

**HIGH COURT OF PUNJAB AND HARYANA
CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN
Date of Decision: March 04, 2024**

CRA-S-147-SB-2017 (O&M)

Zorawar Singh @ Shenty ...APPELLANT

VERSUS

State of Punjab ...RESPONDENT

Legislation:

Section 22 of the N.D.P.S. Act

Subject:

Appeal against conviction under Section 22 of the N.D.P.S. Act for unauthorized possession of narcotic drugs

Headnotes:

Quashing of Conviction and Sentence – Appeal against Trial Court's Conviction – N.D.P.S. Act – Conviction under Section 22 for possession of 400 MICROLIT Tablets – High Court finds serious flaws in the investigation and trial process, leading to doubts about the prosecution's version – Judgment of conviction and order of sentence set aside, appellant acquitted. [Paras 7-14]

Fairness of Investigation – Analysis – Held – The investigation process lacked transparency, with discrepancies in FIR and recovery memos. The IO's knowledge of the charging section before recovery raises doubts about the fairness of the investigation. The concealment of objections raised by the Forensic Lab further adds to the unfairness, violating the principle of a fair trial. [Para 9-10]

Investigative Irregularities – Significance – Emphasized – The concealment of objections by the Forensic Lab and lack of clarity in the investigation process undermine the integrity of the trial. The fairness of investigation and trial is crucial in cases involving narcotic drugs and psychotropic substances. [Para 11]

Decision – Acquittal of the Appellant – The court finds the appeal meritorious due to significant flaws in the investigation and trial process. The conviction and sentence by the Trial Court are set aside, and the appellant is acquitted of the charges under Section 22 of the N.D.P.S. Act. [Para 13-14]

Referred Cases:

- Didar Singh @ Dara Vs. The State of Punjab, 2010 (3) RCR Criminal 337

- Ajay Malik & Ors. v. State of U.T., Chandigarh, 2009(3) RCR (Criminal) 649
- Habeeb Mohammad Vs. State of Hyderabad, AIR 1954 Supreme Court 51

Representing Advocates:

Mr. Saurabh Kapoor for the appellant

Mr. Kunal Vinayak, A.A.G., Punjab

PANKAJ JAIN, J.

Present appeal is directed against judgment of conviction and order of sentence dated 08.12.2016 passed by Special Court, Patialain case FIR No.133 dated 28.07.2013 registered under Section 22 of N.D.P.S. Act at Police Station Kotwali Nabha.

2. The appellant has been convicted for offence punishable under Section 22 of N.D.P.S. Act after having been found guilty of unauthorized possession of 400 MICROLIT Tablets and has been sentenced to undergo rigorous imprisonment of 3 years along with fine of Rs.10,000/- or to undergo further rigorous imprisonment for a period of 6 months, in default of payment of fine.

3. As per the prosecution, on 28.07.2013 the police party was patrolling on private vehicle. Two persons including appellant who were standing were apprehended on suspicion. Their search led to recovery of 400 MICROLIT Tablets from each of them. Both of them were tried and stood sentenced for offence punishable under Section 22 of N.D.P.S. Act. 4. Counsel for the appellant while assailing the impugned judgment and order has submitted that it's a case where the appellant was apprehended on the basis of suspicion. The search memo as well as the consent memo and notice under Section 50 of N.D.P.S. Act, all bear FIR number. There is no explanation as to how the I.O. was in the knowledge of FIR number even prior to searching

the appellant. He has further submitted that it remains unexplained as to how the I.O. was in the knowledge of the contraband in possession of the appellant and other co-accused and thus knew that FIR would be registered qua offence punishable under Section 22 of N.D.P.S. Act. This all shows that it's a planted case. He has drawn attention of this Court to the search memo as well as the consent memo to submit that signatures of the appellant on both the memos are not same, which is evident from the naked eye. So far as the thumb impressions of coaccused Lovepreet Singh are concerned, there is no mention on the consent memo as to whether it's the left thumb impression or the right thumb impression. He has further submitted that it has come on record that police party was on private vehicle but neither the I.O. nor his companion could specify the number of the motorcycle they were riding. They could not even specify the owner of the said motorcycle.

4.1. Lastly, he has taken the Court through statement of I.O. Manjit Singh who appeared as PW3 to contend that admittedly there was an objection raised by FSL regarding the samples but deliberately the said objection was concealed not only from the appellant but also from the Court which puts whole of the case projected by the prosecution under cloud.

