

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-1034-SBA of 2001

Date of Decision : January 08, 2015

State of Punjab

.....Appellant

VERSUS

Sukhmander Singh @ Pappi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. Rajesh Bhardwaj, Additional A.G., Punjab
for the appellant-State.

None for respondent No.1.

T.P.S. MANN, J.

The State has filed the present appeal for challenging the judgment dated 16.1.1998 passed by the Additional Sessions Judge, Bathinda whereby both the respondents were acquitted of the charge under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act').

According to the prosecution, on 27.6.1995 Inspector Nazar Singh, alongwith his fellow officials, was going from Talwandi Sabo to Natheha on G.T. Road in connection with patrolling on government vehicle bearing No.PIB 4016 being driven by HC Hakam Singh. One Sant Singh son of Kallu Singh caste Jatt, resident of Fatehgarh Nau Abadh was joined in the police party from the bus stand of Fatehgarh Nau Abadh. When the police party was present in the area of village Lehri Tikoni Nagla on road leading from Talwandi

Sabo to Sardulgarh, one jeep bearing registration No.HR-13-4327 came from the side of Sardulgarh which was got stopped. SI Nazar Singh, on enquiry, learnt that the driver of the jeep was Gurjit Singh @ Jit Singh son of Mal Singh, caste Jatt, resident of Kartar Basti, Bathinda while the person by his side was Sukhmander Singh @ Pappi, son of Joginder Singh, caste Jatt, resident of Gulabgarh Naiwala, Police Station Sadar, Bathinda. Finding their activities to be suspicious, SI Nazar Singh told both of them that they as well as their jeep were required to be searched as they may be carrying some narcotic substance but they had the right to get the search conducted either in the presence of a Magistrate or a gazetted officer. On this, both, Sukhmander Singh @ Pappi and Gurjit Singh @ Jit Singh replied that the search be conducted in the presence of a gazetted officer. In this regard, memo. was prepared which was signed by them. An information was then sent to the Police Station Talwandi Sabo for sending gazetted officer to the spot. After some time, Shri S.K. Ashthana, IPS, alongwith his personal staff, reached the spot and conducted an enquiry. Inspector Nazar Singh, thereafter, conducted the search of the jeep which led to recovery of poppy husk from four jute bags lying underneath the tarpaulin. Inspector Nazar Singh took out 200 grams of poppy husk from each of the four bags as sample and the remaining poppy husk came to be 34 kgs. in each bag. The samples as well as the jute bags containing poppy husk were taken into possession and duly sealed. The seal, after use, was handed over to ASI Atma Singh. As the two accused could not produce any licence for keeping the poppy husk, they were found to have committed

Singh prepared a ruqa and sent the same to the Police Station for registration of case. Pursuant thereto, FIR No.38 dated 27.6.1995 came to be registered at Police Station Talwandi Sabo at 9.15 p.m.

During the investigation of the case, both the accused were arrested by Inspector Najar Singh and grounds of arrest disclosed to them. The jeep was taken into possession. Rough site plan of the place was prepared. Statements of the prosecution witnesses were recorded under Section 161 Cr.P.C. On return to the Police Station, the accused were lodged in police lock-up. However, Inspector Nazar Singh retained the case property with him. On the following day, i.e. 28.6.1995, Inspector Nazar Singh submitted an application before the Chief Judicial Magistrate with a request that he may be allowed to deposit the four bags containing poppy husk in judicial Malkhana. Both the accused were also produced. On perusing the police request, the Chief Judicial Magistrate (Duty) directed Incharge, Judicial Malkhana to accept the case property as prayed and to keep the same in the Malkhana. Subsequently, the four samples were sent through Constable Ashok Kumar to the office of Chemical Examiner. Vide report dated 12.7.1995, the Assistant Chemical Examiner, on analysis, found the samples to be that of poppy husk as morphine and meconic acid were found present in the same. Upon completion of investigation, final report under Section 173 Cr.P.C. was submitted in the Court of Judicial Magistrate 1st Class, Talwandi Sabo, who, after supplying the copies of the documents to the accused committed the case to the Court of Sessions for facing the trial. The Additional Sessions Judge, Bathinda

vide order dated 1.12.1995 charged the two accused under Section 15 of the Act, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Inspector Nazar Singh, PW2 Constable Ashok Kumar, PW3 Satish Kumar, Superintendent of Police and PW4 Constable Jeet Singh, besides tendering report Ex.PK of the Chemical Examiner.

