

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &  
HARYANA, AT CHANDIGARH**

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**Date of Decision: March 17, 2015**

**Criminal Appeal-D No. 880-DB of 2009**

|                 |        |               |
|-----------------|--------|---------------|
| Balwant Singh   | Versus | --- Appellant |
| State of Punjab |        | ---Respondent |

**AND**

**Criminal Appeal No. 971-DB of 2009**

|                 |        |               |
|-----------------|--------|---------------|
| Sukha           | Versus | ---Appellant  |
| State of Punjab |        | ---Respondent |

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**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN.  
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.**

Present: Shri D.N. Ganeriwala, Advocate for the appellant  
(In Criminal Appeal No. 880-DB of 2009).

Shri Dhirinder Chopra, Advocate for the appellant  
(In Criminal Appeal No. 971-DB of 2009).

Shri S.S. Dhaliwal, Additional Advocate General, Punjab  
for the respondent-State.

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1. *Whether Reporters of local papers may be allowed to see the Judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

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**MAHAVIR S. CHAUHAN, J.**

In view of commonality of facts and circumstances involved therein and having arisen from a common judgment of conviction and order of sentence dated September 29, 2009 whereby learned Judge, Special Court, Jalandhar (here-in-after referred to as 'the trial court') has convicted and sentenced Balwant Singh and Sukha (here-in-after referred to as 'the

appellants') to rigorous imprisonment for a term of twelve years and fine amounting to Rs. 1,00,000/- and in default of payment of fine to further rigorous imprisonment for a term of one year, each, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as 'the Act'), Criminal Appeals No. 880 and 971 of 2009, brought by the above said appellants, are proposed to be disposed of by this common judgment.

***Factual Matrix:***

02. Conspectus of events leading to the instant appeals, stated in brief, indicates that while present at Bus Stand, Mehatpur in the company of a police party at or around 06.00 a.m. on June 11, 2008, Inspector Kulwinder Singh (PW2) (here-in-after referred to as 'the investigating officer') received a secret information that the appellants, who were jointly engaged in sale of poppy husk, were bringing poppy husk in a canter bearing registration No. HR 55 2712 and if a picket was laid at T-point of village Bille, huge quantity of poppy husk was likely to be recovered. Wasting no time, investigating officer, accompanied by the police party, reached T-point of village Bille, laid a picket there and started checking the vehicles passing by. Parminder Singh (PW) happened to reach there and was associated with the police party. After a while the canter bearing registration No. HR 55 2712 came from the side of Jagraon bridge and stopped a little away from the police picket. One person, who was identified as Mukhtiar Singh @ Mukha son of Kashmir Singh @ Kashmira resident of Baghela, Police Station, Mehatpur, jumped from the rear side of the canter and made good his escape. Investigating Officer, with the assistance of his fellow police officials, nevertheless, was able to apprehend appellant Sukha,

who was occupying driver's seat and had vainly attempted to flee, and appellant Balwant Singh @ Bant, who was sitting on the seat by the side of driver's seat; told them that the canter in their possession was suspected to carry some narcotic substance and was liable to be frisked; and asked them if they wanted the frisking of the canter to be conducted by him or by a gazetted officer or a Magistrate. Appellants opted to have the canter frisked by a gazetted officer. Memoranda, Exhibits PD and PE were accordingly recorded. On being requested, Dy. S.P. Harinderpal Singh (PW1) reached the spot and after being apprised of the facts of the case by the investigating officer, asked the appellants if they wanted frisking of the canter to be conducted by him or by some other gazetted officer or a Magistrate. Appellants opted to get the canter frisked by him. Memoranda, Exhibits PA and PB were recorded in this regard. Under the instructions of Dy. S.P. Harinderpal Singh (PW1), investigating officer frisked the canter in the presence of witnesses and recovered fifteen gunny bags of poppy husk (having their openings stitched) from hind cabin thereof; separated two samples of 250 grams each from each bag; and put the samples so separated in parcels. Remainder weighed 34 kilograms and 500 grams each bag. Investigating officer sealed the parcels containing samples and the bags containing the remainder, with his seal bearing impression "KS". Dy. S.P. Harinderpal Singh also affixed his own seal bearing impression "HS" on sample parcels and the bags containing the remainder. Sample seals were separately prepared. Investigating officer handed over seal after use to ASI Manohar Singh (PW5) while Dy. S.P. Harinderpal Singh retained his seal with himself. Investigating officer took in police possession the sealed sample parcels, Exhibits P2 to P16, sealed the bags of remainder, Exhibits

