Darshan Singh and Others Vs State of Punjab

CRM No. M-1271 of 2008 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 4, 2013

Hon'ble Judges: Sabina, J

Bench: Single Bench

Advocate: D.S. Pheruman, for the Appellant; Deep Singh, AAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

Sabina, J.

Petitioners by way of this petition have challenged the order dated 31.10.2007 (Annexure P-2) passed by the Trial Court

whereby second sample was drawn from the bulk of the contraband and was ordered to be sent for analysis to Central Forensic Science

Laboratory. Learned counsel for the petitioners has submitted that under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short

''Act''), there was no provision for sending second sample for analysis. In support of his arguments, learned counsel has placed reliance on Thana

Singh Vs. Central Bureau of Narcotics, wherein it was held as under:-

Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the concerned

laboratories, results of the same must be furnished to all parties concerned with the matter. Any requests as to retesting/re-sampling shall not be

entertained under the NDPS Act as a matter of course. These may, however, be permitted, in extremely exceptional circumstances, for cogent

reasons to be recorded by the Presiding Judge. An application in such rare cases must be made within a period of fifteen days of the receipt of the

test report; no applications for re-testing/re-sampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any

form of re-testing/re-sampling is strictly prohibited under the NDPS Act.

2. Learned State counsel, on the other hand, has opposed the petition and has submitted that earlier report had been obtained by the petitioners in

their favour by exercising political pressure. Hence, in the interest of justice, it was necessary to send the second sample for analysis.

3. Proposition of law is no longer res integra. The Apex Court in Thana Singh''s case (supra) has held that any request for re-testing/re-sampling

shall not be entertained under the Act as a matter of course. Only in rare cases, request for sending second sample for analysis could be

entertained. However, in such a case, application had to be made within a period of 15 days from the receipt of the first test report and no

application for re-testing/re-sampling shall be entertained thereafter. It has further been held that in the absence of any compelling circumstances,

any form of re-testing/re-sampling was strictly prohibited under the Act.

4. In the present case, admittedly sample was sent for analysis on 09.08.2007. Report of the analyst was sent on 11.09.2007. The said report was

received by the prosecution on 19.09.2007 whereas, the application for sending second sample for analysis was moved on 23.10.2007. Thus, the

application for request for sending the second sample for analysis was moved by the prosecution after 15 days of the receipt of first report from

the laboratory. In these circumstances, in view of the decision of the Apex Court in Thana Singh''s Case (supra), the impugned order dated

31.10.2007 is liable to be set aside. Accordingly, this petition is allowed. Impugned order dated 31.10.2007 (Annexure P-2) is set aside.