

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

CRM-44173-2022 in/and  
CRA-D-228-DB-2015 (O/M)  
Date of Decision: May 16, 2023

Kulwinder Singh ...Appellant

Versus

State of Punjab ...Respondent

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU  
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Premjit Singh Hundal, Advocate  
for applicant-appellant.

Mr. Mohit Kapoor, Additional A.G. Punjab.

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**HARINDER SINGH SIDHU, J.**

This appeal has been preferred against the judgment and order dated 05.01.2015 passed by the Judge, Special Court (Adhoc), Fast Track Court, Gurdaspur in Sessions Case No.169 of 2013 whereby the appellant, who was charged with and tried for offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'), has been convicted and sentenced to undergo rigorous imprisonment for a period of 15 years and to pay fine of Rs.1,50,000/- and in default to further undergo rigorous imprisonment for a period of 3 years.

2. The FIR was registered on the complaint of Investigating Officer/ASI Manohar Singh who stated that on 25.07.2013 at about 5.00

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pm, he alongwith other police officials was present on patrolling duty at Bridge Drain, Village Chandu Sujja. At that time, a man was seen coming from village side. He was holding an envelope in his right hand. On seeing the police party, he threw away the envelope and tried to run towards right hand side of drain. He was apprehended by the other police officials. On interrogation, he disclosed his name as Kulwinder Singh alias Maddhar (appellant). On checking the envelope thrown by the appellant, intoxicant powder was found. On weighing, it was found to be 500 grams. Two samples of 10 grams each were drawn. On weighing, the remaining intoxicant powder was found to be 480 grams. The sample was sealed with seal impression 'MS' and same was taken into police possession. Thereafter, he handed over his seal to HC Balbir Singh. He tried to join persons present there as independent witnesses but nobody was ready to join police party. Thereafter, ruqa was sent to police station for registration of case. The sample parcel was sent for chemical examination. On completion of investigation challan was presented.

3. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded wherein he stated that he is innocent and has been falsely implicated in the present case. He was never involved in any kind of criminal as well as civil case. He was an agriculturist by profession. He was badly injured by Jasmeet Singh, Gurleen, Shamsher and others due to some party faction. On his statement the police of P.S. Chandare

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registered FIR against the above said persons. Some of police officials of P.S. Fatehgarh Churrian who are relatives of above said accused pressurized him to compromise the matter with accused. He compromised the matter with accused but due to grudge against him, they falsely implicated him in the present case. Nothing has been recovered from him. He examined Amit Dabra, Alternative Nodal Officer, Vodafone as DW1 and Harpeet Kaur wife of Surjit Singh as DW2.

4. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

5. We have heard learned counsel for the parties and have gone through the judgment and record.

6. PW1 ASI Manohar Singh deposed that on 25.7.2013 he was present at PP Kala Afgana, P.S. Fatehpur Churrian. He was joined by HC Balbir Singh and other police officials. When they were present at Bridge Drain, Village Chandu Sujja, one man was seen coming from village side. He was holding an envelope in his right hand. On seeing them, he threw away the envelope and tried to run away from the spot. He was apprehended by the police party. On interrogation, he disclosed his name as Kulwinder Singh son of Surjit Singh. He (PW1) checked the envelope thrown away by accused. It contained intoxicant powder. He took out 2 samples of 10 grams each. On weighing the remaining powder, it was found to be 480 grams. He put the two samples and one bulk of recovered intoxicant powder into three separate plastic containers

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and sealed them with his seal impression 'MS'. After use, he gave his seal to HC Balbir Singh. The above said case property was taken into police possession through memo Ex.PA. He sent ruqa (Ex.PB) through PHG Gurmit Chand and FIR (Ex.PC) was registered by ASI Chanan Singh. He identified the signatures of ASI Chanan Singh on the FIR. He prepared site plan Ex.PE. The arrest memo of accused is Ex.PF. Ex. PG was personal search memo of accused. On coming back to police station, he handed over the case property to SI/SHO Jagjit Singh vide entrustment memo Ex.PH which was attested by SI Jagjit Singh and HC Kewal Masih. The SHO sealed the case property with his seal impression 'JS' and kept the same intact in double lock. On next day, the SHO (PW5) took out the case property from double lock and handed over the same to him along with accused. He produced the accused and the case property before Illaqa Magistrate. The application for remand of accused (Ex.PJ) was signed by SHO. The order of learned JMIC is Ex.PK. He proved the application for certifying the case property as seen Ex.PL., the application for depositing the case property in Judicial Malkhana Ex.PM and for preparation of the inventory list Ex.PN. The orders of learned Illaqa Magistrate were Ex.PO, Ex.PP and Ex.PQ.

