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IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CRM-A-360-2021 (O&M)  
Date of decision:19.12.2024

State of Punjab ... Appellant

Vs.

Kirna @ Golo ... Respondent

**CORAM: HON'BLE MRS. JUSTICE LISA GILL.  
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. H.S. Deol, Sr. DAG, Punjab, for the appellant.

Mr. Hitesh Verma, Advocate for the respondent.

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**SUKHVINDER KAUR, J.**

1. Appellant – State of Punjab has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 23.11.2020 passed by learned Judge Special Court, Barnala, vide which respondent Kirna @ Golo has been acquitted of offence punishable under Section 22 of the NDPS Act.

2. Factual scenario, as unfolded by prosecution is that on 14.06.2018, ASI Dharampal alongwith other police officials were going from ITI Chowk to Kachari Chowk on official vehicle bearing registration No.PB-13Q-5903, in connection with patrolling and checking of suspects.

When the police party reached near Agarsain Colony, a lady was seen



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coming holding a plastic carry bag in her hand, who on seeing the police party got perplexed and tried to turn back. On the basis of suspicion, he stopped the vehicle and apprehended her with the help of fellow police officials. She disclosed her name as Kirna @ Golo wife of Kaka Singh R/o near bus stand, Barnala. In the meantime, a person was noticed coming from the side of Agarsain Colony. He was stopped by the police party and he disclosed his name as Ramdas S/o Surjit Singh R/o Barnala. After conducting his search and apprising him with the facts of the case, he was joined in the investigation. ASI Dharampal disclosed his identity to accused Kirna besides other particulars and told her that he suspected some illegal substance in the plastic carry bag which she was holding in her right hand, which was to be searched. He apprised her of her legal right that she could get the search conducted through a Gazetted Officer or Magistrate, who could be called at the spot. On this, accused reposed faith in him and expressed her desire to get the search of plastic carry bag conducted through him. Consent memo of Kirna was prepared in this regard. Then Investigating Officer checked the plastic carry bag which was found containing 550 strips of Tramadol (Clovidol-100 SR) with Batch no. DTET006 each containing 10 tablets, total 5500 tablets, which were converted into parcel in the same plastic carry bag and sealed by him with his seal bearing impression 'DP'. Sample seal was prepared. Seal after use was handed over to independent witness Ramdas. Sealed parcel alongwith sample seal was taken into police possession vide recovery memo which was witnessed by ASI Harjinder Singh and Ramdas. Personal search of accused Kirna was got conducted



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through LC Sandeep Kaur. Rs.300/- and one mobile phone 'Nokia' black colour were recovered which were taken into police possession. Accused person was not able to produce any permit or license regarding the possession of aforesaid tablets, so he scribed *ruqa* and sent the same through C. Bharpur Singh on the basis of which formal FIR was recorded by ASI Gurcharan Singh. After inspecting the spot, Investigating Officer prepared the rough site plan of place of recovery. Accused was arrested and intimation of arrest was given to her mother Melo Kaur and intimation memo was prepared in this regard. Statements of witnesses were recorded. On return to the police station, Investigating Officer produced accused Kirna, the witnesses alongwith case property i.e. sealed parcels of tablets and personal search recovery and sample seal before SI Sukhjinder Singh, the officiating SHO on that day, as SHO/Inspector Gurbir Singh was out of station due to official duty, who after verification affixed his seal bearing impression 'SS' on the parcels and also attested sample seal and kept the case property in his custody. Investigating Officer sent special report under Section 57 of the NDPS Act and forwarded the same to Ilaqa DSP. On 15.06.2018, Investigating Officer along with SI Sukhjinder Singh produced accused along with case property before the Court of learned JMIC, Barnala. Learned JMIC broke open the seals of parcels and two samples of one strip each were separated and converted into two representative parcels. Both the representative parcels and bulk parcels containing 548 strips were re-sealed with seal of the Court bearing impression 'KK'. Sample seal of the Court was prepared on Form M-29C and as per order passed by the learned Magistrate,

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bulk parcel was deposited in police judicial Malkhana. One of the representative parcels was deposited in CJM Malkhana. After completion of investigation and on the receipt of report of Chemical Examiner, challan against the accused was presented in the Court of Judge Special Court, Barnala for trial.