P33 to P47, as also the canter, vide memorandum, Exhibit PC; arrested the appellants vide memoranda, Exhibits PG and PF; frisked appellants' persons vide memoranda, Exhibits PG/1 and PF/1; sent intimation (Ruqa), Exhibit PH, to the police station-whereupon a formal First Information Report (FIR, for short), Exhibit PH/1, was recorded by ASI Kewal Singh; recorded statements of witnesses; prepared rough site plan, Exhibit PJ, of the place of recovery; and on return to the police station produced the appellants and the case property before SI Darshan Singh, the Station House Officer, who verified the facts, affixed his own seal on sample parcels and bags, as also on sample seal form, Exhibit P1, and deposited the case property with MHC Harbhajan Lal (PW3). On the following day, i.e. June 12, 2008, investigating officer withdrew the case property from Police Malkahana and the appellants from police lock up and produced them before learned Duty Magistrate at Nakodar who drew representative samples, Exhibits P17 to P31, each weighing 250 grams, from the bags of remainder poppy husk; sealed them with his seal bearing impression "AK"; and on police request, Exhibit PK, passed order Exhibit PK/1, certifying the inventory prepared by the investigating officer to be correct and directing disposal of the remainder poppy husk as per rules. One set of sample parcels was sent to Chemical Examiner through Constable Prem Chand (PW6) and a report, Exhibit PL, confirming that the contents of sample parcels were poppy heads, was received from the Chemical Examiner. On conclusion of investigation a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (here-in-after referred to as 'the Code') was presented before the learned trial court.

03. After hearing the prosecutor and the defence, learned trial court

found a prima facie case triable under Section 15 of the Act to be made out and charged the appellants thereunder. Appellants pleaded not guilty to the charge and claimed to be tried.

04. To prove the charge against the appellants, prosecution examined investigating officer, Inspector Kulwinder Singh as PW2, Dy. S.P. Harinderpal Singh as PW1, ASI Manohar Singh, a witness of recovery, as PW5, the then Station House Officer, SI Darshan Singh as PW4, HC Harbhajan Lal, who kept the case property in safe custody and handed over one set of sample parcels to Constable Prem Chand, as PW3 and Constable Prem Chand, who took the sample parcels to the office of Chemical Examiner, as PW6.

05. All the incriminating circumstances appearing in the prosecution evidence when put to the appellants in their examination under Section 313 of the Code, were denied as incorrect and plea of innocence and false implication was reiterated by them .

06. Appellants examined Constable Sarup Singh twice as DW1 and DW2 in their defence to bring on record copy of relevant portion of Register No. 19.

07. On appreciation of evidence in the light of submissions made at the bar, learned trial court found that the prosecution was able to prove appellants' guilt beyond reasonable doubt and, accordingly, convicted and sentenced them as here-in-before stated.

08. We have heard learned counsel for the parties and, with their able assistance, have also appraised the record.

***Compliance of Section 42 of the Act:***

09. Learned counsel for the appellants have argued, in the first

instance, that investigating officer did not reduce the secret information into writing and did not send such information to his immediate superior as mandated by Section 42 of the Act even though he had sufficient time to do so between receipt of secret information at 06.00 a.m. and recovery of the contraband at 06.30 a.m. Reference in this regard has been made to the deposition of ASI Manohar Singh (PW5) and it is pointed out that he has admitted that the secret information was not reduced into writing. Learned counsel have vehemently contended that non compliance of mandatory provisions of Section 42 of the Act vitiates the recovery and entitles the appellants to acquittal.

The contention, in our considered opinion, is fallacious and deserves to be rejected, for, in enacting Section 42 of the Act intention of the legislature, no doubt, was to provide for procedural safeguards against false implication but, at the same time, it never intended the provision to be literally interpreted to mean that the information received by the investigating officer must be taken down in writing and transmitted to the superior official even though it may allow the culprit to escape and the contraband and evidence being destroyed or removed and thereby forfeit the very purpose of bringing the Act on the statute book. Compliance with the requirements of sub-sections (1) and (2) Sections 42 of the Act as regards taking down the information received in writing and sending a copy thereof to the official superior, should normally precede the entry, search and seizure by the empowered officer but in special circumstances involving emergency situations, recording of the information in writing and sending a copy thereof to the official superior may be postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of

urgency and expediency. However, total non-compliance with requirements of sub-sections (1) and (2) of Section 42 of the Act is impermissible, while delayed compliance with satisfactory explanation about the delay may be acceptable compliance thereof.

