

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**CrIM No. 590/2023 c/w  
CrI LP(D) No. 20/2023**

Reserved on: 19.04.2023  
Pronounced on: 25.04.2023

UT of J&K ... Appellant(s)

Through: - Mr. Amit Gupta, AAG

v.

Pardeep Singh (now dead) and anr. ... Respondent(s)

Through: - None.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE  
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

**JUDGMENT**

**Rajesh Sekhri-J**

1. This appeal has been directed against judgment dated 13.09.2022 passed by the Court of learned Principal Sessions Judge, Jammu (for short, 'trial court') in File No.02/Special Challan titled 'State v. Pardeep Singh and anr.' and FIR No. 33 of 2007 of Police Station Miran Sahib for offences under Section 8/15/29 of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, 'NDPS Act'), vide which, respondent has been acquitted of the charges.

2. Along side the appeal, appellant-UT of J&K has also filed an application for condonation of delay of 122 days and an application seeking

special leave to appeal, to be discussed and decided later, subject to merit of the appeal.

3. Shorn of verbosity, the prosecution case is that on 22.02.2017 Police Station, Miran Sahib, received source information that one Pardeep Singh, respondent No.1 (since dead) driver of truck bearing registration No. JK02AE-0625 was involved in the illegal trade of poppy straw etc. to younger generation by transporting the same from Kashmir. He had parked his truck in front of his house and some poppy straw was being loaded in a Alto Car of respondent/accused Vijay Kumar and was being taken by him to his shop situate at Makhanpur Gujran and remaining Poppy straw was lying in the aforesaid truck of accused Pardeep Singh. On receipt of this information, aforesaid FIR came to be registered and investigation was entrusted to SHO-Pawan Kumar who swung into action and recovered 47 kg of contraband from the roof top of the shop of the respondent and 100 grams from his Alto Car bearing registration No. JK02AX-1081. 19 kg and 100 grams of the contraband was also recovered from the truck of accused-Pardeep Singh. Both the vehicles were seized on the spot. Investigating Officer after rituals of formal investigation, extracted and forwarded samples of the contraband to FSL for chemical analysis.

4. Since on conclusion of investigation, aforesaid offences were established against accused persons, it culminated into filing of final report, under Section 173 Cr.P.C in the trial court.

5. Both the accused were charge-sheeted on 22.07.2017 for offences under Sections 8/15/29 of NDPS Act. Statements of accused under Section 342 of Cr.P.C. were recorded whereby they pleaded false implication and did

not propose to lead any evidence in defence. The prosecution examined as many as 07 witnesses out of 09 cited in the calendar of witnesses to substantiate charges against the accused persons. It is pertinent to mention that accused Pardeep Singh died during the pendency of trial and therefore, proceedings against him stood abated.

6. On appreciation of the prosecution evidence, learned trial court is of the view that prosecution has failed to prove its case beyond reasonable shadow of doubt, therefore, respondent has been acquitted of the charges. Learned trial court has also expressed its displeasure about the standard of investigation carried out in the present case for the reason that various mandatory provisions of the NDPS Act have been violated by the investigating agency with impunity.

7. Appellant-State has questioned the impugned judgment of acquittal on the conventional grounds that respondent has been acquitted by the trial court despite sufficient material on record to sustain conviction as learned trial court has failed to appreciate the law and facts of the case in the right perspective.

8. Having heard learned Mr. Amit Gupta, learned AAG for the appellant-State, we do not find any illegality or impropriety in the impugned judgment of acquittal for the following reasons.

9. Instead of giving a detailed resume of the prosecution evidence, it is proposed to refer to the relevant part of the depositions of prosecution witnesses by highlighting their respective names as, when and where required.

**Contradictions:**

**10.** First of all, the prosecution evidence being replete with serious contradictions does not inspire confidence. **PW-Sgct. Nawaz Ahmad** has stated that on 22.02.2017 he was asked by SHO Miran Sahib, who was also SDPO at that point of time, to intercept Vijay Kumar, who was roaming in a nearby lane in front of his shop. He caught hold Vijay Kumar in the presence of a civilian and a Sarpanch and later, at the instance of accused-Vijay Kumar, 05 Gunny bags were recovered and seized from the first floor of his shop. The said bags were weighed by the SHO. He has denied having witnessed the drawing of samples. **PW-Nawaz Ahmed** has, thus clearly stated that entire occurrence was witnessed by a Sarpanch and a civilian. **PW-Garib Dass** is the civilian, who also happened to be a retired tehsildar and **PW-Rajinder Singh** is the Sarpanch and they have been cited as independent witnesses in the case and both of them have turned hostile. **PW-Rajinder Singh Sarpanch** who denied having witnessed the recovery and seizure of the contraband, has rather stated that their signatures were obtained on blank papers.

