

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

CRA-AD-61-2022

Decided on : 22.07.2022

State of UT Chandigarh

... Appellant

Versus

Sarfraj @ Sahil

... Respondent

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

Present:- Mr.Rajeev Anand, Advocate, for the appellant.

G.S. Sandhawalia, J.

The State of UT, Chandigarh is in appeal against the judgment dated 16.03.2020, passed by Addl.Sessions Judge, Chandigarh for offence under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, the 'NDPS Act') in FIR No.237 dated 18.12.2017 lodged at Police Station Mauli Jagran, Chandigarh, whereby the respondent was sentenced for the undergone period of 18.12.2017 to 28.03.2018 and from 12.02.2019 to 05.08.2019, i.e. for approximately 9 ½ months. The Trial Court came to the conclusion that the psychotropic substance which was recovered on 18.12.2017 was less than 1 gm and thus, fell within the definition of small quantity and the respondent was held guilty under Section 22(a) of the NDPS Act.

Counsel for the appellant has tried to convince us that the reasoning given was not justified and reliance was wrongly placed upon **E.Micheal Raj Vs. Intelligence Officer, Narcotic Control Bureau, (2008) 5 SCC 161**, that complete weight of the 15 injections recovered had not been kept in mind and therefore, the same was not sustainable. The said argument is valid in as much as subsequently on 22.04.2020, the

said judgment was over-ruled in **Hari Singh Vs. Union of India (2020) 20 SCC 272**.

We have perused the judgment under appeal, with the assistance of Mr. Anand and for different reasons, find that leave is not liable to be granted. A perusal of the same would go on to show that the police party was on patrol duty after having parked their vehicle when they encountered the accused-respondent on 18.12.2017 who was carrying a light blue coloured carry bag. He on seeing the police party turned backwards and started moving briskly and was accordingly apprehended on the basis of suspicion. The bag was found to be containing 15 injections of Buprenorphine and 15 injections of Pheniramine Maleate. The Sub-Inspector, Naveen had tried to join into investigation the persons from the public but nobody was willing to join as witness and thereafter, the injections were put back in the same carry bag and converted into a parcel which was sealed. The sample seal was prepared separately and the SFSL form was filled up. The second investigating officer was called namely, SI Baldev Singh who reached the spot approximately 2 hours after apprehending the accused. On the report of the CFSL (Ex.P18), he was charge-sheeted on 21.06.2018. Though an argument was raised before the Trial Court also that the provisions of Section 50 of the NDPS Act had been followed but there was no effort made to give an opportunity to be searched before a Gazetted Officer or a Magistrate. The Trial Court had brushed it aside solely on the ground that the recovery had been made from the bag which the respondent was carrying. Resultantly, while placing reliance upon the

judgment in **State of Punjab Vs. Makhan Chand, 2004 (2) SLJ 980** and **Jauni Ram Vs. State of H.P., 2005 (1) SLC 54**, it was held that there was no need for compliance of Section 50 which was on account of the accused being suddenly apprehended. Reliance was also placed upon the judgment of **Mohd. Anwar @ Annu Vs. State (Delhi), 2011 (2) RCR (Criminal) 912**.

It is also to be noticed that the argument that there was no independent witness joined nor the particulars of such persons had been noted, was also brushed aside since the prosecution witness had consistently deposed regarding the version on the ground that no material discrepancies or contradiction could be pointed out. It is not disputed that the recovery was not from an isolated place but near EWS Colony, Vikas Nagar, Mauli Jagran, Chandigarh and therefore, it could not be said that no witness was available to join the police party. The purpose to join independent person is only to ensure that there is veracity of the search proceedings and the apprehension at the spot and to rule out any false implication by the police party. The factum of the police party not making any effort to call a Gazetted Officer or a Magistrate but calling another police officer on account of the recovery having been effected would thus be violative to the provisions of Section 50 since it has been held that provisions have to be complied with even if the empowered officer is a Gazetted Officer and an opportunity has to be given to the accused. Reliance can be placed upon the judgment of the Apex Court in **Arif Khan Vs, State of Uttarkhand, (2018) 18 SCC 380**. The Apex Court in **Vijaysinh Chandubha Jadeja Vs. State Of Gujarat, (2011) 1**

SCC 609, has held that due compliance of the mandate of Section 50 should be made and an effort should be made to produce the suspect to the nearest Magistrate so that the confidence of the common man is not shaken. Reliance can also be placed upon the judgment of the Apex Court in **State of Rajasthan Vs. Parmanand & another, 2014 (2) RCR (Crl.) 40.**

In such circumstances, we are of the considered opinion that though the accused has not preferred any appeal having been sentenced as undergone but the manner in which the recovery has been effected without associating any independent person and not calling a gazetted officer, though a second investigation was summoned. The same would vitiate the recovery and therefore, we do not feel that it is a fit case wherein the other aspect as argued by Mr. Anand would have to be gone into. It is also to be noticed that in the absence of any independent witness having been joined in the search, the recovery itself became doubtful. On that account, we are not inclined to go into the issue whereby the Trial Court was justified by holding that the recovery was below the commercial quantity.

Resultantly, in view of the above discussion, the present appeal is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

July 22, 2022
sailesh

(VIKAS SURI)
JUDGE

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