

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

CRA-S-348-2021 (O&M)
Reserved on: 25.08.2022
Date of decision: 30.08.2022

GOMA KAUR

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. K.S. Sidhu, Advocate
for the appellant.

Ms. Ishma Randhawa, Addl. A.G. Punjab

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict recorded on 01.02.2021, upon NDPS Case No.443/2019 where through the learned Special Court, Sangrur made a verdict of conviction, upon the accused in respect of charges drawn for an offence punishable under Section 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, (hereinafter referred to as “the Act”). Moreover, through a separate sentencing order drawn, on 01.02.2021, the learned Special Court convicted the convict in the hereinafter extracted paragraph.

*“xxx he is sentenced to undergo rigorous imprisonment for a period of **Four Years and fine of Rs.30,000/-, in default of payment of fine, he will further undergo Rigorous Imprisonment for One Year, U/s 22 of the Act.**”*

2. The convict becomes aggrieved from the above drawn verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed

upon her by the learned Special Court, and, is led to institute thereagainst the instant appeal before this Court.

3. The learned counsel for the appellant, has made a vigorous submission before this Court that, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes recorded, and, imposed upon the convict by the learned trial Judge concerned, does suffer from a gross perversity, absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. Consequently, he has argued that the impugned verdict be quashed, and, set aside.

4. The crime incident occurred at Patiala bypass near Kairon Factory. The time of occurrence is 12.15 noon, and, the convict on a prior information, with the police in respect qua hers indulging in sale of intoxicant tablets, rather became sighted at the crime site, by the police, to throw on the ground a green coloured polythene bag as held, in her right hand, and, as such, she became apprehended at the crime site. The police subsequent to apprehending the convict, intimated her that there is some intoxicant substance kept inside the polythene bag, which became thrown onto the ground, and, that they intend to conduct search of the polythene bag concerned. Though, in respect of search of the polythene bag which became thrown onto the ground, rather no apposite consent of the convict was required to be elicited from her, but yet the investigating officer concerned, prepared consent memo Ex.P-B, and, under her signatures made thereons, the convict reposed confidence in the police to make search of the polythene bag. On search of the green coloured polythene bag being made, it was found to contain 50 strips of tablets make Alprasafe .05 bearing batch No. PCCAA359 MFG date 01/2019 EXP. Date 12/2021, each strip containing 10/10 tablets, besides 10 strips of intoxicant tablets make Clovidol

100SR bearing batch No. TVD 18127 MFG Feb 2019, EXP Jan 2022 each strip containing 10/10 strips. The investigating officer concerned, prepared, at the crime site, the cloth parcels of the above recovered intoxicant tablets. The cloth parcel was sealed with impression JS. The seal after use was handed over to HC Daljeet Singh. Moreover, a recovery memo Ex.P-C was also prepared in respect of the above recovery.

5. The police officer produced the cloth parcel before the SHO of the police station concerned, who thereafter, upon, verifying the facts of the case, put thereons his seal counter impression RS. Subsequently the case property was deposited with the in-charge of the malkhana concerned.

6. On the subsequent thereto date i.e., on 15.03.2019, the investigating officer concerned, produced the case property along with the accused, before JMIC(D) Sangrur. The JMIC(D) Sangrur, upon the case property becoming produced before him, after breaking the seals embossed, upon the cloth parcel, proceeded to draw 2/2 samples of each category from each category concerned, and, 4 representative samples became sealed with the seal of the Court, bearing impression AM, besides the remaining case property was also sealed with the seal of the Court, bearing impression AM. Moreover, the learned JMIC(D) Sangrur through an order comprised in Ex.PH/1 ordered for the depositing of the case property in the police malkhana.

7. The case property is testified by PW-4 to be taken by him, on 19.03.2019 to the FSL concerned, but he testifies that it was handed over, at the FSL concerned, rather on 20.03.2013. The opinion as made by the FSL concerned, on the stuff inside the sample cloth parcels concerned, is enclosed in Ex.PL, contents whereof are extracted ad-verbatim hereinafter.

“xxx

1. Report No.: 1134/2019/Toxi/FSL/Pb, dated 04.6.19

2. Reference No.: Unique code NO.127/19 DPO/Sangrur, dated 19.03.2019.

From: The Senior Superintendent of Police, Sangrur.

3. Case reference: FIR No.49 dated 14.03.2019, U/S 22/61/85 ND & PS Act, PS: City Sangrur.

4. Date of Receipt: 20.03.2019

5. Mode of Receipt: Through L/Ct. Hardeep Kaur, No.608/SGR.

6. Articles Received: Two sealed parcels marked as 1 and 2 in the laboratory, alleged to be seized from S/V Goma Kaur, each sealed with one seal of 'AM' alleged to contain intoxicating material.

