



2026:PHHC:046958



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

114

CRM M-47047 of 2018
Date of Decision: 24.03.2026

Sutikshan Kalia

...Appellants (s)

Vs.

State of U.T. Chandigarh

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. A.D.S.Sukhija, Senior Advocate with
Ms. Jashika, Advocate and
Mr. Karanveer Singh Lall, Advocate
for the petitioner.

Mr. Samir Rathaur, Addl. Public Prosecutor
for U.T., Chandigarh.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 25.04.2018 (Annexure P-3), passed by the Court of Additional Sessions Judge, Chandigarh, whereby the application filed by the prosecutrix for sending the whole case property to CFSL, Chandigarh for examination was allowed.

2. Learned senior counsel for the petitioner has vehemently argued that in the present case, charge was initially ordered to be framed against the petitioner and at the fag end of the trial, the prosecution moved an application for sending the entire case property (other than the samples already sent) for chemical examination by moving an application (Annexure P-2). Learned senior counsel further submits that



the application was moved by the prosecution without mentioning any provision of law and there is no provision under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') for sending a sample again for testing. Consequently, the entire exercise of sending the case property for chemical examination is nonest in the eyes of law. Learned senior counsel further submits that the impugned order dated 25.04.2018 (Annexure P-3), passed by the Court of Additional Sessions Judge, Chandigarh, may be set aside by this Court.

3. On the other hand, learned State counsel submits that the impugned order has been passed by the trial Court while taking into consideration the peculiar facts of the present case. In fact, earlier the samples were sent to FSL, but the entire quantity recovered from the possession of the accused was not sent for chemical examination. Now, the case property (except the samples earlier sent) has to be sent for analysis and no prejudice shall be caused to the petitioner in the present case. In fact, a similar issue cropped up before the Hon'ble Supreme Court in the matter of ***“Thana Singh versus Central Bureau of Narcotics”***, 2013 (1) RCR (Criminal) 861, and the Hon'ble Supreme Court has held as under:-

“.....While re-testing may be an important right of an accused, the haphazard manner in which the right is imported from other legislations without its accompanying restrictions, however, is impermissible. Under the NDPS Act, re-testing and re-sampling is rampant at every stage of the trial contrary to other legislations which define a specific time-frame within which the right may be available. Besides, reverence must also be given to the wisdom of the



Legislature when it expressly omits a provision, which otherwise appears as a standard one in other legislations. The Legislature, unlike for the NDPS Act, enacted Section 25(4) of the Drugs and Cosmetics Act, 1940, Section 13(2) of the Prevention of Food Adulteration Act, 1954 and Rule 56 of the Central Excise Rules, 1944, permitting a time period of thirty, ten and twenty days respectively for filing an application for retesting.”

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“25. Therefore, keeping in mind the array of facts 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 Narcotic Drugs And Psychotropic Substances 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 Narcotic Drugs and Psychotropic Substances Act.”

4. Now, keeping in view the law laid down by the Hon'ble Supreme Court, it can be safely held that re-testing or re-sampling of the samples should not be ordered in routine by the Courts and it can be allowed only in exceptional circumstances, which should be supported by compelling reasons to be recorded by the Court, and the timeline framed for filing the application for re-testing has also been fixed. It clearly lays down that the re-testing or re-sampling can be ordered



within 15 days of receiving the inquiry report and beyond this period such applications shall not be entertained.

5. Thus, in view of the law laid down by the Hon'ble Supreme Court, the present petition is allowed and the impugned order dated 25.04.2018 (Annexure P-3), passed by the Court of Additional Sessions Judge, Chandigarh, is ordered to be set aside.

24.03.2026
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No