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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-S-595-SB-2003 (O&M)  
Date of decision: 22.05.2024

Madan Lal

...Appellant

Vs.

U.T. of Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Salil Bali, Advocate  
for the appellant.

Mr. Abhinav Gupta, Addl. P.P., U.T. Chandigarh.

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HARPREET SINGH BRAR, J. (ORAL)

1. The instant appeal is preferred against the judgment of conviction and order of sentence dated 17.01.2003 passed by learned Judge, Special Court, Chandigarh in FIR No.1 dated 01.01.2000 under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Central, Chandigarh, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of ten years with a fine of Rs. 1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two and a half years.

**FACTUAL BACKGROUND**

2. The facts of the prosecution case, tersely put, are that on 01.01.2000, a police party headed by PW3-Sub Inspector Rajinder Pal (Investigating Officer) was on patrolling duty near the Shimla counter, CTU parking at Inter State Bus Terminal, Chandigarh. When they received secret information that the appellant-accused is carrying a large quantity of *Charas* and will soon be boarding a bus to Bathinda. Information being reliable, a ruqa was sent to the office of ASP(C) through Constable Rajinder Singh. The police party proceeded to nab the appellant. At around 06:45 p.m., an elderly man was seen coming from the side of Haryana Mini Secretariat towards CTU parking. On seeing the police party, the appellant immediately tried to turn back. On signal from the secret informer, the police officials apprehended the appellant, who disclosed his name as Madan Lal. The appellant was given the option of either being searched in the presence of a Gazetted Officer or in the presence of a Magistrate. The respondent opted to be searched before a Gazetted Officer. His consent statement was recorded. Accordingly, Sub Inspector informed the ASP(C) (PW-9), who arrived at the spot at 07.15 p.m. The ASP then instructed Sub Inspector Rajinder Pal to conduct the search and *charas* wrapped in a polythene paper was recovered from a cloth bag, which he was carrying in his hand. On weighing the contraband, it came out to be one kilogram and five hundred grams. Hundred grams of *charas* was drawn and turned into a sample parcel. Rest of the contraband was turned into a bulk parcel.



Both the packages were sealed with the seal 'RP' and were taken into possession vide a recovery memo, which was attested by the witnesses. The seal, after use, was given to Gulshan Kumar. The appellant could not produce any permit or licence for keeping the narcotic drug in his possession. Hence, on a *ruqa* sent to the police station, a case under Section 20 of the NDPS Act was registered against him and he was arrested.

3. On completing the investigation, *challan* was presented against the accused. In compliance with the provisions of Section 207 Cr.P.C., copies of the *challan* were supplied to the appellant-accused free of cost. On finding a *prima facie* case against the appellant, charge under Section 20 of the NDPS Act was framed against him, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution examined as many as ten witnesses. All the incriminating evidence was put to the appellant and his statement under Section 313 Cr.P.C. was recorded, wherein he pleaded false implication. However, the appellant did not examine any witness in his defence.

5. After minutely scrutinizing the evidence led by the prosecution and going through the record of the case, learned trial Court held the appellant guilty and sentenced him as discussed herein above.

### **CONTENTIONS**

6. Learned counsel for the appellant assails the impugned judgment on the ground that learned trial Court has failed to appreciate that apart from the



police witnesses, the independent witness, namely, Gulshan Kumar was the only disinterested witness of the alleged recovery from the appellant and for the reasons best known to the prosecution, this witness was never examined. Further, the Court has erred by placing reliance on the statement of PW3 Sub Inspector Rajinder Pal and PW9 ASP Sagar Preet Hooda. The statements of these witnesses are materially discrepant and improved the case of the prosecution at each and every stage. PW9 ASP Sagar Preet Hooda, in his examination-in-chief, stated that 1.5 Kg of opium was recovered from the possession of the appellant, whereas 1.5 Kgs of *charas* was recovered. This is a major discrepancy, which clearly goes to show that the prosecution version was totally false and fabricated. Further, in the ruqa (Ex.PC), name of the appellant, his father's name and his address, including the house number and the city were mentioned, however, PW3 SI Rajinder Pal, in his cross-examination, confessed that the secret informer had only told him name of the appellant, his father's name and that he is a resident of Bathinda, not the house number of the appellant. Lastly, the FIR number of the case is mentioned on the personal search memo of the appellant and the seizure memo, which were prepared at the spot, at the time of alleged recovery. This clearly indicates that these documents were not prepared at the time of alleged recovery, which were rather prepared after the registration of the case.

7. On the other hand, learned State counsel argues that merely because the independent witness was not examined, it does not make the depositions of



the official witnesses inadmissible, which do not suffer from any serious infirmities. The discrepancies in the depositions of the witnesses are minor in nature and does not impact the prosecution case. The link evidence is complete and learned trial Court has arrived at a guilty verdict on correct appreciation of material on record.

### **OBSERVATIONS AND ANALYSIS**

8. Having heard learned counsel for the parties at length and after perusing the record of the case with their able assistance, it transpires that a raid was conducted on the basis of secret information and 1.5 kg of *Charas* was recovered from the appellant-accused.

