



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-155-2023
Reserved on 28.08.2024
Date of decision: 12.09.2024

State of Punjab ...Appellant
Versus
Adarsh Rathour ...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Mohit Kapoor, DAG, Punjab.

KARAMJIT SINGH, J.

1. The present appeal has been filed by the State against the judgment dated 20.01.2022 passed by Judge, Special Court, SAS Nagar (Mohali) whereby respondent-Adarsh Rathour was acquitted in a criminal case having FIR No.79 dated 05.04.2020 registered under Section 22 NDPS Act at Police Station Dhakoli.
2. The brief facts of the case of prosecution are that on 05.04.2020, SI Naib Singh (PW-3) received written information from SI Arshdeep Sharma (PW-1) through Constable Harjit Singh, while he was present in the police station. As per said written information, one Scorpio car No.HP-63-A-9528 was found parked alongside the road at about 01:15 PM by SI Arshdeep Sharma (PW-1) and one person was seen standing behind the Scorpio car. When the police officials enquired from said person the reason to park his car there, he tried to fled away but was apprehended



and on enquiry disclosed his name as Adarsh Rathour, resident of Shimla. On receiving the said information, SI Naib Singh reached the spot and disclosed his identity to the accused and he was made aware of his legal right to be searched in presence of a Gazetted officer or a Magistrate. The accused showed his willingness to be searched in presence of Gazetted officer and accordingly, dissent memo Ex.PW-2/C was prepared. SI Naib Singh called DSP Rupinderjeet Singh (PW-7), who reached the spot. The accused reposed confidence in said police officer vide memo Ex.PW-2/B. The search of Scorpio car was effected by SI Naib Singh under the supervision of DSP Rupinderjeet Singh. One bag having 19 bottles of **Codeine Phosphate and Triprolidine Hydrochloride Syrup RC-KUFF+Cough Syrup** each weighing 100 ml having batch No.RCLT-1016, manufacturing date Nov.2019 expiry date Dec.2021 was recovered. The accused failed to produce any licence or prescription regarding said bottles of cough syrup. The said bottles of cough syrup were converted into a parcel which was sealed by DSP Rupinderjeet Singh and SI Naib Singh with their respective seals bearing impressions 'RS and NS' respectively. Separate sample seal impressions were also prepared. SI Naib Singh handed over his seal to ASI Dharampal (PW-2) and the aforesaid articles were taken into possession by the police vide memo Ex.PW-2/D which was signed by SI Naib Singh and ASI Dharampal and attested by DSP Rupinderjeet Singh. The ruqa was sent, on the basis of which FIR Ex.PW-3/A was registered in Police Station Dhakoli. The Scorpio car was separately seized by the police vide memo Ex.PW-2/A. After completion of formalities at the spot, the accused along with the entire case property was produced before SHO/SI



Sumit More (PW-4), who after verifying the facts of the case, affixed his seal bearing impression 'SM' on the sealed parcel and separate sample seal impression was also prepared. The case property was deposited with MHC Amit Kumar (PW-6) while the accused was sent to police lockup. On the next day i.e. 06.04.2020, the accused along with the case property was produced before the Illaqa Magistrate. The sealed parcel containing the case property was opened and four bottles of cough syrup were separated and converted into two parcels, in presence of Illaqa Magistrate. The said two parcels and remaining bulk were sealed by the Magistrate with seal bearing impression GD. Form No.M-29 was also prepared. The Illaqa Magistrate passed order Ex.PW-3/J as per the provision of Section 52-A NDPS Act. One sealed sample parcel which was separated in presence of the Illaqa Magistrate was sent for its analysis along with Form No.M-29 Ex.PW-3/L to FSL, SAS Nagar Mohali. On completion of investigation, challan was presented against the accused.

