

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

**Crl. Misc. No. A-292 of 2021
Date of decision : 07.07.2022**

State of Punjab

....Applicant

versus

Pankaj Kumar @ Raju

...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.

RITU BAHRI, J.

The present application has been filed by the applicant-State against the judgment dated 21.01.2020 passed by learned Judge, Special Court, Fatehgarh Sahib, vide which accused-Pankaj Kumar @ Raju was acquitted of the charges framed against him in F.I.R No. 11 dated 11.02.2018 under Sections 22/61/85 of NDPS Act.

Brief facts of the case as noticed by the Court below reads as under:-

“On 11.2.2018 ASI Kaur Singh was posted at PS Badali Ala Singh. On that day, he along with other police officials on private vehicle in connection with patrolling and checking of suspected persons was present on the boundary of village Bhagrana, T-point village Timberpur. At about 11.05 AM, accused was coming on motorcycle bearing registration no. PB-235-7310 make hero honda of silver colour from the side of village Badali Mai Ki. On seeing the police party, he got perplexed and tried to turn towards back side, but on the basis of suspicion, he was apprehended by him with the help of accompanying police officials. On inquiry, he disclosed his name as Pankaj kumar @ Raju son of Vijay kumar, resident of village Tajpur, PS Bassi Pathana, District Fatehgarh Sahib. ASI Kaur Singh also disclosed his name identity and designation to him and apprised him that he suspected that he had some intoxicant substance with him and showed his intention to conduct his search.

ASI Kaur Singh apprised the accused that he had legal right to get his search from some gazetted officer or magistrate and if he had the intention, then said gazetted officer or magistrate could be called at the spot or he could be taken before said Gazetted officer or Magistrate but accused reposed his confidence in the police party for conducting his search: The memo of consent was prepared. I made efforts to join some private witness but none had joined from the public. Then the search of accused as well as search of his motorcycle was conducted and the same led to recovery of 60 strips of Lomotil tablets, each strip containing 20 tablets, from left pocket of the jacket grey colour worn by accused. The strips were having lot No. 03L17066, manufacturing date 09/2017, expiry date 08/2020. These tablets were wrapped in transparent polythene bag. On asking, accused could not produce any license or permit authorizing him to possess the tablets recovered from him. The recovered strips were reduced into parcel, which was sealed by IO with seal impression KS. Separate sample chit was prepared. Seal after use was handed over to SI Sandeep Kaur. Form no.29 was partly filled at the spot. Case property parcel along with sample parcel were taken into police possession vide separate memo. Ruga was drafted and sent to Police Station for registration of FIR through HC Gurcharan Singh and on the basis of which FIR was registered by SI Jaswant Singh. Site plan was prepared with correct marginal notes. Accused was arrested vide memo. Personal search of accused was conducted and same led to the recovery of Rs.50/- which was taken into police possession vide separate memo. Intimation regarding arrest of accused was given to his wife through mobile phone. Motorcycle of accused was taken into police possession vide separate memo. Statements of witnesses were recorded. Statement of carrier of ruga after his arrival on the place of recovery was recorded and the FIR number was inserted in the documents/memos of the case wherever it was required to be inserted. On return to police station case property parcel, accused, witnesses, form no.29, sample chits, motorcycle, personal search articles were produced before officiating SI Jaswant Singh who verified the facts and quantity of the contraband from the witness and accused. After his satisfaction he put his seal bearing impression JS. Seal chits were attested. He deposited the case property with MHC, Accused was put behind the bars. On the next day, IO withdrew the case property from MHC and took out the accused and produced the same before the Magistrate and moved applications for getting attested the case property and for obtaining the order for depositing the case property in judicial Malkhana and for seeking the order of Court regarding disposal of case property. Representative samples were drawn in the Court thereafter as per order, IO deposited the case property with Judicial Malkhaana except one sample parcel of the same and one specimen seal chit and same was deposited with the MHC of police Station on return to the Police Station. Sample was sent through C.Raminder Singh to office of FSL Mohali for chemical examination.

After receiving the chemical report and completion of investigation the challan was prepared by SI Gaganpreet Singh SHO and presented against the accused.

3 Upon receipt of report of chemical examiner and completion of investigation, challan was presented in the court.

4. Copies of the report under section 173 Cr.P.C along with relevant documents were supplied to the accused free of cost. Charge under sections 22 of the Act was framed against accused to which accused pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined Surjit Singh as PW1, C. Rupinder Singh as PW2, CII Baldhir Singh as PW3, SI Jaswant Singh as PW4, ASI Kaur Singh, IO as PW5, SI Sandeep Kaur as PW6 and thereafter learned Addl.P.P closed the prosecution evidence.

6. Thereafter statement of the accused under Section 313 Cr.P.C. was recorded in which the incriminating circumstances appearing against him in the prosecution evidence was put to him, to which he denied and pleaded innocence and closed his defence evidence.”

In the present case, the only argument raised by learned counsel for the applicant-State is that the accused has wrongly been acquitted only on the ground that Section 50 of the NDPS Act has not been complied with. It has been argued that it was a case of chance recovery and the PWs fully proved the recovery from the accused.

After hearing learned counsel for the applicant and after going through the judgment, the present application deserves to be dismissed.

In the judgment passed by the Court below, it has been held that the complainant and the Investigating Officer is the same person i.e ASI Kaur Singh and such complainant cannot be the investigating officer. Reference was made to judgment i.e **Mohan Lal vs. State of Punjab** AIR 2018, Supreme Court 3853 wherein in para No. 14 it has been held as under:-

“In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the every face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not

fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality it is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.”

In the present case, the Investigating Officer in his examination in chief has stated that at the alleged place of recovery, he was present on the boundary of the village Bhagrana T-point village Timberpur and there are some shops. The investigating officer could have called the Sarpanch of the village. Further Investigating Officer did not note down the name and addresses of the persons who refused to joint as independent witnesses.

Learned counsel for the applicant has not been able to point out any other evidence which the lower Court has misread or which can lead to conviction of the accused. Thus, the accused have rightly been acquitted by the Court below.

Accordingly, the application stands dismissed.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

07.07.2022
G Arora

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