Hon'ble Supreme Court of India, in ***Karnail Singh v. State of Haryana, (2009) 8 SCC 539 : 2009 SCW 5265***, while laying down the principles about compliance of sub-sections (1) and (2) of Section 42 of the Act, held as under:

*"35. In conclusion, what is to be noticed is that **Abdul Rashid Ibrahim Mansuri v. State of Gujarat, (2000) 2 SCC 513 : AIR 2000 SC 821** did not require literal compliance with the requirements of Section 42(1) and 42(2) nor did **Sajan Abraham v. State of Kerala, (2001) 6 SCC 692 : AIR 2001 SC 3190** hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:*

*(a) The officer on receiving the information of the nature referred to in sub-section (1) of Section 42. from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).*

*(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.*

*(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the*

*recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.*

*(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."*

11. Investigating Officer, Inspector Kulwinder Singh, while appearing as PW2 has revealed that when he received the secret information at or around 06.00 a.m. on June 11, 2008, he was not present in the police station and, instead, was present at Bus Stand, Mehatpur for patrolling and checking bad elements and was told by the informer that the appellants were coming (towards that place) with huge quantity of poppy husk loaded in a canter bearing registration No. HR 55 2712 and could be apprehended and huge quantity of the contraband recovered if a picket was forthwith laid at T-point of village Bille. Immediately on receipt of the secret information he laid a picket at the aforesaid place and started frisking the vehicles. At or

around 06.30 a.m. the canter reached there. Immediately thereupon he sought consent of the appellants vide memoranda, Exhibits PD and PE, as required under Section 50 of the Act, summoned Dy. S.P. Harinderpal Singh to the spot, seized the contraband vide memorandum, Exhibit PC, after the appellants consented to frisking of the canter by Dy. S.P. Harinderpal Singh (PW1), and then recorded the intimation slip (Ruqa), Exhibit PH, at 09.40 a.m. and immediately thereafter transmitted it to the quarters concerned. It has also come in his cross examination that distance between the place where secret information was received and the place of recovery was about two kilometers and the place of recovery was a busy road. He has also stated that appellant Sukha made a vain attempt to run away while one of the occupants of the canter, namely Mukhtiar Singh was able to flee. The circumstances enumerated by the investigating officer are such that literal compliance with Section 42 of the Act, viz. reducing the secret information into writing and despatching it to the superior officer(s) was bound to result in escape of the appellants and disappearance and/or destruction of the contraband and the evidence. Thus, in our considered opinion, Section 42 of the Act was sufficiently complied with by recording the secret information in the form of Ruqa, Exhibit PH, and sending it to the quarters concerned after recovery of the contraband had been effected.

It may be added here that ASI Manohar Singh (PW5), a member of the police contingent, has replied a question put to him on behalf of the appellants that on receipt of the secret information no separate intimation was sent by the investigating officer to his senior official but he has also reiterated the circumstances which necessitated deferment of compliance of Section 42 of the Act till after recovery of the contraband and

apprehension of the appellants. Interestingly, defence did not dispute the explanation rendered by the investigating officer as regards delayed compliance with Section 42 of the Act, which is indicative of the fact that the defence was satisfied that the narration of events given by the investigating officer was sufficient to justify deferred compliance of Section 42 of the Act.

***Tainted Investigation:***

12. Learned counsel for the appellants have taken us through Exhibit DA, copy of Daily Diary Report (DDR, for short) No. 16 dated June 11, 2008 and Exhibit DB, copy of relevant page of Register No. 19 and have pointed out that in Exhibit DA though the contraband is shown to be handed over to the Moharrir Head Constable but entry in this regard in Register No. 19 (Exhibit DB) is shown to have been scored out. This, according to the learned counsel, means that the contraband was not kept in the Police Malkhana and is sufficient to discard the prosecution case. Learned counsel have also referred to Memoranda, Exhibits PA, PB, PC, PD, PE, PF, PF/1, PG, and PG/1 and have pointed out that all these memoranda, according to prosecution story, were recorded before FIR number could be known to the investigating officer but, surprisingly, number of the FIR is written on the top of all these documents which indicates that the entire proceedings have been fudged to frame the appellants.