Seals on the parcels were found intact and tallied with the specimen seal impressions.

7. Quantity of Sample: **Parcel No.1**: 10 tablets of peach colour in a strip labelled as 'ALPRSAFE-0.5.

Average weight = 116 mg/tablet

Parcel No.2: 10 tablets of white colour in a strip labelled as 'Clovidol-100SR (Tramadol Hydrochloride Tablets).

Average weight = 398 mg/tablet.

8. Purpose of Reference: Analysis and Report.

9. Identification & Tests:

Parcel No.1

Alprazolam: Found present in the tablets contained in the parcel no.1

Average Quantity: 0.41 mg/tablet

Parcel No.2

Tramadol Hydrochloride: Found present in the tablets contained in the parcel no.2.

Average Quantity: 98.35 mg/tablet

REPORT

The tablets contained in the parcels no.1 and 2 under reference have been analyzed separately by chemical TLC and instrumental analysis. On the basis of analysis, average 0.41 mg/tablet Alprazolam has been found present in the tablets contained in the parcel no.1 and average 98.35 mg/tablet Tramadol Hydrochloride has been found present in the tablets contained in the parcel no.2.

I caused it examined

Sd/- Asst. Director (Toxi)

Assistant Director (Toxicology)

Forensic Science Laboratory

Punjab Phase-IV, S.A.S. Nagar

Examined by

Sd/- (GURPREET SINGH)

(Scientific Officer (Toxicology)

Forensic Science Laboratory

Punjab Phase-IV, S.A.S. Nagar”

8. The report of the FSL concerned, which has been *ad-verbatim* reproduced hereinabove, though reveals that, at the time of the sample cloth parcels becoming received in the FSL concerned, rather the sample cloth parcels carrying Court seal impression AM, but subsequently after the retrievals therefrom qua the stuff inside each, and, whereafter the apposite stuff, upon, becoming analysed, and, examined, it became opined, that it contains the prohibited substance, but significantly the Chemical Analyst concerned, did not yet proceed to re-enclose the examined stuff, into the cloth parcels nor did he proceeded to emboss thereons, rather the seal impression of the FSL concerned. The result of the above omission, does cause the inevitable effect, that the prosecution has been unable to link the opinion of the FSL, as carried in Ex,PL, with the bulk parcels, which however never became sent for analysis to the FSL concerned. The further consequence thereof, is obviously that the bulk parcels concerned, cannot be concluded to be also containing the prohibited substance.

9. The above infirmity was curable through the Public Prosecutor concerned, casting an appropriate motion before the learned Special Judge concerned, that yet samples being drawn from the bulk preserved in the police malkhana concerned, and, theirs through a validly drawn certificate, rather being sent, to the FSL concerned. However, the Public Prosecutor concerned, never cast the above motion before the learned Special Judge concerned, and, the above omission, begets a sequel, that the prosecution for proving the charge against the accused depended, only upon Ex.PL, which however for reasons (*supra*), does not link the opinion made therein rather with the bulk parcel(s).

10. An additional fortification to the above inference, becomes garnered from the factum that, not only the bulk parcels were required to be produced in Court, but also the sample cloth parcels, as sent to the FSL

concerned, under a validly drawn road certificate, were also necessarily required to be produced in Court, to ensure that, not only upto the transmission of the sample cloth parcels to the FSL concerned, the thereons made Court seal impressions, remained untampered with or remained intact, but also necessarily required that, after examination of the stuff inside the cloth parcels, the Chemical Analyst concerned, not only re-enclosing the stuff examined inside the cloth parcels, but also embossing thereons', the seal impressions of the FSL concerned. However, as above stated, the above did not happen, and, nor did the Public Prosecutor concerned, despite the above infirmity, cast any motion for the requisite purpose before the learned Special Judge concerned, with the resultant ill-sequel, that the infirmity (supra), hence percolating the report of the FSL rather remaining alive.

11. The above narrated necessities are not merely perfunctory nor are mechanical, rather work towards unflinchingly proving the charge drawn against the accused. The charge would become efficaciously proven, only when the stuff inside the cloth parcels, is opined to be the apposite prohibited substance, which though however, is revealed in Ex.PL, but yet the FSL concerned, was to re-enclose the stuff examined inside the cloth parcels concerned, and, was to also emboss thereons, the seals of the FSL, as, then the cloth parcels would become retrieved to the police malkhana concerned, for thereafter theirs becoming produced before the learned Special Judge concerned, which again never happened.

