

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

CRM-A-965-MA of 2015

Date of decision: 26th July, 2023

State of Haryana

Applicant

Versus

Kuldeep Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajiv Sidhu, DAG, Haryana.
Mr. S. S. Gill, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. This application under Section 378(3) Cr.P.C. is filed seeking leave to appeal against judgment of acquittal dated 21.2.2015.

2 The facts as projected by the prosecution are that on 29.5.2013, the police party headed by ASI Ashwani Kumar apprehended Kuldeep Singh @ Sandeep (respondent No. 1) on suspicion. During his search, he attempted to throw a polythene bag from the right pocket of his trouser but ASI-Ashwani Kumar caught his hand. Twenty two grams of *Heroin* was recovered. Two samples of five grams each were prepared and sealed by putting seal 'RK'. Respondent No. 1 in his disclosure statement named Satnam Singh @ Satta (respondent No. 2) as supplier of the recovered contraband.

3. After considering the facts and appreciating the evidence adduced, the trial court acquitted the accused considering that :

- (i) No independent witness was joined despite the fact that recovery was from a busy public area;
- (ii) There was contradiction in the statements of Investigating Officer and EASI Om Parkash. As per the statement of the Investigating Officer, he tried to join Sohan Singh, Ishwar

Singh and Goraya but they showed their inability whereas according to EASI Om Parkash, Investigating Officer had only tried to join Sohan Singh and Goraya;

- (iii) After sealing the samples by putting the seal of 'RK', the seal was handed over to EASI Om Parkash who was witness in recovery memo;
 - (iv) Area SHO had put an additional seal but retained it, in such circumstances tampering was not be ruled out.
 - (v) The seals of 'RK' and 'OP' were used for sealing, these seals were of ASI Raj Kumar and ASI Om Parkash who were posted at Police Station but were not the officials sealing the sample. There was no explanation for using the seals of the other police officials.
 - (vi) Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 was not complied with as the case property was neither weighed nor samples were drawn in the presence of the Judicial Magistrate;
 - (vii) Name of Satnam Singh surfaced in the disclosure statement and his confessional statement was recorded but there was no evidence to link him with the recovery and
 - (viii) Form-29 prepared at the spot was not produced to establish that there was no delay in sending the samples for testing.
- There was failure of the prosecution to prove the guilt of the accused beyond reasonable doubt.

4. Learned counsel for the State submits that the contraband was recovered from the possession of Kuldeep Singh. It is further argued that it was a chance recovery and FSL report supported the fact that the recovered contraband was *Heroin*.

5. Heard learned counsel for the State and perused the record.

6. The scope of interference in judgment of acquittal is limited. The trial court has given detailed reasons and has separately dealt with every issue denting the story of the prosecution. Failure of the explanation for using the seal of the official who was not present at the spot and

retaining of seal by the Area SHO and handing other seal to the witness of the recovery memo created doubt on the story of prosecution.

7. It would be appropriate to note that the samples were not drawn before the Magistrate. The Supreme Court in **Criminal Appeal No. 1443 of 2023—Simarnjit Singh v. State of Punjab**, decided on 9.5.2023 relying upon its earlier decision in **Union of India v. Mohanlal and another, 2016(3) SCC 379** held :-

“9. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this court in the case of Mohan Lal. This creates a serious doubt about the prosecution's case that substance recovered was a contraband.”

8. The trial court rightly concluded that apart from the confessional statement and the disclosure statement, there was no evidence against Satnam Singh to prove his involvement.

9. There is no legal or factual error in the impugned judgment, much less perversity. No case is made out for grant of leave to appeal.

10. The application is dismissed.

[AVNEESH JHINGAN]
JUDGE

26th July, 2023
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1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

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Yes