As regards the contention that entry with regard to deposit of the contraband in the Police Malkhana has been scored out as shown in Exhibit DB, it may be stated that no doubt a cross is available over the entry but it could be explained either by DW1/DW2, Constable Sarup Singh who brought original Register No. 19 before the learned trial court, or by Head

Constable Harbhajan Lal (PW3), the then Moharrir Head Constable responsible for maintaining Register No. 19 or by Sub Inspector Darshan Singh (PW4), the then Station House Officer, Police Station, Mehatpur but the defence chose not to call upon any of them to render an explanation in this regard. The contention, therefore, is not available to the defence.

Be that as it may, in Exhibit DB itself it has been recorded that the contraband was withdrawn from the Police Malkhana for being produced before the learned Duty Magistrate on June 12, 2008 and an entry with regard to redeposit of the contraband on June 12, 2008, after being produced before the learned Duty Magistrate, is available on record as Exhibit DC. Certificate of the learned Duty Magistrate passed under Section 52-A of the Act is available on record as Exhibit PK/1. According to this certificate, seals appearing on the bags containing the remainder were broken in the presence of learned Duty Magistrate and fifteen representative samples were drawn from those bags. The certificate also says that the inventory prepared by the investigating officer was found to be correct. Defence has not disputed the correctness of this certificate, which as per sub-section (4) of Section 52-A of the Act is primary evidence of the bags containing the recovered contraband.

With regard to appearance of number of the FIR on various memoranda prepared on the spot of recovery, it only needs to be stated that, as per prevalent practice, space for recording the number of the FIR seems to have been left blank at the time of recording of the memoranda in question and number of the FIR written thereon on its receipt from the Police Station. No importance, therefore, can be attached to this circumstance. Recovery of the contraband from possession of the appellants

having been proved and there being no material to infer that the above-stated memoranda were not prepared at the time these claim to have been prepared, recording of FIR number on these memoranda pales into insignificance.

***Seals on the parcels:***

13. By referring to the deposition of Constable Prem Chand (PW6), learned counsel for the appellants have submitted that this witness has revealed that seals on form No. 29 were affixed by the Moharrir Head Constable before it was handed over to this witness for being taken to the office of Chemical Examiner. Learned counsel have argued that according to the investigating officer (PW2) seal after use was handed over to ASI Manohar Singh (PW5) and not to the independent witness. This circumstance when read in conjunction with the above statement of Constable Prem Chand (PW6) leaves nothing to doubt that the seals on the sample parcels and form No. 29 were tampered with before the sample parcels were sent for chemical examination.

The contention, in our view, is untenable. Constable Prem Chand (PW6) has stated without any basis that seals were affixed by the Moharrir Head Constable on form No. 29. Then, the investigating officer (PW2) and Dy. S.P. Harinderpal Singh (PW1), who affixed the seals on the sample parcels and bags containing remainder poppy husk and HC Harbhajan Lal (PW3), the then Moharrir Head Constable have not been questioned with regard to the seals nor have they been confronted with a suggestion that the seals on the parcels and form No. 29 had been tampered with. Even Constable Prem Chand (PW6) has not been called upon to explain what seals were put on form No. 29 by the Moharrir Head Constable and why?

Even ASI Manohar Singh (PW5) has not been confronted with a suggestion that he parted with the seal of the investigating officer before sample parcels were sent to Chemical Examiner. It may be added here that the sample parcels, as evidenced by report, Exhibit PL, were received in the office of Chemical Examiner with all seals intact and tallying with the sample seals.

***Delay in sending the sample parcels for chemical examination:***

14. It has further been contended on behalf of the appellants that the contraband is shown to have been recovered on June 11, 2008 but as stated by Constable Prem Chand (PW6) sample parcels were handed over to him for being taken to office of the Chemical Examiner on July 04, 2008 and the delay in despatch of the sample parcels is fatal to the case of the prosecution.

The submission, however, lacks substance because poppy husk is not such a substance as would deteriorate or get contaminated or decomposed or lose or weaken its character and nature with the passage of time. Even otherwise, no prejudice is shown to have been caused to the appellants by delay in despatch of the sample parcels for chemical examination.

***Independent witness given up:***

15. It is next contended on behalf of the appellants that according to the investigating officer Parminder Singh (PW) was joined with the investigation but for reasons best known to the prosecution he has been given up as won over by the accused without indicating any basis for such an inference. It is further contended that all the witnesses examined by the prosecution in proof of its case are police officials who are highly interested in the success of the prosecution case.

