

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

Date of Decision : 21.02.2015

1) C.R.A-S No.807-SB of 2005 (O&M)

Janak Raj

.....Appellant

Versus

State of Haryana

..... Respondent

2) C.R.A-S No.593-SB of 2005 (O&M)

Ram Sarup

.....Appellant

Versus

The State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. R.K. Singla, Advocate
for the appellant (in CRA-S-807-SB-2005).

Mr. Fateh Saini, Advocate
for Mr. Ashwani Verma, Advocate
for the appellant (in CRA-S-593-SB-2005)

Mr. Raj Kumar Makkad, D.A.G., Haryana.

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

AJAY TEWARI, J. (Oral)

These are two appeals filed against the judgment dated

04.03.2005 passed by the Additional Sessions Judge, Fatehabad convicting

the appellants under Section 15 of the N.D.P.S. Act and sentencing them to undergo rigorous imprisonment of 10 years and a fine of Rs.1 lakh, in default, to undergo rigorous imprisonment of 1 year more. Both the appeals are decided by the common order since the issue involved is same.

The case of the prosecution in short was that on 21.07.2000 ASI Jaipal Singh alongwith other Police officials was present at Old Bus Stand Ratia. In the meantime, he received a secret information to the effect that Hanuman, Ram Sarup, Janak Raj and Chhinder @ Chhinda were habitual in smuggling of poppy husk and they are to bring a truck loaded with poppy husk and if a picket was laid near the dhani of Hanuman, they could be apprehended. The informer had disclosed the registration number of the truck as HYO-1565. As the said information was reliable, so a picket was laid at Lalwas Nimdi road near the canal bridge. After about one hour, a truck was seen coming from the side of village Nimbdi, Jaipal Singh ASI gave a signal to stop the truck. However, the truck sped away. Then the police party chased the truck. Ultimately, the truck stopped and the driver ran away from the spot. One other person who was sitting in the cabin of the truck also ran away. The investigating officer with the help of other police officials tried to apprehended these two persons, but they managed to escape due to darkness. Godhu Ram, Jagdish Chander HC and ASI Charan Singh disclosed the names of the escaped accused as Chhinder Singh, driver of the truck and Hanuman Singh. Two other accused namely Ram Sarup and Janak Raj (present appellants) who were sitting on the bags in the rear portion of the truck were apprehended by the police party. On search of the

truck, poppy husk was recovered. Accordingly, this case was registered against the accused. On 19.12.2000 and 16.02.2001 Inspector Ram Phal formally arrested accused Chhinder Pal and Hanuman respectively. After registration of the F.I.R. investigation was taken up on completion of which the accused persons were challaned. The case was committed for trial and the accused were charge-sheeted under Section 15 of the N.D.P.S. Act to which they pleaded not guilty and claimed to be tried.

In the course of the trial as many as seven prosecution witnesses were examined. PW6 Jaipal Singh District Inspector was the investigating officer who testified that on 21.07.2000 he along with police party was present at Old Bus Stand Ratia and that on receiving the information nakabandi was conducted at Lalwas Nimdi road near the canal bridge and later they apprehended the appellants along with 7 bags of poppy husk which was found to weigh 35.8 kg each. PW5 ASI Charan Singh was another witness of the recovery. He had corroborated the statement made by the investigating officer. PW4 DSP Ram Kumar had also corroborated the version given by PW5 and testified that he received a V.T. Message from control room on 21.07.2000 at 9 P.M. and consequently he reached the spot. PW7 Inspector Ram Phal had deposed that on 19.12.2000 he was posted in Police Station Ratia and investigation of this case was handed over to him. On 19.12.2000 he received an information that accused Chhinder Pal had surrendered before the Illaqa Magistrate. He reached there and formally arrested accused Chhinder Pal and later on he arrested the accused Hanuman. The remaining witnesses were of formal nature.

After conclusion of prosecution evidence, all the accused were examined under Section 313 Cr.P.C. and all incriminating evidence was put to them. They denied the same and pleaded their innocence. However, after going through the evidence on record the Additional Sessions Judge convicted and sentenced the appellants as mentioned above.

Learned counsel for the appellants have argued that in the present case the officer receiving secret information did not record it in writing at all and obviously never sent the information to the superior officers as mandated under Section 42 of the N.D.P.S. Act.

Learned Deputy Advocate General has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Karnail Singh Vs. State of Haryana (SC), 2009(5) RCR (Criminal) 515*** and drawn the attention of this Court to para 17(b) of the judgment where their Lordships held as follows:-

“17(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.”

Learned counsel for the appellants, however, have relied upon the judgment of the Hon'ble Supreme Court in the case of ***Rajinder Singh***

Vs. State of Haryana, 2011 (8) (Criminal) 130 where their Lordships had considered the decision in *Karnail Singh's case (supra)*. The facts of *Rajinder Singh's case (supra)* were similar to the facts of the present case in so much as the secret information was received by the police officer about the presence of narcotics in particular place. He prepared ruqa and sent it to the police station and also sent a message to the DSP. In the present case also, on receipt of secret information a ruqa was sent to the police station and message was sent to the DSP. In *Rajinder Singh's case (supra)* their Lordships held as follows :-

“11. It is therefore clear that the total non-compliance with the provisions sub-section (1) and (2) of Section 42 is impermissible but delayed compliance with a satisfactory explanation for the delay can, however, be countenanced. We have gone through the evidence of PW-6 Kuldip Singh. He clearly admitted in his cross-examination that he had not prepared any record about the secret information received by him in writing and had not sent any such information to the higher authorities. Likewise, PW-5 DSP Charanjit Singh did not utter a single word about the receipt of any written information from his junior officer, Inspector Kuldip Singh. It is, therefore, clear that there has been complete non-compliance with the provisions of Section 42(2) of the Act which vitiates the conviction.

12. Mr. Dalal, the learned counsel for the respondent-State has, however, referred to paragraph 34 of the judgment of the Constitution Bench in Karnail Singh in which general observations have been made with regard to the provisions of Section 41 (1) and 42(2) with respect to the latest electronic technology and the possibility that the said provisions may not

be entirely applicable in such a situation. Concededly the present case does not fall in this category. In any case the principles settled by the Constitution Bench are in para 35 and have already been re-produced by us hereinabove. Likewise, the dispatch of a wireless message to PW-6 (sic PW 5) does not amount to compliance with Section 42(2) of the Act as held by this Court in State of Karnataka vs. Dondusa Namasa Baddi.”

In these circumstances, learned counsel for the appellants have argued that in this judgment their Lordships have specifically considered the decision of the larger bench in ***Karnail Singh's case (supra)*** and therefore the present case is fully covered by the facts and law mentioned in ***Rajinder Singh's (supra)***.

In my considered opinion, this argument can not be rejected. As mentioned above, the present is also a case where admittedly neither the secret information was recorded into writing nor was it sent. The argument of the learned DAG that sending of the ruqa and the sending of the wireless message would be deemed to be compliance of Section 42 can not be accepted in view of the judgment passed in ***Rajinder Singh's case (supra)***. Being bound by the said judgment, it has to be held that the present is a case where Section 42 has been violated and the appellants have to get the benefit thereof.

I am, therefore, of the view that the conviction of the accused-appellants as made by the learned trial Court and the sentence imposed is not legally tenable. I, therefore, set aside the same, acquit the accused-appellants and allow the appeals. Let the appellants be released forthwith in case they are in custody.

Since the main cases have been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

February 21, 2015

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**(AJAY TEWARI)
JUDGE**