# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRA-D No. 1035-DB of 2009(O&M)**

**Date of Decision: July 30 , 2015.**

Rajinder Singh and another

...... APPELLANT (s)

Versus

Intelligence Officer, Directorate of Revenue

...... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA**
**HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. J.S.Gill, Advocate
for the appellants.

Mr. D.D.Sharma, Advocate
for the respondent.

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1. Whether reporters of local papers may be allowed to see the judgment? *Yes.*
2. To be referred to the reports or not? *Yes.*
3. Whether the judgment should be reported in the digest?

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**LISA GILL, J.**

Appellants Rajinder Singh and Sukhchain Singh have been convicted for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and sentenced to undergo rigorous imprisonment for a period of 12 years, besides, pay a fine of ₹1,00,000/- each and in default thereof, to undergo further rigorous imprisonment for one year by the learned Judge, Special Court, Amritsar vide impugned judgment and order dated 04.09.2009.

Briefly stated, the facts are that complaint, Ex.P27 was lodged under Sections 21/23/25/28/29 of the NDPS Act against the appellants by PW1 Pushpdeep Singh, Intelligence Officer, Directorate of Revenue, Amritsar in his official capacity. It was revealed that specific information was received by PW1 Pushpdeep Singh on 22.07.2007 at about 3.30 p.m. that two Sikh gentlemen in white Kurta Pyjama wearing yellow and light pink coloured turbans carrying approx. 5 Kg. of heroin in a hand bag would reach Kathunangal Bus Stop on Amritsar-Pathankot road at about 8.00 p.m. on 22.07.2007 on a private bus.

This intelligence/information was reduced into writing, Ex.P1 and sent to Senior Intelligence Officer, Ramesh Sharma who directed surveillance of Kathunangal Bus Stop and for making arrangements for apprehending the consignment alongwith the persons carrying it vide Ex.P1/A. Pursuant thereto, necessary action was taken.

At about 8.30 on 22.07.2007, PW1 Pushpdeep Singh alongwith his team noticed two Sikh gentlemen matching with the description in the intelligence/information alighting from a bus at Kathunangal Bus Stop. When asked to reveal their identity one of them, who was carrying a blue coloured hand bag, disclosed himself to be Rajinder Singh (appellant No.1). The other person disclosed his identity to be Sukhchain Singh (appellant No.2). When asked whether any narcotic/contraband was being carried in the hand-bag with Rajinder Singh, it was denied. On repeated questioning Rajinder Singh admitted carrying narcotic substance in the said hand-bag held by him. Sukhchain Singh denied having carried any such substance. PW4 Ramesh Sharma disclosed his identity as Senior Intelligence Officer and a gazetted officer of the Directorate of Revenue Intelligence to the accused. Both the accused were served with a notice under Section 50 of the NDPS Act intimating their right to get their search conducted before a Gazetted Officer or before a Magistrate. Both the accused opted to be searched before a Gazetted Officer vide Ex.P2/A and Ex.P3/A. Option was witnessed by Satnam Singh and Ashok Kumar, the independent witnesses.

Both the accused requested their search as well as search of the bag to be carried at a safer place as the contraband was of high value and there was threat to their life. Consequently, both the accused were taken to Directorate of Revenue Intelligence (DRI) office, Green Avenue, Amritsar for carrying out further proceedings. Personal search of both the accused was conducted in the presence of PW4 Ramesh Sharma as well as the independent witnesses. Nothing incriminating was recovered from the personal search of Sukhchain Singh. From the blue coloured hand-bag carried by Rajinder Singh, five packets wrapped in yellow adhesive tape were recovered from under an old and used Kurta Pyjama. Packets were marked as 'A' to 'E'. All the packets were opened and tested with a Drug Testing Kit and were found positive for heroin. In all the five packets, heroin was packed in heat sealed polythene packets further packed in cotton cloth bag. Three of the packets were having oval or square rubber stamps bearing markings of crystal, figure of scorpion and year-2007. On two of the packets, the markings were not legible. All the five packets weighed 5 Kg. 380 grams. Total net weight of the narcotic was found to be 4 Kg. 950 grams. Two samples of 5 grams each were drawn from each of the packets and put in a self-locking polythene packs. All the ten samples were further packed in a white paper envelope and sealed with the seal of DRI over a paper slip bearing signatures of the accused, Panches and DRI officer. All the five packets containing white/yellowish brownish lumps/granules were repacked in the same packets from which the samples were drawn. The opened sides of the polythene packets were closed with the help of transparent adhesive tape and then packed in an off-white colour cotton cloth, stitched and then sealed over a paper slip bearing signatures of the accused, Panches and DRI officer with the seal of DRI. All five packets duly sealed were put in a tin box wrapped with a cotton cloth and sealed in the same way. International value of each packet was statedly ₹1 Crore. Packing material was separately packed and sealed in the same way. Mobile phone recovered from Rajinder Singh was also taken in possession, packed and sealed. Recovery memo, Ex.P5 dated 22/23.07.2007 was prepared bearing signatures of PW1 Pushpdeep Singh attested by both the accused, Panches and PW4 Ramesh Sharma, Senior Intelligence Officer. Seal after use was given to the competent authority. Special report was sent to Joint Director, DRI, Ludhiana.