3. The trial Court framed charge under Section 22 NDPS Act against the accused, to which he did not plead guilty.

4. In support of its case, the prosecution examined PW-3 SI Naib Singh deposed that on 05.04.2020, he received information from SI Arshdeep Sharma (PW-1) and then he reached the disclosed spot, where accused was found present along with Scorpio car No. HP-63-A-9528. He apprised the accused of his legal right of search. On which the accused stated that search of his vehicle be conducted in presence of a Magistrate or a Gazetted officer and to this effect, separate memo Ex.PW-2/C was prepared. DSP Rupinderjeet Singh was informed, who reached the spot and



accused reposed confidence in the said Gazetted police officer vide memo Ex.PW-2/B. On search of the Scorpio car, 19 bottles of Codeine Phosphate were recovered regarding which the accused failed to produce any prescription or licence. The same were converted into parcel and DSP Rupinderjeet Singh appended his seal RS and he also appended his seal bearing impression 'NS', on the said parcel. Separate sample seal impressions were prepared and the aforesaid articles were taken into possession vide memo Ex.PW-2/D. The Scorpio car was seized vide memo Ex.PW-2/A. He also proved ruqa Ex.PW-3/A, FIR Ex.PW-3/C and rough site plan of place of recovery Ex.PW-3/D. He further stated that on return to police station, the case property was produced before PW-4 SHO/SI Sumit More who appended his seal having impression 'SM' on the case property and then the same was deposited in the malkhana. On the next day, the case property was produced before the Illaqa Magistrate and sealed parcel was opened. Four bottles of cough syrup were converted into two separate parcels, which were sealed by Illaqa Magistrate with a seal bearing impression 'GD'. The remaining bulk was converted into separate parcel which was also sealed by the Illaqa Magistrate with aforesaid seal 'GD'. Form No.M-29 Ex.PW-3/L was separately prepared. He also proved inventory report Ex.PW-3/N and order passed by Illaqa Magistrate under Section 52-A NDPS Act Ex.PW-3/J. He also proved photographs of inventory proceedings Ex.P-1 to Ex.P-4 and report of FSL Ex.PW-3/M.

5. PW-1 SI Arshdeep Sharma deposed that on 05.04.2020, he apprehended the accused who was seen standing near Scorpio car No.HP-63-A-9528 and the accused tried to escape on seeing the police officials. He



sent information Ex.PW-1/A in this regard to SI Naib Singh (PW-3) through Constable Harjit Singh. On receiving the said information, the aforesaid police official reached the spot. He further corroborated statement of PW-3

6. PW-2 ASI Dharampal who was the member of police party headed by PW-3 SI Naib Singh corroborated his statement and proved recovery memos Ex.PW-2/D and Ex.PW-2/A, which bear his signatures.

7. PW-7 DSP Rupinderjeet Singh deposed that on 05.04.2022, he was posted as DSP PBI/NDPS and on receiving the information, he reached the spot. The accused reposed confidence in him vide memo Ex.PW-2/B. He corroborated the statement of PW-3 SI Naib Singh and proved recovery memo Ex.PW-2/D, which bears his attestation.

8. PW-4 SI Sumit More deposed that on 05.04.2020, he was posted as SHO Police Station Dhakoli. On that day, accused along with one parcel bearing seal impressions 'NS' and 'RS' and Scorpio car No. HP-63-A-9528 were produced before him by SI Naib Singh. After verifying the facts of the case, he appended his seal bearing impression 'SM' on the aforesaid parcel and sample seal impression slip. Thereafter, the entire case property was deposited in the malkhana. On 07.04.2020 malkhana munshi produced one parcel bearing seal impression GD, which was further converted into a parcel on which he appended his seal bearing impression 'SM' and also affixed secret code 0002 and then the same was handed back to malkhana munshi for its deposit in the FSL.

9. PW-5 SI Harjinder Singh deposed that on 07.04.2020 Constable Shammi Hans produced the aforesaid sealed parcel on which he affixed unique code bearing No. SSP70 and directed the said police official



to deposit the same in the office of FSL.

10. PW-6 CII Amit Kumar who was posted as MHC in Police Station Dhakoli tendered his affidavit Ex.PW-6/A regarding deposit of the case property with him.

