

CRR-47-2015
242 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-47-2015
Reserved on: 23.01.2024
Pronounced on: 30.01.2024

Santokh Ram @ Sukha

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kamaldip Singh Sidhu, Advocate
for the petitioner

Mr. Sandeep Kumar, DAG, Punjab

Harpreet Singh Brar, J. (Oral)

1. The present revision petition is preferred against the impugned order dated 15.12.2014 passed by learned Special Court, S.B.S. Nagar, whereby the application dated 25.11.2014 for re-sampling the second sample by Chemical Examiner, Kharar has been allowed in FIR No. 93 dated 09.08.2013 registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act') at Police Station Rahon, S.B.S Nagar.

2. Briefly, the facts are that on 09.08.2013, the police party was patrolling and had established a checkpoint at Adda Bharta when a white coloured Maruti car, driven by the petitioner, came to the spot and was apprehended on suspicion. The Investigating Officer- A.S.I Nand Lal, found two plastic bags lying on the back seat of the car and suspected them to be carrying contraband. After receiving consent from the petitioner, the police party proceeded to search the said plastic bags and recovered poppy husk from the same. The two bags were weighed at 28 kg each and two samples of 250 g each were separated from each of the bags. The four samples hence separated were sealed by the Investigating

Office with his seal 'NL.' Thereafter, final report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') was filed on 13.01.2014, along with the Chemical Examination Report by Chemical Examiner, Kharar dated 11.01.2014 (Annexure P-2), following which the learned trial Court framed charges against the petitioner.

3. Vide Dispatch No. 2304 dated 13.10.2014 (Annexure P-3), office of Chemical Examiner, Kharar conveyed to the learned trial Court that the sample in the case titled '*State v. Santokh Ram alias Sukha*' has been misplaced during a vigilance inquiry and requested that another sample be deposited so a report could be issued. The prosecution filed an application dated 28.10.2014 under Section 311 and 91 of the Cr.P.C.(Annexure P-6) calling for a report from the office of Chemical Examiner, Kharar. Thereafter, the prosecution filed another application dated 10.11.2014 requesting for a search to be conducted to recover the lost sample so the report can be generated for the sample taken from the second bag and can be attached with the final report under Section 173(8) of the Cr.P.C.

4. During the pendency of the application dated 28.10.2014, the prosecution filed another application dated 25.11.2014 (Annexure P-7) with the same request to send another sample from the second bag for re-examination to the Chemical Examiner, which was allowed by the learned trial Court vide impugned order dated 15.12.2014.

5. Learned counsel for the petitioner assails the impugned order on the ground that resampling of the contraband can only be allowed within fifteen days of receipt of report from the Chemical Examiner only as has been held by the Hon'ble Supreme Court in **Thana Singh v. Central Bureau of Narcotics (2013) 2 SCC 603**. The prosecution has failed to make any efforts towards calling the report from Chemical Examiner, with respect to the lost sample, for one year after

(Annexure P-2). Further, the learned trial Court has recorded no reasons to justify the criterion of exceptional circumstances, necessary for resampling as laid down by this Court in **Karan Kakkar v. State of U.T. Chandigarh 2014(4) R.C.R. (Criminal) 159**, and as such, the impugned order deserves to be set aside.

6. Per contra, learned State counsel opposes the prayer and submits that the petitioner was found to be in conscious possession of 56 kg of poppy husk, which falls under the ambit of commercial quantity and resampling of the second sample is necessary for just and fair adjudication of the case at hand.

7. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the sample taken from the second bag of the recovered contraband, was misplaced during a vigilance inquiry. The same was intimated to the learned trial Court by Dr. Kulbir Singh, from the office of Chemical Examiner, Kharar vide Dispatch No. 2304 dated 13.10.2014 (Annexure P-3).

8. A two Judge bench of the Hon'ble Supreme Court in **Thana Singh v. Central Bureau of Narcotics (supra)**, categorically held that no resampling requests shall be entertained unless such application is backed by exceptional circumstances and made within fifteen days of receipt of the test report.

“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.” (emphasis added)

9. However, the fifteen day bar would be inconsequential in the present factual matrix as the lost sample was never examined in the first place and therefore, naturally, no test report was received with respect to it. The need for resending a sample arose because the original sample was lost during a vigilance inquiry and not on account of any lapses on part of the investigating authority. Neither the prosecution nor the accused can be allowed to take advantage of hyper-technical grounds to escape lawful adjudication. As such, it would be in the interest of justice if another sample is drawn from the second bag and sent for chemical examination. Reliance in this regard can be placed on the judgment rendered by a Division Bench of this Court in **Amarjit Singh vs. State of Punjab 2013 (4) R.C.R. (Criminal) 524**, where, speaking through Justice M. Jayapaul, the following observations were made:-

“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.” (emphasis added)

10. In view of the above discussion, the present petition is dismissed and the impugned order dated 15.12.2014 passed by learned Special Court, S.B.S. Nagar, whereby the application dated 25.11.2014 for re-sampling the second sample by Chemical Examiner, Kharar, is upheld.
11. Pending CRM(s), if any, are also disposed of accordingly.

30.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>