

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-A-1802-2019 (O&M)

Date of Decision: 18.07.2022

State of Punjab

...Appellant

V/s.

Rajni Kant

.....Respondent

CORAM: **HON'BLE MR. JUSTICE G.S. SANDHAWALIA**
HON'BLE MR. JUSTICE VIKAS SURI

Present: Ms. Anju Arora, Addl. AG Punjab for the appellant

G.S. SANDHAWALIA, J. (Oral)

Application has been filed under Section 378(4) of the CrPC for leave to appeal against the judgment of acquittal dated 31.01.2019 passed by the learned Special Judge, SBS Nagar in FIR No.47 dated 05.06.2017 under Sections 21/22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act') registered at PS Behram.

The trial Court has framed the following four questions for determination:-

1. Whether the complainant and investigating Officer is one and the same police official in this case, if so its effect?
2. Whether mandatory provision of Section 50 has not been complied with, if so its effect?
3. Whether non-joining of Independent witness is fatal to the prosecution case?
4. Whether the prosecution has been able to prove on record charge against the accused beyond the reasonable doubt?

The issue was as to whether the charge which had been framed under section 21 of the NDPS Act was made out regarding the issue as to

whether the accused was carrying 15 injections of Buprenorphine of 2 ML each and 20 injection vials of Avil containing 10 ML each. It is to be noticed the SI Amrik Singh who had conducted the investigation had appeared as PW4 and therefore keeping in view the fact that the accused had not been apprised of his legal right to get the search effected in the presence of Gazetted Officer or a Magistrate vide consent memo Ex.P1 since the accused was not taken before any Gazetted Officer or a Magistrate in order to carry out their search acquittal has been recorded. Reliance was placed on the **Arif Khan @ Agha Khan vs. State of Uttarakhand, 2018 (2) RCR (CrL) 931**, that the benefit of violation of statutory provisions of Section 50 as such necessarily will have to go to the respondent-accused more-so on account of the fact that on account of acquittal, there is double presumption of his innocence as per the settled principle of law. It was noticed that as per Section 52A(2) of the Act, the inventory report is to be prepared by the Station House Officer but inventory report (Ex.P11) showed that the same was prepared by the Investigating Officer Amrik Singh PW4, which also bore his signatures and therefore the provisions of Section 52A(2) had been attracted. Reliance in this regard was placed on the **Jasbir Singh vs. State of UT Chandigarh 2015(4) RCR (CrL) 48**.

Various other lacunae were noticed by the trial court in so far as the PW3 HC Sarbjit Singh in his cross examination stated that the arrest memo of the accused was prepared at 11.00 PM, but recovery memo was prepared at 11.05 PM, and consent memo was prepared at 11.15 PM which showed that the accused had already been arrested, which was in violation of law. It is accordingly held that the presence of PW3 as such was doubtful at the time of recovery since PW3 HC Sarabjit Singh stated that the writing work was done by Investigating Officer and there is no village near the place of

recovery, but PW4 SI Amrik Singh IO had stated that all the writing work was done by him but the place of recovery is surrounded with villages.

The recovery memo (Ex.P3) was examined to record that there were 15 injections of Buprenorphine having Batch No.LG06 of 2 ML each and 20 Avil Pheniramine Maleate injections were recovered but the order of the learned Magistrate dated 05.06.2017 (Ex.P17) before whom the case property has been produced, there was no mention of 15 injections of Buprenorphine whereas the chemical examiner report (Ex.P19) showed that the parcels of glass ampule of Leegisic was produced for chemical analysis. Resultantly, it was held that different versions have come regarding the intoxicant injections said to be recovered in this case and there was no explanation on the part of the prosecution to explain such material contradictions. Rather serious doubt has been raised about the recovery of the Buphranorphine Hcl ampules from the accused. It was accordingly noticed that the mandatory provisions of Section 50(1) had been violated as there was no Gazetted Officer or a Magistrate called and the accused was not informed of his right that he could be discharged if so desired by the Gazetted Officer or Magistrate. Therefore, it was not held to be a valid offer and as such serious prejudice had been caused to the accused and the benefit of acquittal has been given.

Apart from that it was also noticed that the contraband as such has been produced before the Magistrate in Court for drawing samples and that the sample sent to the Chemical Examiner bore the seal bearing impression "AS & KS" of Investigating Officer SI Amrik Singh and SHO Kashmir Singh but no sample bearing the seal of the Ld. Magistrate was sent to the chemical examiner for analysis. The samples which were to be sent which had been sealed by the Magistrate with seal "TS" had not been sent and

therefore, there was a violation of the directions of Apex Court in **Union of India vs. Mohan Lal (2016) 3 SCC 379**. The overzealousness of the police officer was also kept in mind and on that account acquittal has been recorded by noticing that the origin of the contraband has also not been traced, and the sample was received in the Laboratory on 12.06.2017 which was after one week and therefore there was considerable delay in sending the same.

We have gone through the record of the case and are satisfied that the accused has been put to grave prejudice in the manner in which the investigation has been conducted and the mandatory provisions have not been complied with. It is settled principle that on account of acquittal of the accused, there is double presumption of his innocence in favour of the accused. The judgment as such impugned does not suffer from any perversity which would warrant interference by this Court in the facts and circumstances of the case.

Reliance can also be placed on the judgment of the Apex Court in **State of Rajasthan vs. Parmanand & Anr., (2014) 5 SCC 345**, wherein the provisions of Section 50 were also discussed. The Apex Court in the said case as such was dealing with the acquittal which had been rendered by the Rajasthan High Court which had reversed the conviction recorded by the trial Court. It was accordingly held “most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual, and the accused must be made aware of the existence of such a right. This right was held to be of little significance if the beneficiary thereof was not able to exercise it for want of knowledge about its existence.

The said provision has been blatantly violated in the present case by not associating the Gazetted Officer or Magistrate at the time of the search. Therefore, we are of the considered view that the findings recorded by the Trial Court as such do not suffer from any infirmity which would warrant interference by this Court.

Dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

18.07.2022
V.Vishal

Whether speaking / reasoned	:	Yes /No.
Whether Reportable	:	Yes/No