Statements, Ex.P8 and P9 of accused Rajinder Singh and Sukhchain Singh were recorded under Section 67 of the NDPS Act. Before recording their statements, caution was afforded to the accused that their statements so recorded can be used in any court of law as evidence. Statements Ex.P8 and P9 were made voluntarily without any pressure, duress or influence by Rajinder Singh and Sukhchain Singh, respectively in the presence of PW4 Ramesh Sharma, Senior Intelligence Officer.

Rajinder Singh in his statement, Ex.P8 revealed that he was an agriculturist. He owned two trucks, one of them being driven by co-accused Sukhchain Singh (appellant No.2) and the other by one Jaswant Singh son of Jagir Singh. About two years prior to 2002 i.e., in the year 2000 he used to work as a Travel Agent. He had sent about 10-15 persons to Germany and he used to take money ranging from ₹2 lacs to ₹2.5 lacs per person. He used to send persons abroad through one Kuldip Singh Randhawa, resident of village Kanda Police Station Dera Baba Nanak, District Gurdaspur. His commission out of ₹2.5 lacs was about ₹20,000/- per person which he received in about 10/12 cases. He made Kuldip Singh Randhawa pay back ₹5-7 lacs per case in about 12/13 cases. However, he neither got his commission nor some of those persons were sent abroad and their money was also not returned. He became debtor of ₹60-65 lacs towards the persons who could not go or be sent abroad and they were pressing him hard for their money.

Rajinder Singh asked Kuldip Singh Randhawa to either send the said persons abroad or to return their money but to no avail. Kuldip Singh Randhawa who had gone to Spain contacted him on his mobile No.9855452777 and told that a person named Sarpanch would contact him on telephone and ask him to do some work and Rajinder Singh would earn much money. Nature of work revealed to him on his asking was transporting of narcotic/intoxicating substance to a place, Sarpanch would tell. He did not agree to the same. In the year 2007, Sarpanch contacted him on another telephone number. Meanwhile, one of Rajinder Singh's vehicle met with an accident. He suffered huge loss and could not even pay back his loan installments. Due to this financial helplessness, he consented to execute the work for Sarpanch.

Rajinder Singh received a phone call at about 7/7.30 a.m. on 22.07.2007 directing him to go to Vijaypur, a little ahead of Sambe and to stand at chowk there. Sarpanch inquired as to which dress and colour he would wear on that occasion and who would be accompanying him at that time. Upon this, he replied that he would wear white Kurta Pyjama and saffron turban and the person accompanying him would wear white Kurta Pyjama and cream colour turban. After some time Sarpanch again called him up that description of his physical appearance had been given to someone who would give him some material which he should bring to Kathunangal by bus where another person would meet him to whom the said articles should be handed over. Rajinder Singh asked his uncle Sukhchain Singh who resided in the same village and also plied one of his trucks, to accompany him. He revealed to Sukhchain Singh that they have to transport narcotic/psychotropic substance and they would gain much money. He revealed that he had been told by Sarpanch that he would be paid ₹10,000/- per packet for transporting the intoxicating packets. He also mentioned that Sukhchain Singh also worked as a driver for his vehicle and he paid ₹2500/- per month as salary to him.

Both of them reached Vijaypur chowk at about 3.30 p.m. Within about five minutes a Hindu gentleman carrying a blue colour hand-bag introduced himself as Vicky and asked whether they have been sent by Sarpanch. Having replied in affirmative, he handed over the said blue hand-bag to the accused and directed them to go to the place by bus as told by Sarpanch. They reached Kathunangal at about 8.00 p.m. by a private bus. As they stepped down from the bus, officials in plain clothes stopped them and revealed themselves to be officials of Directorate of Revenue Intelligence. He reiterated the version of their apprehension and recovery of narcotic as revealed by PW1 Pushpdeep Singh.

