

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

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**CRA-AS-128-2022 (O&M)
Date of Decision: 04.07.2022**

STATE OF U.T. CHANDIGARH

... Appellant

Versus

SHANKAR

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. J.S. Toor, Addl. P.P. for U.T., Chandigarh.

VINOD S. BHARDWAJ, J. (ORAL)

The instant appeal has been preferred by the State of U.T., Chandigarh against the judgment dated 05.12.2019 passed by the Judge, Special Court, Chandigarh in case bearing FIR No.166 dated 18.07.2016 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Mani Majra, Chandigarh.

In order to adjudicate the present case, the brief facts of the case of prosecution are referred to hereby below:

- (i) That the case of the prosecution is that on 18.07.2016, Sub Inspector Inder Singh alongwith other police officials was on patrolling duty in front of Gate No.2, Shivalik Garden, Mani Majra. At about 8.40 P.M., one person was coming from the Shanti Nagar side on foot and on seeing the Police Party he turned back. On suspicion that the said person might be carrying some stolen article, they apprehended that person. Thereafter, he tried to throw one tiffin which was being carried by him in his hand but he was not allowed. After opening the same, it was found to be containing

Charas. SI Inder Singh requested public persons to join the investigation, but none agreed to join the same. The said person disclosed his name as Shankar and was unable to produce any licence or permit for carrying the said contraband. SI Inder Singh weighed the said contraband on Electronic Weighing Machine and the weight came out to be 220 grams. Thereafter, SI Inder Singh drew two samples of 10 gms each and sealed them in the separate sealed parcels with the seal of CS at two places and the remnant was also sealed in the sealed parcel with seal of CS at two places. SI Inder Singh prepared the seizure memo and also filled the test memo form. SI Inder Singh prepared ruka and sent it same through Constable Rakeshwari Kumar to police station for registration of the F.I.R. He also gave the information for sending the second I.O. to the spot. After some time, second I.O. SI Rohit Kumar reached the spot. SI Inder Singh handed over the case property as well as accused to second I.O. vide memo. Second I.O. prepared the rough site plan at his instance. Second I.O. arrested the accused vide memo and conducted his personal search vide memo. On completion of investigation, challan was put up in the court for trial.

- (ii) On presentation of challan, copy thereof was supplied to the accused free of costs.
- (iii) A prima facie case under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the Act) was made out against the accused, he was charge sheeted on

02.08.2017. Contents of the charge sheet were read over and explained to the accused in simple Hindi to which he pleaded not guilty and claimed trial.

- (iv) The prosecution in order to prove its case has examined as many as seven witnesses.

The prosecution evidence was duly considered by the Judge, Special Court, Chandigarh and upon consideration thereof, several discrepancies in the evidence of the prosecution were noticed and it was recorded that the prosecution has miserably failed to prove the offence in question beyond a shadow of reasonable doubt and that the recovery itself was suffering from suspicious circumstances. Furthermore, no independent witness was joined to lend credence to the prosecution story. It was also noticed that the testimonies of the police officials also suffered major contradictions. The relevant parts of the observations recorded by the Judge, Special Court, Chandigarh, are reproduced herein below:

“15. Further, if we go through the evidence of members of patrolling party and the SHO, it is clear that the seal was not properly used and there are material discrepancies with regard to use of seal, which makes the prosecution case highly doubtful. SI Inder Singh has stated that samples were sealed with the seal of CS but he has no knowledge whose seal it was through he used the seal of CS after drawing it from his kit. Further, he has stated that after use the seal CS was handed over to HC Jaspal Singh PW2 but he has denied this fact. Whereas PW5 SI Rohit Kumar who was second I.O. has stated that after reaching the spot he did not record the statement of first IO SI Inder

Singh but as per SI Inder Singh he got recorded his statement from SI Rohit Kumar and further stated that seal DR was affixed on the parcel of the contraband and SI Rohit Kumar wrongly recorded that he affixed seal of DR impression on the contraband whereas as per I.O. Inder Singh the seal was of CS impression. This creates a serious doubt because SI Inder Singh has failed to give any explanation how he had stated in his statement to SI Rohit Kumar that seal DR was used by him while sealing the parcel of the sample as well as of the remnant contraband. PW5 SI Rohit Kumar has stated that seal CS belongs to SI Inder Singh but SI Inder Singh had denied it and even he has failed to tell if the seal CS was not belonging to him then to whom it belongs to and how it came in his possession. Further, the recording the statement of SI Inder Singh at the spot by SI Rohit Kumar becomes highly doubtful because the statement of SI Inder Singh shows that it was recorded on 30.03.2015 and not on 18.08.2016. Though SI Rohit Kumar had stated that he did not record the statement of SI Inder Singh on 30.03.2016 but again he had failed to give any explanation then how the date 30.03.2016 surfaced on the statement of SI Inder Singh. Meaning thereby SI Rohit deposed against the record, hence not given the true version. Keeping in view the statement of both the material witnesses i.e. PW5 and PW6 possibility of tempering of the case property as well as sample cannot be ruled out. Failure in the evidence by the witnesses to say when the statement of first Investigating Officer was recorded by the second I.O. and whether their seal CS or DR was used by the first IO and more so it creates suspicion whether after use the seal was handed over to