7. During investigation, he deposited the case property in Judicial Malkhana and sent one sample to Chemical Examiner, Kharar. The receipt of Form M-29 which was prepared on the spot and also signed by SI/SHO is Ex.PR. The report of Chemical Examiner is Ex.PS.

On completion of investigation, challan was prepared by SI/SHO Jagjit Singh. He identified the case property MO-1 and MO-2.

8. In cross examination by learned counsel for accused, he stated that the place of recovery is a thoroughfare. He did not apprise the accused of his legal right to be searched before a Gazetted Officer or any Magistrate. He could not tell the name of persons whom he requested to join the investigation as independent witnesses. He had not taken any action against the persons who refused to join the investigation. The ruqa carrier came back with FIR after 2 hours. He prepared the memos Ex.PG, Ex.PE, Ex.PF and Ex.PH. He also recorded some statements on the spot. He is both the complainant and investigating officer of this case. He recorded the statements of SI Jagjit Singh and HC Milkha Singh on 03.08.2013. He prepared inventory list Ex.PN. The order of the Court is Ex.PQ. No sample was drawn from the bulk in the presence of Illaqa Magistrate. After the samples and bulk were produced before the Illaqa Magistrate, the remaining bulk was lying with SHO. The case property MO-1 and MO-2 had been received from PS Fatehgarh Churrian. He denied the suggestion that as per mandatory provisions of NDPS Act, the remaining bulk alongwith representative samples always remained in the safe custody of Judicial Malkhana. He had informed Gurpreet Singh who is relative of accused through Ex.PF (Memo of Arrest and Information). His attention was drawn towards Ex.PF where the same was not mentioned. His Mobile No. is 9780-004303. On the

day of arrest of accused, the mobile was with him.

9. PW2 HC Balbir Singh deposed that on 25.07.2013 he was posted at PP Kala Afagana, P.S. Fatehgarh Churian. He also reiterated the same version as deposed by ASI Manohar Singh (PW1).

10. In cross examination by learned counsel for accused, he stated that no consent memo was prepared by Investigating Officer as accused was not apprised his legal rights. The place of recovery was a thoroughfare. No independent witness was joined. He admitted that no effort was made by the Investigating Officer or by him to join any person from public as independent witness. He does not remember the metal of the seal of Investigating Officer. The same might be in round shape. On return to the police station, he handed over the seal to Investigating Officer. He does not remember the name of police man whom the Investigating Officer sent for arranging the plastic containers. The whole parcel was sealed on the spot with the help of needle and thread. The police party was not in possession of any sewing machine. He accepted the suggestion that the cloth which was used for wrapping the sample and bulk was stitched with the sewing machine. He denied the suggestion that the whole stitching work was done at police station only to implicate the accused in a false case. The Investigating Officer prepared exhibits and recorded the statements of witnesses and nothing has been done at the spot by him. Before sending the ruqa carrier, the Investigating Officer prepared Ex.PA. He accepted that Ex.PA is having FIR No.,

date, under Section on starting lines. He denied the suggestion that all the memos were falsely prepared against the accused.

11. He admitted that there is a large quantity of water in the canal shown in the site plan. The accused did not try to throw the plastic envelope in the canal. He accepted that if accused had thrown the envelope in the canal, he could get escape. ASI Manohar Singh (PW1) was not having any testing machine with him when accused was arrested. He accepted that the police party had no scientific knowledge about the nature of contraband recovered from accused. They ascertained the nature of contraband only on the basis of personal knowledge. He was witness of 7-8 cases registered under NDPS Act at the police station where he is posted i.e. Fatehgarh Churrian. He has not made any endorsement before MHC regarding the seal kept by him. The Investigating Officer prepared two sample seals on the spot which were sealed with the impression of ink. He denied the suggestion that he has deposited falsely being police official.

12. PW3 HC Milkha Singh tendered into evidence his affidavit (Ex.PW3/A) deposing that he was posted at P.S. Fatehgarh Churian. On 02.08.2013 SHO Jagjit Singh, P.S. Fatehgarh Churian handed over him above said case sample which he deposited in the office of Chemical Examiner, Kharar vide RC No. 174/21 which sealed with seal impression MS and JS. As long as sample remained with him, neither he nor anybody made an attempt to tamper it.

