

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

**CRM-A-387-2020 (O&M)
Date of decision: 29.04.2022**

State of Punjab

.....Applicant/appellant

Versus

Tarsem singh

.....Respondent

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. H.S. Grewal, Addl. A.G., Punjab,
for the applicant-appellant.

Ritu Bahri, J.

CRM-8167-2020

In view of the averments mentioned in the application, same is allowed and delay of 54 days in filing of the appeal is condoned.

CRM-A-387-2020 (O&M)

State has come up in appeal against the judgment dated 23.09.2019 passed by the Special Court, Bathinda, whereby accused-respondent has been acquitted of the charges framed against him under Sections 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

Brief facts of the case are that on 29.03.2013, ASI Gurjan Singh along with other police officials, was present at T-Point, where Raj Kumar met and joined the police party. When they reached at the turning point of a street, a person was seen coming from the opposite side having a transparent

polythene in his right hand and on seeing the policy party, he became

perplexed and tried to turn back, but was apprehended with the help of other police officials on the basis of suspicion. He disclosed his name as Tarsem Singh son of Harmail Singh (respondent herein). Upon conducting the search, 11 vials of Rexcof were recovered from the polythene bag carried by the accused-respondent, out of which one vial of 100 MI was separated as sample and converted into a parcel. A separate parcel of remaining 10 vials of Rexcof was prepared. Both the parcels were sealed bearing impression 'GS'. Form M29 was prepared. Seal, after use, was handed over to HC Kashmir Singh. The entire case property was taken into police possession. Personal search memo of accused was prepared. He could not produce any permit or licence for keeping the above said vials of Rexcof in his possession. Ruqa was sent to the police station through HC Kamaljeet Singh, on the basis of which, formal FIR was registered. Rough site plan was prepared. Accused-respondent was arrested and statements of the witnesses were recorded.

On conclusion of investigation, report under Section 173 Cr.P.C. was prepared and submitted against the accused before the Illaqa Magistrate. Copy of challan were supplied to him free of costs as envisaged under Section 207 Cr.P.C.

Finding a prima facie case, charge under Section 21 of the NDPS Act was framed against the accused-respondent, to which, he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined HC Kashmir Singh (PW-1), ASI Gurjant Singh (PW-2), Nik Dev (PW-3) and HC Deshpal Singh (PW-4).

After conclusion of the prosecution evidence, statement of

accused-respondent under Section 313 Cr.P.C. was recorded, wherein entire incriminating evidence was put to him. However, he denied the same and pleaded his innocence. In defence, accused-respondent examined HC Sher Singh (DW-1) and Raj Kumar (DW-2).

Trial Court, after hearing learned counsel for the parties and going through the evidence led by the parties, acquitted the accused-respondent of the charge framed against him.

As per the evidence before the trial Court, the Investigating Officer as well as recovery witness had stated that no sample was taken from each vial. No batch number was written on any memo. Further it was not written on any of the documents, as to how much quantity of liquid was there in each vial. Kashmiri Lal, who was incharge of the Police Mal Khana, was not examined by the prosecution. While acquitting the accused, trial Court has referred the judgment passed by Hon'ble the Supreme Court in Arif Khan @ Agha Khan vs. State of Uttarakhand, 2018 SCC online 459, on the proposition that Section 50 of the NDPS Act is a mandatory provision and if, a person is to be searched, it was mandatory for the police officer to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate. In case, any recovery is effected without following the procedure as set out in Section 50 of the NDPS Act, it would cause a dent to the prosecution case and conviction is liable to be set aside. Further reference was made to a judgment passed in Dilip and another vs. State of M.P., 2007 (1) RCR (Criminal) 586. This was a case, where no contraband was found on personal search of the accused. However, the contraband was found in the scooter. It was held that in such a case, compliance of Section 50 of NDPS Act is mandatory. In State of Rajasthan vs. Parmanand and

another, 2014 (2) RCR (Criminal) 40, Hon'ble the Supreme Court has held that if, merely a bag carried by a person is searched without there being any search of his person, in that case Section 50 of NDPS Act will have no application. But, if the bag carried by him is searched and his personal search was also conducted, then Section 50 of the Act will have application.

In the facts of the present case, Raj Kumar, an independent witness, had been joined prior to the sighting of the accused-respondent, but the said witness was not examined by the prosecution. However, he stepped into the witness box as defence witness and deposed that he had signed the papers in Police Station, City Rampura on the asking of ASI Gurjant Singh, where he had gone in connection with dispute of his neighbour Maninder Kumar. This witness, though, did not support the prosecution version, but there was every chance that he was a stock witness. He further deposed that on the day of deposition, he had come to the Court Complex from Central Jail, Bathinda, where he was lodged in a rape case registered against him at Police Station, Sadar Rampura.

Heard.

In the present case, the accused was allegedly apprehended at the spot on the basis of suspicion and recovery of 11 vials of Rexcof was effected from him. But, from the perusal of the impugned judgment, it is apparent that at the time of recovery, Section 50 of the NDPS Act had not been complied with, whereas it was obligatory upon the Investigating Officer to comply with the said section. Further, the independent witness namely Raj Kumar was not examined by the prosecution, rather he had appeared before the trial Court as a defence witness and stated that the papers were signed by him in Police Station, City Rampura on the asking of

ASI Gurjant Singh, where he had gone in connection with the dispute of his neighbour Maninder Kumar, who had a quarrel with someone. Furthermore, the said witness had come to the Court from Central Jail, Bathinda, where he was lodged in connection with a rape case. After the alleged recovery, samples were not taken from each of the vials. In this case, the link evidence was also missing.

In view of the above, the prosecution has miserably failed to lead any cogent and convincing evidence to substantiate the allegations levelled against the accused-respondent. In the absence of any cogent and convincing evidence, scope of interference in the impugned judgment is very limited. Accordingly, having examined the impugned judgment, no illegality, much less perversity has been found therein warranting interference by this Court. The evidence has been appreciated in the right perspective.

Dismissed.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

29.04.2022
ajp

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