

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10795-2020 (O& M)
Date of decision: 22.04.2024

Jaswinder Singh @ Binder Petitioner
V/s
State of Punjab ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rajiv Kataria, Advocate and
Ms. Deepshikha Arora, Advocate,
for the petitioner.

Mr. Mohit Saroha, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the proceedings including the order framing charge against the petitioner dated 26.11.2018 (Annexure P-9) under Section 22 of the NDPS Act, 1985 in FIR No.40 dated 03.06.2012 under Sections 22/61 of the NDPS Act, 1985 at Police Station Sadar Nabha, District Patiala as well as all subsequent proceedings arising therefrom.

2. The brief facts of the case are that an FIR No. 40 dated 03.06.2012 under Sections 21/61/85 of the NDPS Act, Police Station Sadar Nabha, District Patiala (Annexure P-1) came to be registered against the petitioner-Jaswinder Singh @ Binder and his co-accused/Chander Parkash @ Chander (discharged vide order dated 04.03.2020, Annexure P-10).

3. As per the allegations in the aforementioned FIR, the petitioner and his co-accused were apprehended and from the search of the polythene bag in the hands of Chander Parkash @ Chander, 500 grams of intoxicating

powder came to be recovered. Two samples of 10 grams each were taken and one sample was sent for analysis.

4. The report of the Chemical Examiner, Kharar was obtained, as per which the sample contained Paracetamol. The copy of the said report dated 18.07.2012 is attached as Annexure P-2.

5. The investigating agency moved an application dated 11.01.2013 (Annexure P-3) for sending the second sample for analysis to the Chemical Examiner.

6. Co-accused Chander Parkash @ Chander filed a petition bearing No. CRM-M-2667 of 2014 contending that the report of the Chemical Examiner had only shown 'Paracetamol' and the second sample could not have been sent for re-analysis. In that petition, notice of motion was issued on 24.01.2014 but the proceedings was not stayed.

7. Vide order dated 17.11.2014, the Special Judge allowed the application of the investigating agency dated 11.01.2013 (Annexure P-3) for sending the second sample for analysis without disclosing any special circumstances warranting the sending of the second sample for analysis. A copy of the said order is attached as Annexure P-4.

8. The petitioner filed a petition bearing No.CRM-M-43625-2014 wherein he challenged the order dated 17.11.2014 (Annexure P-4) praying that the second sample be not sent for re-analysis.

9. This Court passed an interim order on the basis of judgment in '*Amarjit Singh versus State of Punjab, 2013(4) RCR (Criminal) 524*' against sending of a second sample for re-analysis. A copy of the order dated 22.12.2014 is attached as Annexure P-5 to the petition.

10. However, before the passing of the aforementioned order, the investigating agency had already sent the second sample for analysis which was received by the Central Forensic Science Laboratory on 12.12.2014 and as per the second report dated 30.01.2015 (Annexure P-6), the sample contained the following salts:-

Sr. No.	Name of the Salt
i.	Ibuprofen
ii.	Acetaminophen
iii.	Caffeine
iv.	Dicyclomine
v.	Dextropropoxyphene
vi.	Nimesulide

11. On 29.12.2015, the report under Section 173(2) Cr.P.C. was submitted on the basis of the report of the Chemical Examiner.

12. Chander Parkash @ Chander/co-accused filed a petition bearing CRM-M-19424-2018 in which he challenged the report under Section 173 Cr.P.C. for filing the charge-sheet on the basis of the analysis of the second sample. The said petition was disposed of as pre-mature as the charges had not been framed till then i.e. on 08.05.2018.

13. Meanwhile, co-accused/Chander Parkash @ Chander filed a criminal revision petition bearing No.CRR-4493-2018 challenging the order whereby charges had been framed against him vide order dated 26.11.2018.

14. The said criminal revision petition was allowed and the proceedings were quashed holding that the second sample could not have been sent for analysis as there was no such provision of law entitling the sending of the second sample for re-analysis and no special circumstances had been noted by the Special Judge in his order whereby the analysis of the

second sample was ordered. A copy of the order dated 04.03.2020 is attached as Annexure P-10 to the petition.

15. The instant petition has been filed seeking quashing of the proceedings including the order framing charges dated 26.11.2018 (Annexure P-9) as the proceedings qua the co-accused already stand quashed.