The contention, however, must fail because no adverse inference can be drawn against the case of the prosecution only because the public witness, Parminder Singh was given up. The witnesses being human beings are quite exposed and vulnerable to human weakness of yielding, browbeating, threats and inducements and, as such, giving up of public witness, as won over, was fully justified more so because case of the prosecution has been proved to the hilt in the evidence of Inspector Kulwinder Singh (PW2), Dy. S.P. Harinderpal Singh (PW1) and ASI Manohar Singh (PW5). Section 134 of the Indian Evidence Act, 1872 provides that it is not necessary to examine a particular number of witnesses in proof of a particular fact. This view finds support from two Division Bench judgments of this Court rendered in ***Roop Singh v. State of Punjab-1996(1) RCR(CrL) 146***, and ***Anup Gupta v. State of Punjab-2008(4) RCR (CrL) 390***.

No doubt case of the prosecution is based on the evidence of police witnesses but there can be no legal proposition that evidence of police personnel, unless supported by independent witnesses, is unworthy of acceptance. Rather, testimony of a police personnel should be treated in the same manner as testimony of any other witness. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons. We cannot assume that statement of every police personnel is necessarily false. In the present case, there is nothing to show that the police witnesses made false statements before the learned trial court. They had no enmity with the accused. Also, there is no material available on record to indicate that by implication of the appellants the police witnesses have derived any benefit for themselves or for anyone else they may be interested

in. The witnesses have been able to stand the arduous test of cross examination successfully.

***Conscious Possession:***

16. *Ad finem*, it has been argued on behalf of the appellants that the prosecution has failed to prove conscious possession of the appellants over the contraband in so far owner of the canter in which the contraband is stated to be carried has not been questioned and as per case of the prosecution itself one person named Mukhtiar Singh who was sitting over the bags of poppy husk had run away and the appellants who were there in the driver's cabin cannot be presumed to be aware of what was loaded in the hind cabin of the canter. It has also been contended that while examining the appellants under Section 313 of the Code it has not been put to them that they were in conscious possession of the poppy husk loaded in the hind cabin of the canter.

The contention, in our well thought-out view, is fallacious. It has been proved that appellant Sukha was on the wheel of the canter and appellant Balwant Singh was sitting by his side. Appellant Sukha even attempted to run away after abandoning the canter on seeing the police party. It is not the case of the defence that the appellants were not aware of the contents of the bags loaded in the hind cabin of the canter. Section 54 of the Act lays down that in trials under the Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under the Act, amongst other things, in respect of any narcotic drug or psychotropic substance or controlled substance, for the possession of which he fails to account satisfactorily. Further, according to Section 35 of the Act,

“In any prosecution for an offence under this Act which requires a culpable

mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.” By way of explanation added to Section 35, it has been explained that “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact. As aforesaid, it has been proved in the evidence of Inspector Kulwinder Singh (PW2), Dy. S.P. Harinderpal Singh (PW1) and ASI Manohar Singh (PW5) that the appellants were found in possession of the canter loaded with fifteen bagfuls of poppy husk. A presumption in terms of Sections 54 and 35 of the Act arises to the effect that they did commit an offence within the meaning of Section 15 of the Act and had the necessary culpable mental state to commit such an offence. The presumption has remained unrebutted.

As regards the contention that factum of conscious possession has not been put to the appellants in their statements recorded under Section 313 of the Code, it should suffice to point out that the factum of recovery of poppy husk from a canter which was being driven by appellant Sukha and had appellant Balwant Singh on the seat by the side of driver’s seat, has been very specifically put to both the appellants and both of them have come out with a simple denial de hors any explanation.

***Quantum of sentence:***

17. Left with no other option, learned counsel for the appellants have submitted that the appellants being sole bread winners for their respective families and there being no criminal history before and after the instant case, deserve leniency in the matter of sentence.

18. Nothing more has been urged.

19. In the consequence, while maintaining the judgment of conviction, substantive sentence awarded to the appellants is reduced to rigorous imprisonment for ten years each. Sentence of fine and default clause are, however, maintained.

20. With above modification in the quantum of sentence, the appeals fail and are dismissed.

[T.P.S. Mann]  
Judge

[Mahavir S. Chauhan]  
Judge

March 17, 2015  
adhikari