Appellant Sukhchain Singh vide his statement, Ex.P9 has reiterated the facts as revealed by Rajinder Singh. Telegram was sent to the wives of appellants.

An application, Ex.P17 was moved before the Chief Judicial Magistrate, Amritsar producing both the accused alongwith the case property. The Chief Judicial Magistrate, Amritsar passed order, Ex.P18 on 23.07.2007. Case property was deposited with PW3 Daljit Singh, Inspector Incharge Malkhana, Customs House, Amritsar vide Ex.P19. Five samples from the recovered contraband were sent to the Central Revenue Control Laboratory (CRCL), New Delhi on 25.07.2007 through HC Swaran Singh, DRI office, Amritsar. They were deposited vide receipt No.113 dated 26.07.2007. Forwarding letter is Ex.P22. Test memo sent to CRCL, New Delhi is Ex.P25. Report of the Chemical Examiner Ex.P26 was received and the complaint in question was thereafter filed. Inquiry as contemplated under Section 202 Cr.P.C. was dispensed with, the complaint having been instituted by a public servant in discharge of his official duties. Charge against the accused was framed to which the accused pleaded not guilty and claimed trial. Prosecution examined five witnesses to prove its case.

Both the accused while denying incriminating material put to them claimed innocence and false implication in this case in their statements under

Section 313 Cr.P.C. In defence five witnesses were examined.

Learned trial court on consideration of the entire facts and circumstances of the case, concluded that prosecution had proved its case beyond reasonable doubt qua the accused who were accordingly convicted and sentenced as detailed above.

Learned senior counsel for the appellants vehemently argues that false implication of appellants is apparent on the face of it. Prosecution is unable to prove that the appellants were, in fact, apprehended at Bus Stop Kathunangal in conscious possession of the contraband in question. Identity of the appellants is not established on record. It is further argued that intelligence in this respect was allegedly received on 22.07.2007 at about 3.30 p.m. Therefore, it is not understandable as to why the revenue officials kept waiting till 8/8.30 p.m. at Bus Stop Kathunangal. Accused could easily have been apprehended at an earlier point of time as in all probability information regarding starting point of journey etc. would also have been received by them.

It is further urged that false implication of the appellants is proved by the fact that no independent witness was joined with the proceedings. So called independent witnesses Satnam Singh and Ashok Kumar had been given up as having been won over by the prosecution on 14.05.2008. It is only when the defence examined DW3 Satnam Singh, that witness PW5 Satnam Singh was examined after moving an application under Section 311 Cr.P.C. Prosecution has propped up an impersonator in place of the real Satnam Singh who has, in fact, deposed as DW3. Furthermore, in case the recovery had actually been effected, at least the number of the bus in question from which the appellants had alighted or the transporter company running would be brought on record. No such step was taken by the prosecution. Neither the driver, conductor nor any of the passengers of the bus were associated with the proceedings. Conviction of the accused on the basis of the statements under Section 67 of the NDPS Act cannot be sustained, which are otherwise not free from suspicion. It is thus prayed that conviction of the appellants in the facts and circumstances is not sustainable. They should be acquitted of the charges against them.

Learned counsel for the respondent while supporting the impugned judgment submits that there is overwhelming evidence on record adduced by the prosecution to prove complicity of the appellants in the commission of the offence as alleged. Appellants were apprehended carrying heavy quantity of contraband in an illegal manner. Mandatory provisions of law have been duly complied with and there is no ground whatsoever for setting aside the conviction and sentence imposed upon the appellants vide the well reasoned judgment and order dated 04.09.2009.

We have heard learned counsel for the parties and gone through the record with their able assistance.

The facts as they unfolded have been revealed by PW1 Pushpdeep Singh, Inspector Customs who is the Investigating Officer in this case. He has specifically revealed that specific secret information/intelligence was received about two Sikh gentlemen who would be carrying approximately 5 Kg. heroin. They could be apprehended at Kathunangal Bus Stop on Amritsar – Pathankot road. Information was duly reduced into writing, Ex.P1 and sent to the Senior Intelligence Officer who had duly endorsed the same. It is on this secret information that the officials were present at Kathunangal Bus Stop.