11. PW-8 HC Shammi Hans tendered his affidavit Ex.PW-8/A in order to prove the link evidence.

12. In his statement recorded under Section 313 Cr.P.C, the entire incriminating evidence was put to the accused but he denied the same and pleaded innocence and false implication. However, the accused had not examined any witness in his defence.

13. After hearing the counsel for the parties and considering the evidence on record, the trial Court acquitted the appellant vide judgment dated 20.01.2022, with observations as follows:-

“27. Now, from the evidence on record, I find that PW-1 Arshdeep Sharma has deposed regarding recovery as 19 bottles of Codeine Phosphate & Triprolidine Hydrochloride Syrup each bottle was weighing 100ML and it was RCLT 1016 manufacturing date Nov. 2019 and Expiry date Dec. 2021 and MRP Rs.120 each, was written on the bottles and has not deposed regarding the brand, whereas PW2, PW3 and PW7 have referred to the recovery as 19 bottles of Codeine Phosphate only and are silent to the brand or the batch number of the bottles allegedly recovered from the accused. Further PW-4 has deposed that recovered article is Codeine Phosphate & Triprolidine Hydrochloride Syrup RC- KUUFF- Cough Syrup, whereas in the affidavit of PW-6 C-2 Amit Kumar it is mentioned that the parcel was containing Codeine Phosphate & Triprolidine Hydrochloride Syrup RC-KUUFF+ Cough Syrup. But admittedly, he was handed over a sealed parcel and he would not know what was the content of the same.

28. Now, coming to the report of Chemical Examiner Ex.PW3/H (Ex.PW3/M), the same is "RC-KUUFF PLUS. Therefore, I find that the case property which was allegedly recovered and produced before the learned Magistrate is not the same which was sent to the Chemical Examiner. This is not the case of some powder or loose tablets that presumption can be drawn that the article sent to Chemical Examiner are the same which were allegedly recovered as in those cases no brand name or any batch number are written. It would have been a different story if batch number and expiry date were mentioned on the report Ex. PW3/H (Ex.PW3/M). Once batch numbers are not mentioned, it is not possible to come to the conclusion that Chemical Report relates to the same material which was allegedly recovered. Even otherwise in the alleged recovery memo words



Codeine Phosphate & Tripriolidine Hydrochloride syrup RC-KUFF+ COUGH Syrup is written i.e. notation+ and not words PLUS, whereas in the chemical report words 'RC-KUFF PLUS' is written and not the sign+. 29. In the considered opinion of this Court, this discrepancy is fatal to the prosecution version, benefit of which has to be given to the accused. Hence, giving benefit of doubt, accused is acquitted of the charges framed against him. However, the accused is directed to furnish the bail bond in the sum of Rs.50,000/- with one surety in the like amount within one week of his release from custody as per provisions of Section 437(A) of the Criminal Procedure Code, thereby undertaking to appear before the Hon'ble High Court in case the notice of any appeal filed by the State is received by him. from the Hon'ble High Court. Case property be disposed of, under rules after the expiry of period prescribed for filing appeal or revision, as the case may be and outcome thereof, if any except the sealed sample. File be consigned to the record room.

14. The State counsel while assailing the judgment of acquittal passed by the trial Court, has argued that it is there in the evidence that the accused was apprehended along with his Scorpio car No. HP-63-A-9528 by PW-1, who called PW-3 at the spot. The accused was apprised of his legal right to be searched in presence of a Magistrate or a Gazetted officer and he opted for search of his vehicle in presence of a Gazetted officer as is evident from Ex.PW-2/C and then PW-7 reached the spot after he got the information. The accused reposed confidence in said police officer vide memo Ex.PW-2/B. It is further submitted that on search of the aforesaid vehicle, one bag containing 19 bottles of **Codeine Phosphate and Tripriolidine Hydrochloride Syrup RC-KUFF+Cough Syrup** each weighing 100 ml having batch No.RCLT-1016, manufacturing date Nov.2019 and expiry date Dec.2021, was recovered. The aforesaid articles were converted into a sealed parcel which was sealed by PW-3 and PW-7 with their respective seals and then seized vide memo Ex.PW-2/D. The State counsel has further submitted that batch number, date of manufacture and expiry date was specifically mentioned in recovery memo Ex.PW-2/D and case property was fully detailed in the said recovery memo. On



