

(2006) 09 P&H CK 0120

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 69930-M of 2005

Resham Singh alias Pappu

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Sept. 7, 2006

Citation: (2007) 1 AICLR 478 : (2006) 4 RCR(Criminal) 545

Hon'ble Judges: T.P.S.Mann, J

Advocate: Mr. R.P. Rana, Advocate. Mr. Sidharth Sarup, A.A.G., Haryana., Advocates for appearing Parties

Judgement

T.P.S. Mann, J.

1. Prayer has been made for issuance of directions to the trial Court for taking fresh sample from the remaining material of case property after properly mixing the same and sending the same thereafter for reexamination by the Central Forensic Science Laboratory.

2. FIR No. 67 dated 3.3.2005 under Sections 18 and 25 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'the NDPS Act') was registered with the allegations that petitioner Resham Singh @ Pappu along with Suresh and Bindi s/o Jagir Singh fled away in the vehicle on 3.3.2005 when they saw a police party. While fleeing in the vehicle, they had to take an acute turn and in the process one plastic bag of white colour fell from the window of the vehicle. The same was opened and opium was recovered. Two samples of 20 grams each were taken and the remaining opium was weighed which came to 5 kgs. and 960 grams.

3. The petitioner was later on arrested in the aforementioned FIR. It was claimed by him that he had been falsely implicated in the case and the story of his alleged escape from the spot was all a made up one. Further that the rest of the material allegedly recovered by the police was not opium nor any other narcotic substance, as the same was planted. He sent an application through his wife to Senior Superintendent of Police, Fatehabad for drawing another sample from the

remaining material and sending the same to the laboratory for examination. As fresh sample was not drawn, the petitioner filed the present petition seeking issuance of directions for the said purpose.

4. Reply has been filed by the State wherein a specific stand has been taken that there is no provision in the NDPS Act to take second sample of the contraband and sending it for analysis.

5. In *State of Kerala v. Deepak*, 2001(3) RCR(Criminal) 216 (Kerala) it was held that though the NDPS Act did not specifically refer to the forwarding of a second sample for analysis yet request for sending a second sample for analysis would be allowed. The facts of the case were that the first sample sent to the laboratory was reported to be negative i.e. against the prosecution. Further that part of the same stock, involved in another case, when subjected to analysis in the laboratory revealed that it contained some psychotropic substance. In view of these facts, the Kerala High Court allowed the request of the prosecution for sending a second sample for analysis.

In *Amar Singh v. State of Punjab*, 2004(2) RCR(Criminal) 487, this Court directed the sending of second sample for analysis to the Central Laboratory, Chandigarh. However, it was observed that if the second sample had not already been taken, only then the case property be opened and second sample be drawn from the bulk opium.

6. In the present case, the claim of the petitioner is that he does not want the second sample already taken by the police to be sent for examination afresh but he wants another sample to be drawn from the bulk opium. This claim of the petitioner cannot be acceded to. He could, at the most, request for sending the second sample which had already been drawn by the police for examination afresh. He cannot be permitted to ask for drawing of sample afresh from the bulk opium and sending it to the laboratory. In *Amar Singh's* case (supra) case property was to be opened and the sample drawn from the bulk opium only if the second sample had not been taken. The facts of the present case are that two samples of 20 grams. each were drawn, one of which was sent to the laboratory and the other retained in the Malkhana. The petitioner does not know the contents of the second sample but express his suspicion that the remaining bulk was not opium and just a waste product planted to implicate the petitioner. In *Jarmanjit Singh and another v. State of Punjab*, 2003(2) RCR Criminal 753 this Court clearly held that NDPS Act did not provide for the sending of second sample to the laboratory for reanalysis. It was held as under :

"20. Reverting to the controversy raised in the present case, it is manifest from the above quoted standing instructions dated 15.3.1988 issued by the Narcotics Control Bureau, New Delhi that in the situation contemplated in clause 1.21, the second sample can be sent for analysis in case of loss of original sample in transit or

otherwise on account of trial Court passing an order for a second test for which duplicate sample has to be utilized. These guidelines do not envisage that to dislodge the report of Chemical Examiner already obtained and available on record, the second sample can be got analyzed by the accused. In this case the second sample has been sent by the Investigating Officer at the state (stage ?) of investigation and before submitting the police report under Section 173 of the Code without getting the permission of Court, which recourse is unwarranted under the circumstances of the case."

In view of the above, the present petition does not call for issuance of any directions for taking sample afresh. The petition is, accordingly, dismissed.