12. The sample cloth parcels whereons an adverse opinion, becomes drawn against the convict, by the FSL concerned, can never become the property of the FSL concerned, "but is case property" and, is obviously required to be returned, by the FSL concerned, to the police malkhana concerned, for thereafter

its becoming produced in Court, as, only upon its production in Court the factum of its provenly becoming linked with the road certificate, and, also its apposite link, with the report of the FSL, would become established, and, also rather only when after examination of the stuff inside cloth parcels, the same, became re-enclosed in them, and, thereafter the seals' of the FSL become also embossed, hence, on each of the sample cloth parcels. Reiteratedly the above has not happened, and, as above stated despite the sample cloth parcels comprising the case property, they became unlawfully retained, at the FSL concerned. Even otherwise, the incriminatory opinion of the FSL concerned, is required to be corroborated, by the production of the apposite sample cloth parcels, as, sent to it, rather before the learned trial Judge concerned, as the primary evidence for relying, upon the report of the FSL concerned, is the stuff inside the sample cloth parcels concerned. The reason being that alike, the report of a Handwriting Expert concerned, which becomes bedrocked, upon the apposite documents sent to it for comparison, and, as such, the writings concerned, becoming necessarily to become appended with the apposite report, as they are rather the best primary evidence for supporting the report of the FSL concerned, also rather, the stuff inside the sample cloth parcels, is the apposite primary evidence to not only prove the charge, but also for corroborating the incriminatory opinion, as made thereons, by the Chemical Analyst concerned, therefore, the primary evidence (supra), is required to be produced in Court, and, also is required to be proven to be then in an untampered condition.

13. Even otherwise, the above necessity of the above legally enjoined acts, becoming performed by the Chemical Analyst working, at the FSL concerned, does apart from reasons (supra), also facilitate the convict, to ask for apposite re-examinations from the FSL concerned, but that would happen only

when the sample cloth parcels are produced in Court. The facilitation to the accused to ask for re-examination of the stuff inside sample cloth parcels, rather by the FSL concerned, whereons an adverse opinion is earlier made by the Chemical Analyst concerned, does necessarily ensue to the accused, as the report of the FSL concerned, has only a presumption of truth, and, obviously its opinion, does not enjoy any conclusivity in law. Therefore, for facilitating the accused, to rebut the opinion of the FSL concerned, rather the production of the sample cloth parcels, in Court after their retrieval from the police malkhana concerned, is, of utmost significance. However, neither the above defence has been purveyed to the accused nor obviously any opportunity has been given to the accused, to rebut the presumption of truth, enjoyed by the report of the FSL concerned, to which Ex.PL is assigned, and, all the above hindrances to the accused hence for his efficaciously propagating his defence, have made their emergence, only because the FSL concerned, has not returned the sample cloth parcels to the FSL concerned, and, nor obviously the sample cloth parcels, as, became sent to it, never became produced in Court. Resultantly, on the above ground also, the adverse opinion, as made on the stuff inside the sample cloth parcels concerned, cannot become the plank for concluding that, the presumption of truth, if any, as attached to it, being linked either to the bulk, and/or, it carrying any legal efficacy, given apparently the stuff inside, the sample cloth parcels concerned, becoming probably destroyed, and/or, not being preserved.

14. Be that as it may, no evidence also has been adduced by the prosecution suggestive that the crime bag from which the relevant recovery, is made, despite its being thrown onto the ground rather becoming owned by the convict. For the lack of cogent evidence in respect of the convict owning the

crime bag, this Court, is convinced that the charges drawn against the accused remains unproven to the guilt.

15. The result of the above discussion is that, the impugned verdict suffers from a gross infirmity, of gross misappraisal of the above, and, requires its being annulled, and, set aside.

16. An explanation for the above omission be called for, by the Director of Prosecution Punjab, from the Chemical Analyst concerned, and, if the explanation is found deficit, thereupon he is directed to draw appropriate lawful proceedings against the errant concerned.

17. In consequence, there is merit in the instant appeal, and, the same is allowed. The impugned verdict, as, drawn, upon the convict, by learned Special Court concerned, is quashed, and, set aside. The personal, and, surety bonds of the convict are directed to be forthwith cancelled, and, discharged. The convict if in custody, and, if not required in any other case, is directed to be forthwith released from prison. Release warrants be accordingly prepared. Fine amount, if any, deposited by the accused be forthwith refunded to her, but in accordance with law. Records of the Court below, be sent down forthwith. Case property, if not required, be dealt with, and, destroyed after the expiry of the period of limitation

18. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

30.08.2022

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