

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

Criminal Misc. No.M-43745-2021

Date of Decision: July 04, 2022

Kamaldeep Sharma @ Kanwaldeep Sharma
and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr. A.D.S. Jattana, Advocate for the petitioners.

Mr. B.S.Sewak, Addl.A.G., Punjab.

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HARINDER SINGH SIDHU, J.

This petition has been filed for setting aside the order dated 15.09.2021 (Annexure P-10) of the Ld. Special Court, SAS Nagar, Mohali whereby, the application filed by the prosecution under Section 311 Cr.P.C. for recalling PW-2 (Constable Gurpreet Singh) has been allowed.

FIR No.119 dated 10.07.2018 under Section 22 of the NDPS Act, Police Station Lalru, District SAS Nagar has been registered against the petitioner and other co-accused. As per the allegations in the FIR on 10.07.2018 SI Phool Singh alongwith Constable Balbir Singh, Constable Anil Kumar, Constable Gurpreet Singh, PHG Avtar Singh, PHG Sukhpal Singh was on patrolling duty. On suspicion, they apprehended a car bearing registration No.CH-01-AF-9081. The petitioner was driving the car. Co-accused Harvinder Kumar was sitting next to him. Sunil Kumar was

sitting on the back seat. 140 packets, each one containing 100 tablets of RX Diphenoxylate Hydrochloride were recovered from a black colored polythene bag lying below the driver seat. Recovery was effected in the presence of a Gazetted Officer Harmandeep Singh Hans PPS, ASP, Sub Division Derabassi. Ruqa was sent and the FIR was registered.

After completion of investigation, challan was presented. 11 witnesses were listed in the report under Section 173 Cr.P.C. Constable-Gurpreet Singh was listed as a 'witness of *ruka* and deposit of sample with FSL'. Gurpreet Singh appeared as PW-2. In his affidavit Annexure P-6 presented as his statement in chief he deposed that he had been posted at Police Station Lalru for general duty work on 18.07.2018. MHC Lal Mohammad had prepared a parcel related to the case and handed over the same to him for deposit of the same with the Forensic Science Laboratory, Mohali. He deposited the parcel with the Forensic Science Laboratory, Mohali on the same date and obtained a receipt therefrom. On his return he handed over the receipt to MHC Lal Mohommad. PW-2 Constable Gurpreet Singh was cross-examined by the defence. In his cross-examination he stated that he did not remember the date when his statement under Section 161 Cr.P.C. was recorded by the Investigating Officer. He also stated that he had not been joined by the Investigating Officer in the investigation of the present case except on 18.07.20218 as mentioned by him in his affidavit. He also had no personal knowledge regarding the facts of the case or the manner of recovery.

After the cross-examination of PW-2 the Public Prosecutor

filed an application under Section 311 Cr.P.C. praying to recall Constable Gurpreet Singh. In the application it was stated that as per the challan Constable-Gurpreet Singh is a witness of recovery/*ruka* as also regarding deposit of sample with Forensic Science Laboratory, Mohali. Inadvertently when he tendered his affidavit he had not deposed regarding recovery/*ruka* but had only deposed regarding depositing the case property with Forensic Science Laboratory, Mohali. It was prayed that he be recalled to depose regarding recovery/*ruka*. The petitioners in their reply to the application argued that Constable-Gurpreet Singh in his affidavit has deposed only regarding deposit of the case property with Forensic Science Laboratory, Mohali. He had been cross-examined. In his cross-examination he had been specifically asked as to whether he had been joined in the investigation of the case on any date other than the one mentioned in the affidavit. He answered that except 18.07.2018 he had not been joined in investigation of the present case. He had also stated that he did not know about the manner and sequence of recovery in the present case. It was contended that the application under Section 311 Cr.P.C. cannot be used for filling up the lacunae left by the prosecution and the same should be dismissed.