When examined under Section 313 Cr.P.C., both the accused denied the circumstances appearing in the prosecution evidence and stated that they were innocent and falsely implicated in the case. They were called upon to enter their defence but did not lead any evidence.

After hearing learned counsel for the parties and going through the record of the case, the trial Court came to the conclusion that neither the accused nor the case property were either produced by the investigating officer before the Station House Officer nor the case property kept in the judicial Malkhana, despite Inspector Nazar Singh moving an application in that regard before the Chief Judicial Magistrate and on the said application an order being passed requiring him to keep the case property in the Judicial Malkhana. Instead, the case property remained with the investigating officer and, therefore, the possibility of tampering with the same could not be ruled out. Accordingly, the provisions of Section 52 of the Act had not been complied with and violation thereof was fatal. Resultantly, the accused were acquitted of the charge by giving them the benefit of doubt.

Aggrieved of the passing of the impugned judgment of acquittal, the State sought leave to appeal. Said leave was, however, declined. Not satisfied with the same, the State filed SLP (Criminal) No.4371 of 1998, which came up for hearing before the Hon'ble Supreme Court on 17.7.2000 when after setting aside the order of the High Court, the matter was remitted back to this Court for deciding it on merits in the light of various decisions rendered by the Hon'ble Supreme Court. Subsequently, on 14.9.2001, this Court granted leave and while admitting the appeal issued bailable warrants to secure the presence of the respondents.

It may not be out of place to mention here that respondent No.2-Gurjit Singh @ Jit Singh has died during the pendency of the appeal. This fact stands reflected in the report made by Chief Judicial Magistrate, Bathinda and is also not disputed by the State counsel. Therefore, in view of the provisions of Section 394(1) Cr.P.C., appeal against respondent No.2-Gurjit Singh @ Jit Singh stands abated. Therefore, the appeal survives only qua respondent No.1-Sukhmander Singh @ Pappi.

Having heard learned State counsel and going through the impugned judgment of acquittal, this Court finds that the provisions of Sections 52 and 55 of the Act have not been complied with by the prosecution. PW1 Inspector Nazar Singh testified that he locked the accused in the police lock-up and the case property was retained by him on return to the Police Station. Said Inspector Nazar Singh was Station House Officer but in the event of his leaving the Police Station, the next senior most officer would work as Station House Officer.

Inspector Nazar Singh admitted that SI Harpal Singh was the Station House Officer in his absence. This is also apparent from the FIR, which was recorded by SI Harpal Singh as Station House Officer. In such a situation, Inspector Nazar Singh was required to hand over the accused and the case property to SI Harpal Singh, who had to be treated as Station House Officer at the relevant time, i.e. registration of the FIR on the basis of *ruqa* sent by Inspector Nazar Singh. The non-production of the accused as well as case property by Inspector Nazar Singh before SI Harpal Singh resulted in the case property not being resealed by SI Harpal Singh nor also verification being made about the investigation carried out uptill that point of time. As Inspector Nazar Singh lodged the accused in police lock-up and retained the case property with him, the provisions of Sections 52 and 55 of the Act had not been complied with by the prosecution.

Before proceeding any further, it would be appropriate to have a look at the provisions of Section 52 of the Act which deals with disposal of persons arrested and articles seized. These provisions are reproduced here-in-below :-

“52. Disposal of persons arrested and articles seized.

- (1) Any officer arresting a person under section 41, section 42 section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.
- (2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.”

Section 55 of the Act deals with taking charge of articles by the police, which had been seized and delivered. The same is reproduced here-in-below:-

“55. Police to take charge of articles seized and delivered.-

An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.”

A mere look of the provisions of Section 52 of the Act makes it clear that the officer arresting a person under Section 41,

Section 42, Section 43 or Section 44 is required to inform the suspect

of the grounds of his arrest and every person arrested and articles seized to be forwarded to the Magistrate. Further, the person arrested and articles seized shall be forwarded to the officer-in-charge of the nearest Police Station or the officer empowered under Section 53 of the Act, who would take measures for the disposal according to law, of such person or article. Section 55 of the Act requires the officer-in-charge of a Police Station to take charge and keep in safe custody, pending the orders of the Magistrate, all articles seized under the Act and shall allow any officer accompanying such articles to the Police Station, to affix his seal to such articles or to take samples of and from them and all samples so taken to be sealed with a seal of the officer incharge of the Police Station.