9. A perusal of the record indicates that the alleged recovery was effected on 01.01.2000 and the same was produced before SHO KIP Singh (PW-8). Subsequently, the case property was deposited with the MMHC, HC Ashok Kumar (PW-5), who has categorically admitted that the samples were retained by him in his custody from 01.01.2000 to 12.01.2000, when they were sent for chemical examination. Hence, the samples were deposited with the FSL after the lapse of 12 days from its seizure, in direct violation of the Standing Order No. 1 of 1988 dated 15.03.1988, which would tantamount to a serious flaw in the investigation and suffocate the prosecution case completely. The sanctity of the instructions contained in Standing Order No.1 of 1988 came up for consideration before the Hon'ble Supreme Court in *Noor Aga Vs. State of Punjab and another*,



**2008 (16) SCC 417** and it was held that these statutory instructions are mandatory in nature and the following was observed:

*“32. Recently, this Court in **State of Kerala & Ors. v. Kurian Abraham (P) Ltd. & Anr.** [(2008) 3 SCC 582], following the earlier decision of this Court in **Union of India v. Azadi Bachao Andolan** [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.*

*Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly outed and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.”*

10. Furthermore, there is a glaring omission with respect to the compliance of Section 52-A of the NDPS Act. No evidence has been brought on record to the effect that the procedure prescribed under subsections (2), (3) and (4) of Section 52-A of the NDPS Act was followed while making the seizure and drawing sample such as preparing the inventory and getting it certified by the Magistrate. Section 52-A of the NDPS Act does not serve a mere academic purpose, as by introducing the Magistrate in the chain of events, it advances the cause of fair and impartial investigation as guaranteed by Article 21 of the Constitution of India, since the police authorities do not enjoy the same degree of confidence amongst the public as do the Courts. Therefore, the legislative intention behind Section 52-A of the NDPS Act would be entirely



defeated if the samples are not drawn in the presence of the Magistrate and the list of the samples so drawn is not certified by him, which consequently makes the prosecution case untenable. A two Judge Bench of the Hon'ble Supreme Court in ***Mangilal Vs. The State of M.P., 2023(3) R.C.R (Criminal) 703***, while acquitting the accused, has observed that the mandate of Section 52-A of the Act has to be duly complied with. Speaking through Justice M.M. Sundresh, the following was observed:-

*"8. Before any proposed disposal/destruction mandate of Section 52A of the NPDS Act requires to be duly complied with starting with an application to that effect. A Court should be satisfied with such compliance while deciding the case. The onus is entirely on the prosecution in a given case to satisfy the Court when such an issue arises for consideration. Production of seized material is a factor to establish seizure followed by recovery. One has to remember that the provisions of the NDPS Act are both stringent and rigorous and therefore the burden heavily lies on the prosecution. Non production of a physical evidence would lead to a negative inference within the meaning of section 114(g) of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act). The procedure contemplated through the notification has an element of fair play such as the deposit of the seal, numbering the containers in seriatim wise and keeping them in lots preceded by compliance of the procedure for drawing samples."*

11. On a careful reading of the deposition of the Investigating Officer, it is discovered that the personal search memo as well as the seizure memo were completed first. This was followed by the preparation of the ruqa (Ex.PF) which was sent through Constable Rajinder Singh to the police station and on the basis of this ruqa, the FIR was registered. However, a perusal of the personal search



memo and seizure memo shows that they bear the FIR number. There is no explanation by any of the witnesses as to how the FIR number came to be reflected on the personal search memo as well as seizure memo, when admittedly the FIR was lodged later in time. The above aspect raises a serious suspicion on the investigation conducted by the investigating officer.

12. It is also important to note that although an independent witness was joined in the investigation, when the recovery was effected from the accused, but he was not examined during trial. This lapse on the part of the investigation team becomes even more prominent, given the fact that the said independent witness was also the supplier of secret information and helped in identifying the appellant during the recovery. The Hon'ble Supreme Court in ***Krishan Chand Vs. State of H.P., AIR 2017 (SC) 3751*** has laid down the ratio that the failure of the investigating officer to associate an independent witness at the time of recovery creates a dent in the case of the prosecution. A two Judge Bench of the Hon'ble Supreme Court in ***Gorakh Nath Prasad Vs. State of Bihar, 2018(1) RCR (Criminal) 108*** had acquitted the accused and held that the case of the prosecution cannot be entirely based upon the statements of the official witnesses when no independent witness has been joined in the investigation.

### **CONCLUSION**

13. In view of the above discussion, the present appeal is allowed. The judgment of conviction and order of sentence dated 17.01.2003 passed by learned



Judge, Special Court, Chandigarh is set aside. The appellant, namely Madan Lal, is acquitted of the charges framed against him. His bail/surety bonds stand discharged.

14. All the pending miscellaneous application(s), if any, shall also stand disposed of.

15. The case property, if any, may be dealt with as per rules after the expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

[ HARPREET SINGH BRAR ]  
JUDGE

22.05.2024  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No