

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-10241-2020 in/and

CRM-A-591-2020

Date of decision: 05.05.2022

State of Punjab

....Appellant

V/s.

Satish Kumar

....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 appellant.

Ritu Bahri, J.

CRM-10241-2020

For the reasons mentioned in the application, the same is allowed and the delay of 99 days in filing the appeal is condoned. The appeal is taken up on Board today itself for final disposal.

CRM-A-591-2020

The State has come up in this appeal against the judgment dated 03.08.2019 whereby Satish Kumar had been acquitted while facing trial in FIR No. 123 dated 07.07.2018 under Section 22 of NDPS Act registered at Police Station, City Nawanshahr.

On 07.07.2018, ASI Balbeg Singh alongwith other police officials was on patrolling duty from Police Station City Nawanshahr towards Chandigarh road, Nawanshahr. At about 08:00 a.m. when they reached in the area of link road from Barnala Gate to Village Saloh, the police party spotted a person on foot, having carried a polythene bag in his hand. On seeing the police party, he got panicked and tried to retreat. He

was apprehended by the police party. When asked, he revealed his name as Satish Kumar and his address. The Investigating Officer disclosed his name and designation to him. He further told him that he had suspicion that he (Satish Kumar) was carrying something incriminating in his possession and wanted to conduct his search. He also apprised him of his legal right of getting himself searched in the presence of Gazetted Officer or a Magistrate but the accused reposed confidence in him. The consent memo (Ex.PW-3/A) was prepared. The personal search of the accused was conducted by the Investigating Officer and 15 injections of Buprenorphine, 02 ml each were recovered from the bag held by him. The Investigating Officer prepared parcel of the same and sealed it with his seal impression bearing impression 'BS' and took into police possession vide recovery memo (Ex.PW-3/B). Ruqa was prepared and thereafter FIR was registered. The accused was arrested by the Investigating Officer vide arrest memo Ex.PW-3/C and personally searched him vide memo Ex.PW-3/D.

PW-5 SI Balbeg Singh, Investigating Officer as well as PW-2 HC-Rajinder Pal stated that the accused was apprehended from a place where there was a religious place at a distance of about 40 yards and there were number of shops on the main road surrounding the place of recovery. However, before conducting search of the accused, the Investigating Officer tried to join an independent witness from the public but none obliged. PW-2 HC-Rajinder Pal, who was witness to the alleged recovery, could not tell batch number, expiry date and manufacturing date of the alleged injections. He was not able to tell the name of the injections and the company. He did not know whether batch number was mentioned in any other memos prepared at the spot and also deposed that batch numbers of the injections

might be different from each other. As per order dated 07.07.2018 passed by the learned JMIC (D) SBS Nagar in the application under Section 52-A of NDPS Act, revealed that 15 injections of Buprenorphine, 02 ml each having same batch number LM18009, manufacturing date 04/18 and expiry date 3/21 were produced before her.

At the same time, as per PW-4 HC-Balbir Singh, with whom the case property, sample parcels, sample seals etc. were deposited on 07.07.2018 in the Police Malkhana, 13 injections of Buprenorphine, 02 ml each sealed with seal of Court 'LS' one sample parcel containing one injection Buprenorphine, 02 ml, sealed with seal of Court 'LS' and another sample parcel containing one injection Buprenorphine, 02 ml sealed with seal of Court 'LS' alongwith other articles were deposited with him. Same position is with regard to name of said injections mentioned in the recovery memo, arrest memo, inventory report, production memo and Form No. 29 whereas report of Forensic Science Laboratory, proved as Ex.PW-4/C revealed that ampoule labeled as 'Omgesic' was sent for analysis.

Hence, there was a doubt created with respect to the injections allegedly recovered from the spot and which were produced before the learned JMIC (D) SBS Nagar alongwith application under Section 52-A of NDPS Act and the injection which was sent for analysis to the concerned Forensic Science Laboratory. The contradiction in the two reports caused a dent to the prosecution version of recovery of injections from the accused.

Another fact which the lower Court had taken into account that PW-3 SHO/Inspector Shahbaaz Singh, Investigating Officer produced the accused alongwith case property parcel, sample seal before him. After verifying the facts of the case, he affixed his seal bearing impression 'SS' to

the case property parcel and prepared sample seal Ex.PW-4/A. He also prepared an inventory report Ex.PW-4/B, production cum entrustment memo Ex.PW-4/C. He deposed that the case property, sample seal and inventory report were handed over by him to the MHC and the accused was sent behind the bars. Thereafter, he alongwith Investigating Officer produced the accused alongwith case property parcel, sample seal and inventory report before Ms. Lavleen Sandhu, learned Duty Magistrate, SBS Nagar by moving three applications Ex.PW-4/D to Ex.PW-4/F. He also deposed that after inventory proceeding, case property was handed over to him for depositing it with MHC. In his cross-examination, he deposed that he did not make any entry in the DDR regarding production of the case property. The case property was deposited by him with the MHC at about 04:00 p.m. after producing the accused before the Ilaqa Magistrate. His statement recorded under Section 161 Cr.P.C. on 07.07.2018 revealed that ASI-Balbeg Singh alongwith police officials produced the accused and case property before him in the police station but GD No.028 dated 07.07.2018 (Ex.DB) revealed that said SHO was informed through telephone by ASI Balbeg Singh that 15 injections of Buprenorphine, 02 ml each had been recovered from the accused, on which the SHO reached on the spot and he alongwith Investigating Officer and other police officials reached the Court complex alongwith case property etc.

As per PW-4 HC-Balbir Singh, the case property parcel containing 13 injections of Buprenorphine, 02 ml each, sealed with seal of Court 'LS', one sample parcel containing one injection Buprenorphine, 02 ml, sealed with seal of Court 'LS' and another sample parcel containing one injection Buprenorphine, 02 ml, sealed with seal of Court 'LS' alongwith

other articles were deposited with him on 07.07.2018 in the Police Malkhana by Inspector/SHO Shahbaaz Singh but in his cross-examination, he deposed that the Investigating Officer deposited the case property with him on 07.07.2018. PW-5 SI-Balbeg Singh deposed that the case property after inventory proceeding was handed over to him for depositing it with MHC.

The prosecution case had become doubtful as per the variations to deposit the case property in Police Malkhana.

Another fact which the lower Court had observed that PW-5 SI Balbeg Singh, Investigating Officer, in his cross examination deposed that he had conducted personal search of the accused on the basis of suspicion and accused was apprised of his legal right before conducting his personal search. He deposed that the accused was not taken to the nearest Gazetted Officer or Magistrate before effecting recovery. Ruqa (Ex.PW-5/A) and consent memo (Ex.PW3/A) revealed that an offer was given to conduct personal search of the accused. These documents coupled with admissions on the part of recovery witness and Investigating Officer revealed that personal search of the accused was conducted by him (i.e. PW-5).

In the present case, the accused was not taken before any Gazetted Officer or Magistrate before effecting recovery of injections, the mandatory provisions of Section 50 of the NDPS Act were not complied with and the prosecution had not led sufficient evidence to show how initial recovery of 15 injections was effected but 13 injections were deposited in the Police Malkhana with different seal impressions. Further, there were variations to deposit the case property in Police Malkhana. The Lower Court had rightly given the benefit of doubt to the accused.

Keeping in view of above observations, no ground to interfere in the judgment dated 03.08.2019 is made out.

Appeal is hereby dismissed.

(RITU BAHRI)
JUDGE

05.05.2022
Divyanshi

(ASHOK KUMAR VERMA)
JUDGE

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