



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-750-SB-2014 (O&M)
Reserved on 21.10.2024
Date of decision: 04.11.2024

Sanjiv Kumar and another ...Appellants

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. R.K. Girdhar, Advocate and
Mr. Chirag Girdhar, Advocate for appellant No.1.

Mr. Gurpal Singh Sandhu, Advocate
for appellant No.2.

Mr. Jasjeet Singh Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. Appellants have filed the present appeal against the judgment and order dated 27.01.2014 passed by the Court of Special Judge-III, Ferozepur, vide which both the appellants were convicted and sentenced to RI for 10 years each and to pay fine of Rs.1 lac each and in default of payment of fine to further undergo RI for a period of 2 years each under Section 22 (c) of NDPS Act in a criminal case having FIR No.11 dated 17.01.2010, under Section 22 of NDPS Act, Police Station Sadar, Jalalabad (District Ferozepur).

2. The brief facts of the case of prosecution are that on 17.01.2010, police party headed by PW-3 ASI Gurmail Singh apprehended appellants Sanjiv Kumar and Paramjit Singh @ Pamma in the area of



village Kathgarh and 13 pouches each having 100 tablets of Piolit and 91 injections of Oxytocin were recovered from the polythene bag which Sanjiv Kumar was carrying. One pouch having 100 tablets of Piolit and 10 injections of Oxytocin were separated as samples and converted into two parcels. The remaining bulk was also converted into two separate parcels. On the search of the polythene bag possessed by Paramjit Singh @ Pamma, 13 pouches each containing 100 tablets of Momolit and other 4 pouches each containing 100 tablets of Microlit were recovered. One pouch having 100 tablets of Momolit and one pouch having 100 tablets of Microlit were separated as samples and converted into two parcels. The remaining bulk was converted into two separate parcels. All the sample parcels and the parcels containing bulk were sealed by investigating officer namely PW-3 ASI Gurmail Singh with his seal having impression GS. Separate sample seal impressions were also affixed on Form No.M-29 by the investigating officer. The entire case property was taken into possession by the police vide memo Ex.P-2 which was signed by HC Harkesh Kumar and HC Amarjit Singh and also by the investigating officer. The seal after use was handed over by the investigating officer to HC Harkesh Kumar. The investigating officer sent ruqa Ex.P-7, on the basis which FIR Ex.P-8 was registered in the police station. Both the appellants were arrested and on completion of proceedings at the place of recovery, both the appellants along with the entire case property were produced before PW-4 SI/SHO Jasbir Singh, who after verifying the facts of the case appended his seal bearing impression JS on the entire case property and then the case property was deposited in the malkhana, while both the appellants were sent to police



lock up. On the next day i.e. 18.01.2010, the appellants along with the entire case property were produced before Sub Divisional Judicial Magistrate, Jalalabad (West) along with police request Ex.P-15 and Ex.P-17. The Magistrate concerned checked the case property and passed order Ex.P-18 to that effect. The sample parcels along with Form No.M-29 were sent for analysis to FSL Punjab, Chandigarh. On receipt of the report of FSL, police presented challan against the appellants.

3. On finding, a prima facie case, charge under Section 22 NDPS Act was framed to which the appellants pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution examined PW-3 ASI Gurmail Singh who while supporting the case of prosecution deposed regarding recovery of medical intoxicants from the possession of Sanjiv Kumar and Paramjit Singh @ Pamma which was effected on 17.01.2010. He proved the recovery memo Ex.P-2 and arrest memo Ex.P-5 bearing his attestation. He also proved consent memo Ex.P-1 whereby both the appellants reposed confidence in him and permitted the witness to effect their personal search. He also proved Form No.M-29 having sample seal impressions Ex.P-9 to Ex.P-12. PW-1 ASI Harkesh Kumar corroborated the statement of investigating officer being witness to the aforesaid recoveries. He also proved ruqa Ex.P-7 and FIR Ex.P-8. PW-4 SI Jasbir Singh deposed that on 17.01.2010 he was SHO, Police Station Sadar, Jalalabad and on that day, PW-3 produced before him both the appellants along with the entire case property bearing seal impressions GS. He verified the facts of the case and checked the entire case property and then affixed his seal bearing JS on the entire case property including Form No.M-29. On the next day, the



appellants along with the case property were produced before the area Magistrate and applications Ex.P-15 and Ex.P-17 were also moved, on which the Magistrate passed orders Ex.P-16 and Ex.P-18. That subsequently, sample parcels along with Form No. M-29 bearing sample seal impressions were sent to FSL and after analysis, FSL sent its report Ex.P-12/A. He also proved special report Ex.P-19 sent to the higher police officials under Section 57 of NDPS Act. PW-2 HC Balwant Singh tendered his affidavit Ex.PW-2/A regarding due deposit of the sample parcels in the office of FSL on 22.01.2010. Finally, the public prosecutor closed the prosecution evidence.

