

In the High Court for the States of Punjab and Haryana at  
Chandigarh

**CRM-M-46512-2019**

**Reserved on:** *February 13, 2023*

**Date of Decision:** *February 17, 2023*

Gurbakash Singh

*... Petitioner*

Versus

State of Punjab

*... Respondent*

**CORAM: HON'BLE MR. JUSTICE VIVEK PURI**

Present: Mr. C.L. Verma, Advocate,  
for the petitioner.

Mr. Hittan Nehra, Addl.A.G., Punjab.

**Vivek Puri, J.**

The petitioner has assailed the order dated 10.01.2019 passed by the learned trial Court vide which the application of the prosecution for sending the second sample to Forensic Science Laboratory (for short 'FSL') was allowed.

Precisely, the FIR bearing no. 129 dated 28.07.2015, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') was registered at Police Station Daba, District Ludhiana in pursuance of recovery of 150 Kg. of poppy husk from the truck being driven by the petitioner and the co-accused Swarn Singh was also travelling therein.

The learned counsel for the petitioner contends that the challan in the instant case was presented without

the report of the Chemical Laboratory on 25.01.2016 and the petitioner is continuously appearing in the learned trial Court. The prosecution had moved an application (Annexure P-4) for permission to send the second sample to FSL on the score that as per the letter received from the Chemical Examiner, Kharar for obtaining the report of FSL, it has been reported that the samples were misplaced due to shifting of building. Consequently, the application for permission to send the second sample to FSL has been allowed by virtue of the impugned order. It has been argued that there is no provision in the Act for re-testing or re-analysis of the samples. There is lack of material to indicate that the sample was lost during the course of shifting of the office of the Chemical Examiner. Moreover, in view of the guidelines laid down in ***Thana Singh vs. Central Bureau of Narcotics, 2013(3) R.C.R. (Criminal) 931***, the request of re-testing/re-sampling is to be entertained under extremely exceptional circumstances for cogent reasons to be recorded by the trial Court and that too within a period of 15 days from the receipt of the test report. The application for sending the second sample has been moved to fill up the lacuna in the case of the prosecution and it will be prejudicial to the interest of the petitioner.

On the contrary, the learned State counsel has contended that it is not a case where there is any lapse on

the part of the Investigating Officer or the Officer In-charge of the police station in sending the sample parcel to the office of the chemical examiner. The samples have been lost/mis-placed during the course of shifting of the building of the office of chemical examiner. Consequently, the request was made to the trial Court for permission to send the second sample to the chemical examiner. After the application was allowed, the report of the chemical examiner has also been received which indicates that the contents of the sample parcels have been identified as poppy husk.

Before proceeding further, it may be mentioned here that there is no provision under the Act for sending the second sample for Chemical Examiner which may be akin to the relevant provisions of the Prevention of Food Adulteration Act and Insecticide Act. In Thana Singh's case (supra), it has been observed as following:-

*“25. Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the concerned laboratories, results of the same must be furnished to all parties concerned with the matter. Any requests as to re-testing/re-sampling shall not be entertained under the Narcotic Drugs and Psychotropic Substances Act as a matter of course. These may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge. An application*

*in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-testing/re-sampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any form of re-testing/re-sampling is strictly prohibited under the Narcotic Drugs and Psychotropic Substances Act.”*

The precise question in the instant case is to see as to whether any such extremely exceptional circumstances are made out which may justify the sending of second sample to the office of chemical examiner for analysis. As per the aforesaid decision, re-testing/re-sampling is not to be entertained under the Act as a matter of course and that too after a period of 15 days of the receipt of test report. Significantly, the present one is not a case of re-testing or re-sampling. It is not the case of the prosecution that the sample sent at the first instance was, in fact, tested in the Laboratory and there was any deficiency therein. In the case in hand, the sample was never tested as it got misplaced/mis-laid during the course of shifting of the office of chemical examiner. Even the bar of 15 days as directed aforesaid will not come into play as no test report has been received in the instant case. It is not the case of the prosecution that at the earlier instance the sample was tested and the report was inconclusive or in any manner adverse to the case of the prosecution.

The fine question of law has also been considered by a Division Bench of this Court in **Amarjit Singh vs. State of Punjab, 2013 (4) R.C.R. (Criminal) 524** and it has been held as following:-

*“22. Even though the Narcotic Drugs and Psychotropic Substances Act does not have any provision pertaining to the second test of the sample, at the instance of the prosecution, there may arise an occasion which would warrant recourse to second test. It may be a case where the sample contraband sent for examination was lost in transit or could not be traced before ever the test was embarked upon by the Laboratory. The sample would have been subjected to damage during transit or at the Laboratory. There may be a case where the seal found affixed on the sample does not match with the sample seal sent along therewith for comparison by the Chemical Examiner before ever opening the sample for test. Though the Narcotic Drugs and Psychotropic Substances Act does not recognise the right of the prosecution to go in for second test, the aforesaid contingencies warrant second test in the interest of justice. Negation of the plea for second test even in such contingencies would definitely lead to miscarriage of justice. But at the same time the prosecution cannot simply come with an application for re-test of the sample already collected or drawn afresh from the bulk quantity just because it was not satisfied with the report*

*submitted at the first instance by the Chemical Examiner. In case the sample itself was tampered with at the instance of the accused or at the instance of the Chemical Examiner, of course, the prosecution can pray for fresh test by another Laboratory of the sample already kept or the sample draw from the bulk of the quantity. Under the PFA Act and the Insecticides Act, the ultimate report submitted by the Analyst has been termed as conclusive proof. But the Narcotic Drugs and Psychotropic Substances Act there is no such provision to term the report ultimately submitted by the Central Forensic Science Laboratory as conclusive proof, making in roads into the domain of the Evidence Act. When the Special Act governing the narcotic offences does not speak about the relative probative value of the first result and the final result of the sample, the general law of evidence will have to be applied.”*

Although in **Thana Singh’s case** (supra), no illustrative instances have been pointed out which may require sending the second sample for re-analysis, but the aforesaid Division Bench decision indicates that damage or loss during the course of transit will make out a justified case for sending the second sample parcel for analysis.

In the instant case, there is no lapse on the part of the Investigating Officer or the Officer In-charge of the Police Station which may have necessitated sending the

second sample parcel for analysis to the chemical examiner. The analysis of the contraband alleged to have been recovered from the vehicle being driven by the petitioner appears to be essential for the just decision of the case and sending the second sample parcels to the Chemical Examiner for analysis in the facts and circumstances of the case appears to be essential to meet with the ends of justice. In the instant case, sufficient extremely exceptional circumstances are made out to justify sending the second sample parcel to the Chemical Examiner for analysis.

Consequently, no illegality or irregularity is made out in the impugned order which may warrant interference by this Court.

For the aforesaid reason, finding no merit in the petition, the same is dismissed.

**February 17, 2023**  
*vk*

**(Vivek Puri)**  
**Judge**

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| Whether speaking/reasoned: | Yes |
| Whether reportable:        | Yes |