

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-119-2022

Date of decision: 27.10.2022

State of Punjab

....Appellant(s)

Versus

Lovepreet Singh @ Love

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Arjun Sheoran, DAG, Punjab.

G.S.SANDHAWALIA, J.

The present application has been filed under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment of acquittal passed by the trial Court, Gurdaspur dated 06.01.2020, whereby acquittal has been recorded of the respondent in FIR No. 52 dated 04.06.2018 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act'), P.S. Dhariwal against the charge for being in conscious possession of 150 grams of intoxicant powder containing active salt Alprazolam.

The Special Court, Gurdaspur acquitted the respondent by giving him the benefit of Section 50 of the Act while placing reliance upon the judgments of the Apex Court in *Vijaysinh Chandubha Jadeja vs. State of Gujarat, 2010 (4) RCR (Crl.) 911* and *Arif Khan @ Agha Khan vs. State of Uttarakhand, 2018 (2) RCR (Crl.) 931*. Reliance was also placed upon the judgment in *Nirmal Singh Pehlwan @ Nimma vs. Inspector, Customs, Customs House, Punjab, 2011 (3) RCR (Crl.) 831* to come to the conclusion that mandatory provisions had to be strictly complied with and the Gazetted

Officer or the Magistrate having not been associated in the search and the accused having not informed about his right, there was blatant violation of Section 50 of the Act. It was also noticed that the number of the FIR had been mentioned in the consent statement (Ex.P-1) alongwith the offence and it was highly improbable and strange that at the time of recording the consent statement, the Investigating Officer was aware of the FIR number and the offence which had been committed by the accused. Therefore, keeping in view the judgment of a Single Bench of this Court in ***Kashmir Singh and others vs. State of Haryana, 2018 (4) RCR (Crl.) 319***, the benefit was granted by holding that it was highly suspicious document.

It was also noticed that though there was non-joining of the independent witnesses which may not be fatal to the prosecution case but the statement of the witnesses being not consistent on material particulars, the non-availability of independent witnesses had given a fatal blow to the prosecution case. It was observed that the residential area was about 2-1/2 kilometers from the place of recovery and it was a big village having a Panchayat but no person had been called and as per the Investigating Officer ASI Jagdish Singh himself, the distance was only 1 kilometer from the residential area. The Investigating Officer had not given particulars of those persons who had refused to join the investigation whereas the statement of HC Kuldeep Singh regarding the non-joining of the investigation was different. It was also noticed that HC Kuldeep Singh had said that 2-4 persons had passed at the time of occurrence while the Investigating Officer Jagdish Singh had told that 10-20 persons had passed during their stay at the spot. It was also noticed that the ownership of the motor cycles used by the police could not be told by the HC Kuldeep Singh and the fact that the

mother of the accused was not given the information regarding the arrest of the accused though the police witnesses had stated so and, therefore, the conclusion was arrived at that both the witnesses were not together at the time of the alleged recovery.

Counsel for the State has mainly tried to argue that the provisions of Section 50 of the Act have wrongly been applied as it was a case of recovery from the polythene in the hand of the accused and not from the person of the accused and, therefore, tried to distinguish the judgments relied upon by the trial Court. It has further been argued that there were minor contradictions as such and the statements were recorded after a period of 8 months and, therefore, witnesses would tend to contradict each other a little and the contradictions are liable to be over looked.

A perusal of the paper book would go on to show that the case of the prosecution was that ASI Jagdish Singh alongwith other police officials were going towards village Jaffarwal in connection with patrolling duty. While reaching the fly over of the said village, the accused was spotted sitting on the motor cycle and on seeing the police party pulled a polythene bag from the pocket of his wearing pant and tried to throw the same but had been apprehended at that point of time. It was at that point he had disclosed his name and efforts had been made to join the public witness. It has also come on record that apart from recovery from the polythene bag and the incriminating material recovered from him, personal search of the accused had also been done and a mobile phone of Samsung make had also been recovered. Ex.P-8 was the search memo as such.

We have also examined the statement of HC Kuldeep Singh,

who has also stated that the personal search of the accused was made apart

from the statement of the Investigating Officer Jagdish Singh, who also, in his examination-in-chief, had stated that he had also conducted the personal search of the accused vide Memo Ex.P-8 and the recovery of the phone had been made.