16. The learned counsel for the petitioner contends that after the first sample was found to contain 'Paracetamol', the second sample ought not to have been sent for re-analysis in the absence of any special circumstances warranting the same. This had been so held in the judgments in '*Thana Singh versus Central Bureau of Narcotics, 2013(1) RCR (Criminal) 861, Laxmi Nagappa Koli versus Narcotic Control Bureau and another 2014(4) Crimes 457 and Amarjit Singh versus State of Punjab 2013(4) RCR (Criminal) 524*'. Even otherwise, as the proceedings qua the co-accused/Chander Parkash @ Chander stood quashed, the pendency of these proceedings would be an exercise in futility and therefore, the proceedings including the order framing charges (Annexure P-9) and subsequent proceedings arising therefrom qua the petitioner were also liable to be quashed.

17. The learned counsel for the State, on the other hand, while referring to the reply dated 15.11.2022 contends that no fault could be found with the order whereby the second sample was ordered to be re-tested. He, however, concedes that the case of the petitioner was similar to that of his co-accused/Chander Parkash @ Chander qua whom the proceedings stood quashed.

18. I have heard the learned counsel for the parties.

19. Before proceeding further, it would be apposite to examine the judgments quoted by the learned counsel for the petitioner. The same are reproduced hereinbelow:-

In '**Thana Singh versus Central Bureau of Narcotics, 2013(1) RCR (Criminal) 861**', the Hon'ble Supreme Court has held as under:-

“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 retesting/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.”

In '**Laxmi Nagappa Koli versus Narcotic Control Bureau and another 2014(4) Crimes 457**', the Hon'ble Supreme Court has held as under:-

“1. It is not a matter of dispute that the seizure admittedly took place on 17.02.2013. It was alleged that the seized material was heroin. Two samples of the seized material were sent for testing. The first one to the Central Forensic Science Laboratory, Hyderabad, and the other to the Central Forensic Science Laboratory, Mumbai.

2. The report of the Central Forensic Science Laboratory, Hyderabad, was to the following effect:

“The Exhibits were analyzed by Colour Test, TLC and Gas Chromatography – Mass Spectroscopy (GC-MS) methods. Based upon the above methods the results are given below.

Heroin has not been detected in the Exhibit S-II. However, Paracetamol and Fervunulin detected in Exhibit S-II.”

The result of the Forensic Science Laboratory, Mumbai was as under:

“The sample is in the form of light brown colour powder. It is composed of Nitrogen bearing Organic Compound. For exact identification of the sample u/r more instrumental analysis like I.R. Spectroscopy is required, which is not available here at present. Therefore, sample may be forwarded to C.F.S.L. Hyderabad. Remnant Sample is being returned in a sealed envelope. The facsimile of seal affixed on sealed envelope is given below.”

(emphasis is ours)

3. Premised on the fact, that the Central Forensic Science Laboratory, Mumbai was not fully equipped, to chemically test the sample sent to it for examination, the respondents before this Court moved an application, for getting a third sample tested from an approved Forensic Science Laboratory. The instant prayer made by the respondents was acceded to by Special Judge, N.D.P.S., Thane, vide an order dated 30.4.2013. A challenge raised to the above order passed by the trial Court, was rejected by the High Court, through the impugned order dated 19.07.2013.

4. During the course of hearing, learned counsel for the appellant assailed the determination of the courts below, in having the third sample tested. In this behalf, reliance was placed on the decision rendered by this Court in *Thana Singh v. Central Bureau of Narcotics* (2013) 2 SCC 590. Our pointed attention was invited to the following observations recorded in the above judgment:

“27. Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the laboratories concerned, 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 [NDPS 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 [NDPS Act](#).”

(emphasis is ours)

5. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the rival parties. It is no doubt true that the Forensic Science Laboratory, Mumbai, in its report dated 7.3.2013 had clearly opined, that it did not have sufficient infrastructure to test the sample provided to it by the respondents, and as such, required the respondents to have the same tested by another laboratory. What however, cannot be overlooked is, that a separate sample which was sent to the Forensic Science Laboratory, Hyderabad, which clearly recorded a conclusion, that the sample contained Paracetamol and Fervunulin. The instant determination by the Forensic Science Laboratory, Hyderabad is clear, categoric and specific. The same cannot be overlooked under any circumstances.

