

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

Criminal Appeal No. S-30-SB of 2009
Date of decision: 24.12.2014.

Harjinder alias Bittu ..Appellant

Versus

State of Haryana ..Respondent

Criminal Appeal No. S-1975-SB of 2008

Sita Ram and another ..Appellants

Versus

State of Haryana ..Respondent

Criminal Appeal No. S-2280-SB of 2008

Baljit ..Appellant

Versus

State of Haryana ..Respondent

Criminal Appeal No. S-2309-SB of 2008

Dalip Singh ..Appellant

Versus

State of Haryana ..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. P.S. Sekhon, Advocate
for the appellant in CRA-S-30-SB of 2009.

Mr. Atul Lakhanpal, Sr. Advocate with
Mr. R.S. Chahal, Advocate
for the appellants in CRA-S-1975-SB of 2008.

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Mr. Ashwani Verma, Advocate
for the appellants in CRA-S-2280-SB of 2008 and
CRA-S-2309-SB of 2008.

Mr. Pradeep Virk, D.A.G., Haryana.

Daya Chaudhary, J. (Oral)

By this judgment, four cases bearing Criminal Appeal Nos. S-30-SB of 2009, S-1975-SB of 2008, S-2280-SB of 2008 and S-2309-SB of 2008 shall be disposed of as said appeals have arisen out of the same judgment of conviction and order of sentence.

Sita Ram, Baljit, Subhash Chander, Dalip Singh and Harjinder alias Bittu were accused in case FIR No.242 dated 27.03.2007 registered under Section 15/27A of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') at Police Station Ratia.

As per prosecution version, a Police party headed by ASI Krishan Chand was on patrol duty. The accused-appellants were in a vehicle Opel (open) bearing registration No.DL-CH-792 and two occupants fled away after seeing the Police officials. On checking of the vehicle, total seven bags were recovered, out of which, two were lying on the back seat and five were lying in the diggi. On checking, poppy straw was found in the bags. Two samples of 100 gms each were separated and remainder were found to be 23.800 kgs of poppy straw. The samples and bags were converted into parcels and case property was taken into possession. FIR was registered against accused persons and after completing all formalities, the accused were taken into custody and case property was deposited with MHC.

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On the same day, ASI Krishan Chander moved an application before Illaqa Magistrate for inventory under Section 52-A of the Act. During investigation of the case, Azad Singh was interrogated, who disclosed that he was dealing in the business of sale and purchase of vehicles and has sold his car to Subhash Chander, accused on 28.01.2007. An Affidavit to this effect was produced. On 01.04.2007, accused Subhash Chander and Baljit Singh were produced by Ex-Sarpanch-Dilbag Singh and they suffered disclosure statements admitting their guilt. It was stated that Subhash Chander, his uncle Sita Ram went to Dhanoti (Rajasthan) and purchased poppy husk and loaded the same in the car. Two bags were delivered to Dalip Singh-accused at his house and while going to village Khunan to hand over 20 kgs poppy husk to Kala alias Baljit Singh, they met Police party. Subhash and Baljit fled away from the spot. His uncle Sita Ram also fled away from the spot. The place of recovery was identified by them. Thereafter, accused Sita Ram was arrested and he was also interrogated. Sita Ram also suffered a disclosure statement as has been suffered by Subhash Chander and pointed out the place of recovery. Thereafter, accused Harjinder Singh was also arrested, who also suffered disclosure statement stating therein that on 26.03.2007, he paid ₹50,000/- to Subhash and Baljit for bringing poppy husk and pinpointed the place of payment of amount. On completion of all the formalities, the investigation was completed and challan was presented against all the accused.

Thereafter the accused were charge sheeted for

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commission of offence punishable under Sections 15 and 27-A of the Act vide order dated 06.12.2007. The accused pleaded not guilty and claimed trial.

The prosecution examined as many as total eleven witnesses to prove its case.

On examination of all prosecution witnesses, the statements of accused under Section 313 Cr.P.C. were recorded wherein they pleaded innocence and denied all allegations. Accused Sita Ram has stated in his statement that the mobile allegedly recovered from him did not belong to him. Accused Subhash has stated that he never purchased the car allegedly used for smuggling of poppy husk. Similarly, accused Dalip has stated that he did not know any of the accused named in the case. Accused Harjinder Singh has stated that he has falsely been implicated due to party faction in the village.

In defence, the appellants examined only one witness, namely, Dilbag Singh as DW1.

On appreciation of evidence and on conclusion of trial, the accused-appellants, namely, Sita Ram, Subhash Chander and Baljit were convicted and sentenced to undergo RI for a period of ten years and to pay fine of ₹1,00,000/- each with default clause for offence punishable under Section 15 of the Act. Accused-appellants, namely, Harjinder and Dalip were convicted and sentenced to undergo RI for a period of ten years and to pay fine of ₹1,00,000/- each with default clause for offence punishable under Section 27-A of the Act.

