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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M No.38155-2017(O&M)
Date of Decision:-02.08.2024**

RAKESH KUMAR BANSAL

... Petitioner

Versus

U.T. CHANDGARH AND ANOTHER

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Vineet Sehgal, Advocate, for the petitioner.

Mr. J.S.Toor, Addl. P.P. U.T. Chandigarh.

SANJIV BERRY, J (ORAL)

1. Instant petition has been filed under Section 482 Cr. P.C. for quashing of the FIR No. 108 dated 17.04.2014 (Annexure P-1) registered under Sections 9A, 25A NDPS Act, and Section 120-B IPC added later on registered at Police Station 31, Chandigarh as well as supplementary final report dated 27.10.2015 (Annexure P-9) presented under Section 120 B IPC alone against the petitioner

2. Brief facts of the case are that on 17.04.2014 at about 12:30 a wireless message was received that a white coloured car bearing No. CH01AE-8402 having drugs is roaming near the airport light point. At the same time, a bullet motorcycle came and stopped in front of the white



coloured car, the boy who was riding motorcycle alongwith a lady, opened the door of the driver side and the lady opened the door of the other side and started beating the car driver. Upon this, police party intervened and on checking, it was found that the car for which message was received was the same car. The boy and lady riding the motorcycle told police to search the car as there were drugs in the car. On checking, 3 glazed envelopes were recovered which were found containing white coloured powder. The recovered material weighing 490 grams was suspected to be intoxicant substance. On investigation, it was found that Sahil the driver of the car did not have any information regarding the intoxicating powder recovered from his car. However, the information given by lady Paramjit Kaur and Amandeep, driver of the motorcycle that there were drugs lying in his car and from the inquiry at the spot, it was found that this intoxicating powder has been placed by some unknown person in the car, as such FIR was registered.

3. It is *inter alia* contended by learned counsel for the petitioner that petitioner is innocent and has been falsely implicated by police at the instance of complainant Nirmal Singh, Sub Inspector-respondent No.2 who himself is an official in Chandigarh Police and 1st Investigating Officer of the case. He contends that petitioner was not named in the FIR but was lateron nominated on the basis of alleged statement of co-accused Paramjit Kaur. He contends that co-accused Paramjit Kaur recorded her statement under Section 164 Cr.P.C. before learned Illaqa Magistrate on 03.05.2014 in which she clearly stated that she was being threatened by the police officials



to give statement as per their desire and stated that she was hired to falsely implicate some persons (Annexure P-2). He contends that after completion of investigation police presented challan dated 17.12.2014 under Sections 9A and 25 A of NDPS Act along with Section 120-B IPC (Annexure P-4). He contends that the alleged recovery of narcotic substance was found to be Phenylpropanolamine (Norephedrine) as per the CFSL report dated 07.11.2014 (Annexure P-5) which is as per Gazette of India as published on March 26, 2013 having No. S.O. 834(E), and G.S.R. 191(E) the same salt is mentioned in Schedule B and Schedule C, import and export of this salt is prohibited being controlled substances but its manufacture, distribution, sale, purchase, possession, storage and consumption is not prohibited. The learned Additional Sessions Judge, Chandigarh relying upon the CFSL report dated 07.11.2014 dropped charges under Section 9A and 25A of NDPS Act vide orders dated 16.03.2015 (Annexure P-6) against one of the accused Sher Singh @ Sherry. He contends that the investigating officer with malicious intent proceeded against the petitioner and filed supplementary Challan dated 27.10.2015 (Annexure P-9) only against the petitioner and one Paramjit Kaur under Section 120-B IPC, despite the fact that no substantial evidence is on record against them during investigation. He contends that nothing has come on record during the investigation against the petitioner and it is settled preposition by Hon'ble Apex Court that charges framed solely under Section 120B IPC, without any substantive offence, cannot proceed to trial. Hence, prayed for acceptance of the present petition.