5. Both the appellants were examined under Section 313 Cr.P.C. The entire incriminating evidence was put to them, but they denied the same. The appellants pleaded false implication and innocence.

6. The appellants examined DW-1 Kewal Krishan, Clerk in health department who produced the summoned record and proved Form No.20-B and Form No.21-B regarding licence being issued to M/s Sudesh Medical Hall to run a chemist shop which was valid up to 31.12.2000 and copies thereof are Ex.D-1 and Ex.D-2 respectively. He stated that application for renewal of the said licence was pending before the competent authority.

7. After hearing the counsel for the parties, the learned trial Court convicted and sentenced both the appellants under Section 22 (c) NDPS Act, as has been detailed above.

8. The counsel for the appellants while laying challenge to the impugned judgment and order has submitted that the prosecution has miserably failed to prove its case against both the appellants who were



employees of Sudesh Medical Hall, which was having proper licence to run the Chemist Shop, as is evident from Ex.D-1 and Ex.D-2. The said licence was proved by DW-1, an official of Punjab Health Department, who produced the relevant record maintained in the head office at Chandigarh. The counsel for the appellants has further submitted that in the present case the alleged recoveries were effected in violation of the mandatory provisions of Section 50 NDPS Act. It has been further argued that proper procedure as provided under Section 52-A of NDPS Act was not followed while preparing the inventory of the medical intoxicants alleged to be recovered in the present case. It has been further submitted that the alleged recovery was effected on 17.01.2010 whereas the samples were sent to FSL for their analysis on 22.01.2010 in violation of the standing instructions, as per which samples were required to be sent to FSL within 72 hours of the recovery.

9. On the other hand, the State counsel while supporting the judgment and order dated 27.01.2014 passed by Special Judge-III, Ferozepur has contended that there is no illegality or perversity in the said judgment and order. It has been further argued that the recovery in the present case was not effected from the person of the appellants and as such, the provisions of Section 50 NDPS Act are not applicable to the instant case. It has been further submitted that the investigating officer and other police officials were having no previous enmity with the appellants and thus, there was no reason for them to falsely implicate the appellants in the present case. It has been further contended that PW-1 and PW-3 made consistent statements in the Court and proved recovery memo Ex.P-2



whereby the medical intoxicants recovered from possession of the appellants were taken into possession after separating the samples and the entire case property was sealed at the spot by the investigating officer. It has been further contended that on return to police station, the appellants and the entire case property were produced before the concerned SHO namely PW-4 SI Jasbir Singh, who verified the facts of the case and appended his seal on the entire case property. On the next day i.e. 18.01.2010, the inventory of the case property was verified by the Illaqa Magistrate who passed order Ex.P-18 in accordance with law. Subsequently, the sealed sample parcels reached the office of FSL concerned, in intact condition and on analysis, the samples were found to be containing Diphenoxylate Hydrochloride, Atropine Sulphate and Oxytocin as is apparent from report Ex.P-12/A of FSL. It has been further submitted that the present appeal deserves to be dismissed being devoid of merits.

10. I have considered the submissions made by counsel for the parties.

11. In the present case, recoveries were effected in year 2010. At the relevant time, Oxytocin was Schedule-H drug covered under Drugs and Cosmetic Act 1940. Serial No.58 of Notifications bearing Nos.826(E) dated 14.11.1985, S.O 49(E) dated 29.01.1993 and S.O 143(E) dated 21.06.2011 issued by Government of India provides as follows:-

“Ethyl 1-(3- Cyano-3, 3-Diphenylpropyl)-4- Phenylpiperidine-4-Carboxylic acid ethyl ester,(the international non-proprietary name of which is Diphenoxylate) and its salts and preparations, admixture, extracts or other substances containing any of these drugs except preparations of Diphenoxylate calculated as base, and a quantity of Atropine Sulphate equivalent to at least one percent of the dose of Diphenoxylate.”