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The judgment of conviction and order of sentence dated 29.09.2008 passed by learned Additional Sessions Judge, Fatehabad is subject matter of challenge in the present appeals whereas CRM-M-31976 of 2011 has been filed by accused Harjinder Singh for running the sentence concurrently.

Learned counsel for the appellants submit that judgment passed by the trial Court is not based on proper appreciation of evidence and the appellants have been held guilty for the offences without taking into consideration the evidence available on the file. As per case of the prosecution, there were two occupants in the car, who fled away after seeing the Police from a distance of 300 yards. Accused-appellants have falsely been implicated only on the basis of disclosure statements. Accused-appellant-Baljit has also been implicated only on the basis of disclosure statement whereas there was no connecting evidence and no recovery was made from him. Similarly, accused-appellant-Harjinder Singh has been convicted and sentenced without adducing any positive evidence and disclosure statements Ex.P-6 and Ex.P-23 are hit by Section 25 of the Indian Evidence Act. Simply by pinpointing the place of alleged handing over the money does not in itself prove that the appellant was financing for illicit draft of narcotic substance. Learned counsel for the appellants also submit that there was non-compliance of mandatory provisions of the Act. There are serious discrepancies and contradictions in the statements of the prosecution witnesses. The only piece of evidence against the accused-appellants to connect them with the alleged

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offence is the disclosure statement of Subhash made before the Police to the effect that an amount was paid to Subhash for bringing poppy husk by accused Dalip. Learned counsel for the appellants have also relied upon judgments of **Noor Aga vs. State of Punjab and another, 2008(3) RCR (Criminal) 633, U.O.I. vs. Bal Mukund & Ors., 2009 (2) RCR (Criminal) 574, State of Punjab vs. Madan Lal, 2009(2) RCR (Criminal) 602** as well as judgments of this Court in **Swaroop Singh vs. State of Haryana, 2014(2) RCR (Criminal) 571, Jang Singh vs. State of Punjab, 2008(1) RCR (Criminal) 323, Pritam Singh vs. State of Punjab, 2007(4) RCR (Criminal) 712, Sukhdev Raj vs. State of Punjab and others, 1996(1) RCR (Criminal) 108, Sameer Ahmad and others vs. State of Haryana, 2010(2) RCR (Criminal) 612** and judgment of Bombay High Court in **Satnam Singh Puransing Gill vs. State of Maharashtra, 2009(1) RCR (Criminal) 703** in support of their contentions.

Learned State counsel submits that the judgment of conviction and order of sentence is well reasoned and based on proper appreciation of evidence and no interference is required.

Heard arguments of learned counsel for the appellants as well as of learned State counsel and have carefully perused the statements of the prosecution witnesses as well as defence witness.

As per case of the prosecution, the accused-appellants were travelling in a vehicle and out of those accused, two remained successful in running away from the place of occurrence. In the aforesaid vehicle, seven bags were found to be lying on the back seat

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as well as in the diggi. The substance found in the bags was poppy straw. During investigation of the case, accused-Azad Singh disclosed that he was dealing with business of sale and purchase of the vehicle and sold his car to Subhash on 28.01.2007. He has also produced an affidavit to this effect. Accused Subhash and Baljit Singh were also interrogated and they had also suffered statements admitting their guilt. It was stated that Subhash Chander and Sita Ram had gone to State of Rajasthan, purchased the Poppy Husk and loaded the same in the car. Out of the poppy husk purchased, two bags were given to accused-Dalip Singh at his house and while going to village Khunan, 20 kgs. poppy husk was given to accused Kala @ Baljit Singh. Accused-Sita Ram fled away from the spot but he was arrested subsequently. Sita Ram also suffered disclosure statement as has been suffered by Subhash and pinpointed the place of recovery. Thereafter accused-Harjinder Singh was also arrested and he has also suffered disclosure statement stating therein that he paid amount to Subhash and Baljit for purchase of Poppy Husk.

PW4 HC Satpal Singh has stated in his statement that accused Dalip Singh was arrested in the case by the Investigating Officer and he suffered disclosure statement Ex.P3 that money was paid to accused Subhash and Baljit Singh at his residence. On the basis of disclosure statement, accused were identified. In cross-examination, he has stated that he did not sign the daily diary register. He denied with regard to any purpose for departure from the Police Station to Village Nakta. It has also been stated that many people of

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the village were coming and going at the place of occurrence but no efforts were made by him to call any person from the village. It has also been admitted in the cross-examination that no site plan was prepared by the Investigating Officer. Said witness has further stated that no efforts were made to know the source of payment of amount. Even it has been admitted that no report under Section 55 of the Act was prepared when accused were produced before the SHO.

Similarly, PW5 Inspector Yad Ram, Welfare Inspector, Karnal, has stated in his cross-examination that no recovery was effected from accused Harjinder Singh and Dalip Singh on their arrest. Even he denied the exact date of arrest of both the accused by the Investigating Officer. It has also been admitted that accused Bittu and Dalip were arrested but they were not produced on the same date.

