



CRM-A-2106-2019 (O&M)

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

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CRM-A-2106-2019 (O&M)
Date of Decision: 18.09.2024

State of Punjab

..... Appellant

Versus

Shamsher Singh alias Sunny

..... Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Dhruv Dayal, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)**CRM-27987-2019**

This is an application for condonation of delay of 139 days in filing the present appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 139 days in filing the appeal is hereby condoned.

Main Case

This is an appeal preferred by the State challenging the judgment passed by the Judge, Special Court, Amritsar dated 03.01.2019, whereby, he has acquitted the respondent for offences under the NDPS Act for allegedly carrying 110 grams of intoxicant namely Alprazolam.

It is the admitted position noticed from the cross-examination of the ASI Satnam Singh, who is the Investigating Officer as well as from the statement of PW-3 HC Baljinder Singh who is witness to the alleged



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recovery that the recovery was effected from the right pocket of the trouser of the accused which was therefore a recovery from personal search and an independent witness was required to be made available and offer under Section 50 of the Act was also mandatory. Thus, there is a non-compliance of the provision which is of mandatory in nature. We also find that the sample alleged to have been recovered, was sent to the chemical examiner after a delay of 20 days whereas the provision requires that the sample is to be sent within 72 hours to the concerned lab for analysis. Learned trial Court has relied upon the judgment in the case of ***Buta Singh Vs. State of Punjab 2006(1) RCR (Criminal) 835*** in support of such finding to hold that the investigation was initiated as per law. Learned counsel has however pointed out that the trial Court has also relied upon a judgment passed in the case of ***Mohan Lal Vs. State of Punjab 2018(3) Law Herald 2397***, to hold that the investigation initiated on the basis that the complainant of the case as well as the investigating officer was one and the same person. Learned counsel relies upon the judgment passed by the Hon'ble Supreme Court in the case of ***Mukesh Singh Vs. State (Narcotics Branch of Delhi) (2020) 10 SCC 120***, to submit that the Larger Constitutional Bench of Hon'ble Supreme Court has held that the complainant and the investigating officer can be one and the same person.

We find that while the trial Court might have relied upon a judgment which stands overruled in terms of the judgment passed by the Constitutional Bench in the case of ***Mukesh Singh (supra)***, but that would not be a sufficient ground for entertaining this appeal as on the main issue relating to non-compliance of Section 50 of the NDPS Act as has been

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not find any reason to interfere with the final verdict as given out by the trial Court and we hold that the judgment passed by the trial Court sends the findings relating to the investigating officer being one and sole complainant, shall remain in force.

In view of above, the present appeal is devoid of merits and accordingly, the same is dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

18.09.2024
D.Bansal

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No