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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-846-DBA-2003 (O&M)
Date of decision: 10.05.2024

State of Punjab

...Appellant

Vs.

Anoop Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Subhash Godara, Addl. A.G., Punjab.

Mr. Japsehaj Singh, Advocate and
Mr. Mayur Karkra, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant appeal is preferred against the judgment of acquittal dated 02.12.2002 passed by learned Judge, Special Court, Patiala in FIR No.524 dated 15.09.1999 under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Sadar, Patiala.

FACTUAL BACKGROUND

2. The facts of the prosecution case, tersely put, are that on 15.09.1999, a police party headed by PW5-SI Gurchain Singh (Investigating



Officer) was on patrolling duty near the railway crossing, Bandha at Village Daulatpur, when it spotted the respondent-accused coming on a motor cycle. The respondent was signalled to stop. On enquiry, he disclosed his name and address. SI Gurchain Singh, suspecting that there is contraband in the bag tied to the handle of his motor-cycle, gave the respondent 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, which was thumb marked by PW Sahib Singh and attested by ASI Ranjit singh and by the accused. Subsequently, SI Gurchain Singh called DSP Jagjit Singh Gill, who reached at the spot and disclosed his identity. DSP Jagjit Singh Gill gave an option to the respondent to be searched by SI Gurchain Singh, to which he replied in the affirmative. Consent statement of the respondent was recorded and was duly attested. Under the directions of DSP Jagjit Singh Gill, SI Gurchain singh conducted the search of the bag, from which opium, wrapped in a glazed paper, was recovered. Two samples of 10 grams each were separated and made into parcels. The remaining contraband, upon weighing, came out to be 1.980 kg. The sample parcels and the bulk parcel were sealed with the seal bearing impression 'GS' of SI Gurchain Singh and 'JS' of DSP Jagjit Singh. Specimen impression of the seals used was also prepared. The parcels were then entrusted to ASI Ranjit Singh. Upon completing the legal formalities, a *ruqa* was sent to the police station for registration of the case, on the basis of which instant FIR was recorded. The



entire case property was taken into possession vide memo Ex.PC attested by the witnesses. SI Gurchain Singh prepared the site plan, recorded the statements of the witnesses and arrested the respondent. On receipt of the report of Chemical Examiner and after completion of formal investigation, the Final Report was filed under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') against the respondent.

3. In compliance with the provisions of Section 207 Cr.P.C, copies of the Final Report were supplied to the respondent-accused free of cost. On finding a *prima facie* case against the respondent, charge under Section 18 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 six witnesses. All the incriminating evidence was put to the respondent and his statement under Section 313 Cr.P.C. was recorded, wherein he pleaded false implication. The respondent, in defence, examined 05 witnesses to prove his innocence.

5. After minutely scrutinizing the evidence led by the parties and going through the record of the case, learned trial Court held the respondent not guilty and acquitted him.

CONTENTIONS

6. Learned State counsel assails the impugned judgment on the ground that learned trial Court has wrongly held that the prosecution has not



been able to prove the link evidence as to where the sample remained from 15.09.1999 to 27.09.1999, whereas Constable Fakir Chand PW3 had tendered his affidavit (Ex.PF), vide which he had categorically stated that he deposited the sample parcel along with the docket on 15.09.1999 in the office of Chemical Examiner, Patiala. The report of the Chemical Examiner (Ex.PX), which is admissible in evidence, shows that there is a certificate of the Chemical Examiner that he received the sample parcel with seal intact and the same was tallied with the sample seal sent along. This evidence is sufficient to prove that the sample was not tampered with and it was only opened to be analysed by the Chemical Examiner. Therefore, there is no possibility of tampering with the sample before its being analysed. Moreover, the finding of learned trial Court that PW3 got the docket prepared on 29.09.1999 is totally misconceived. As per his statement, as tendered in the affidavit, he deposited the parcel along with the docket on 15.09.1999. As such, the judgment of acquittal is based on conjectures and surmises and the evidence led by the prosecution has been overlooked without assigning any cogent reason.

7. Per contra, learned counsel for the respondent argues that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, no interference is warranted by this Court. The prosecution has not been able to prove its case. The affidavit (Ex.PF) tendered by PW3 reveals that he went to the office of the Chemical Examiner, Patiala for depositing the sample parcel along with the docket on



15.09.1999, however, a perusal of the report of Chemical Examiner (Ex.PK) makes it clear that the same was deposited with the Chemical Examiner on 27.09.1999 and the prosecution has not been able to substantiate as to in whose custody the sample remained from 15.09.1999 to 27.09.1999. Hence, the possibility of tampering with the case property cannot be ruled out and this further falsifies the entire prosecution story.

OBSERVATIONS AND ANALYSIS

8. Having heard learned counsel for the parties at length and after perusing the record with their able assistance, it transpires that the respondent-accused was found carrying 02 kg of opium wrapped in a glazed paper in Village Daulatpur. The contraband was kept in a bag, which was tied to the handle of the motor cycle, bearing registration No.PBS-2174.

9. A perusal of the record indicates that as per the affidavit (Ex.PF) tendered by PW3 Constable Fakir Chand, he was entrusted with the sample on 15.09.1999 and on the same day, after he got the docket from the office of S.S.P., Patiala, he went to the Chemical Examiner and deposited the sample. However, the chain of events, as spelled out in the aforementioned affidavit, does not inspire confidence since the report of the Chemical Examiner (Ex.PK) explicitly mentions that the docket was prepared by PW3 on 27.09.1999 and was deposited with the Chemical Examiner on that day. Resultantly, the prosecution has not been able to prove the link evidence i.e. the whereabouts of the sample from 15.09.1999 to 27.09.1999 and certainly the possibility of



tampering with the sample parcel cannot be ruled out. Moreover, the sample parcels were deposited with the FSL after a lapse of 12 days from 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. The Investigating Officer-SI Gurchain Singh (PW-3) is also the complainant of the case. The Hon'ble Supreme Court in **State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu Vs. Ranjangam,**



2010(15) SCC 369, has opined that since the arrest and search is made by the complainant, he should not involve himself with the investigation of the case. Such an officer leading the investigation would forthrightly raise questions as to the fairness and impartiality of the said investigation process.

11. Furthermore, a perusal of the impugned judgment indicates that although a person, namely, Sahib Singh was present at the spot of the alleged occurrence and was admittedly interacting with the investigating officer, yet he was not examined during trial. 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

12. In view of the above discussion, present appeal is dismissed. The judgment of acquittal dated 02.12.2002 passed by learned Judge, Special Court, Patiala is upheld.

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



14. 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.

10.05.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No