3. Prima facie case under Section 22 of the NDPS Act was found to be made out against the accused. She was charge sheeted accordingly, to which she pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution has examined as many as 7 witnesses. Thereafter, statement of accused under Section 313 Cr.P.C. was recorded in which all the incriminating evidence was put to her which she denied and pleaded false implication.

5. In defence evidence, accused examined DW1 Kamal Kumar and DW2 Sarwan Singh, who brought the summoned record i.e. General Diary details GD No. 063 Ex. D1, GD No. 61 Ex. D2, GD No. 66 Ex. D3 and GD No. 46 Ex. D4.

6. After appreciating the evidence on record, learned trial Court held that prosecution could not prove guilt of the accused beyond shadow of reasonable doubt. It was held that there was non-compliance of Section 50 of the NDPS Act. SHO Gurbir Singh was not out of City Barnala when the accused and case property were produced before ASI Sukhjinder Singh and as per DDR entry No.61 dated 14.06.2018, FIR was lodged against Kirna and Ramdas, but from the very inception, case of the prosecution was that Ramdas had been associated as independent witness during the investigation



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before effecting the alleged recovery of contraband from the accused. Aggrieved of said decision dated 23.11.2020, appellant/State has filed the present application for leave to appeal against acquittal of the accused.

7. Learned counsel for the appellant/State vehemently contended that producing of case property along with accused before officiating SHO did not cause any prejudice to accused and it has come in evidence that regular SHO at the relevant time had departed for official duty for the purpose of patrolling and checking of suspects. Therefore, observations of learned trial Court in this regard are erroneous and against facts and law. He further contended that cogent evidence has come on record by way of testimonies of official witnesses from which it stands duly proved on record that due compliance of provisions of the NDPS Act was carried out. He submitted that version of prosecution witnesses is truthful and reliable and prosecution has been able to prove guilt of accused beyond shadow of doubt. He prayed that present appeal be allowed and judgment of acquittal dated 23.11.2020 passed by learned trial Court be set aside and accused be convicted and punished in accordance with law.

8. A glance at prosecution evidence reveals that in order to prove its case prosecution examined **PW1 C. Gurpreet Singh**, who tendered in evidence his duly sworn affidavit Ex.PW1/A, regarding deposit of case property by him at RT FSL, Bathinda.

**PW2 ASI Dharampal**, the Investigating Officer in the present case deposed regarding effecting of alleged recovery of contraband from the accused after joining Ramdass as independent witness and after apprising



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the accused regarding her legal right to be searched in the presence of a Gazetted Officer or Magistrate who could be called at the spot. She reposed confidence in him and then search of plastic carry bag being carried by accused Kirna was conducted through him. He prepared consent Memo Ex.PW2/A in this regard which was witnessed by ASI Harjinder Singh and independent witness Ramdass and was thumb marked by accused Kirna. Plastic carry bag, being carried by accused was containing 550 strips of Tramadol (Clovidol-100 SR) with Batch no. DTET006 each containing 10 tablets total 5500 tablets, which were converted into a parcel in the same plastic bag and sealed by him with his seal bearing impression 'DP'. He also prepared sample seal and seal after use was handed over to independent witness Ramdass. The sealed parcel alongwith sample seal was taken into police possession vide memo Ex.PW2/B. Personal search of accused Kirna was conducted through LC Sandeep Kaur. Rs. 300/- and one mobile phone of 'Nokia' black colour was recovered from her which was taken into police possession vide memo Ex.PW2/C. He deposed that as accused person was not able to produce any permit or license regarding possession of abovesaid tablets he scribed Ruqa Ex. PW2/D and sent through C. Bharpur Singh on the basis of which formal FIR Ex.PW2/E was recorded by ASI Gurcharan Singh. He prepared rough site plan at the spot Ex.PW2/G. Accused was arrested and intimation regarding her arrest was given to her mother Melo Kaur vide intimation memo Ex. PW2/1. Statements of the witnesses were recorded. On return to the police station, he produced accused Kirna and the witnesses alongwith case property before SI Sukhjinder Singh, officiating



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SHO, who after verifying facts of the case from the witnesses and interrogating the accused and comparing the seals, affixed his seal bearing impression 'SS' on the parcel, attested sample seal Ex.P1 and kept the case property in the safe custody. He prepared report under Section 57 of the NDPS Act EX.PW2/J and forwarded the same to Illaqa DSP.