13. In the cross examination by learned counsel for accused, he stated that he has not taken the case property/sample from judicial malkhana (volunteered sample was given to him in police station). He only took the sample with him. Neither any seal nor any form was handed over to him for depositing the same with Chemical Examiner, Kharar. He denied the suggestion that he has filed a false affidavit.

14. PW4 Constable Kuldeep Singh tendered his affidavit (Ex.PW4/A) wherein he deposed regarding delivery of special reports to Illaqa Magistrate on 25.07.2013.

15. PW5 SHO/SI Jagjit Singh deposed that on 25.07.2013 he was posted as SHO P.S. Fatehgarh Churian. On that day, the Investigating Officer (PW1 ASI Manohar Singh) handed over to him case property pertaining to this case having seal impression 'JS'. He kept the same intact in double lock. The accused was put behind bars. Next day, accused was produced before Illaqa Magistrate.

16. During investigation on 02.08.2013, he took out one sample parcel out of double lock and handed it over to HC Milkha Singh through RCV No. 174/21 which was deposited by him in the office of Chemical Examiner, Kharar on the same day as per his direction HC Milkha Singh handed over the receipt of same to him. On receiving of Chemical Report (Ex.PS) and after completion of investigation, challan against accused was presented. He also signed Form No. M-29. As long as case property remained with him, neither he nor anybody else was allowed to temper

the same. ASI Manohar Singh (IO) recorded has statement.

17. In cross examination by learned counsel for accused, he stated that he does not remember where the remaining property was deposited (volunteered the same was deposited in police station with double lock). The case property was never deposited in the judicial malkhana nor was the statement of Incharge of judicial malkhana ever recorded. The case property was lying in the police station. He could not tell whether any sample was taken out from the bulk in the presence of Illaqa/Duty Magistrate or not (volunteered I.O. can tell about the same). He accepted that the Investigating Officer of the case is also complainant in the present case.

18. DW1 Amit Dabra, Alternative Nodal Officer, Vodafone stated that as per the licence agreement with Department of Telecommunication, only call details and locations of one year are to be preserved. In the present case, all details and locations are deleted being older than one year.

19. DW2 Hardeep Kaur wife of Surjit Singh (mother of the appellant) deposed that on 24.07.2013 in the morning at about 6.00 am, SHO P.S. Fatehgarh Churian Jagjit Singh and other police officials forcibly entered into her house and took her son Kulwinder Singh with them. She made repeated requests to them not to do so but they did not listen to her. Thereafter, she along with some respectables visited the Police Station Fatehgarh Churian. However, they were not allowed to

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meet her son Kulwinder Singh. When she made the request then ASI Manohar Singh told her that Kulwinder Singh had got registered FIR No. 247 against his relative Gulbahar Singh under Section 307 IPC at P.S. Sadar Amritsar. Now, he (ASI Manohar Singh) is going to teach him a lesson after registering a false case against him. On this, she moved an application to the Punjab and Haryana High Court, Chandigarh on the same day. She moved another application (Ex.D2) before DIG Punjab Police, Chandigarh and also to I.G. Border Range Amritsar (Ex.D1). However, no action was taken against the police officials. Next day she came to know that in connivance with Gulbahar Singh, ASI Manohar Singh registered a false case against her son Kulwinder Singh. FIR is Ex.D3.

20. In cross examination by learned PP for State, she denied the suggestion that on 25.07.2013, her son Kulwinder Singh was found present in the area of Pull Drain, Chandu Sajju with 500 grams intoxicant powder which contained salt Diphenoxylate without a valid licence or permit. She further denied the suggestion that she is deposing falsely in favour of her son just for love and affection. She further stated that she had not brought any postal receipt and any other record regarding applications sent to higher police authorities. She denied the suggestion that she wrongly gave story of FIR No. 247.

21. As per FSL report Ex. PS the sample was found to contain Diphenoxylate. It has also been recorded therein that the sample was

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received with the following seals & the seals were duly verified & compared with sample seals: MS + JS.

22. The applications Ex.PC, Ex.PM, Ex.PN moved before the Magistrate and the orders Ex PP, Ex. PO and Ex. PQ passed thereon are as under : -

Ex. PC (Application for seen Case of property)

P.S. Fatehgarh Churian

Police Distt. Batala.

Application for seen Case of property

Sir,

It is requested that today I ASI along with co-officials on patrolling 500 grms narcotic powder recovered from accused, Two sample of 10/10 grms narcotic powder took out into recovered narcotic powder and prepared separate parcels and remaining narcotic powder weight 480 grms sealed with own seal mark M.S. and taken in Police possession. Above said case property and three parcels sealed with M.S. and J.S. along with sample seal are producing in your Court. So please seen its.