**11.** Next prosecution witness in the case is **Sgct. Sukhvinder Singh**, a police official. He has stated that occurrence took place on 22.07.2017 and it is pertinent to mention that when again asked about the date of occurrence by the prosecution, he repeated the date of occurrence as 22.07.2017 whereas the incident in the present case occurred on 22.02.2017. He has also claimed that occurrence was witnessed by a retired Tehsildar and Sarpanch and made a statement as made by PW Nawaz Ahmed and further stated that occurrence was witnessed by 40 to 50 people.

**12.** Further, **PW-Pawan Kumar** was SHO at the relevant point of time in February, 2017. It is he who received the information. He has conducted the investigation and filed charge sheet also. Pertinently, on the receipt of source information, he straightway proceeded to raid the shop of respondent and stated to have recovered and seized the contraband from first floor of his shop in the presence of independent **PWs-Garib Dass**, a retired Tehsildar and **Sarpanch Rajinder Singh**, who, as already stated, have turned hostile.

**13.** Be that as it may, we find infraction of various mandatory provisions of the NDPS Act. It is pertinent to mention that in cases under the NDPS Act and the Rules framed thereunder, it is not only the recovery and seizure of the contraband, which is sufficient to sustain conviction, but manner of conducting investigation is of vital significance, in view of the fact that offences under the NDPS Act, being heinous in nature and against the society at large, are visited with severe punishment and the legislature in its wisdom, while legislating the Act has provided various safeguards to be religiously followed by the investigating agency. Various provisions governing the arrest, search and seizure have been incorporated in Chapter-V of the NDPS Act to ensure that no innocent person is subjected to harassment.

**14.** Keeping the aforesaid principles in mind, if we proceed to analyse the prosecution evidence in the present case, it is found that mandatory provisions of the NDPS Act have been observed in breach and flouted by the investigating agency with impunity. It needs a specific mention that in NDPS cases the investigation of a case, if conducted properly and in accordance with the NDPS Act and the Rules framed thereunder, gets completed on the

spot, except the placing of the recovered and seized contraband in safe custody, re-sealing of the same through Executive Magistrate or Gazetted officer 1<sup>st</sup> Class and forwarding of the re-sealed sample for chemical analysis through FSL.

**Infraction of Section 42 of NDPS Act:**

15. One of the salutary provisions, investigating officer is bound to follow is that he is obliged to reduce the information received by him into writing and forwarding a copy thereof to his immediate superior officer within 72 hours. Section 42 of the NDPS Act mandates compliance of the requirements contained therein, i.e. if the officer has reason to believe from personal knowledge or information received by him from any person which is required to be taken down in writing that any drug or psychotropic substance or controlled substance in respect of which an offence punishable under the Act has been committed, he is empowered to exercise his power enumerated in clauses (a) and (b) of sub Section 1 of Section 42 of the NDPS Act between sun rise and sun set, subject to just exceptions. It is manifest, as such, that taking down of information in writing is necessarily to be complied with. The proviso appended to sub section (1) of Section 42 of the NDPS Act provides that if such officer has reason to believe that search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building conveyance or enclosed place at any time between sun set and sun rise after recording the grounds of his belief. Further sub section (2) of Section 42 of the NDPS Act lays down that where an officer takes down any information in writing under Sub Section (1) or

records grounds of his belief under the proviso thereto, he shall within 72 hours send a copy of the same to his immediate superior officer.

16. Reverting to the present case, **PW-Pawan Kumar, I.O.** has stated that on receipt of source information, he telephonically informed his superior officer. It implies that I.O. did not reduce the information received by him into writing as mandated by Section 42 of the NDPS Act.

17. Hon'ble Supreme Court in **Karnail Singh v. State of Haryana** reported as **(2000) 2 SCC 513**, commenting upon the import of Section 42(2) of the NDPS Act has clearly ruled in the following words:

**“Under Section 42(2) as it stood prior to amendment such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same would adversely affect the prosecution case and to that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case, it is to be concluded that the mandatory enforcement of the provisions of Section 42 of the Act non-compliance of which may vitiate a trial has been restricted only to the provision of sending a copy of the information written down by the empowered officer to immediate official superior and not to any other condition of the Section.”**

18. A similar view has been expressed by Hon'ble Supreme Court in **2009 AIR (Criminal) 401 SC.**

19. It is manifest from the afore-quoted case law that non compliance of Section 42 of NDPS Act vitiates the trial.

### **Infringement of Section 55 of NDPS Act.**

20. Another vital aspect of the case is that prosecution has failed to prove that contraband recovered in the present case was kept in safe custody and forwarded to FSL in accordance with law and without any delay. It is

pertinent to note that in view of stringent provisions regarding punishment and grant of bail, the legislature in its wisdom enacted section 55 of the NDPS Act to ensure that officer Incharge of Police Station shall immediately take charge and keep the alleged contraband in safe custody, in order to rule out any possibility of tampering with the contraband. Prosecution is obliged to prove that the contraband after its recovery and seizure from the accused was kept in safe custody, in the Malkhana of the concerned Police Station under proper entry in the Malkhana register. The prosecution is also obliged to prove that said sample of the contraband was forwarded to FSL without any delay.