Appellants alighted from the bus coming from Pathankot side at about 8.30 p.m. on 23.07.2007. Appellants revealed their identity at the time of their apprehension on the spot. Both of them were apprehended on the basis of secret information which was received. Due procedure was followed by the officials as mandated under the NDPS Act. Search of both the appellants was conducted in the presence of PW4 Ramesh Sharma, Senior Intelligence Officer, a gazetted officer of the Directorate of Revenue Intelligence, Amritsar. They were served with the notice under Section 50 of the NDPS Act though the provisions of Section 50 of the Act in a case where the recovery is effected from a bag held by the accused would not be strictly applicable.

It is a matter of record that both the appellants suffered statements, Ex.P8 and P9. In the statements recorded under Section 67 of the NDPS Act both of them revealed their complicity in the commission of the offence. Appellant Rajinder Singh has specifically stated that he was in dire financial straits. People whom he had promised to send abroad were pressing hard for return of their money. He had been working as a Travel Agent and used to send people to Germany through one Kuldip Singh Randhawa who used to pay him ₹20,000/- per person. Said Kuldip Singh Randhawa was not returning the money. He asked appellant Rajinder Singh to transport narcotic substance who did not agree initially. However, he succumbed as he has suffered great financial loss and could not even pay back his installments. Financial helplessness prodded him into this illegal trade. He was directed to go to Vijaypur chowk on 22.07.2007 where he would be handed over the narcotic substance which would be transported by him to Kathunangal Bus Stop. Appellant No.1 – Rajinder Singh told his uncle Sukhchain Singh, appellant No.2

about the work to be carried out and promised him a share in the spoils. Appellant No.2 admittedly worked as a driver on his vehicle at a salary of ₹2500/- per month.

Similarly, appellant No.2-Sukhchain Singh has also admitted in his statement, Ex.P9 that his financial condition was not sound. Therefore, he went alongwith Rajinder Singh for transporting the narcotic substance to Kathunangal in lieu of his share out of ₹50,000/-. He has revealed the entire details of the manner in which they proceeded. Thus reflecting his conscious and active participation in the commission of the crime.

Contention of learned counsel for the appellants that the said statements before the Revenue Officials are not admissible in evidence, is untenable and unacceptable. Hon'ble Supreme Court in **Ram Singh v. Central Bureau of Narcotics,** ***(2011) 11 SCC 347*** has specifically held that officers vested with the powers of investigation under the Act are not police officers and, therefore, confessions recorded by such officers are admissible in evidence. Bar created under Sections 24 and 27 of the Evidence is not attracted and the statement by a person before the officer concerned can be relied upon as a confessional statement against such a person.

A Division Bench of this Court of which one of us (Hemant Gupta,J.) was a member in CRA No.11-DB of 2010 (Fatima Bibi v. Inspector of Customs) decided on 26.03.2013, after considering various judgments of Hon'ble Supreme Court on this issue has specifically held that statements recorded by an empowered Custom Officer are statements under Section 67 of the Act which are analogous to Section 108 of the Customs Act. Therefore, once the accused has made a statement to an empowered police officer in respect of investigation carried out under the Act, such statements are relevant for determining the offence by the concerned person.

Therefore, in the present case statements, Ex.P8 and P9 suffered by the appellants can be read into evidence. It is pertinent to note that appellants have not retracted from their confession/statement at any point of time in this case.

Furthermore, contention of learned counsel for the appellants that there are number of cuttings in statement Ex.P9 suffered by Sukhchain Singh rendering it inadmissible, is not tenable. We have perused the statement, Ex.P9. Said statement is duly signed by appellant No.2 on each page. Cuttings referred to are, in fact, corrections which have been affected. The same are not material and do not detract from the substance thereof. Countersigning of the said corrections by appellant No.2 rather lends truthfulness to the same rather than detract therefrom as is sought to be argued by learned counsel for the appellants.

Another argument pressed into service on behalf of the appellants is that so-called independent witness PW5 Satnam Singh had never witnessed the occurrence. Defence claims to have examined the original Satnam Singh son of Tara Singh as DW3. It is noted that prosecution has examined PW5 Satnam Singh son of late Shri Tara Singh as an independent witness who was present at the time of recovery of narcotics from the appellants. PW5 has completely supported the prosecution version. Though an attempt has been made to discredit the witness while cross-examining him but nothing material could be elicited in favour of the appellants. On the other hand DW3 Satnam Singh was unable to deny that his father had died about one year prior to his deposition which took place on 27.07.2009. Recovery in this case was effected on 22.07.2007 from the appellants. Independent witness Satnam Singh associated at the time of recovery is duly mentioned as son of 'late Shri Tara Singh'. Therefore, it is clear that Satnam Singh son of late Shri Tara Singh who had, in fact, witnessed the recovery was duly examined by the prosecution and he has duly supported the prosecution version. By setting up DW3 Satnam Singh, nothing can be gained by the defence. Prosecution has duly proved the recovery of 5 Kg. heroin from the appellants in the presence of independent witnesses.