Manohar Singh ASI  
P.S.Fatehgarh Churian  
Dated:-25.07.2013

Ex PP

Present: APP for the State

Accused in Custody

ASI Manohar Singh moved an application to seen the case property. He produced 500 grams intoxicant powder and out of which two sample 10/10 grams each duly sealed with seal MS and JS produced before me. I have seen the case property and sample parcels and the same is returned to him intact.

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Harpreet Singh  
JMIC 26.7.2013

Ex. PM (Application for depositing case property)

P.S. Fatehgarh Churian

Police District Batala

Application for depositing case property

Sir,

It is requested that above said case's, case property which is according to below written, please provide permission to deposit the District Nazir

1. One bulk parcel weight 480 grams intoxicant powder sealed with seal impression MS and JS one stamp each
2. One sample parcel weight 10/10 grams sealed with seal impression MS and JS one stamp each.

Manohar Singh, ASI  
P.S. Fatehgarh Churian  
Dated 25.7.2013

Ex.PO (order dated 26.7.2013 of JMIC)

Present: APP for the State.

ASI Manohar Singh moved an application for depositing the case property in malkhana. Heard. He is directed to deposit the intoxicant powder 480 grams and 10/10 grams each duly sealed with seal impression MS and JS in judicial malkhana.

Harpreet Singh  
JMIC 26.7.2013

Ex.PN (Inventory list)

Inventory List

1. One bulk parcel Narcotic powder weight 480 grams sealed with seal impression MS and JS one stamp each, total two stamp.
2. One sample parcel narcotic powder weight 10 grams sealed with seal impression MS and JS one stamp each, total two stamp.

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3. One sample parcel narcotic powder weight 10 grams sealed with seal impression MS and JS one stamp each, total two stamp.
4. One specimen seal MS and JS, three seals each.
5. Inquiry person: ASI Manohar Singh, PS Fatehgarh Churian.

Manohar Singh ASI  
PS Fatehgarh Churian  
Dated 25.7.2013

Ex.PQ (order of JMIC dated 26.7.2013)

Present: APP for the State.

ASI Manohar Singh prepared inventory of the case property.

1. Case property of intoxicant powder 480 grams duly sealed with seal of MS and JS one stamp each.
2. One sample parcel duly sealed with seal MS and JS one stamp each.
3. One sample parcel duly sealed with seal MS and JS one stamp each.
4. One specimen seal duly sealed with seal MS and JS three seals each.

Hapreet Singh  
JMIC 26.7.2013

23. Mr. Premjit Singh Hundal, Ld. Counsel for the appellant has primarily contended that there is no compliance with Section 52-A of the Act. The case property was not deposited in the Judicial Malkhana despite the orders of the Magistrate to that effect. There is no explanation as to why it was not done. The sample seals were not sent to the FSL as testified by PW 3 HC Milkha Singh who stated that he only took the sample with him to the Chemical Examiner. Neither any seal nor any

form was handed over to him for depositing the same with Chemical Examiner, Kharar.

24. On the other hand Mr. Mohit Kapoor, Ld. Additional Advocate General, Punjab has contended that there is proper compliance with the procedure as contemplated in Section 52-A. As testified by PW 1 ASI Manohar Lal after making the recovery and drawing the samples, he came back to the police station and handed over the case property to SI/SHO Jagjit Singh vide entrustment memo Ex.PH. The SHO sealed the case property with his seal impression 'JS' and kept the same intact in double lock. On next day, the SHO (PW5) took out the case property from double lock and handed over the same to him along with accused. He produced the accused and the case property before Illaqa Magistrate. Necessary applications for certifying the case property as seen Ex PC, for depositing the case property in Judicial Malkhana Ex.PM and for preparation of the inventory list Ex.PN were moved on which the learned Illaqa Magistrate passed orders Ex.PP, Ex. PO and Ex.PQ. The fact that the property remained in safe custody and was not tampered with has been proved by the depositions of the PWs. He argued that the statement of PW 3 Milkha Singh that he did not take any seal with him to the chemical examiner is belied by the report of the FSL (Ex.PS ) as per which the sample was received with the following seals & the seals were duly verified & compared with sample seals: MS + JS.

25. We have heard Ld. Counsel for the parties and perused the

record.

