

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Appeal-D No. 234-DB of 2010(O&M)

Date of Decision: July 28 , 2015.

Jaswinder Singh @ Shinda and another APPELLANT (s)

Versus

State of Punjab RESPONDENT (s)

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

Present: Mr. Sidakmeet Singh Sandhu, Advocate
for the appellants.

Ms. Manjari Kaul Nehru, Addl.AG, Punjab.

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

LISA GILL, J.

Appellant No.1 – Jaswinder Singh @ Shinda and appellant No.2 – Sushil Kumar have preferred this appeal impugning their conviction for the commission of offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'NDPS Act') and sentence of rigorous imprisonment for twelve years each, besides, a fine of ₹1,50,000/- each and in default thereof, further rigorous imprisonment for two years each by learned Judge, Special Court, Jalandhar vide judgment and order dated 03.02.2010.

Facts of the case are that, PW1 Ravinder Pal Singh, then Incharge of CIA Staff, Jalandhar alongwith police officials was present at Gazi Gulla Chowk for checking of bad elements on 30.05.2007. Secret information was received that one truck bearing registration No. MP09-KB-1885 driven by one young Sikh person and another clean shaven person accompanying him would come towards Ram Nagar railway crossing after a while and would be carrying some narcotic substance. At that time PW2 DSP(D) Raghbir Singh was passing through the area in his official TATA Sumo vehicle. PW1 Ravinder Pal Singh conveyed this information to him.

In the meantime, the truck as mentioned above was seen coming from the Workshop chowk side. It was signalled to stop with torch light at about 10.30 p.m. Truck driver did not stop on the signal being given but sped towards Ram Nagar railway crossing. PW1 Inspector Ravinder Pal Singh alongwith other police officials in his official jeep and DSP Raghbir Singh in his official vehicle alongwith gunman chased the said truck, who turned towards Sodal chowk side. They managed to stop the truck. On inquiry, truck driver disclosed his name as Jaswinder Singh (appellant No.1) and clean-shaven person sitting next to him was found to be Sushil Kumar (appellant No.2). Meanwhile, Rajinder Kumar, a person who happened to be a passerby was joined with the police party.

PW2 DSP Raghbir Singh told both the accused persons separately that he is a Gazetted Officer of the Punjab Government and posted as Deputy Superintendent of Police(D) Jalandhar. He also apprised both of them that there was suspicion of some narcotic substance being carried by them and accused

have the option of search to be conducted before him or some other Gazetted Officer or before a Magistrate. Accused Jaswinder Singh expressed confidence in PW2 DSP Raghbir Singh vide consent memo Ex.PA. Accused Sushil Kumar has also expressed confidence in PW2 DSP Raghbir Singh vide consent memo Ex.PB. Both the consent memos were attested by PW1 Inspector Ravinder Pal Singh, PW3 SI Ashwani Kumar, SI Sukhdev Singh and Rajinder Kumar. Thereafter, search of both the accused was conducted in the presence of PW2 DSP Raghbir Singh and independent witness, Rajinder Kumar.

On search of accused Jaswinder Singh opium wrapped in glazed paper tied around his waist with a *Parna* (cloth) under his shirt was recovered. Two samples of 10 gms each were separated. Remaining opium when weighed was found to be 3Kg. 980 gms. and put in a separate plastic container.

Similarly, on search of accused Sushil Kumar opium wrapped in glazed paper tied around his waist with a *Parna* (cloth) under his shirt was recovered. Two samples of 10 gms each were separated. Remaining opium when weighed was found to be 4Kg. 980 gms. and put in a separate plastic container .

All the four sample parcels alongwith bulk parcels were sealed by the Investigating Officer Ravinder Pal Singh and DSP Raghbir Singh with their respective seals bearing impression 'RPS' and 'RSS', respectively. Specimen of the seals was prepared. Seal after use was handed over to SI Ashwani Kumar by the Investigating Officer while DSP Raghbir Singh retained his seal. All the four sample parcels, both the bulk parcels of opium as well as the truck were taken in possession vide memo Ex.PC. From the personal search of accused Jaswinder

Singh, ₹930/- was recovered and from accused Sushil Kumar, one mobile phone make Nokia and ₹1060/- were recovered vide memos Ex.PF and Ex.PG, respectively. Both the accused were arrested. Ruka was sent to the police station on the basis of which formal FIR was registered against both the accused. Site plan Ex.PH was prepared.

PW1 Inspector Ravinder Pal Singh produced the case property, sample seals as well as both the accused and witnesses before SI/SHO Rajinder Kumar who after verifying the facts sealed the case property with his seal bearing impressing 'RK' vide Ex.P1. Case property was deposited with MHC Malkiat Ram. Case property was withdrawn by PW1 Ravinder Pal Singh from MHC Malkiat Ram on the same day and produced before the Duty Magistrate, Jalandhar alongwith the accused persons. On an application under Section 52A of the NDPS Act Ex.PX, Duty Magistrate passed order Ex.PX/2. Representative samples were taken in the presence of Judicial Magistrate. Seal 'AKJ' was appended on the parcels. Inventory, Ex.PX/1 was certified to be correct. Case property was redeposited with the MHC on 31.05.2007. Samples were sent for chemical examination on 08.06.2007. Report of the chemical examiner Ex.PJ was received verifying the contents of the contraband to be opium.

On completion of investigation, report under Section 173 Cr.P.C. was prepared and presented. Charge was framed against both the accused under Section 18 of the NDPS Act.