whom is a very serious bearing upon authenticity of the prosecution case. Moreover, case of the prosecution is that after completing the formalities at the spot accused alongwith other documents was produced before the SHO in the police station who after verifying the facts affixed his seal on each parcel and prepared the sample seal and handed over the same to PW3 HC Sakattar Singh MMHC but HC Sakattar Singh has categorically denied this fact stating that SHO did not hand over him seal affixed by him. PW3 has also stated that he has no knowledge to whom the seal CS belongs to. Possibility of tempering of the case property as well as sample cannot be ruled out. It is a technical offence and the safeguards provided in the enactment requires a strict compliance. Possibility of tempering of the case property as well as sample cannot be ruled out. Reliance can be laid in **Vainkat Rao Vs. State of Chhatisgarh** Law Finder Doc ID # 1470I.O., 2006 CrL.LJ 2326 and **State of HP Vs. Shadi Lal** 2016 CrL.L.J I.O.25 HP.

16. The case of the prosecution further becomes doubtful because as PW6 SI Inder Singh and PW2 HC Jaspal Singh, recovery memo of the contraband Ex.P2, handing over memo of the contraband Ex.P3 and test memo form Ex.P13 were prepared by the I.O. before reaching the ruqqa carrier C.Rakeshwari at the spot after lodging the FIR but perusal of the recovery memo Ex.P2, test memo form Ex.P13 and the handing over memo Ex.P3 reveals that FIR No.166 is already mentioned there. The question arises if these documents were prepared by the 1st I.O. at the time of apprehending the accused and before sending C. Rakeshwari for lodging FIR alongwith the ruqqa in

police station then how the FIR number was known to Ist I.O. which he had mentioned on these documents. This fact clearly demolish the very foundation of prosecution case. Rather the argument of learned defence counsel find force that prosecution has concocted a fake story and all these documents were prepared while sitting in the police station.

17. Further, PW7 Inspector Harminderjit Singh has stated that he handed over the case property and sample seal to MMHC on 18.07.2016 and seal to C. Rakeshwari but C. Rakeshwari was not examined thus link evidence is missing. PW7 Inspector Harminderjit Singh has stated that SI Rohit Kumar has recorded his statement on 15.09.2016 but again said on 18.07.2016 but the statement of Inspector Harminder Singh is of 30.07.2016. He has also no knowledge about the seal impression of DR. This is material contradiction in the statement of prosecution witnesses. PW2 HC Jaspal Singh further deposed that he remained at the spot till I.O..30PM whereas SI Rohit Kumr with whom HC Jaspal Singh remained till completing the whole proceedings at the spot and also associated him till the police station when the recovered contraband as well as the accused alongwith documents prepared at the spot was produced before the police station, stated that they remained at the spot till 12 O'clock but he also stated that he reached in the police station at 11PM. It again creates suspicion over the prosecution story that if the second I.O. after completing the proceedings at the spot reached in the police at 11PM then there was no occasion for the police to remain present at the spot upto 12 O'Clock.

18. Further, PW6 SI Inder Singh and PW2 HC Jaspal have categorically stated that no independent witness was joined in the investigation despite the fact that occurrence spot was a thoroughfare and the availability of many persons were there on the spot at time of occurrence. Police should have joined the independent witness to lend credence to the prosecution story because the testimony of the police witnesses suffers from major contradictions. So in this situation non joining of independent witnesses creates suspicion over the prosecution story. Though it was stated by the first I.O. and other police officials associated by him that they tried to join some independent witness but they refused to become witness. Their names were not asked, police did not try to know about their names nor any action was taken against them. Our Hon'ble High Court in **Amarjit Singh Vs. State of Haryana** 2008 (3) RCR (Criminal) 502 has held that if such person had shown their unwillingness to join the investigation the IO should have recorded a note to this effect in the case diary and in absence of such the explanation given by the police is not satisfactory. PW SI Inder Singh, SI Rohit, HC Jaspal Singh were material witnesses but their testimony is not of credit-worthy, reliable or convincing hence does not create confidence in the mind of Court.”

Upon consideration of the reasons mentioned by the Judge, Special Court, Chandigarh, it is evident that all the crucial aspects have been duly considered by the trial Court. The findings recorded by the Court thus cannot be said to be perverse or unsustainable. Learned Addl. P.P. for the U.T. Chandigarh could not indicate or refer to any evidence to show that

the findings recorded in the impugned judgment suffer from misappreciation of evidence or is in defiance of settled position in law.

In view of the above, there is no ground warranting interference in the impugned judgment passed by the Judge, Special Court, Chandigarh. Accordingly, instant appeal stands dismissed.

(VINOD S. BHARDWAJ)
JUDGE

04.07.2022
rajender

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**