4. On the other hand learned Public Prosecutor for the State of U.T. Chandigarh has assailed these arguments by submitting that after the completion of investigation, challan has been presented in the case in accordance with law. The petitioner has no ground to get the FIR quashed. He submits that initially the FIR registered under Section 9A, 25 A of the NDPS Act and the challan was presented against one Sher Singh @ Sherry, further the charges against him were dropped vide order (Annexure P-6) and thereafter the challan has been presented against the petitioner under Section 120-B IPC. He submits that there is no merit in the petition hence, the same is liable to be dismissed.

5. After considering the rival contentions and perusing the record, it transpires that originally after completion of investigation, final report under Section 173(2) Cr.P.C was submitted in Court vide (Annexure P-4) against Sher Singh @ Sherry for having committed offences under Section 9A and 25 A of the NDPS Act. However, during course of proceedings, the learned trial Court passed the order dated 16.03.2015 (Annexure P-6) dropping charges under Section 9A and 25 A of the NDPS Act against said Sher Singh @ Sherry. Subsequently, the Police filed another final report (Annexure P-9) against the petitioner and one Paramjit Kaur alleging the offences under Section 120-B IPC.

6. It is pertinent to mention here that the said co-accused Paramjit Kaur had suffered statement under Section 164 before the learned Illaqa Magistrate alleging that the police has pressurized her to implicate the petitioner and his wife and was facing threat to her life from the police and



on the basis of the same, learned Magistrate recommended the security to be provided to the said Paramjit Kaur vide letter dated 05.05.2014 (Annexure P-3). As per the final report (Annexure P-9) the police had claimed the conspiracy between the petitioner and co-accused Paramjit Kaur qua which Paramjit Kaur had already suffered statement under Section 164 Cr.P.C qua police pressurizing her to give statement against the petitioner.

7. Even from the perusal of the final report (Annexure P-9) would reveal that it is consistently the stand of the police that said Paramjit Kaur had given statement to the police that the conspiracy was hatched by her under greed of money on the asking of one Chetan Bansal. Said Chetan Bansal has not been challaned and has been declared innocent. The co-accused Paramjit Kaur has nowhere alleged the conspiracy to have been hatched in connivance with the present petitioner and this fact is evident from the perusal of the final report (Annexure P-9), to attract the offence under Section 120-B IPC an essential element for proving the conspiracy is the requirement of specific overt act which is a physical manifestation of the agreement or understanding between the accused parties to commit the alleged offence, which hopelessly is missing in the present case. Further for sustaining a conviction for such offence under Section 120-B IPC there has to be an specific proof of agreement between the conspirator to commit an illegal act and mere knowledge of conspiracy is insufficient as stated above even in the challan presented against the petitioner this element qua the agreement between the petitioner and co-accused Paramjit Kaur is conspicuously missing. The entire case of the prosecution has been based



on the alleged statement of Paramjit Kaur to have hatched the conspiracy on the asking of one Chetan Bansal. There is not even any iota of evidence to suggest that she had acted in conspiracy with the present petitioner. There being no agreement or meeting of mind between the petitioner and said Paramjit Kaur, further there is nothing on record which could go to prove the allegations of criminal conspiracy against the present petitioner, nor is there any specific overt act attributed to the petitioner to be an active participant of the alleged conspiracy. Therefore, in these circumstances, the continuation of the proceedings against the petitioner would be nothing but abuse of process of law.

8. Consequently, finding merit in the present petitioner the same is hereby allowed. Accordingly, the FIR No. 108 dated 17.04.2024 registered under Section 9A, Section 25 A of Narcotics Drugs and Psychotropic Substances Act, 1985 and Section 120 B of IPC added later on, at Police Station Sector 31, Chandigarh as well as supplementary final report dated 27.10.2015 presented under Section 120 B IPC against the petitioner, is hereby quashed.

(SANJIV BERRY)
JUDGE

02.08.2024

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i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No