Parcel No.1 which was received in the FSL was relating to 10 injections labeled as Oxytocin. As per report of FSL Ex.P-12/A, the average quantity of atropine sulphate in each tablet relating to parcels No.2, 3 and 4 was found to be 0.024 mg, 0.023 mg and 0.024 mg respectively and that of Diphenoxylate Hydrochloride in each tablet relating to parcels No.2, 3 and 4 was found to be 2.4 mg, 2.3 mg and 2.4 mg respectively.

12. The recoveries in question were effected from the polythene bags carried by the appellants. It being so, the provisions of Section 50 NDPS Act are not attracted to the instant case.

13. From the perusal of the record coupled with order Ex.P-18 dated 18.01.2010 passed by the area Magistrate with regard to inventory of the case property, it is evident that on 18.01.2010, the entire case property including samples were produced before the Magistrate concerned by the investigating officer. The seals on the case property were found to be intact. However, it is clear from aforesaid order Ex.P-18 that no samples out of the bulk were separated in presence of the Magistrate concerned and even the area Magistrate did not append his/her seal on the case property and Form No.M-29. Thus, it stands proved that no samples were separated from the bulk in presence of the area Magistrate, in compliance of the mandatory provision of Section 52-A NDPS Act. The Hon'ble Supreme Court in ***Union of India Vs. Mohan Lal (2016) 3 SCC 379*** while dealing with scope of Section 52-A of NDPS Act held that there is no provision in the NDPS Act that mandates taking of samples at the time of seizure. The Hon'ble Sureme Court further observed as follows:-

“Sub-section (3) of [Section 52- A](#) requires that the Magistrate shall as



soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.”

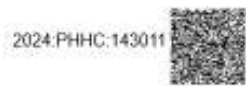
14. Recently, Hon’ble Supreme Court in ***Simranjit Singh Vs. State of Punjab 2023 SCC Online SC 906*** also placed reliance on its earlier decision in **Mohan Lal’s case** (supra) and acquitted the accused while making the following observations:-

*“10. Hence, the act of PW-7 of drawing samples from all the packets at the time of 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.*

11. Hence, the case of the prosecution is not free from suspicion and the same has not been established beyond a reasonable doubt. Accordingly, we set aside the impugned judgments in so far as, the present appellant is concerned and quash his conviction and sentence.”

15. From the perusal of the record, it appears that the recovered medical intoxicants were not bearing any batch number, date of manufacture or expiry date. It being so, the samples i.e. one pouch containing 100 tablets of Piolits, 10 injections of Oxytocin, one pouch containing 100 tablets of Momolit and one pouch containing 100 tablets Microlit could not be considered as representative samples of the entire contraband stated to be recovered from possession of the appellants.

16. As per recovery memo, Ex.P-2, the investigating officer after using his seal bearing impressions GS handed over the same to recovery witness namely PW-1 ASI Harkesh Kumar. However, PW-1 while appearing in the witness box nowhere stated that the said seal after use was handed over to him by the investigating officer. From the perusal of the record, it could be easily made out that recovery memo Ex.P-2 is not bearing the signature of PW-1 who is stated to be a recovery witness. This fact is also admitted in his cross examination by PW-1. The prosecution did not examine the second recovery witness namely HC Amarjit Singh, whose signatures are thereon the recovery memo Ex.P-2. In the absence of any independent corroboration, the afore-stated discrepancies in the prosecution



case, creates further dent in the prosecution story.

17. In light of the fact that there is a violation of mandatory provision of Section 52-A NDPS Act coupled with the other discrepancies/deficiencies as are discussed above, this Court is of the view that the prosecution has failed to prove its case beyond shadow of doubt against both the appellants.

18. Consequently, the present appeal is allowed and the judgment of conviction and order of sentence both dated 27.01.2014 passed by the Court of Special Judge-III, Ferozepur are set aside. Appellants Sanjiv Kumar and Paramjit Singh @ Pamma are acquitted of the charges framed against them. Their bail bonds/surety bonds stand discharged.

04.11.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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