Prosecution examined seven witnesses to prove its case. Accused in their statements under Section 313 Cr.P.C. denied the incriminating evidence put to them and pleaded innocence and false implication.

Learned trial court on appreciation of evidence on record concluded that the prosecution has proved its case beyond reasonable doubt thereby, convicted and sentenced the accused as mentioned above.

Learned counsel for the appellants has argued that there is a stark non-compliance of mandatory provisions of the NDPS Act. Even though the Investigating Officer received secret information when he was present at Gazi Gulla chowk but he had not reduced it into writing and sent it to senior officers as is mandatory. Accused are entitled to acquittal on this sole ground. It is also submitted that link evidence in this case is missing pointing to the false implication of the accused. Form 29 has not been prepared at the spot. Evidence on record does not indicate that the samples were not tampered with.

Furthermore, alleged independent witness Rajinder Kumar has not been examined by the prosecution thereby, casting a cloud thereon. It is, thus, prayed that conviction of the accused under Section 18 of the NDPS Act is not sustainable.

Learned counsel for the State, per contra, submits that there is no ground whatsoever for setting aside the conviction of the accused. There is clear and cogent evidence on record to show that the accused were in illegal possession of heavy quantity of contraband i.e., 9 Kg. of opium. Appellant No.1 – Jaswinder Singh was in conscious illegal possession of 4 Kg. opium and appellant No.2 – Sushil Kumar of 5 Kg. opium. She, therefore, prays for upholding the impugned judgment of conviction and order of sentence.

Having heard learned counsel for the parties and on going through the record, we find no merit in this appeal. Learned counsel for the appellants is

unable to point out anything on record which creates a doubt on the complicity of the accused in this case.

First contention raised by learned counsel for the appellants that there is non-compliance of the provisions of Section 42 of the NDPS Act thereby, entitling the accused to acquittal on this sole ground, is untenable. It is a matter of record that in the present case, Investigating Officer PW1 Ravinder Pal Singh received secret information in respect to accused carrying the contraband while he was on duty at Gazi Gulla chowk alongwith other police officials. He shared this information with PW2 DSP Raghbir Singh who also happened to be in this area. Subsequent to this information, the truck driven by accused Jaswinder Singh was apprehended at 10.30 p.m. itself and the contraband was recovered as revealed by the official witnesses. Ruqa was sent subsequent to the recovery of the contraband on the basis of which formal FIR was registered at 1.20 a.m. itself. Copies thereof were sent to Illaqa Magistrate as well as to higher officials. There is, thus, specific compliance of Section 42 of the NDPS Act.

Hon'ble Supreme Court in **Bahadur Singh v. State of Haryana, 2010(2) RCR(Crl.) 586** has categorically held that non-compliance of Section 42 of the NDPS Act does not *per se* vitiate the trial. Accused has to show whether any prejudice has been caused on account of the non-reduction of secret information in writing or non-sending of the same to the higher officials immediately thereafter. Learned counsel for the appellants is unable to point out any prejudice which may have been caused by not reducing the secret information into writing immediately or not sending it to the higher officials. Therefore, it cannot be said that the same is fatal to the prosecution case thereby,

entitling the appellants to acquittal.

Opium weighing 4 Kg. from accused Jaswinder Singh and 5 Kg. from accused Sushil Kumar was recovered after they were apprehended on the basis of secret information. It was found concealed in a glazed paper tied around their waists with the help of cloth (*Parna*). A perusal of the record shows that there is due compliance of the provisions of Section 50 of the NDPS Act. In fact, no such argument regarding non-compliance of Section 50 of the NDPS Act has even been raised. In these circumstances, non-examination of the independent witness Rajinder Kumar is not material. Said witness Rajinder Kumar was given up as having been won over by the accused.

Examination of an independent witness is necessarily a rule of prudence. Proceedings cannot be vitiated only on account of non-examination of an independent witness. Evidence of official witnesses in such cases can be relied upon though it is to be examined with greater care and caution and would be subjected to greater scrutiny. 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. Official witnesses have rendered a faithful and trustworthy account of the events as they unfolded. There is no reason to disbelieve them.

Link evidence in this case is complete. There is no possibility of any tampering with the samples taken. They were duly sealed when taken in custody, duly presented before the Magistrate alongwith the accused and the case property. Inventory was certified to be correct. Samples were sent for chemical examination on 08.06.2007. Seals were found to be intact as per the Chemical Examiner's report, Ex.PJ. There is thus nothing on record which creates a doubt

on the prosecution version. Prosecution has indeed proved its case against both the accused beyond a shadow of doubt.

No other argument has been raised.

At this stage, learned counsel for the appellants submits that sentence imposed upon the appellants is not commensurate with the offence in question. Accused Jaswinder Singh is a poor labourer while accused Sushil Kumar was a small time shop-keeper. Both of them are the sole bread-earners of their respective families. There is no one else to look after their dependents. Appellant Sushil Kumar is not involved in any other case. Jaswinder Singh stands acquitted in another matter under the NDPS Act and is not involved in any other case.

Having heard learned counsel on this aspect and taking into consideration the peculiar facts and circumstances of this case, it would be in the interest of justice to reduce the period of sentence of rigorous imprisonment of 12 years to rigorous imprisonment for 10 years qua both the accused. Fine of ₹1,50,000/- is reduced to ₹1,00,000/- each. In default of payment of fine, both the convicts shall undergo further rigorous imprisonment for one year each.

With the abovesaid modification in the sentence imposed upon the appellants, present appeal is disposed of accordingly.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

July 28 , 2015.
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