6. It is in the above factual scenario, that we have to determine whether a third sample could be sent for testing, before some other Forensic Science Laboratory, in terms of the observations made by this Court in [Thana Singh's](#) case (*supra*). We are of the view, that the instant case is not a case which presents a situation of extreme exceptional circumstances, narrated in the above judgment. At no point in time, can the report submitted by the Forensic Science Laboratory, Hyderabad be ignored. Moreover, learned counsel for the appellant, during the course of hearing contended, that even the report of the Forensic Science Laboratory, Mumbai, clearly establishes, that the sample sent to it did not contain heroin. In this behalf it was submitted, that the Mumbai laboratory had returned a

clear finding, that the sample tested by it was a “Nitrogen based organic compound”. It was submitted, that heroin is not a Nitrogen based compound, and as such, even the second sample, according to the test report, did not contain heroin. The above mentioned factual position (in respect of the report of the Mumbai laboratory), was not disputed by the learned counsel for the respondents. In the above view of the matter, no fruitful purpose will be served by sending another sample to any third laboratory”.

In ‘**Amarjit Singh versus State of Punjab 2013(4) RCR (Criminal) 524**’, this Court has held as under:-

“21. Of course in the instant case the second test was conducted at the instance of the prosecution with the permission of the Special Judge but it is to be noted that there is no provision under the Narcotic Drugs And Psychotropic Substances Act giving preferential or privileged treatment to the report submitted by the Central Forensic Science Laboratory.

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 such circumstances two sets of opinion, may emerge in a particular case. Under the PFA Act and the Insecticides Act, the ultimate report submitted by the Analyst has been termed as conclusive proof. But in 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.

23. In the instant case it is the admitted position that the first sample was properly drawn, sealed and sent for examination. A vague allegation has been made in the application submitted by PW2 that such a negative report had come into existence on account of the connivance of the accused with the Chemical Examiner. Though the prosecution has every right to go in for second test, based on such prima facie allegation, in the absence of any specific provision to give priority only to the report submitted by the Central Forensic Science Laboratory, the prosecution is bound to completely demolish the first report which was submitted to their inconvenience before ever persuading the Court to accept the second report submitted by the Central Forensic Science Laboratory.

24. The allegations made in the application filed before the Special Judge for seeking the second sample for test was not

carried further by the prosecution. No such allegation has been made by any one of the prosecution witnesses in their evidence. Virtually there is no material to show before the Court that there was a connivance between the accused and the Chemical Examiner, Amritsar to concoct a negative report. Unless there is a strong material to dislodge the report submitted by the competent Chemical Examiner the second report submitted by the Central Forensic Science Laboratory, Hyderabad cannot at all be accepted by the Court of law.

25. The Hon'ble Supreme Court in State of U.P. v. Munni Ram and others, 2012(7) RCR (Criminal) 2304 : 2011(1) Law Herald (SC) 27 has reiterated the well known principle that if two views are possible on the evidence adduced, one pointing to the guilt of the accused and the other to the innocence, the view just favourable to the accused is normally to be adopted. In the instant case two contrary opinions are available on record. We have already pointed out, noting the fact that the seal used by PW3 was entrusted to HC Puran Chand and the seal used by PW5-A was kept by himself that there was every possibility for tampering with the bulk of the contraband allegedly seized from the Truck of the accused. The second sample has been drawn from such a bulk of the contraband kept in the police malkhana. We cannot ignore the fact that two contrary opinions have come into existence only in such circumstances. Applying the aforesaid principle of law laid down by the Supreme Court, the negative opinion given by the Chemical Examiner, Amritsar is preferred against the later report submitted by the Central Forensic Science Laboratory, Hyderabad. In view of the above discussion, we hold that the judgment of conviction and the order of sentence passed by the trial Court based on improper appreciation of evidence and the point of law are liable to be sat aside.

26. For the reasons recorded above, the appeal is allowed. The Judgment of conviction and the order of sentence passed by the

trial court is set aside. The appellant is acquitted of the charge framed against him. The accused who is in custody be set at liberty, at once, if not required, in any other case”.