On 15.06.2018, he along with SI Sukhjinder Singh produced accused person alongwith case property before the Court of learned JMJC, Barnala vide inventory memo Ex. PW2/L. Thereafter, he deposed regarding drawing of representative parcels by learned Magistrate and regarding deposit of bulk parcel in judicial Malkhana and depositing one representative parcel in CJM Malkhana as per the Court order. He produced chemical report Ex.PX.

**PW3 ASI Harjinder Singh** and **PW4 LC Sandeep Kaur** both the recovery witnesses have corroborated testimony of PW2 SI Dharampal.

**PW5 MHC Ranjit Singh** produced on record DDR No.45 dated 14.06.2018 Ex.PW5/A regarding departure of SHO Gurbir Singh and DDR No.66, dated 14.06.2018 Ex.PW5/B regarding production of case property before SI Sukhjinder Singh.

**PW6 SI Sukhjinder Singh** deposed that on 14.06.2018, he was posted at PS City Barnala and on that day, he was officiating SHO as the regular SHO Inspector Gurbir Singh was out of station due to official duty. He deposed regarding producing of accused, witnesses and case property before him by Investigating Officer/ASI Dharampal. He further deposed regarding verifying the facts of the case from the witnesses and comparing



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of seals and after his satisfaction affixed his seal bearing impression 'SS' on the parcel and also attested sample seal and kept the case property in his safe custody.

He also deposed that on 15.06.2018, he was accompanied by ASI Dharampal and produced accused Kirna along with case property in the Court of learned JMIC, Barnala vide inventory memo Ex. PW2/L, where two representative samples were drawn by learned Magistrate. In compliance of order Ex. PW2/N passed by the Court, bulk parcel was deposited in police judicial Malkhana and one of the representative parcel was deposited in CJM Malkhana and another representative parcel was handed over to him for sending to Chemical Examiner. On 18.06.2018, he handed over one of the representative parcel after sealing the same with his seal bearing impression 'SS' and after affixing secret Code 29/City BNL to C. Gurpreet Singh for depositing the same in FSL, Bathinda and instructed him to get the docket forward through SSP Office, Barnala.

**PW7 DSP Varinderjit Singh** deposed that on 18.06.2018, he was posted as DSP (H) Barnala. On that day, he was present in his office where C. Gurpreet Singh produced before him a sealed parcel on which secret code 29/City BNL dt. 18.06.2018 was affixed and a letter of SSP Office. He affixed his seal bearing impression 'VS' and affixed unique code DPO/BNL/89 dated 18.06.2018, after putting parcels and sealed envelop in a separate parcel and handed over the same to C. Gurpreet Singh for sending the same to Chemical Examiner.

9. After having heard learned counsel for the appellant-State and



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having perused the judgment as well as the other relevant record, we are of the considered opinion that prosecution was indeed unable to prove its case against the accused beyond the shadow of reasonable doubt and that learned trial Court has correctly acquitted her of the charges framed against her.

10. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by learned trial Court. Reference in this regard can be made to judgments of Hon'ble the Supreme Court in '**Mahamadkhan Nathekhan vs. State of Gujarat**' 2014 (14) SCC 589 and **Mallappa and others Vs. State of Karnataka, 2024 AIR (SC) 1252**. NDPS Act provides for very stringent punishment in case the accused is found to have committed an offence under the same. Several safeguards have been provided under the Act, compliance of which is mandatory. In the light of above, it is to be examined whether learned trial Court correctly concluded that prosecution could not prove conscious possession of accused regarding the contraband in question.

11. Learned trial Court has delineated in great detail about violation of Section 50 of NDPS Act but in this matter of chance recovery the same is infact irrelevant. Hon'ble the Supreme Court in the case of **Ranjan Kumar Chadha Vs. State of Haryana, 2023 LiveLaw (SC) 856** while discussing its earlier judgments including **State of Himachal Pradesh Versus Pawan Kumar, Latest HLJ 2004 (SC) 1247**, held that the term 'person' under



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Section 50 of NDPS Act would mean a natural person or living unit and not a bag or briefcase. Therefore, even if argument of learned counsel for State in this regard is accepted in the instant case, question of non-compliance or otherwise of provision of Section 50 of NDPS Act by itself is not very material or relevant because evidence on record when considered as a whole reveals material chinks which demolishes the prosecution case. The ultimate conclusion of inability of prosecution to prove its case beyond reasonable doubt has been correctly arrived at by learned trial Court when the matter is examined in its entirety.