It has been held by the Apex Court in ***State of Rajasthan vs. Parmanand and others, 2014 (2) RCR (Crl.) 40*** that if personal search is also carried out, there would be contravention of Section 50 of the Act and, therefore, the search of the person of the respondent as such in the absence of the Gazetted Officer or the Magistrate would contravene the provisions of Section 50. Relevant portion of the judgment reads thus:-

*“12. Thus, if merely a bag carried by a person is searched without there being any search of his person, **Section 50** of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, **Section 50** of the NDPS Act will have application. In this case, respondent No.1 Parmanand’s bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, **Section 50** of the NDPS Act will have application.”*

It was keeping in view the said position, the Apex Court as such had upheld the judgment of acquittal by the High Court which had set aside the order of conviction passed by the Lower Court and which is approved by the Apex Court. In such circumstances, the argument raised by counsel for the State that since the recovery was from the bag, the provisions of Section 50 would not be attracted is without any basis.

police party was on the two motor cycles, one owned by the Investigating Officer and the second owned by H.C. Kuldeep Singh, which has come out in the cross examination of the Investigating Officer. HC Kuldeep Singh, in his cross examination, stated that the two motor cycles were owned by the employees of the police but he could not tell who was the owner of the motor cycles and what was their registration numbers, though he remembers the model. It is highly unlikely that the Head Constable who was accompanying the ASI would not remember that one of the motor cycles was owned by the ASI himself and secondly, the ASI had put the ownership of the second motor cycle on him who never admitted that the motor cycle was owned by him. It is, thus, apparent that the police party were not together at any point of time and their statements have thus material discrepancies.

It has also come on record that the accused was earlier involved in a case under Section 379-B and his defence under Section 313 Cr.P.C. was that he was picked up from Fatehgarh Churian, Old Bus Stand by the police officials of the said Police Station on 03.06.2018, a day earlier of the lodging of the FIR by the police party and was falsely implicated. The said aspect was also put to the SHO that the said person had been picked just to increase the ratio of cases under the NDPS Act. The probability of the same as such would increase in view of the fact that no independent person was associated and the fact that the number of the FIR has been mentioned in the documents prepared at the spot. Another aspect which is to be noticed is that the sampling was done in the presence of the Magistrate on 05.06.2016 (Ex.PW-3/D) and the sample was only sent on 18.06.2018 and received by the Forensic Science Laboratory, Amritsar on 22.06.2018. The photographs showing the sampling being done in front of the Magistrate would also go on

to show that the consignment as such, which is stated to be of 150 grams in the polythene bag, was of such a size that it cannot be put into a trouser pocket to be pulled out as alleged in front of the police party. It is also to be noticed that the accused has been prejudiced on several accounts as initially the charge was framed on 08.02.2019 wherein he was stated to be found in conscious possession of 150 grams of intoxicant tablets containing active salt Alprazolam and the said charge was thereafter amended on 16.09.2019 whereby the word 'tablets' was substituted by the word 'powder' after the evidence as such had been recorded of 4 prosecution witnesses. It is also to be noticed that on 05.06.2018 when the sampling was done, it was noticed that the 140 grams of intoxicant powder had been sealed and handed back to the ASI Jagdish Singh for depositing the same in judicial *malkhana*. However, apparently an application was filed thereafter to rectify the said mistake and an order was passed on 03.07.2018 that the remaining quantity was 130 grams which had been returned as two samples of 10 grams each had been separated from the case property.

Thus, keeping in mind the various discrepancies and the fact that the police station was 5 kilometers from the place of occurrence as such and the fact that the FIR number had also been mentioned in the consent memo and it has also come on record that the police official had been sent at 3.30 p.m. to the police station alongwith the *ruqa* and had come back at 5.00 p.m. and the fact that the police party stayed at the fly over from 2.00 p.m. onwards but no independent person was joined in investigation, we are of the considered opinion that in the absence of any independent witnesses to the recovery and the contradictions which have surfaced would go on to show that the presence of the police officials at the spot at the same point of time is

doubtful. Accordingly, we are of the considered opinion that the trial Court was well justified in granting the benefit of acquittal.

Thus, keeping in view the cumulative factors, we are of the considered opinion that the trial Court, who has examined the evidence in detail, did nor err in any manner while acquitting the respondent and there is a double presumption of innocence in favour of the respondent-accused. There is no vice of perversity in the judgment under appeal which would give us reason to reopen the same.

Keeping in view the settled principle of law, we are of the considered opinion that no case is made out to grant leave to appeal against the judgment of acquittal recorded by the trial Court which has been rendered in favour of the respondent. The present application accordingly stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

27.10.2022
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No