5. Per contra, learned State counsel has submitted that there is a well-reasoned judgment passed by the Trial Court. It has been proved on record beyond doubt that the appellant was found in possession of 400 MICROLIT Tablets which is a narcotic drug and thus he has been rightly held guilty by the Special Court. Therefore, there is no reason for this Court to interfere in the well-reasoned judgment passed by the Special Court.
6. I have heard counsel for the parties and with the able assistance have gone through records of the case carefully.
7. I have seen the search memo, the consent memo as well as site plan. It is evident from the consent memo (Ex.PW3/A) as well as recovery memo (Ex.PW3/C) that FIR number appears to have been left blank and filed later.

However, Section 22 of N.D.P.S. Act has been mentioned in all the memos which leads the inference that though the FIR number may not have been known to the I.O. at the time the consent memo as well as recovery memo were prepared but he was in the knowledge of the offence for which the appellant and the co-accused was to be booked. The I.O. being in the knowledge of the charging section even prior to recovery of the contraband at the time he obtained consent of the suspect does not augur well with the fairness expected from the prosecution. Reference can be made to Division Bench judgment of this Court in the case of Didar Singh @ Dara Vs. The State of Punjab, 2010 (3) RCR Criminal 337 wherein it was observed that:-

“...29. There is another infirmity on the record which further creates a doubt about the entire prosecution case. As per the prosecution, at the time of the recovery, various documents were prepared. Those documents are Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE and Ex.PF. All these memos bear the FIR number of the case. It is admitted case of the prosecution that when these documents were prepared, the FIR was not registered and FIR No. was not available as the same was registered later on, on the ruqa sent by the police. It has not been explained how all these memos contained the FIR number, which was not existing at the time when these memos were prepared. In Ajay Malik & Ors. v. State of U.T., Chandigarh, 2009(3) RCR (Criminal) 649, this Court while dealing with similar situation has observed that two inferences could be drawn from such situation, i.e., either the FIR was registered prior to the alleged recovery of the contraband or number of FIR was inserted in the document after its registration. But in both situations, it seriously reflects upon the integrity of the prosecution version. While relying upon several other decisions, it was held that such serious lapses in the prosecution case create a doubt to the prosecution theory.....”

8. The other thing that this Court finds fatal to the case of prosecution emanates from testimony of I.O. Manjeet Singh I.O. appeared as PW3. Relevant portion of his statement reads as under:-

“...The date of sending the samples to the chemical lab on 31.07.2013 the same was returned back on account of objection. It is wrong to suggest that the samples were not properly sealed or that on account of this objection was raised by the FSL Mohali. The kind of objection raised by FSL was not

mentioned on any document attached with the challan and I had not read the objection. Only one time the objection was raised by the FSL Mohali. It is correct that the form of the objection by the FSL not attached with the challan as well as not delivered to SSP Patiala. I have seen the form of objection on the same day. But I cannot tell the form of the objection or where the document was attached.....”

9. From the aforesaid admission made by I.O., it is evident that the sample sent to the Forensic Lab met with an objection. The said objection has been kept under wraps. Prosecution opted not to reveal the nature of objection(s) raised by the Forensic Lab. I.O. remains secretive even while deposition.
10. The object of investigation is not subject of debate. Investigating agency can not hide proceedings from the Court. The onus upon the investigating agency is to investigate the crime and not to ensure that the accused is punished. After all, the quest is for the truth. The fairness of investigation is expected from the prosecution not only from the stand of the prosecution but also from the point of view of the defence. In the trials involving narcotic drugs and psychotropic substance, the sampling as well as forensic report are crucial. Once there was an objection by the Forensic Lab, it was duty of the prosecution to come clean on the said objection. Concealment of this vital fact from the accused is fatal to the prosecution and defeats the whole object of the fair trial.
11. Fairness of trial demands that the accused must be made aware of all the circumstances against him. Keeping of objections raised by FSL veiled from the Court and the accused leads to the conclusion that the appellant has not been tried fairly.
12. I am guided by following observations made by the Supreme Court in *Habeeb Mohammad Vs. State of Hyderabad*, AIR 1954 Supreme Court 51:-

“xxx xxx xxx

In a long series of decisions the view taken in India was, as was expressed by Jenkins C.J. in – ‘AIR 1915 Calcutta 545 that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a public prosecutor is to represent not the police but the Crown, and this duty should be discharged fairly and fearlessly with a full sense of the responsibility attaching to his position and that he should in a capital case place before the court the testimony of all the available eye-witnesses, though brought to the court by the defence and though they give different accounts, and that the rule is not a technical one, but founded on common sense and humanity.

xxx xxx xxx”

13. In view of above, this Court finds that the present appeal deserves acceptance and the same is accepted. Impugned judgment of conviction and order of sentence dated 08.12.2016 is set aside. Appellant is acquitted.
14. Appeal stands allowed.
15. Pending application(s), if any, shall also stand disposed of.

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