Even otherwise if the prosecution is able to prove its case on the basis of succinct evidence, insistence on the presence of independent witness is not necessary. Joining of an independent witness is necessarily a rule of prudence. Even in their absence, the evidence of official witnesses can be relied upon though it is to be examined with greater care and caution and would be subjected to greater scrutiny. In the present case not only the independent witness supported the prosecution version but other evidence on record proves the recovery of the contraband from the appellants. There is not an iota of evidence on record to prove that any of the official witnesses were inimical towards the appellants having an axe to grind against them.

Similarly, it cannot be said that non-recording of number of the bus in question or non-examination of the driver/conductor of the bus or of the co-passengers, is fatal to the prosecution version. Link evidence in this case is intact.

There is nothing on record to raise an inference of tampering of the sample in question. Samples drawn at the time of recovery were duly sealed and handed over to PW2 HC Swaran Singh. Case property alongwith the accused were produced before the Chief Judicial Magistrate, Amritsar who passed order dated 23.07.2007, Ex.P18. Case property alongwith samples were deposited with PW3 Daljit Singh, Inspector Malkhana Custom House, Amritsar. Five samples duly sealed were sent to the CRCL, New Delhi on 26.07.2007. As per the Chemical Examiner's report, Ex.P26, seals on the samples received were intact and tallied with the sample seals. HC Swaran Singh as well as Inspector Daljit Singh PW3, who was Incharge of Malkhana on 24.07.2007 have specifically deposed that the samples were neither tampered with nor allowed to be tampered with by anybody as long as they were in his possession. It is contended that tampering of the case property cannot be ruled out as signatures of the Magistrate on the seals have not been mentioned in the Inventory, Ex.P19 especially in view of statement of PW1 Pushpdeep Singh that case property was seen and signed by Chief Judicial Magistrate, Amritsar. This fact was not mentioned in the inventory. Perusal of the record specifically Ex.P18 i.e., order dated 23.07.2007 passed by the Chief Judicial Magistrate, Amritsar reveals that he had signed on the parcels which were sealed with the seal of DRI though this fact is not mentioned in the inventory, Ex.P19. This omission by itself is not fatal to the prosecution case. It is borne out from the record that the case property was produced again on 24.04.2008 for authentication certificate under Section 110(1-B) of the Customs Act and it is specifically mentioned in the order, Ex.P28 by the Chief Judicial Magistrate that the samples were produced, duly seen and initialed by the Magistrate. Tampering is thus not evident from the above.

Learned senior counsel for the appellants has additionally sought to attack the prosecution version on the ground that alleged secret information was received at about 3.30 p.m. on 22.07.2007 by the officials, there is no reason whatsoever for not having taken any action till 8.30 p.m. In case information had been received at about 3.30 p.m., there is no reason as to why the officials could not nab the accused much earlier. This argument is extremely presumptuous and cannot in any manner dent the prosecution version.

In respect to appellant No.2 – Sukhchain Singh, learned senior counsel vehemently argues that no recovery whatsoever was effected from him therefore, his conviction under Section 21 of NDPS Act is not sustainable. Evidence on record does not prove that appellant No.2 – Sukhchain Singh was found in conscious possession of the contraband. Simply because he was accompanying Rajinder Singh does not show his complicity therefore, he is entitled to acquittal in this case.

This argument carries no weight in the present factual matrix. Sukhchain Singh has suffered statement, Ex.P9 wherein he has given the details of his complicity in the commission of the offence. Said statement is admissible in evidence as discussed in the foregoing paras. He has specifically stated that he also indulged in trafficking of narcotics in lieu of money. He was very well aware of the narcotic being carried to Kathunangal by them. Therefore, it is fallacious to contend that the bag containing narcotics was held by Rajinder Singh and not by Sukhchain Singh therefore, his culpability is not proved. Sukhchain Singh was a conscious and active participant in the crime.

Prosecution has proved its case beyond reasonable doubt against both the appellants on the basis of clear and cogent evidence. There is no ground for setting aside their conviction and sentence imposed vide impugned judgment and order dated 04.09.2009 passed by learned Judge, Special Court, Amritsar.

Present appeal is accordingly dismissed.

**( HEMANT GUPTA )**
**JUDGE**

**( LISA GILL )**
**JUDGE**

July 30 , 2015.
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