The learned Special Court however, allowed the application opining that in the list of witnesses Constable-Gurpreet Singh had been cited as prosecution witness to prove *ruka* and deposit of sample/parcel with the Forensic Science Laboratory, Mohali. In his affidavit tendered in examination- in- chief he had deposed only with regard to deposit of sample parcel with the Forensic Science Laboratory, Mohali. His evidence was

essential to prove the factum of recovery/*ruka*. In case he is recalled no prejudice will be caused to the accused as they would be at liberty to cross examine him on all aspects of the case. Accordingly, Constable-Gurpreet Singh was ordered to be recalled.

Assailing the order Mr. Jattana, learned counsel for the petitioners has argued that in his affidavit submitted by way of examination -in- chief Constable-Gurpreet Singh had only deposed regarding deposit of the sample parcel with the Forensic Science Laboratory, Mohali. He had been cross-examined. In his cross-examination he had been specifically asked as to whether he had been joined in the investigation of the case on any date other than the one mentioned in the affidavit. He answered that except 18.07.2019 he had not been joined in investigation of the present case. He had also stated that he did not know about the manner and sequence of recovery in the present case. Mr. Jattana argued that the application under Section 311 Cr.P.C. cannot be used for filling up the lacunae left by the prosecution and the same should be dismissed. He argued that great prejudice would be caused to the petitioner if Constable-Gurpreet Singh is recalled and permitted to fill up the lacunae on the dictates of the prosecution.

Mr. Sewak, on the other hand, contended that a huge recovery of 14000 tablets was effected from the petitioners and co-accused. Constable-Gurpreet Singh was present with the police party when the car in which the petitioner and co-accused were travelling was intercepted. He was present when the recovery was effected. The *ruka* was prepared by SI

Phool Singh and sent to the Police station through Constable Gurpreet Singh for registration of the case. This fact has been specifically recorded in the FIR wherein it is mentioned that after registration of FIR the special report was sent to the senior officers and the Area Magistrate through Nasib Singh and a copy of the FIR was sent back through Constable-Gurpreet Singh. The statement of Constable-Gurpreet Singh under Section 161 Cr.P.C. was recorded on 10.07.2018 (Annexure P-4) wherein he detailed the entire sequence regarding the car being apprehended, the recovery being effected and that he had been sent to the Police Station with the *ruqa* for registration of the case, he handed over the ruka to ASI Naib Singh, In-charge Police Station who after registration of the case handed over the case file to him. He then brought the same and handed it over to SI Phool Singh.

Having heard learned counsel for the parties, in my view there is no infirmity in the order of learned Special Court allowing the application under Section 311 Cr.P.C. filed by the prosecution for recalling Constable-Gurpreet Singh to depose regarding the recovery/*ruqa*.

The presence of Constable-Gurpreet Singh alongwith the police party is mentioned in the FIR. The FIR clearly mentions that ruqa was prepared by SI Phool Singh and sent through Constable-Gurpreet Singh to the police Station for registration of the case. The statement of Constable Gurpreet Singh u/s 161 Cr.P.C. was recorded at the spot by SI Phul Singh wherein he mentioned the entire sequence regarding the car being apprehended, the recovery being effected and that he had been sent to the Police Station with the ruka for registration of a case. He handed over the

ruka to ASI Naib Singh Incharge Police Station who after registration of the case handed over the case file to him. He then brought the same and handed it over to SI Phool Singh. A huge recovery of 14000 intoxicant tablets has been effected from the accused.

In these circumstances the Ld. Special Judge has rightly allowed the application for recalling Constable-Gurpreet Singh to prove the factum of recovery/ruqa which appears to have inadvertently not been mentioned in his affidavit tendered in examination- in- chief. Constable-Gurpreet Singh is a material witness. The fact that in his cross-examination Constable-Gurpreet Singh has stated that he had not been associated with the investigation of the case on any date other than 18.07.2018 when he took the sample to the FSL Mohali cannot be the sole ground for not permitting his recall. The accused would have the right to cross-examine Constable-Gurpreet Singh including to confront him with his cross-examination previously recorded.

Accordingly, there is no merit in the present petition and the same is dismissed.

July 04, 2022
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No