

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

**CRA-S No. 2496-SB of 2009 (O&M)
Date of decision: 19.08.2015.**

Harpal Singh @ Happy @ Hazara Gill and another Appellants.

Versus

State of Punjab Respondent.

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Argued by: Mr. S.P.S. Sidhu, Advocate, for the appellants.

Mr. K.S. Pannu, DAG, Punjab, for the respondent.

NAVITA SINGH, J.

The present appeal has been directed against the judgment of conviction and order of sentence, both passed on 27.08.2009, whereby the appellants were held guilty and convicted for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act for short) and were sentenced to undergo rigorous imprisonment for ten years each and to pay fine of Rs.1,00,000/- (One lac) each. In default of payment of fine, they were to undergo further rigorous imprisonment for one year each.

2. Initially, one Amolak Singh also faced trial along with the appellants, but he was acquitted.

3. The case against the appellants was registered by way of FIR No. 27 dated 28.02.2007, under Sections 21, 25 and 29 of the Act and Section 411 of the Indian Penal Code, at Police Station 'B' Division, Amritsar, on the allegations that on 28.02.2007, SI Harwinderpal Singh was present in the office of Special Narcotics Cell, Amritsar, when he received a

secret information that Harpal Singh @ Happy @ Hazara Gill, who was a smuggler, and his brother Amolak Singh along with Balwinder Singh @ Binda son of Balbir Singh were trying to smuggle heroin from Pakistan. They were waiting near a Tata Indigo car for some party. Amolak Singh had already been convicted and sentenced in another case and was serving sentence in Central Jail, Ludhiana, but those days he was on parole. The matter was brought to the notice of Inspector Jasbir Singh, who in turn informed Makhan Singh, Senior Superintendent of Police, Special Narcotics Cell, Punjab. On the directions of senior officers, police party led by SI Harwinder Singh proceeded towards the informed place in a government vehicle. When they reached near Dhingra Hospital, Amritsar, they saw a person standing near a Tata Indigo car, which was the information given by the informant. The occupants of the car were about to flee when they were intercepted. They tried to escape and out of them two were apprehended at the spot and the third one managed to escape. Those apprehended disclosed their identity as Harpal Singh @ Happy @ Hazara Gill and Balwinder Singh @ Binda. They disclosed the name of the third person, who had escaped, as Amolak Singh. They were informed of their rights after suspecting that they were carrying some narcotics. They said that they wanted to get the search conducted in the presence of a gazetted officer. DSP Rajpal Singh was informed to reach the spot. Effort was made to join some independent witnesses, but no one was ready. Ultimately, one Tajwinder Singh son of Anokh Singh joined the police party. He was joined before DSP Rajpal Singh arrived.

4. DSP Rajpal Singh disclosed his identity to the appellants

separately and told them that it was suspected that some narcotic substance was in their possession and they could get the search conducted in his presence or in the presence of a Magistrate. Both the appellants said that they had faith in the DSP and consented for the search.

5. After preparing the consent memo, search was conducted and eight packets of heroin were recovered from a black bag carried by Harpal Singh @ Happy around his neck. The packets were wrapped in a cloth and then wrapped in a glazed paper and some stamps were affixed on them. Those stamps, which were oval in shape, consisted of picture of a woman and a weighing scale, a leaf and digits '999'. Something more was mentioned in Urdu which the investigating officer could not read. Each packet was found to contain one kilogram of the contraband. Five grams of heroin was separated out of each packet and the samples and remaining contraband were separately sealed. Seal 'HS' was used by SI Harwinderpal Singh and 'RS' was used by DSP Rajpal Singh. Sample seals were also prepared and the property was taken into possession.

6. Thereafter, search of Balwinder Singh @ Binda was conducted and two packets of heroin were recovered from a bag which he was carrying. Those packets were also wrapped in a cloth which was further wrapped in a glazed paper with oval stamps which were identical to those on the packets found in possession of Harpal Singh. These also contained one kilogram each of heroin and sample was separated as was done with the other packets and the samples and the remaining contraband were sealed with the same seals and taken into possession. Seal of SI Harwinderpal Singh was handed over to SI Balbir Singh while DSP Rajpal Singh retained

his seal. Nothing, however, was recovered from the car. The police could not produce any document regarding the vehicle to show its registration etc. The vehicle was also taken into possession. The bags carried by the appellants were also taken into possession and ruqqa was sent for registration of the case.

7. On completion of investigation, charge-sheet was filed in Court whereafter charges were drawn up under the Act against the appellants and Amolak Singh, who had later on been arrested in this case, after being produced from the Jail.

