

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

CRM-M-2725-2020

Date of Decision: 14.02.2023

Reserved on: 06.02.2023

Ramji Dass and another

..... Petitioners

Versus

State of Punjab

.....Respondent

CRM-M-2806-2020

Kanwal Pal Singh

..... Petitioner

Versus

State of Punjab

.....Respondent

CRM-M-2694-2020 (O&M)

Gurmeet Singh

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ravneet Singh Joshi, Advocate,
Mr. Amandeep S.Rai, Advocate and
Mr. S.S. Narula, Advocate, for the petitioners.

Mr. Gaurav Garg Dhuriwala,
Additional Advocate General, Punjab and
Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Petition qua petitioner No.1 Ramji Dass in CRM-M-2725-2020
already stands dismissed on 06.02.2023.

Rajesh Bhardwaj, J.

The above mentioned petitions are being disposed of by this
common order as all these have arisen out of a common impugned order.

The petitioners have approached this Court by way of filing the
present petitions under Section 482 Cr.P.C. for quashing of the
judgment/order dated 10.01.2020 passed by the Court of learned Judge
Special Court, Ludhiana convicting the petitioners under Section 58(1)(a) &

(c) of the NDPS Act, 1985 (for short, 'the Act') in criminal case bearing No.NDPS/307/2019 titled as State vs. Baljit Singh, in a case FIR No.235 dated 05.07.2018, registered under Sections 22 of the Act, at Police Station Sadar Jagraon, District Ludhiana and alongwith subsequent proceedings arising therefrom.

Succinctly, facts of the case are that on 05.07.2018, ASI Gurmeet Singh alongwith ASI Manjinder Singh and other police officials on private vehicle were present at Pulla Sua village Ramgarh Bhullar in connection with patrolling and in search of anti social elements. They received a secret information that Baljit Singh is habitual of doing drug trade since long and he is habitual of selling the intoxicant substance and weapon to the consumers since long and he is present at his house and waiting for consumers to sell heroin and intoxicant powder and if raid is conducted, he could be apprehended on the spot. But he could not be apprehended on that day. However, on 06.07.2018 when the police party was present at Sherpur Kalan in connection with the checking, they received a secret information that Baljit Singh, who is wearing *Kurta Pajama* is coming from the village Leelan. Thereafter, Baljit Singh was apprehended on the spot and after compliance of the provisions of Section 50 of the Act, his search was conducted in the presence of DSP Kanwarpal Singh. On his search, heroin weighing 260 grams was recovered from him. On registration of the FIR, the investigation was carried out and the challan was presented and the trial Court after framing the charges, examined the prosecution witnesses and concluded the trial. On the conclusion of the trial, the learned Special Court found the prosecution having failed in proving the charges against the accused and thus, the accused was acquitted of the charges

framed against him. It was observed by the learned trial Court that the accused was falsely implicated in this case on 05.07.2018 and thereafter on 06.07.2018 false recovery of 260 grams of intoxicant powder had been planted by the Investigating Officer in connivance with PW-3 Ramji Dass, PW-4 Gurmeet Singh, PW-5 Manjinder Singh, PW-6 DSP Kanwarpal Singh and HC Bagga Singh due to the malice/grudge explained and proved by the accused. Resultantly, the accused was acquitted by the trial Court of the charges framed against him under Section 22 of the Act on 10.01.2020. Thereafter, the learned trial Court finding the members of the Investigating Agency i.e. the petitioners hatching a conspiracy for falsely implicating the accused in this case, has observed as follows:-

“29. However at the same time in the opinion of this court resultantly in view of the above discussion, it is fit case to attract the provisions of section 58(1)(a) and (c) of the NDPS Act 1985. The officials who have placed active role in hatching the conspiracy must have the feel of noose which they had so thoughtfully prepared for falsely implicating the innocent person Baljit Singh. Hence ASI Gurmeet Singh, ASI Ramji Dass, ASI Manjinder Singh, HC Bagga Singh and DSP Kanwarpal Singh are hereby held guilty and convicted for the commission of an offence punishable u/s 58(1) (a) and (c) of the NDPS Act 1985. However no doubt none of these convicted person are present to say that no charge has been framed against them but in view of section 464 of the Cr.P.C., any finding or order cannot be considered as invalid even due to omission of non-framing of charge i.e. u/s 58 NDPS Act for which above persons are convicted. To support above opinion this court has relied upon citation **Rajbir Singh and another Vs. State of Haryana and another 2009 (3) RCR Criminal, Hon'ble Supreme Court of India, 673**. They are ordered to be summoned by issuance of N/B/W to hear on the plea if any

claimed by them otherwise on the hearing of quantum of sentence as and when they are appeared or produced before this court and file be consigned to the record room. The proceedings qua the convicted persons be separated and these proceedings qua the convicted persons be put up alongwith the main file on 31.1.2020 and for that date fixed, appearance of the convicted persons for above reason is awaited.”