PW6 HC Dharamvir Singh has stated in his cross-examination that accused Sita Ram was not produced before him but he was produced before the Investigating Officer and was arrested at 7.00 am. It has also been admitted that arrest memo was prepared by the Investigating Officer, which was signed by him. It has been admitted that source of money paid by the accused Bittu was not inquired by the Investigating Officer and no independent person was joined at the time of disclosure statement made by the accused and even at the time of demarcation made by the accused.

PW9 ASI Krishan Chander has stated that he did not remember whether any member of the raiding party signed the DDR or not. He has admitted that he did not sign the DDR. It has also been

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stated by him that Dilbag Singh, Sarpanch, reached at the place of occurrence after 20 minutes when the accused ran away. It has also been admitted that Sarpanch came at the spot but no efforts were made to join him in the investigation at the time of recovery. It has also been admitted that no efforts were made to join any other public witness at the time of recording disclosure statement. Said witness has also admitted that ID number was produced on the file but there was only the name of Sita Ram Verma but name of father was not mentioned.

Similarly PW10 EHC Atma Ram has also admitted in cross-examination that no entry was made in the DDR or in the Police diary. He has also admitted that neither any effort was made by the Investigating Officer at the time of disclosure statement nor at the time of recovery to join any independent witness.

On perusal of statements of the witnesses, it appears that accused-appellant Sita Ram has been involved only on the basis of recovery of mobile phone from the car. Neither any bill of the mobile phone nor any connecting document was placed on record. Simply on the basis of flashing of name of Sita Ram on the screen of the mobile phone, he has been connected with the offence. Even if, the mobile is presumed to be of accused Sita Ram, even then it has not been proved that he was present in the car with the contraband. He has been connected with the offence only on the basis of disclosure statement, which is not admissible in evidence. Accused Baljit Singh has also been connected with the offence only on the basis of

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disclosure statement made by accused Subhash Chander before Police wherein it has been stated that accused Subhash Chander and his uncle Sita Ram had gone to State of Rajasthan to purchase Poppy Husk and two bags were delivered to accused Dalip Singh at his house and 20 kgs of Poppy Husk was handed over to accused Kaka @ Baljit Singh while meeting on the way and they fled away from the place of occurrence. Not only material contradictions and discrepancies are there in the statements of the prosecution witnesses but mandatory provisions of the Act have also not been complied with.

Accused appellant Dalip Singh has been convicted for offence punishable under Section 27-A of the Act but he has been connected with the offence only on the basis of disclosure statement of Subhash Chander stating therein that he has paid an amount to Subhash Chander for bringing Poppy Husk. Neither any recovery was effected from him nor any connecting evidence was there.

In a large number of cases, this Court as well as Hon'ble the Apex Court have emphasized the need of conducting a search in presence of independent persons. It is the requirement of law that normally the search should be conducted by a magistrate or a gazetted officer. Even the presence of a gazetted officer at the time of raid is the requirement of provisions of NDPS Act.

In the judgment of Hon'ble the Apex Court titled as ***Mousam Singha Roy and others vs. State of Bengal 2003(12)***

SCC 377, it has been held as under :-

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“ It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.”

In case of judgment of this Court in ***Raghubir Singh and another vs. State of Punjab 2008(1) RCR (Criminal) 510***, the samples were sent to chemical examiner after 18 days of seizure and the delay was not explained which was found to be fatal to the prosecution and the accused was acquitted of the charge.

In case of judgment of this Court in ***Kaur Singh vs. State of Punjab 2007(2) RCR (Criminal) 630***, the independent witness was not examined and the samples were given to A.S.I. and it was held that there were material flaws in the prosecution version and the prosecution case could not be proved beyond reasonable doubt and the accused was acquitted of the charge by giving the benefit of doubt.

In ***State of West Bengal and others vs. Babu Chakraborty, 2004(4) RCR (Criminal) 252***, Hon'ble the Supreme Court again has gone into the aspect of violation of the provisions of Section 42 of the Act and came to conclude as under :-

“Great significance has been attached to the mandatory nature of the provisions, keeping in mind the stringent punishment prescribed in the Act. This Court has attached great importance

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to the recording of the information and the ground of belief since that would be the earliest version that will be available to a Court of law and the accused while defending his prosecution. This Court also held that failure to comply with S.42(1), proviso to S.42(1) and S.42(2) would render the entire prosecution case suspect and cause prejudice to the accused.”

In view of the facts as mentioned above, the prosecution has failed to prove its case beyond reasonable doubt and benefit of doubt goes in favour of the appellants.

Accordingly, the present appeals are allowed and the judgment of conviction and order of sentence is set aside and the appellants are acquitted of the charge framed against them. All the accused-appellants are on bail except Harjinder Singh @ Bittu as their sentence has already been suspended during pendency of the appeals. He be released forthwith if not required in any other case.

24.12.2014
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(DAYA CHAUDHARY)
JUDGE