8. The prosecution completed its evidence whereafter statements of the appellants and Amolak Singh under Section 313 of the Code of Criminal Procedure were recorded. They denied the allegations and pleaded false implication, but did not lead any evidence in defence.

9. Counsel for the appellants assailed the prosecution case on technical grounds alleging that compliance of Sections 42 and 50 of the Act was not made. The independent witness-Tajwinder Singh was not examined and that there was delay of six days in sending the samples for chemical examination.

10. So far as the delay in sending the samples is concerned, period of six days is not such as may raise eyebrows and put a question mark on the investigation. Link evidence is complete as it came in evidence that the case property was deposited in intact condition and the person who took the samples also made his deposition. Regarding non-examination of Tajwinder Singh, the appellants would again not get any benefit as in many

a case it is seen that the witnesses from the public do not come forward to depose in Court as they are either threatened by the accused or are won over. In the present case where the appellants were alleged to be smugglers, absence of Tajwinder Singh from the witness box was not surprising.

11. Most of the stress was laid by counsel for the appellants on the aspect of non-compliance of Section 42 of the Act. According to him, the secret information should have been reduced into writing and placed before the senior officer. It was contended that even where the police does not have enough time to put the secret information in black and white immediately after its receipt and the police party has hurry to the spot so that the culprit(s) may not escape, the same must be put in writing later on and be made a part of the record. Reliance was placed on case **Karnail Singh vs. State of Haryana, 2010 (88) AIC 28 (SC)**.

12. In the reported case, the facts of the case in Abdul Rashid Ibrahim Mansuri vs. State of Gujarat, 2000 (1) RCR (Criminal) 661, were given where gunny bags were recovered from an autorickshaw which was intercepted by the police party. Charas was found in those bags, but the defence taken by the person in the autorickshaw was that the bags had been brought in a truck by two persons which were unloaded in his autorickshaw and he was directed to transport those to a particular destination. In the said case, however, a particular defence was taken by the accused, but in the present case neither in the cross-examination of the witnesses, nor in the statements under Section 313 of the Code of Criminal Procedure, the appellants put forth any specific defence. They simply said that no recovery

was effected from them and that they were picked up from their houses and were made to sign blank papers in the police station. No evidence in defence was led by them.

13. The statements of the police officials show that the investigation at the spot was conducted in a meticulous manner. The appellants were apprised of their rights and DSP Rajpal Singh was called at the spot. The witnesses of recovery even gave the manner in which the contraband was wrapped and the details of the stamps put on the bags, i.e. picture of a woman, a weighing scale, a leaf with digits '999' and something more written in Urdu, which was not readable. Such minute details once given by the recovery witnesses leave no doubt about the recovery because if a false case had been foisted on the appellants, the witnesses could not have dreamt of giving such details. No effective cross-examination was conducted on any of the witnesses so as to impeach their veracity and even raise the slightest doubt regarding the recovery. Section 42 of the Act refers to taking down the information given by any person in writing and the procedure regarding entry, search and seizure of any building, conveyance or enclosed place at any time between sunset and sunrise. Section 42 of the Act speaks of seizure and arrest in public place as was the place here.

14. In the given facts and circumstances, therefore, Section 42 of the Act would not come into play. Regarding seizure in a public place, the officer, who is empowered under Section 42 of the Act, may also act under Section 43 of the Act where he has reason to believe that any offence punishable under the Act had been committed. Here, the information which

was found believable was that the offence punishable under the Act had been committed and along with contraband, the TATA Indica car, which was being used, could also be seized. In the present case, the information was not that the contraband had been kept concealed in any conveyance which alone was required to be searched which would mean that only the conveyance was there with some contraband in it. But rather here the information was that the appellants and one more person were present near the car waiting for some buyer and that they were carrying some narcotic substances. The words “*power of entry, search, seizure and arrest without warrant or authorisation*” used in Section 42 of the Act and the words “*power of seizure and arrest in public place*” used in Section 43 of the Act would make all the difference.

15. No other point was urged before me. It may, however, be mentioned that all the witnesses saw eye to eye with one another regarding main aspects of recovery and nothing was brought to light in their cross-examination as would convince the Court to record acquittal of the appellants. Nothing was put forth by the appellants to show as to why the police would falsely implicate them and why they would be taken to police station for no fault and their signatures would be obtained on blank papers.

16. As a sequel to the discussion made above, the appeal is dismissed.

(NAVITA SINGH)
JUDGE

19.08.2015
Ramesh