12. As per prosecution version, accused Kirna was intercepted by the police party headed by ASI Dharampal. While appearing as PW2, ASI Dharampal stated that before effecting recovery from accused, they had joined one Ramdass as an independent witness. Said alleged independent witness Ramdass has not been examined by the prosecution for reasons best known to it. Though it is not essential that for proving prosecution case, testimony of independent witness is a sine qua non and testimony of official witnesses until and unless discredited, is sufficient to convict an accused, however in the given circumstances, non-examination of independent witness Ramdass does cast a doubt upon the alleged recovery effected from the accused. Accused proved on record DDR No.61 dated 14.06.2018 Ex.D2 which shows that on receipt of the written *ruqa* from ASI Dharampal, the FIR was lodged against Kirna @ Golo and Ramdass. If as per the prosecution version Ramdass was associated as an independent witness during investigation, before effecting the alleged contraband from the



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conscious possession of the accused, then there was no occasion for making the DDR Entry No.61 dated 14.06.2018 Ex.D2, which makes the entire case of the prosecution quite doubtful. As per testimony of PW2 ASI Dharampal, seal after use was also handed over to Ramdas, the alleged independent witness. Once Ramdas beside being independent witness is also the witness to whom seal was handed, his non-examination by prosecution indeed snaps the ties in the chain of link evidence. It creates doubt that about the seal remaining intact in safe custody and not being tampered with.

13. Furthermore, there is unexplained delay of four days in sending of samples to the chemical examiner, which raises a doubt about samples remaining intact throughout. Relevant witness who could testify the pristine sanctity of seal being maintained, while it was not with Investigating Officer has not been examined. In this respect, reliance can be placed upon **Baldev Singh @ Deba Vs. State of Punjab & others, 2013 (1) Law Herald (P&H) 186**, wherein it was held that -

*“There is a delay of about one month in sending the samples to the laboratory and possibility of tampering with the case property and the samples of parcels could not be ruled out, particularly when the seals, after use, remained with the police officials throughout-No explanation whatsoever has been furnished by the prosecution witnesses, with regard to delay of about one month in sending the samples to the office of Chemical Examiner.”*

14. Moreover, as per statement of PW2 ASI Dharampal, plastic carry bag in question contained 550 strips of Tramadol (Clovidol-100 SR) with Batch no. DTET006, each containing 10 tablets total 5500 tablets, which



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were converted into parcels. As per FSL report Ex.PX, no batch number was mentioned on the intoxicating tablets (sample) that had been sent for the chemical analysis. This also creates doubt whether it was the intoxicating tablets allegedly recovered from the accused which had been sent for chemical analysis. Perusal of form No.29-C on record further reveals that there is unexplained overwriting over the batch number in column No.1 of the same which also creates doubt upon veracity of prosecution version.

15. Admittedly as per prosecution version, present was a case of chance recovery where ruqa Ex.PW2/D was sent for registration of FIR but there is no explanation for appearance of FIR number and specific sections on the recovery memo Ex.PW2/B and personal search memo Ex.PW2/C. Hon'ble Supreme Court in the case Kamaljit Singh @ Pappu Vs. State of Punjab, 2020 (14) SCC 9, held conviction to be unsustainable when sole independent witness was not examined coupled with FIR number being noted on documents which were statedly drawn up at an earlier point of time, preceding registration of FIR.

16. Thus testimony of official witnesses does not inspire confidence in the given factual matrix. Rather their presence at the relevant time and alleged place of recovery from the accused, in the manner as alleged by the prosecution is doubtful.

17. Therefore, keeping in view the material discrepancies as above, prosecution was indeed unable to prove its case against the accused beyond reasonable doubt. Recovery of contraband in the manner and mode as alleged by prosecution is not proved beyond the pale of reasonable doubt.



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The accused has been rightly acquitted by giving her the benefit of doubt.

- 18. No other argument was addressed.
- 19. In view of the above, no case is made out for grant of leave to appeal against acquittal of Kirna @ Golo with application being devoid of any merit. Leave to appeal is accordingly declined.

( SUKHVINDER KAUR )  
JUDGE

( LISA GILL )  
JUDGE

19.12.2024  
*harjeet*

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|----------------------------|--------|
| Whether speaking/reasoned? | Yes/No |
| Whether reportable?        | Yes/No |