21. Chattisgarh High Court in **Ganga Bhai v. State of M.P** reported as **2012 (4) Crimes (HC) 687** in a similar legal situation has made following observation:

**“30. After having considered the evidence led by the prosecution in its entirety, I am of the considered opinion that there is non compliance of the provisions of Sections 52 and 55 of the Act, 1985. Neither delay in delivering the sample at FSL has been explained nor the Malkhana Register was produced in evidence. The prosecution did not examine the officer-in-charge of Malkhana, Station House Officer and Constable 302 Shyam Sunder Chandrakar. Therefore, the report of FSI (Ex. P8) cannot form basis of conviction of the appellant under Section 20B of the Act, 1985. In view of teh above, the impugned judgment deserves to be set aside”**

22. Similarly, in **Prem Shahi v. State of Uttrakhand** reported as **(2013) Supreme (UK) 162**, Uttrakhand High Court has also held as below:

**“Having perused the contents of Section 55 of the NDPS Act, I have no hesitation to hold that contraband, so recovered from the accused, shall be forwarded to the officer Incharge of the police station; who shall put the contraband and sample seal in a safe custody and shall affix his seal to such articles before keeping them in the Maalkhana. Section 55 further authorizes Incharge of the police station to permit the Investigating Officer or any other officer to take sample of the contraband in the presence of Incharge of the police station and affix his own**



**seal on the sample, so drawn as well as on the packet, wherein rest of the contraband, is kept, after taking the sample.”**

**23.** Identical view has been taken in **State of Rajasthan v. Tara Singh** reported as **2011 (3) SCR 1112**, in which High Court of Rajasthan dealing with the import and significance of Section 55 of NDPS Act, has held in the following manner:

**“4. xxx xxx xxx**

**We must emphasize that in a prosecution relating to the Act the question as to how and where the samples had been stored or as to when they had dispatched or received in the laboratory is a matter of great importance on account of the huge penalty involved in these matters.”**

**24.** Reverting to the case at hand, the prosecution in the trial court has neither produced incharge Malkhana to establish safe custody of the contraband recovered and seized in the present case nor Executive Magistrate First Class from whom the sealed packets are stated to have been re-sealed by the Investigating officer. Pertinently, **PW-Pawan Kumar**, in his cross examination, has conceded that he claimed in the charge sheet to have got the contraband re-sealed from Executive Magistrate First Class, but there is nothing on the record of the file with respect to any kind of communication addressed to the Executive Magistrate requesting for re-sealing of the exhibits. It is also pertinent to mention that no authority letter of the Executive Magistrate to authorize forensic experts to break open the seal and examine the contraband is found on the record.

**25.** The inevitable effect of this omission is that prosecution has failed to rule out the possibility of the samples being changed or tampered with. The prosecution has failed to prove that right from the stage of seizure of the contraband to the stage of handing over samples to the public analyst, the

samples remained in safe custody and were got properly re-sealed and also that seals remained intact. This is a serious infraction and vitiates the trial.

**26.** Further, as per prosecution case, the sample packets are stated to have sent to FSL through SI Kamal Preet Singh. But neither SI Kamal Preet Singh has been cited as a witness in the case nor produced or examined.

**27.** For what has been observed and discussed herein above, it is clear that not only the prosecution evidence in the present case is replete with material contradictions and serious discrepancies, but mandatory provisions of the NDPS Act have been observed in breach by the Investigating Agency. Viewed from any angle, we are not persuaded to take a view different from the one taken by learned trial court, therefore, the impugned judgment, being well reasoned, is liable to be upheld.

**28.** Thus considered, we do not find any merit in the present appeal, which is liable to be dismissed and consequently, impugned judgment, being well reasoned, is liable to be upheld. Ordered accordingly.

**29.** Consequently, both the applications for condonation of delay as also special leave to appeal are dismissed.

**30.** Before parting, we concur with the displeasure expressed by learned trial court about the standard of investigation carried out in the present case. Notably, the cases related to the drug peddling have shown an alarming surge from past many years and this part of the country has emerged as a new breeding ground entrapped in the tentacles of the menace which has taken the shape of an industry with criminal minded people hell bent to

destroy the blooming youngsters and incapacitate their minds and souls. It may seem to be an ordinary crime but there is no denying the fact that money generated from this trade, finds its use in financing the subversive activities and the acts inimical to the security and stability of the nation.

**(RAJESH SEKHRI)**  
**JUDGE**

**(SANJEEV KUMAR)**  
**JUDGE**

Jammu  
25.04.2023  
Paramjeet

Whether the order is speaking?  
Whether the order is reportable?

**Yes**  
**Yes**