26. As deposed by PW1 ASI Manohar Singh on 25.07.2013 he was present at PP Kala Fagana, P.S. Fatehgarh Churrian along with police party. The appellant was seen coming holding an envelope in his right hand. On seeing them, he threw away the envelope. He was apprehended. The envelope was found to contain intoxicant powder. He took out 2 samples of 10 grams each. The remaining powder, weighed 480 grams. He put the two samples and one bulk sample of recovered intoxicant powder into three separate plastic containers and sealed them with his seal impression 'MS'. On coming back to police station, he handed over the case property to SI/SHO Jagjit Singh vide entrustment memo Ex.PH which was attested by SI Jagjit Singh and HC Kewal Masih. The SHO sealed the case property with his seal impression 'JS' and kept the same intact in double lock. On next day, the SHO (PW5) took out the case property from double lock and handed over the same to him along with accused. He produced the accused and the case property before Illaqa Magistrate. He identified the case property MO-1 and MO-2.

27. In cross examination he admitted that no sample was drawn from the bulk in the presence of Illaqa Magistrate. After the samples and bulk were produced before the Illaqa Magistrate, the remaining bulk was lying with SHO. The case property MO-1 and MO-2 had been received from PS Fatehgarh Churrian.

28. PW3 HC Milkha Singh who had taken the case sample for

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deposit in the office of Chemical Examiner, Kharar testified that he has not taken the case property/sample from judicial malkhana (volunteered sample was given to him in police station). He only took the sample with him. Neither any seal nor any form was handed over to him for depositing the same with Chemical Examiner, Kharar.

29. PW5 SHO/SI Jagjit Singh deposed that on 25.07.2013 the Investigating Officer (PW1 ASI Manohar Singh) handed over to him case property having seal impression 'JS'. He kept the same intact in double lock. During investigation on 02.08.2013, he took out one sample parcel out of double lock and handed it over to HC Milkha Singh which was deposited by him in the office of Chemical Examiner, Kharar. During cross examination he admitted that the case property was never deposited in the judicial malkhana nor was the statement of Incharge of judicial malkhana ever recorded. The case property was lying in the police station.

30. From the above it clearly emerges that the case property was produced before the Magistrate who duly certified that he had seen the property. He also certified the inventory and directed that the property be deposited in the Judicial Malkhana. But it was never deposited in the Judicial Malkhana. It remained in the Police Station. It was produced in Court from the Police Malkhana.

31. Similar situations where the case property remained in the Police Station despite orders of the Magistrate to deposit the same in the

judicial Malkhana, without any satisfactory explanation for the same, has been considered by the Supreme Court and also by this Court.

32. In **Jugal Kishore v. State of Punjab, (2008) 17 SCC 747** it was noticed as under :

*“2. In this appeal challenging the impugned judgment, the learned counsel contends that the linkage evidence has not been adduced by the prosecution and resultantly, the prosecution has failed to bring home the charge against the appellant. The case of the prosecution in brief is that the appellant was apprehended on 27-8-1993 and opium of the quantity aforesaid was recovered from the box in his scooter, the same having been lying in a bag in the said box. After completion of formalities 10 gm of opium was taken out as sample and the remaining quantity of 6.500 kg was put in a bag and made a parcel; it was sealed and after the seal had been put, the same was handed over to ASI Swaran Singh. The independent witness of recovery Jagrup Singh was not examined for having been won over by the appellant. He was examined by the appellant as a defence witness as DW 1. We have perused the testimony of SI Barjinder Singh, SHO of the police station concerned who was examined by the prosecution as PW 1. His statement shows that on the next date after the recovery, the case property and the accused were produced before the Magistrate concerned by ASI Swaran Singh. The learned Magistrate directed ASI Swaran Singh to deposit the opium parcel, Ext. P-2 in the judicial malkhana. The order of the Magistrate is Ext. PG-1. The case property was, however, not deposited in the judicial malkhana but was deposited in the police malkhana. According to PW 1 that was on*

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*account of lack of sufficient space in the judicial malkhana and on that count ASI Swaran Singh deposited the opium parcel Ext. P-2 in the police malkhana. According to PW 1 the case property and the seal thereupon remained intact in the police custody.*

