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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(205)

CRM-M-27977-2017 (O&M)
Reserved on :01.08.2024
Date of Pronouncement: 06. 08.2024

State of Haryana

... Petitioner

Versus

Manpreet Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Parveen Kumar Aggarwal, DAG, Haryana,
for the petitioner.

Ms. Sheena Khanna, Advocate, for respondents No.1 to 4.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of order dated 01.04.2016 passed by the Sessions Judge, Sirsa-cum-Special Court (NDPS Act) whereby the application moved by the Public Prosecutor for the state for sending the second sample to CFSL, Chandigarh for analyses has been rejected.

2. The brief facts of the case are that Manpreet Singh and Avtar Singh were apprehended with 130 bottles of Rexcof each containing 100 ml. They disclosed that they had purchased the same from Satpal and Pawan Kumar.

3. The samples taken at the time of seizure were sent for forensic analysis and the report filed on 10.02.2016 reads as under:-



FORENSIC SCIENCE LABORATORY, HARYANA, MADHUBAN, KARNAL
(An ISO/IEC 170025 Accredited Laboratory)

Accredited By

National Accreditation Board for Testing & Calibration Laboratories

T-0767

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REPORT NO.FSL(H) 2015/N-7510

Dated 22.01.2016

To

The Dy. Superintendent of Police,
Ellenabad, Sirsa

Your forwarding memo no.656-5A dated 15.9.2015 regarding One sealed parcel in connection with FIR No.391 Dated 13-09-2015 Under sections 21/22-C-61-85 NDPS Act, Police Station Rania stated to have been dispatched by you vide R.C No.556 Dated 16.09.2015 through Ct. Karan Singh-788 and received in this division on 16.09.2015.

Description articles and condition of seals.

Parcel No.	No. & seal Impression	Description of articles/samples
1.	3-PK 1-DS	Sample marked here as-N/1290/15 Sample-1: 100ml of REXCOF make cough syrup, Mfd. By CIPLA Ltd. Labeled to contain codeine phosphot 10mg/5ml and chlorphineramine maleate 4mg/5ml

Analytical Techniques Applied:

Colour tests, TLC and GLC techniques

Based upon the above examination the result obtained are as under:-

Results of Analysis

1. Dextromethorphan and chlorphineramine were detected in the sample

Notes:-

1. The opinion relates to the analyzed sample only.
2. After examination the remnants of the samples alongwith the original wrapper were sealed with the seal of AC General FSLH.

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Kiran Kumar,

Senior Scientific Officer (NDPS)
Forensic Scientific Laboratory
Haryana, Madhuban, (Karnal)



4. An application was moved by the Public Prosecutor for sending the second sample to CFSL, Chandigarh alleging that in the report of the FSL, Madhuban, presence of Codeine in the sample of Rexcof had not been specifically mentioned and the report was false. The second sample was lying in the *Malkhana*, Sirsa and the same be sent to CFSL, Chandigarh so that the presence of Codeine could be known specifically in the sample.

5. The accused file a reply and opposed the application on the grounds that there was no provision under the NDPS Act for sending the second sample to the FSL or CFSL for testing. It was pleaded that no Codeine had been detected in the sample which was drawn at the time of the alleged recovery and had been sent to FSL, Madhuban, so the prosecution could not be allowed to fill up the lacuna in its case.

6. Based on the rival contentions of both the parties, the application for sending the second sample to CFSL, Chandigarh was dismissed vide order dated 01.04.2016 passed by the Sessions Judge, Sirsa.

7. It is this order which is under challenge in the present petition.

8. The learned counsel for the petitioner-State contends that the whole intent for preparing two samples was that in case of ambiguity in one sample, the second sample could be used and sent to FSL for chemical examination to get a second opinion. The label affixed on the recovered bottles of “Rexcof” depicted the content therein to be Codeine Phosphate. However, the FSL report was totally silent about the presence of Codeine in the sample and therefore, the Public Prosecutor was right in moving the application for retesting and the Trial



Court ought to have allowed the same. In fact, the view taken by the said Court that there was no provision under the NDPS Act to send a second sample for testing was erroneous.

9. The learned counsel for the respondents-accused, on the other hand, contends that in view of the judgment in ***“Thana Singh versus Central Bureau of Narcotics, 2013(2) SCC 590”***, a second sample could be sent in exceptional circumstances. No compelling circumstances had been pointed out in the instant case to send the second sample for retesting which was, otherwise, strictly prohibited. She, therefore, contends that no fault could be found with the order passed by the Trial Court.

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

11. In the case of ***“Thana Singh versus Central Bureau of Narcotics, 2013(2) SCC 590”***, the Hon’ble Supreme Court held as under:-

23. The NDPS Act itself does not permit re-sampling or re-testing of samples. Yet, there has been a trend to the contrary; NDPS courts have been consistently obliging to applications for re-testing and re-sampling. These applications add to delays as they are often received at advanced stages of trials after significant elapse of time. NDPS courts seem to be permitting re-testing nonetheless by taking resort to either some High Court judgments [See: State of Kerala Vs. Deepak. P. Shah[5]; Nihal Khan Vs. The State (Govt. of NCT Delhi) [6]] or perhaps to Section 79 and 80 of the NDPS Act which permit application of the Customs Act, 1962 and the Drugs and Cosmetics Act, 1940. While re-testing may be an important right of an accused, the haphazard manner in which the right is imported from other legislations without its accompanying restrictions, however, is impermissible. Under the NDPS Act, re-testing and re-sampling is



rampant at every stage of the trial contrary to other legislations which define a specific time-frame within which the right may be available. Besides, reverence must also be given to the wisdom of the Legislature when it expressly omits a provision, which otherwise appears as a standard one in other legislations. The Legislature, unlike for the NDPS Act, enacted Section 25(4) of the Drugs and Cosmetics Act, 1940, Section 13(2) of the Prevention of Food Adulteration Act, 1954 and Rule 56 of the Central Excise Rules, 1944, permitting a time period of thirty, ten and twenty days respectively for filing an application for re- testing

24. Hence, it is imperative to define re-testing rights, if at all, as an amalgamation of the above- stated factors. Further, in light of Section 52A of the NDPS Act, which permits swift disposal of some hazardous substances, the time frame within which any application for re-testing may be permitted ought to be strictly defined. Section 52A of the NDPS Act reads as follows: -

“52A. Disposal of seized narcotic drugs and psychotropic substances (1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure herein- after specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer- in- charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub- section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the



packing in which they are packed, country of origin and other particulars as the officer referred to in sub-

section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub- section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub- section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

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 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.

12. As per the FSL report, the sample parcel was sent vide RC No.556 dated 16.09.2015 which was received with the FSL on the same day. The seals were found intact and tallied with the specimen seal as per the Forwarding authority’s letter. There is nothing to indicate in the report of any damage to the seals or that the sample was in a damaged condition. Further, merely because the presence of Codeine is not mentioned in the FSL report in the sample of Rexcof would not amount to compelling circumstances under which the second sample was required to be sent for reanalyses to CFSL, Chandigarh.

13. In view of the above discussion, I find no merit in the present petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 06, 2024
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No