

CRM-A-20-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-20-2021.

Decided on: August 1, 2022.

State of Punjab

.. Applicant-appellant

VERSUS

Sahil @ Sunny & another

.. Respondents

* * *

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

* * *

PRESENT Mr.Ajay Pal Singh, DAG, Punjab

G.S. SANDHAWALIA, J. (ORAL)

Present application for leave to appeal has been filed by the State under Section 378 (3) of the Code of Criminal Procedure, against the judgment of acquittal passed by the Special Court, Shaheed Bhagat Singh Nagar, in FIR No.85 dated 3.7.2018, registered under Sections 22 and 29 of the NDPS Act decided on 12.12.2019.

The acquittal has been recorded on the ground that the provisions of Section 50 of the NDPS Act, have been violated while referring to the Constitution Bench judgment of the Hon'ble Apex Court in *State of Punjab Vs. Baldev Singh, (1990) 6 SCC 172 and Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2011 (1) SCC 609 and Arif Khan*

@ Agha Khan Vs. State of Uttarakhand, 2018 (2) RCR (Criminal) 931.

It is not disputed that the recovery of 15 injections/glass ampules of buprenorphine containing 2 ml each were recovered on the search of respondent No.1. The respondent No.2 was proceeded against on the basis of disclosure statement suffered by the first respondent. The trial Court found that apart from the disclosure statement of the first respondent, there is no independent, substantive and corroborative evidence against respondent No.2. As per the settled position by the Constitution Bench in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1, the proposition of law has been clarified that any confessional statement made cannot be taken into consideration in order to convict accused under the NDPS Act. Therefore, we do not see any reason as to why there has to be any interference regarding the acquittal of respondent No.2, as nothing else was brought forth in the evidence and as noticed by the trial Court, no further recovery was effected. The only allegation was that contraband has been received from him to distribute by the first respondent. Apparently, the police failed to even trace the source of the original contraband and did not take the investigation to its logical end to the extent that wherefrom respondent No.2 was sourcing the said contraband.

Regarding respondent No.1, the discrepancies in the search conducted vitiated the seizure in view of the settled proposition of law as discussed above and is also not liable to be interfered with as there is no perversity in the order against which leave to appeal is sought. The trial Court has noticed that the consent memo Ex.P-1 shows that consent was recorded and the signatures were taken of Sunny Sahil and mentioning

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of the same in the main text or body of the application shows that signatures of the accused could have been obtained on blank papers. It was also noticed that the personal search memo Ex.P-9 showed that he had signed only as Sahil in Punjabi whereas in the consent memo he had signed as Sunny Sahil. It has also been noticed that there are cuttings in Ex.P-1 and therefore, the two kind of signatures which were obtained on the same day from the said accused could not be explained by the prosecution especially when there is overwriting on the signatures in Ex.P-1. It was also noticed that the recovery was made from a public road where there was traffic and there was no independent witnesses nor any member of Panchayat or Lamberdar or respectable person had been joined.

Therefore, keeping in mind the principle that prosecution under the NDPS Act provides for stringent punishment, we are of the considered opinion that the view which has been taken and keeping in view the fact that the provisions of Section 50 of the NDPS Act, had not been complied with the recovery is vitiated. The perusal of the record would also go on to show that search had been conducted of the person, which is clear from the statement of PW.2 HC Dharam Chand and even PW-1 SI Manjit Lal has also stated that the recovery of plastic bag was from the right back pocket of the capri which the accused was wearing. He admitted in cross-examination that the accused was not taken before any gazetted Officer or Magistrate and in such circumstances, the principles laid down by the Constitution Bench of the Hon'ble Apex Court in **Baldev Singh, Vijaysinh Chandubha Jadeja and Arif Khan @ Agha Khan** (supra) would come into play.

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It is also to be noticed that the samples were only sent after a period of 2 days to the FSL which would be clear from the report Ex.P-19 which shows that one parcel sealed with two seals 'ML' and 'SPS' had been received on 6.7.2018. A perusal of the record would also go on to show that on 5.7.2018, the sealed parcel had been produced before the Magistrate which had been sealed by him and handed over to the investigating officer with a direction to deposit with the chemical examiner for analysis. The said parcel was never got opened by the Magistrate for perusal as to whether it contained the narcotics which had been recovered. It is also to be noticed that the sample which had been received in the FSL only contained the seals of the police officials and therefore, we are of the considered opinion that the benefit of doubt has to be granted to respondent No.1.

Thus, in the absence of any perversity in the impugned judgment, we are of the considered opinion that there is no scope for interference in the well reasoned order passed by the trial Court. Moreso, on the principle that now a double presumption of innocence has arisen in favour of the respondents, we feel that no case is made out for grant of leave. Resultantly, the application for leave to appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

August 1, 2022.
raj arora

Whether speaking / reasoned
Whether reportable

(VIKAS SURI)
JUDGE
Yes / No
Yes / No