

ITEM NO.2

COURT NO.9

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 39528/2018

(Arising out of impugned final judgment and order dated 08-04-2016 in CRLA No. 1598/2013 passed by the High Court Of Delhi At New Delhi)

MUKESH SINGH

Petitioner(s)

VERSUS

STATE (NARCOTIC BRANCH OF DELHI)

Respondent(s)

(APPLICATIONS FOR CONDONATION OF DELAY IN FILING and IA No. 154080/2018 - EXEMPTION FROM FILING O.T.)

Date : 17-01-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Ajay Garg, Adv.
Mr. Parlov Kr. Handique, Adv.
Ms. Shilpa Sharma, Adv.
Mr. Rajiv Shankar Dvivedi, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Learned counsel for the petitioner placed reliance on a judgment of a Bench consisting of three Hon'ble Judges of this Court in *Mohan Lal vs. State of Punjab [(2018) SCC Online SC 974]* to submit that since the investigation in the present case was conducted by the Police Officer who himself was the complainant, the trial was vitiated and as such the petitioner-accused is entitled to acquittal.

Para 4 of said judgment in *Mohan Lal (Supra)* refers to earlier judgments of this Court in *State of Punjab Vs. Baldev Singh [(1999) 6 SCC 172]* - judgment by Constitution Bench of this Court, *Bhaskar Ramappa Madar and Others vs. State of Karnataka [(2009) 11 SCC 690]* and *Surender Alias Kala Vs. State of Haryana [(2016) 4 SCC 617]*, which cases were relied upon to project the view that investigation would not get vitiated merely because it was conducted by the informant himself.

The judgment thereafter referred to cases; *Bhagwan Singh Vs. The State of Rajasthan [(1976) 1 SCC 15]*, *Megha Singh vs. State of Haryana [(1996) 11 SCC 709]*, *State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu vs. Rajangam [(2010) 15 SCC 369]* wherein while appreciating evidence on record, the fact that the investigation was conducted by the informant himself, weighed with the Court in ordering acquittal of the accused.

In *Bhagwan Singh vs. The State of Rajasthan (supra)* this Court held that if the complainant himself was the Investigating Officer the case of prosecution would not be free from doubt. In *Megha Singh vs. State of Haryana (supra)* while recording acquittal on that count it was observed that such practice should not be resorted to.

In *State of Punjab vs. Baldev Singh (supra)* a Constitution Bench of this Court considered the effect of failure to inform a person of his right to be searched in the presence of a Gazetted Officer or Magistrate and whether such failure would result in

trial getting vitiated. Para 57(3) of the decision which sets out conclusion in that behalf was as under:-

"57. On the basis of the reasoning and discussion above, the following conclusions arise:

(1)

(2)

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded *only* on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

... ..
... .."

We may also note the view taken by this Court in *State represented by Inspector of Police, Vigilance & Anti Corruption, Tiruchirapally, Tamil Nadu vs. V. Jayapaul* [(2004) 5 SCC 223] to the following effect:

"....

6. *Though there is no such statutory bar the premise on which the High Court quashed the proceedings was that the investigation by the same officer who 'lodged' the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR*

incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack."

In *State vs. Rajangam* (supra) the question undoubtedly was whether the complainant ought to have investigated the case but said decision had not noted the decisions in *State of Punjab vs. Baldev Singh* (supra) and in *Inspector of Police vs. V. Jayapaul* (supra).

Having considered the submissions and the cases referred to in the judgment in *Mohan Lal* (Supra) as well as other cases, in our considered view, the matter requires consideration by a Bench

of three Hon'ble Judges.

We may prima facie express that we find it difficult to accept the view taken in *Mohan Lal* (Supra). Some of the decided cases have maintained a distinction in that where the investigation was conducted by the informant himself, appropriate weightage was given while appreciating the evidence. In a given case, where the complainant himself had conducted investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record but it would be completely a different thing to say that the trial itself would be vitiated for such infraction. But *Mohan Lal* (Supra) has ruled that the trial itself would stand vitiated on that count.

Since we are in respectful disagreement with the view taken in *Mohan Lal* (Supra), this matter may require consideration by a Bench of atleast three Hon'ble Judges. We, therefore, direct the Registry to place the papers before the Hon'ble the Chief Justice of India to constitute a Bench of appropriate strength to consider the matter.

In the end, we express that reliance has been placed on *Mohan Lal* (Supra) in some other cases as well. The instant matter and the questions raised herein therefore need to be resolved at an early date.

(INDU MARWAH)
COURT MASTER

(VIDYA NEGI)
BRANCH OFFICER