

CRR-4-2020 (O&M)

2023:PHHC:068202

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(251)

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

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Date of Decision: 11.05.2023

STATE OF HARYANA

... Petitioner

Versus

MOHAMAD DEEN @ NIKU KHAN

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Neeraj Poswal, Asst. A.G., Haryana.

Mr. Basant Sharma, Advocate
for the respondent.

JASJIT SINGH BEDI, J.

The present petition has been preferred against the order dated 06.02.2019 passed by the Additional Sessions Judge, Sirsa, whereby the respondent was discharged.

2. The brief facts of the case are that on 04.05.2017 accused/Paramjeet Kaur was apprehended by the police officials near the BSNL Tower No.6, Ellenabad. During search, 6 gms smack was recovered from her. After completing the usual formalities, FIR No.93 dated 04.05.2017 under Section 21/27-A/61/85 of NDPS Act at Police Station Ellenabad came to be registered against Paramjeet Kaur. During her interrogation, she suffered a disclosure statement that she had purchased the recovered smack from Mohammdin @ Nikku son of Nabab Khan (respondent/discharged accused). In pursuance of the disclosure statement, the respondent was

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arrested on 06.07.2018. He was interrogated and confessed his guilt. He also demarcated the place where he allegedly sold the smack to Paramjeet Kaur. However, no recovery was effected from him. After completion of the investigation, a supplementary report under Section 173(2) Cr.P.C. was submitted against the respondent.

3. Ultimately, on consideration of the said report, the respondent came to be discharged vide order dated 06.02.2019. It is this order which is under challenge in the instant petition.

4. The learned counsel for the petitioner/State contends that the disclosure statement of the accused was categorical to the effect that it was the respondent who had sold the contraband to Paramjeet Kaur, the arrested accused. A demarcation memo had also been prepared during the course of investigation. The respondent himself had also suffered a disclosure statement admitting to having sold the contraband to his co-accused Paramjeet Kaur. Therefore, the Trial Court had erred in discharging the respondent holding that no *prima facie* case was made out. In fact, at the stage of framing of charges, the appreciation of evidence could not have been done and mere suspicion was sufficient to frame charges. He, therefore, prays that the order be set aside and the trial ought to proceed against the respondent.

5. I have heard the learned counsel for the petitioner.

6. Admittedly, in the instant case, the petitioner has been named in the disclosure statement of his co-accused in pursuance to which no recovery whatsoever has been made from him. The Hon'ble Supreme Court and this

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Court in the case of Tofan Singh Versus State of Tamil Nadu, 2020 AIR (Supreme Court) 5592, Rakesh Kumar Singla Versus Union of India, 2021(1) RCR (Criminal) 704, Surinder Kumar Khanna Versus Intelligence Officer Directorate of Revenue Intelligence, 2018(3) RCR (Criminal) 954, State by (NCB) Bengaluru Versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762 and Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal 590), held that in the absence of any corroborative evidence, the disclosure statement of a co-accused has no evidentiary value.

7. Further, there is a discrepancy regarding the amount of contraband supplied by the respondent. As per the disclosure statement of accused/respondent, he had sold 0.6 gms of opium (smack) to Paramjeet Kaur. However, as per the demarcation memo, the respondent is said to have sold 6 gms to Paramjeet Kaur. Further, the recovery from Paramjeet Kaur is of 6 gms of smack as against .6 gms purportedly supplied by the respondent. Therefore, there is a doubt in the prosecution version, the benefit of which ought to go to the respondent.

8. Keeping in view the fact that the respondent was only named in the disclosure statement of his co-accused pursuant to which no recovery whatsoever has been effected from him as also the fact that there is material discrepancy in the quantity of smack purportedly supplied by the respondent to Paramjeet Kaur, no fault can be found with the order of discharge passed by the Court of Additional Sessions Judge, Sirsa.

9. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same is dismissed.

(JASJIT SINGH BEDI)
JUDGE

11.05.2023
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No