reaching the police station, PW-4 being SHO sealed the said parcel with a seal bearing impression 'SM' and the same was kept in safe custody. The State counsel has further submitted that on the next day, the case property along with the accused was produced before the Illaqa Magistrate concerned where the proceedings under Section 52-A NDPS Act were carried out and out of the bulk, two samples each, containing two bottles of cough syrup, were separated which were sealed by the learned Magistrate with his seal 'GD'. The remaining bulk was also sealed by the learned Magistrate with his aforesaid seal. The State counsel further submits that there is enough link evidence to prove that the sealed sample sent for analysis, remained intact till it reached the office of FSL. As per the report of FSL Ex.PW-3/M, the said sample was found to be containing 9.8 mg/5 ml of Codeine Phosphate and the entire recovery comes under commercial quantity of contraband, as per the provisions of NDPS Act. The State counsel has further argued that in the given circumstances, the trial Court wrongly came to the conclusion that prosecution has failed to establish that the report of chemical examiner Ex.PW-3/M is related to the articles mentioned in recovery memo Ex.PW-2/D. The State counsel has further contended that the appeal filed by the State deserves to be allowed.

15. We have considered the submissions made by the State counsel.

16. The following issue arises for consideration before this Court:-

“Whether the prosecution is able to prove that report of FSL Ex.PW-3/M relates to the articles mentioned in recovery memo Ex.PW-2/D.”

17. Recovery memo is Ex.PW-2/D, as per which 19 bottles of



Codeine Phosphate and Tripriolidine Hydrochloride Syrup RC-KUFF+Cough Syrup each weighing 100 ml, having batch No.RCLT-1016, manufacturing date Nov.2019 expiry date Dec.2021, were recovered on 05.04.2020 from the accused. However, in the inventory proceedings Ex.PW-3/J conducted under Section 52-A NDPS Act, there is no mention of batch number, manufacturing date and expiry date of the said articles. Even Form No.M-29 Ex.PW-3/L, which was prepared in presence of the Illaqa Magistrate and is bearing his signatures, is silent with regard to batch number, date of manufacturing and expiry date of the alleged recovered articles. Furthermore, report of FSL Ex.PW-3/M is also completely silent about the batch number, date of manufacturing and expiry date of said articles. In the absence of batch number not being mentioned in FSL, the sample consisting of two bottles of cough syrup, cannot be considered as a true representative sample of the remaining bulk. Thus, as there is lack of requisite details like batch number, date of manufacture and expiry date in the report of FSL Ex.PW-3/M and inventory report Ex.PW-3/J and Form No.M-29 Ex.PW-3/L, the prosecution has failed to establish that the aforesaid documents related to the bottles of cough syrup which are detailed in recovery memo Ex.PW-2/D. Furthermore, as per the recovery memo Ex.PW-2/D, 19 bottles of **Codeine Phosphate and Tripriolidine Hydrochloride Syrup RC-KUFF+Cough Syrup** each weighing 100 ml having batch number, date of manufacturing and expiry date were recovered at the spot, whereas report of FSL is regarding sample having two bottles each labeled as '**RC-KUFF PLUS**' each weighing 100 ml. It being so, the trial Court rightly held that the recovered bottles of cough syrup were

labeled having notation+ and not words PLUS, whereas in the report of FSL, it was written as ‘RC-KUFF PLUS’ and in place of notation+, word PLUS is there. Thus, the prosecution failed to prove that report of FSL Ex.PW-3/M relates to the alleged medical intoxicants described in recovery memo Ex.PW-2/D. Accordingly, the issue framed above is decided against the appellant State.

18. In the light of the above discussion, the State counsel has failed to point out any illegality or perversity in the impugned judgment whereby the accused was acquitted while giving him a benefit of doubt.

19. Consequently, the present appeal is hereby dismissed being devoid of merits.

(SUDHIR SINGH)
JUDGE

12.09.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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