In the case of ‘**Chander Parkash @ Chander versus State of Punjab (CRR-4493-2018 decided on 04.03.2020)**’, this Court has held as under:-

“23. After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons:

(a) As per the prosecution case, on 03.06.2012, two sample parcels of 10 grams each and two residue parcels of 480 grams each were sealed with seal 'GS' of Investigating Officer and 'PS' of SHO. It is further the case of prosecution that sample parcels were kept in Malkhana of the police station and when the same were produced before the Illaqua Magistrate, no seal or signature of the Illaqua Magistrate was taken on both the sample parcels, therefore, there were only identification seals of Investigating Officer as 'GS' and that of SHO as 'PS' and admittedly, for two days, both the sample parcels were in the custody of the police itself. On the next day i.e. 04.06.2012, the sample parcels were produced before the Illaqua Magistrate who directed that the samples be kept in Judicial Malkhana, however, the same were transferred only on 05.06.2012 and for two days, the same were kept with MHC of the police station. There is no explanation as to why the order of Illaqua Magistrate was not complied with on the same date i.e. 04.06.2012.

(b) It is own case of the prosecution that both sample parcels were not checked by Illaqua Magistrate as both neither bear his signature nor seal on these parcels. This fact is further corroborated from order dated 16.08.2016, vide which Illaqua Magistrate, after three years, drawn representative sample parcel in compliance of an order of Special Judge directing him to comply with provision of

Section 52-A of the NDPS Act. The sample drawn by the Magistrate from residue parcel bears his seal as 'AD' and this sample was never sent for re-analysis. Moreover, this exercise is done by the prosecution just to fill up lacuna at a highly belated stage.

(c) The first report was received on 18.07.2012 showing the contents as '*Paracetamol*' and thereafter, the application was moved by the prosecution on 11.01.2013 for analysis of second sample, however, there is no reference in this application regarding any exceptional circumstance except that the report of Chemical Examiner, Kharar seems to be suspicious.

(d) The case set up by the prosecution in the affidavit of DSP, Circle Nabha, District Patiala, dated 14.08.2019, is clearly an afterthought. The application was moved before the trial Court on 11.01.2013, whereas the FIR No. 14 against the official of Chemical Examiner, Kharar was registered on 11.11.2013 and, therefore, the prosecution has tried to justify the order of the trial Court allowing the application on the basis of the FIR, which was not in existence when the application was moved before the trial Court.

(e) There is nothing on record to show that from 05.06.2012 till the time the trial Court allowed the application for analysis of second sample on 17.11.2014, the sample parcels were kept in safe custody. Therefore, admittedly, the '**second**' sample was sent for analysis after about two and a half years, hence, the possibility of tampering with same cannot be ruled out as it bears only the seal of Investigating Officer and SHO and there is no signature of the Illaqua Magistrate before whom the samples were produced for verification.

(f) In view of the aforesaid facts, it is apparent that no exceptional or extraordinary circumstance is made out to send the second sample for analysis as on 04.06.2012

when the accused were produced along with the sample parcels and the case property before the Illaqua Magistrate, provisions of Section 52-A NDPS Act were never complied with as neither any representative sample was drawn by the Magistrate nor the samples drawn by the Investigating Officer and verified by the SHO were ever verified by the Illaqua Magistrate by putting his own seal so as to say that both the samples were verified by him. Mere fact that on direction of Special Judge, after the lapse of more than three and a half years, the Illaqua Magistrate complied with the provisions of Section 52-A of the NDPS Act, is just an eye-wash as before this date, both the reports of the Chemical Examiners were received and both the samples were never verified by the Judicial Magistrate in terms of Section 52-A by putting his seal.

24. Therefore, keeping in view the above facts and circumstance and also in view of the judgments rendered by Hon'ble Supreme Court in *Thana Singh* and *Laxmi Nagappa Koli's* cases (*supra*), the present revision petition is allowed and the impugned order dated 26.11.2018, vide which the trial Court has framed charge against the petitioner under Section 22 of the NDPS Act, is hereby set aside.

25. The petitioner stands discharged accordingly.”.

20. Keeping in view the fact that the proceedings qua the co-accused/Chander Parkash @ Chander stand quashed and in view of the judgments of the Hon'ble Supreme Court in *Thana Singh (supra)* and *Laxmi Nagappa Koli (supra)* as also the judgment of this Court in *Amarjit Singh (supra)*, the FIR No.40 dated 03.06.2012 under Sections 22/61 of the NDPS Act, 1985 at Police Station Sadar Nabha, District Patiala, order framing charges against the petitioner dated 26.11.2018 (Annexure P-9) and

CRM-M-10795-2020 (O & M) ::14::

all subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

21. The present petition stands disposed of.

(JASJIT SINGH BEDI)

JUDGE

April 22, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No