*3. Admittedly, ASI Swaran Singh has not been examined by the prosecution. The seal after use, according to the testimony of PW 2, remained with ASI Swaran Singh from 3.45 p.m. and was returned the next day at about 8/9 a.m. Further, no evidence had been produced about the lack of space to keep Ext. P-2 in the judicial malkhana. No order or endorsement of the judicial malkhana has been produced. It is also not the case of the prosecution that the Magistrate concerned was approached on finding that there was no space in the judicial malkhana to keep Ext. P-2 therein in terms of the order of the Magistrate Ext. PG-1. Under these circumstances, the learned counsel is right in contending that there is a reasonable doubt about tampering of the case property or at least reasonable likelihood of the tampering, particularly keeping in view the fact that the case property and the seal both remained in the custody of the police despite order to the contrary in respect of the case property by the Magistrate. It has further been pointed out that the sample that had been taken out was of 10 gm whereas the weights which were available as per the testimony of PW 1 were of 2 kg, 1 kg, 500 gm and 200 gm.”*

33. The non- deposit in the judicial malkhana was sought to be explained by stating that there was no space in the Judicial Malkhana. The Supreme Court rejected this argument noticing that no evidence had been produced about the lack of space in the judicial malkhana. There was no

endorsement of Incharge of the judicial malkhana stating so. Nor did the prosecution approach the Magistrate with a request to modify the direction for deposit of the case property in the judicial malkha in the absence of proper storage space therein. The Court accepted the contention of the appellant that in these circumstances, there was a reasonable doubt or at least likelihood of tampering with the case property as the case property and the seal remained in the custody of the police despite orders of the Magistrate.

34. Similar is the situation here. As testified by PW 5 SHO Jagjit Singh no statement of Incharge of judicial malkhana ever recorded. No application was presented before the Magistrate to modify the direction to deposit the case property in the judicial malkhana.

35. To the same effect are the observations of a Division Bench of this Court in ***Harbhajan Singh v. State of Punjab, 2019 SCC OnLine P&H 6316*** :

*“22. The case property was handed over to PW-2 SI Harinder Singh vide Ex.P5. He moved application Ex.P8 before the Illaqa Magistrate. The Illaqa Magistrate passed the order vide Ex.P11 on 05.01.2008. The order reads as under:—*

*“Heard. The case property be deposited in Judicial Malkhana. Intimation be sent to the Ld. CJM, Ferozepur.”*

*23. However the fact of the matter is that despite the specific order dated 05.01.2008, the case property was not kept in judicial malkhana. PW- 2 SI Harinder Singh*

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*admitted in his cross-examination that case property though was ordered to be deposited in judicial malkhana, this case property was still lying in police station and was brought to the Court from police station itself. He volunteered said that there was no space in the judicial malkhana. However he also admitted that he did not get the Court order modified regarding deposit of case property. There was no report of in charge of judicial malkhana that there was no space in the judicial malkhana. He admitted in his cross-examination that there was no case diary regarding taking of the case property to judicial malkhana and its return. He did not record any case diary on 10.01.2008 regarding dispatch of samples to the lab. He admitted that whenever any case property is taken out from the malkhana for any official purpose and then redeposited, entries of both these activities are always made in register No. 10 under the signatures of SHO or other officers. PW-3 SI Harpal Singh admitted that he had seen the case property outside the Court lying in canter. The seals on some of the bags were broken. It was serious lapse on the part of the police. Once it was ordered to deposit the case property in the judicial malkhana, it should have been deposited in the judicial malkhana alone. In case there was no space in judicial malkhana, the police should have moved an application for modification of the order dated 05.01.2008. There is no report from the in charge of judicial malkhana that there is no space/room to keep the property in judicial malkhana. There is no corresponding entry when the case property was taken out from the malkhana and redeposited in the malkhana. There is detailed procedure under the Punjab Police Rules prescribing the manner in which the case*

*property is to be deposited and taken out from malkhana. Since there is no entry in the malkhana, there is doubt whether the case property remained intact or not more particularly when the seal of certain bags were found broken. The contraband was seized on 04.01.2008 but it was sent for chemical examination only on 10.01.2008. PW-2 SI Harinder Singh also admitted that he did not record any case diary on 10.01.2008 regarding dispatch of sample to the laboratory. It is the duty of the police to ensure that case property always remains intact from the date of seizure till its production in the Court. ....”*

36. Accordingly, the appeal is allowed and the judgment of conviction and order of sentence both dated 5.1.2015 are set aside. Appellant is acquitted of the charge framed against him by giving him benefit of doubt. The appellant be released forthwith, if not required in any other case. Registry is directed to prepare release warrants forthwith.

(LALIT BATRA)  
JUDGE

(HARINDER SINGH SIDHU)  
JUDGE

May 16, 2023

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|-----------------------------|----------|
| Whether Speaking / Reasoned | Yes      |
| Whether Reportable          | Yes / No |