

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Revision No.1518 of 2010

Date of decision:-28.2.2011

Dara Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Yashwinder Paul Singh, Advocate
for the petitioner.

Mr. Raghbir Chaudhary, Sr. DAG Punjab.

RITU BAHRI J.

This criminal revision has been filed against the order dated 16.4.2010 passed by the Special Judge, Mohali vide which application filed by the petitioner for sending samples from the bulk (i.e. recovered quantity of CFSL Chandigarh) for chemical analysis, was dismissed.

On 28.8.2008 on the basis of a secret information of a reliable informer, who informed SI Sarabjeet Singh that one Dara Singh son of Pal Singh resident of Phase 3B-2, Mohali, who deals in narcotic substances will go towards village Kandala via Kharar and Zirakpur alongwith cocaine narcotic substances in his Maruti Car bearing registration No. CH01Y-5432 white colour. Nakabandi was done near village Kandala on the road and SI Sarabjeet Singh informed the same to Savinderjeet Singh, Deputy Superintendent of Police, City, SAS Nagar Mohali and was requested to reach at the spot alongwith gunman. But on 28.8.2008 the maruti car of Dara Singh did not come. However, on 29.8.2008 nakabandi was done near Radha Swami gate by SI Sarabjeet Singh alongwith

police party and car No. CH01Y-5432 was stopped. Name and address of the person was stated to be Dara Singh son of Pal Singh resident of House No.1376, Phase 3B-2, Mohali, who was driving the car. After his search cocaine was recovered from a polythene bag. Two samples of 10 grams each were separated from the recovered cocaine and were put in the polythene paper packets and were put in a small plastic boxes. Remaining cocaine weighing about 1 kg and 210 grams was put in a red colour recovered bag and all the three parcels were sealed by SI Saravjeet Singh and the SP with the seals bearing letters SS and HS. All the three sealed parcels and samples were taken into police possession vide separate memo and signatures of the witnesses were taken on the memo. The samples narcotic were sent for testing to Chemical Laboratory, Punjab Chandigarh. As per the report of chemical laboratory dated 04.9.2008, samples contained cocaine with 89.80%. Thereafter, on 18.9.2008 challan under Section 173 Cr.P.C. was prepared against the accused Dara Singh. In the challan it has been mentioned that during the inquiry from the accused Dara Singh a raid was conducted at the house of Gurdarshan Singh Sodhi son of Gian Singh resident of House No.2297 Sector 27, Chandigarh by SI Saravjeet Singh alongwith accused Dara Singh and police party. He was arrested on 29.8.2008. Two cheques, one of rupees six lacs and another of four lacs were recovered from Gurdarshan Singh Sodhi. From the inquiry of the accused Gurdarshan Singh Sodhi, the Deputy Superintendent of Police, Haryana SI Saravjeet Singh arrested Joginder Singh son of Parladh Singh resident of Village Vehta, Police Station Sohana, District Gurgaon and Manohar Singh son of Ram Dayal Singh, resident of Thukerian, Police Station Gothan, District Nagaur (Rajasthan) from Delhi on 20.8.2008. On 01.9.2008 accused Dara Singh and Gurdarshan Singh went to Narcotic Cell, Amritsar. Report of the chemical laboratory was received on 13.9.2008. From the FIR, Naksha Mouka, Nazri, Map of recovery, report of chemical and statements, offence under Section 28/69/85 of NDPS Act was

proved and the challan was presented in this case.

During the pendency of the trial, the petitioner made an application on 05.11.2009 i.e. almost one year after the report of the chemical laboratory dated 04.9.2008 that cocaine has been received on 04.9.2008. Vide this application dated 05.11.2009 the petitioner had sought re-testing of the sample. The allegation in the application was that he has been falsely implicated and no recovery was effected from the accused. The prayer was made that a fresh sample be taken from the bulk property and sent to CFSL Laboratory Chandigarh for analysis. Further evidence be not recorded till the report of the second sample is received. This application of the petitioner has been dismissed on 16.4.2010, which is the subject matter of challenge in this revision petition.

I have heard learned counsel for the parties and have gone through the case file carefully.

Mr. Raghubir Chaudhary, Sr. DAG Punjab informed the Court that almost evidence of the prosecution has been reached the fag end. At this stage prayer of the petitioner cannot be allowed as it will delay the pendency of the trial without any cogent reasons.

Mr. Yashwinder Paul Singh, Advocate counsel for the petitioner has argued that a prayer for re-analysis of second sample can be made even at the defence stage. For this he has placed reliance upon **Amar Singh versus State of Punjab** 2004(2) RCR 487, in which, it has been observed as under:-

“In my opinion, the application has been wrong dismissed. Even if there is some delay on the part of the petitioner for making a request to send the second sample for re-analysis, then also it should have been allowed because even at the defence stage, the petitioner was entitle to ask for the second sample to be sent for re-analysis. It has been observed by Kerala High Court in State of Kerala versus Deepak, 2001(3) RCR (Criminal) 216 (Kerla) that even in the absence of specific provisions, request for sending second

sample for analysis can be allowed if interest of justice demands that the second sample should be got analysis from the Central Laboratory to establish positively the case against the petitioner."

There is no bar for the Court in allowing such application to meet ends of justice. In **Nihal Khan versus State (Government of NCT) 2007 (3) RCR (Criminal) 850**, the circumstances, in which the Court should consider and allow such application, has been discussed as under:-

"If the Court, upon considering the totality of circumstances comes to the conclusion that retesting would be necessary, then it ought to allow such an application. An illustration of a case where retesting would be necessary is one given by the decision in Masooni Ali (supra) where the first test did not disclose the percentage contents of diacetylmorphine and the second test became necessary for ascertaining the exact content so that the category of the offence under Section 21 of the NDPS Act could be ascertained. Another situation where re-testing. A third situation may be where in the course of the trial it is indicated that there is a possibility that the sample sent for testing did not match the case property. This can be discerned some times by marked difference in colour or other appearance to be naked eye. In all such situation, it is so feels, to direct re-testing. These instances are merely illustrative. There may be other situations where it would be necessary for the court the court allowed such an application."

In the present case it would be interesting to note that the first report of the chemical analysis was received on 04.9.2008, thereafter the challan was presented and the trial proceedings continued. On 05.11.2009 the application for re-sampling was presented by the petitioner. After going through the application there are no allegations against any police officials. The only allegation was that he has been falsely implicated and no recovery was effected from the accused. A prayer has been made that the sample should be collected

in front of the Chief Judicial Magistrate and then the sample should be handed over to the CFSL Laboratory at Chandigarh. No specific reason is made out for re-analysis of the sample. On the one hand the petitioner is stating that no recovery was effected from him and on the other hand he requests for sending the second sample for re-analysis. It has been mentioned in the challan that when the samples were prepared and sealed, before taking into possession of samples by the police, signatures of the witnesses were taken. Sub Inspector Saravjeet Singh was the investigating officer at that time, who had sealed the samples. This recovery was as per the information received by the police, which turned out to be true.

Since the trial has reached at the final stage of conclusion, no case is made out for getting the re-testing of the second sample.

The criminal revision is hereby dismissed.

28.2.2011
Vijay Asija

(**RITU BAHRI**)
JUDGE