

PUNJAB AND HARYANA HIGH COURT**Before: Anil Kshetarpal, J.**

CRA-S-376-SB-2016

Decided on: 20.11.2019

Robin Masih

Appellant

Versus

State of Punjab

Respondent

Present: Mr. Sohan Singh Rana, Advocate for the appellant

Mr. SPS Tinna, Addl. Advocate General, Punjab.

Narcotic Drugs and Psychotropic Substances, Act, 1985 (61 of 1985), Section 42, 67 – Acquittal in NDPS matter -- Investigation by Assistant Sub-Inspector – Assistant Sub Inspector, the investigating officer of this case is a C.2 Constable which is an upper rank for the post of Constable, substantive rank still continues to be that of Constable and is drawing pay of the Constable – Provisions of the Act of 1985 are stringent and provide for severe punishment -- In such a situation, it is the duty of the investigating agency to strictly comply with the requirements of the Act – Accused acquitted.

(Para 2-7)**Cases referred:**

1. State of Punjab Vs Thana Singh, 1994 (2) RCR (Crl.) 430.
2. Bikkar Singh Vs State of Punjab, 2006 (3) RCR (Crl.) 16.

ANIL KSHETARPAL, J.--

1. Question as to whether officer below the rank of Assistant Sub Inspector can investigate the case arising out under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act of 1985) has been settled by two Division Bench judgments of this Court titled as ***State of Punjab Vs Thana Singh, 1994 (2) RCR (Crl.) 430 and Bikkar Singh Vs State of Punjab, 2006 (3) RCR (Crl.) 16.***

2. The aforesaid judgments have been delivered after interpreting the notification dated 03.09.1987 issued by the Government of Punjab, wherein the President of India was pleased to empower the officers of and above the rank of Assistant Sub Inspector of Police to exercise the powers and perform the duties specified in the Sections 42 and 67 of the Act of 1985.

3. In the present case, learned counsel for the appellant has drawn attention of the Court to para 26 of the judgment passed by the learned court of sessions, wherein statement of DW-1 PHC Paramjit Singh has been noticed. He has stated that he has brought the official record and admitted that Assistant Sub Inspector Parkash Singh, the investigating officer of this case is a C.2 Constable which is an upper rank for the post of Constable. He was given posting of Assistant Sub Inspector in own rank and pay. He has admitted that his substantive rank still continues to be that of Constable and is drawing pay of the Constable. The entire statement of Paramjit Singh is extracted as under:-

"Stated that I am a summoned witness and brought original service book of Parkash Singh No.1568/Btl. As per our record, Parkash Singh No.1568/Btl was joined as Constable on 08.10.1993. He is receiving the salary grade of Constable amounting to Rs.3200/-, uptil now. He is working on ORP rank. As per our record, his actual rank is Constable. Attested copies of service book is Exhibit D.1 and Exhibit D.2.

Xxxxxxx by Sh. Vivek Puri, Additional Public Prosecutor for the State.

It is correct that the original Rank of Parkash Singh No.1568 Btl is C.2. It is correct that he was promoted as C.2 on 23.11.1993 as per record. It is correct that Parkash Singh is presently posted as In charge PP Simble Batala and having additional charge Anti Gunda Staff Batala on the orders of SSP, Batala. It is correct that at present he is promoted ASI on ORP Rank by Director General of Police Punjab on 06.10.2014. It is correct that C.2 is upper rank than Constable Vol. said lower than Head Constable.

4. Facts of the case, as noticed by the court of sessions, correctness whereof is not in dispute, is extracted as under:-

"The prosecution story in brief is that on 30.03.2013, ASI Parkash Singh along with HC Harjit Singh, HC Jasbir Singh, HC Ranjit Singh and other police officials were on patrolling and went from the police post towards simble chowk, Guru Nanak Nagar, Bhullar Road, Village Pundar. When the police party reached near Railway Crossing G.T. Road, Gurdaspur, then two clean shaven men were seen coming from the front side carrying plastic envelop in their hand who were tried to escape after seeing the police party. On the basis of suspicion, ASI apprehended them with the help of other police officials. On enquiry, out of which two person one disclosed his name Sanjeev Kumar @ Labhi son of Om Parkash r/o Bhullar Road, Guru Nanak Nagar, Batala and second clean shaven man disclosed his name Robin Masih son of Yakub Masih r/o Prem Nagar, Civil Lines, Batala. Then ASI Checked the plastic envelope of accused Sanjeev Kumar, out of which 290 intoxicant capsules make Parvodex were recovered, then ASI checked the plastic envelope of accused, Robin Masih out of which 225 intoxicant capsules make Parvodex were recovered. After that ASI told accused Sanjeev Kumar and accused Robin Masih that he has suspicion upon them that they have in possession some intoxicant material. ASI apprised them about their legal right that they have legal right to be searched by him or some by Gazetted Officer or Magistrate. On this both accused respond faith in ASI. Regarding this, the consent memos was prepared. Before conducting the personal search of accused, ASI tried to join the public witness, but no body was ready to join the police party. After that the personal search of accused Sanjeev Kumar was conducted by ASI and from his possession intoxicant powder and from the accused Sanjeev Kumar 925 grams intoxicant powder was recovered, out of which 2 sample 10/10 grams each were separated by ASI and remaining bulk was found 905 grams, both bulk and samples were put into different plastic containers, prepared 3 sample



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parcels and from the recovered 290 capsules 10/10 capsules as sample were separated. Then bulk along with sample were put into separate plastic container sealed by ASI with his seal impression PS. After that ASI weighed intoxicant powder recovered from Robin Masih which came 635 grams out of which 2 sample 10/10 grams each were separated by ASI and remaining bulk was found 615 grams, both bulk and samples were put into different plastic containers, prepared 3 sample parcels and from the recovered 225 capsules 10/10 capsules as sample were separated. Then bulk along with sample were put into separate plastic container sealed by ASI with his seal impression PS. Then all the sample parcels and bulk parcels were sealed by ASI with his seal bearing impression PS (1/1 on each parcel) and took into police possession vide separate memo. Sample seal was also prepared. After using the seal, the same was handed over to HC Harjit Singh. Ruqa was sent to the police station through HC Balbir Singh, on the basis of which formal FIR was registered. Site plan was prepared. Statements of the witnesses were recorded. Accused was arrested in this case. On receipt of reports of chemical examiner and after completion of other necessary formalities, the challan against the accused was presented in the Court."

5. Learned counsel appearing for the State has informed the Court that as per custody certificate, the appellant has already undergone 3 years and 7 months and he is not involved in any other case under the NDPS Act. However, he submits that no prejudice has been caused to the appellant as recovery from the appellant has been proved.

6. The provisions of the Act of 1985 are stringent. Special enactment has been made by the Legislature in order to provide for severe punishment in case an accused is found guilty. In such a situation, it is the duty of the investigating agency to comply with the requirements of the Act, strictly. The State of Punjab itself has issued a notification dated 03.09.1987 empowering the officers of and above the rank of Assistant Sub Inspector of Police to exercise the powers and perform duties specified in the aforesaid Sections 42 and 67 of the Act of 1985.

7. In view of the above, this Court finds substance in the submission of learned counsel for the appellant. Hence, the present appeal is allowed. The accused-appellant is acquitted of the charges. Pending application(s), if any, shall also stand disposed of, in terms thereof.

8. The Director General of Police, Punjab is requested to circulate the order among all the District Heads for information and compliance.

Appeals Allowed.
