Satwinder Singh, who was examined as PW-4, would also go on to show that the second Investigating Officer had come to the spot and he had handed over the case property, accused and documents to the second Investigating Officer, who had recorded a statement and thereafter left the spot.

Thus, it is apparent that he had denied the suggestion that the lady constable Manjit was not accompanying him and admitted that the place of recovery and the house of the accused were at a distance of 30-35 steps. He denied the factum of the lodging of FIR No. 125 against the son of the accused and had admitted that the personal search of the accused was carried out by the lady constable Manjit at that time. Thus, apparently once the personal search as such had been carried out as per the admission of the police official, the Gazetted Officer or the Magistrate were not accompanying them and thus, there is violation of Section 50 of the Act in view of the law laid down by the Apex Court in ***State of Rajasthan vs. Parmanand and others, 2014 (2) RCR (Crl.) 40***. Relevant portion of the judgment reads thus:-

“12. Thus, if merely a bag carried by a person is searched without there being any search of his person, [Section 50](#) of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, [Section 50](#) of the NDPS Act will have application. In this case, respondent No.1 Parmanand’s bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, [Section 50](#) of the NDPS Act will have application.”

Even otherwise, the lady constable as such was never examined and Section 50(4) of the Act specifically provides that no female is to be searched by anyone except a female and, thus, an adverse inference is to be drawn that the search conducted was in violation of Section 50 of the Act also. Thus, the trial Court has rightly relied upon the judgment of this Court in ***Paramjit Kaur @ Pammi vs. State of Punjab, 2019 (3) RCR (Crl.) 153.*** The SHO denied the fact that an information was received in the police station regarding the quarrel in H.No.91 and whether DDR No. 19 was also registered in his police station and whether the PCR visited H.No.91 on the same day, which would go on to show that the police party itself was suppressing the truth and it has come on record through the statement of DW-1 H.C. Sunder Lal from the police control room that PCR vehicle Sugar-21 had visited the spot at 6.42 a.m. and HC Pradeep Kumar had made a report that SI Satwinder Kumar from CIA staff team had reached the house and no quarrel was there. The report was exhibited as Ex.DW-1/A. The fact of the mobile phone bearing No. 95178-54455 was also proved to be of Kiran Singhania w/o Vicky Singhania, H.No.91, Daddu Majra Colony by summoning DW-2 Surjit Singh, official of Vodafone company. Similarly, a perusal of the statement of PW-8 S.I. Ashok Kumar would go on to show that the accused was also personally searched and arrested by lady constable Manjit, who herself has not been examined. It was also denied that ASI Vidya Nand had visited the house of the accused at 6.46 a.m. and, thus, it is apparent that the trial Court was well justified in coming to the conclusion that the police officials were withholding the truth and apparently it was against the official record itself.

We have also perused the personal search memo (Ex.P-4) which

would also go on to show that recovery was also shown of gold items from

the accused which were in the form of golden chain with locket, two golden karas, one gold chain, nose pin, three earrings, one pair silver *pajeb*, one pair earring with small chains and two golden rings, which also shows alleged presence of lady constable Manjit who had not been examined and the categorical finding on handwriting which is different is apparent even with a naked eye. The site plan Ex.P-5 would also go on to show that H.No.91 is situated opposite the *Peer Majaar* and, thus, it is apparent that the site of the incident was shown to be in the close vicinity of the house of the accused with had been raided by the police party.

In such circumstances, we are of the considered opinion that the trial Court has considered all the evidence on record and examined it in detail and there is no perversity in the order in coming to the conclusion that the police party as such was suppressing the truth regarding how the incident had happened. The defence version was well justified and the statement as such under Section 313 Cr.PC. is also to the extent that the police officials had entered the house and apparently a false case had been planted not only upon the respondent-accused but also upon the son, both of whom have been given the benefit of doubt by the Courts below.

In such circumstances, we are of the considered opinion that no case is made out for interference in the well reasoned order passed by the trial court. We had also called for the custody certificate of the accused, which has been filed, which would also go on to show that she has spent 3 months and 29 days in custody before she was released on bail and there is no other case of similar nature against her. Thus, we are of the considered opinion that her carrying huge amount of contraband on her head is only to get out of the illegal raid which had been conducted in the morning.

Accordingly, the present application stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

21.11.2022
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No