It is true that the provisions of Sections 52 and 55 of the Act are only directory and not mandatory. This was held by the Hon'ble Supreme Court in the case of State of Punjab Vs. Balbir Singh 1994(1) RCR (Criminal) 736. It would be appropriate to refer to the below mentioned observations made therein :-

"26. Section 52 and 57 come into operation after the arrest and seizure under the Act. Somewhat similar provisions also are there in the Criminal Procedure Code. If there is any violation of these provisions, then the Court has to examine the effect of the same. In that context while determining whether the provisions of the Act to be followed after the arrest or search are directory or mandatory. It will have to be kept in mind that the provisions of a statute creating public duties are generally speaking directory. The provisions of these two Sections contain certain procedural instructions for strict compliance by the officers. But if

there is no strict compliance of any of these instructions that by itself cannot render the acts done by these officers null and void and at the most it may affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. Therefore, it has to be shown that such non-compliance has caused prejudice and resulted in failure of justice. The officers, however, cannot totally ignore these provisions and if there is no proper explanation for non-compliance or where the officers totally ignore the provisions then that will definitely have an adverse effect on the prosecution case and the courts have to appreciate the evidence and the merits of the case bearing these aspects in view. However, a mere non-compliance or failure to strictly comply by itself will not vitiate the prosecution.

27. The questions considered above arise frequently before the trial Courts. Therefore, we find it necessary to set out our conclusions which are as follows :-

(1) to (5) xxx xxx xxx

 xxxx xxxx xxxx

(6) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case."

The afore-mentioned conclusions were reiterated by the

Hon'ble Supreme Court in the case of Gurbax Singh Vs. State of Haryana 2001(1) RCR (Criminal) 702 and Babubhai Odhavji Patel, etc. etc. Vs. State of Gujarat 2005(4) RCR (Criminal) 858. The relevant observations in the Gurbax Singh's case (*supra*) are as under :-

“9. The learned counsel for the appellant next contended that from the evidence it is apparent that the I.O. has not followed the procedure prescribed under Sections 52, 55 and 57 of the Narcotic Drugs and Psychotropic Substances Act. May be that the I.O. had no knowledge about the operation of the Narcotic Drugs and Psychotropic Substances Act on the date of the incident as he recorded the FIR under Sections 9/1/78 of the Opium Act. In our view, there is much substance in this submission. It is true that provisions of Sections 52 and 57 are directory. Violation of these provisions would not *ipso facto* violate the trial or conviction. However, I.O. cannot totally ignore these provisions and such failure will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the article.

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On the basis of the aforesaid evidence and faulty investigation by the prosecution, in our view, it would not be safe to convict the appellant for a serious offence of possessing poppy husk.”

In view of the fact that Inspector Nazar Singh had neither produced the accused nor the case property before SI Harpal Singh, who was deputed as Station House Officer at the relevant time, the provisions of Section 52 of the Act have not been complied with by the prosecution which has caused serious prejudice to the accused. The

benefit of faulty investigation would accrue in favour of the accused so as to uphold the order of acquittal passed by the trial Court in his favour.

Similarly, the provisions of Section 55 of the Act have been flouted by the prosecution inasmuch as the case property was not kept in safe custody. As per the prosecution, PW1 Inspector Nazar Singh himself submitted application Ex.PJ dated 28.6.1995 before the Chief Judicial Magistrate seeking orders for depositing the case property. His request was accepted vide order Ex.PJ/1 and Incharge, Judicial Malkhana was directed to accept the case property. Despite the same, Inspector Nazar Singh did not produce the case property before the Incharge, Judicial Malkhana. Instead, he kept the same in police Malkhana. The factum of retaining the case property in the police Malkhana and not depositing the same in the Judicial Malkhana was clearly admitted by him in his cross-examination. He further deposed that he did not obtain any orders from the Court for keeping the case property in the Police Station. In such a situation, possibility of tampering with the case property could not be ruled out.

Resultantly, the appeal filed in respect of respondent Gurjit Singh @ Jit Singh is disposed of as having been abated, whereas the one qua Sukhmander Singh @ Pappi is dismissed.

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

January 08, 2015