Thus, the petitioners were held guilty and convicted for the commission of an offence under Section 58(1)(a) & (c) of the Act. Aggrieved by the same, the petitioners are before this Court by way of filing the present petitions.

Learned counsel for the petitioners have vehemently contended that the petitioners before this Court are the Government Officials, who were members of the Investigating Agency and had discharged their legal duty. They have submitted that the Judge, Special Court had no jurisdiction to convict the petitioners under Section 58(1)(a) & (c) of the Act, as the same is in violation of the Section 36(A) of the Act with specific set out that only such offences under the NDPS Act that are punishable with a term of more than three years are triable by the learned Special Court constituted under the Act, whereas, Section 58 of the Act describes the offence committed under the Act and entails the maximum punishment of six months or fine. It has been vehemently contended by learned counsel for the petitioners that it is settled principles of law that nobody can be condemned unheard, however, learned Special Court totally had turned a blind eye to this settled principle of law without providing any opportunity whatsoever of being heard to the petitioners before condemning them. They have submitted that as per the statutory provisions of the Criminal Procedure of

Code, the charges are to be framed against the accused and he has to be made aware of the same before launching the prosecution against him and in case the accused pleads innocence and claims trial, it is only in that situation, he is to be tried by the Court of law as per the procedure prescribed in Cr.P.C. It is submitted that the procedure adopted by the learned trial Court is totally unknown to the law, where after acquitting the accused, the learned trial Court had straightway drawn the conclusion of the conspiracy hatched by the petitioners in falsely implicating Baljit Singh and without affording any opportunity to them, they were straightway held guilty for the offence under Section 58(1)(a) & (c) of the Act. It is submitted that the petitioners were taken by surprise only by knowing about the notice for hearing them regarding the quantum of sentence. They have submitted that even if it is assumed that the petitioners have committed any offence, the trial Court had no jurisdiction to bypass the settled principle of law of providing right of hearing to the petitioners and thus granting them opportunity to defend them against the charges they are being prosecuted. It has been submitted that Hon'ble the Supreme Court in Rajbir Singh and another vs. State of Haryana, 2009(3) RCR (Criminal) 673 had appreciated the similar controversy and allowed the petitioners therein to appear before the learned trial Court with opportunity to submit their defence before the Court concerned. It is submitted that the conviction as ordered by the trial Court without giving opportunity of being heard to the petitioners is totally beyond the jurisdiction of the trial Court and thus, unsustainable in the eyes of law and hence, deserves to be quashed.

Learned State counsel though has supported the case of the prosecution on merits regarding the prosecution of accused Baljit Singh on

the recovery of the contraband, however, he has candidly submitted that the petitioners have been convicted by the learned trial Court without providing them any opportunity to defend themselves.

Heard.

There is no gainsaying that the petitioners in this case are the members of the prosecuting agency. They were part of the investigation and material witnesses of the prosecution in the main case against Baljit Singh. On the conclusion of the trial, accused-Baljit Singh, against whom prosecution was launched, was found to be not guilty of the charges framed against him and thus, was acquitted vide order dated 10.01.2020. In the same order, the learned Special Court observed that the petitioners maliciously implicated accused Baljit Singh and thus, convicted directly by holding them guilty. It is apparent from the perusal of the impugned order that no charges were framed against the petitioners and they were not provided any opportunity of hearing whatsoever and they were held guilty by adopting the procedure, which is unknown to the law. It is a settled principle of law that no one should be condemned unheard. Every accused being tried has to be provided a free and fair trial by providing him the right to defend himself. No such method was applied by the trial Court in the present case and thus, this Court has no hesitation in holding that the impugned order dated 10.01.2020 to the extent of holding the petitioners straightway guilty for the offence under Section 58(1)(a) & (c) of the Act in the absence of the any right of hearing having been granted to them, is totally unsustainable in the eyes of law and the same is hereby set aside to that extent only. The trial Court, if desires, is within its jurisdiction to initiate the proceedings afresh against the petitioners by providing them

opportunity of having a free and fair trial, in accordance with law.

The present petitions are disposed of in abovesaid terms.

14.02.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No