

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S-706-SB-2006 (O&M)

Date of decision: 20.05.2015

Dara Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

PRESENT: Mr. Sumeet Puri, Advocate for the appellant.

Mr. Gurveer Sidhu, AAG, Punjab.

R.P. NAGRATH, J.

The appellant faced trial along with 7 others for offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') in FIR No. 109 dated 31.10.1998, Police Station Sadar, Nabha. One of the accused person, namely; Darshan Singh had died and 6 others were acquitted by the trial court finding the charge against them to be doubtful as their identity was not established. It is to clarify that it was only the appellant who was apprehended at the spot and his associates fled from there. The vehicle in which the accused persons were travelling was Tata 709 No. RJ-14-G-4537, loaded with 7 bags of

poppy husk each containing 37 kgs. of the commodity. The vehicle was intercepted by the police party on 31.10.1998 and on the disclosure statement made by the appellant while in custody, 6 more bags of poppy husk each containing 35 kgs. of the quantity were also recovered. This is how the charges under two heads were framed. The trial ended in conviction of the appellant for offence under Section 15 of the Act on both the counts. Learned trial Court awarded him sentence to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹ 1 lac, in default of payment of fine to further undergo rigorous imprisonment for a period of two years.

2. The prosecution story, briefly stated, is that SI Karansher Singh, Incharge of CIA Staff, Nabha was holding Nakabandi (picketing) at T-Point Nabha-Kakrala Road, Near Grid Station. Rachhvinder Singh S/o Darbara Singh resident of village Rohti Channa came there. The police party was having conversation with aforesaid Rachhvinder Singh that at about 2.00 p.m. Tata 709 No. RJ-14-G-4537 was seen coming from the side of Nabha Town. The driver stopped the vehicle at a distance of about 30 yards from the police party on seeing the police party. The driver and 7 other persons riding in the truck alighted and tried to run away but they were chased by the police party. Out of them, appellant was apprehended at the spot and rest of the persons escaped the police net. The appellant gave the names and description of his accomplices with driver's name as Ashok Kumar resident of village Behror, District Alwar (Rajashtan).

3. The accused was apprised of his right to be searched before a

Gazetted Officer and he opted his search to be conducted in the presence of a Gazetted Officer. Memo Ex. PC in this regard was prepared which was thumb marked by the appellant and attested by other witnesses including Rachhvinder Singh.

4. A message was sent to Deputy Superintendent of Police (DSP), Nabha Circle and Sh. Gurmit Singh Chohan, Deputy Superintendent of Police, reached the spot in his official vehicle. The DSP introduced himself to the accused-appellant that he was a Gazetted Officer. On instructions of DSP, the vehicle was searched and 7 bags were found loaded in the truck. Two parcels each weighing 250 gms. were separated as samples from each bag and prepared those into sealed parcels. Rest of the commodity in each bag was found to be containing 36.5 kgs. of poppy husk. The sample parcels and rest of the bags were sealed with the seal of Investigating Officer bearing impression 'KS' and the Investigating Officer also prepared sample seal Ex. P-1 separately and after using the seal, the same was handed over to ASI Dalbir Singh. Panchnama Ex. PD for taking into possession the case property was prepared. On personal search of the accused, an amount of ₹ 160/- was recovered for which separate memo Ex. PE was reduced into writing.

5. From the search of vehicle Registration Certificate (RC) and Insurance Policy in the name of Surinder Singh S/o Rohitash Singh resident of Behror District Alwar (Rajasthan) were recovered for which memo Ex. PF was prepared. The rough sketch of the place of recovery is Ex. PK. PW-7 SI Dalbir Singh who was member of the police party on 31.10.1998 proved Registration Certificate of the truck as Ex. P-2 and

Insurance Cover Ex. P-3 recovered from the vehicle. The prosecution also examined PW-5 Mohd. Hafeez from the office of RTO Jaipur. The witness brought the register in respect of Tata truck No. RJ-14-G-4537 and stated that this vehicle is in the ownership of Surinder Kumar S/o Rohitash Singh, aforesaid.

6. From the spot, ruqa Ex. PM was sent to the police Station and FIR Ex. PM/1 was recorded.

7. Rest of the version is subsequent story of recovery of 6 bags on 3.11.1998 in pursuance to the disclosure statement Ex. PO made by the accused. While going to the spot from police station, a message was sent to the DSP who met the police party in the way and in his presence the proceedings were held.

8. On return to the police station on both the dates i.e. on 31.10.1998 and 03.11.1998, the case property was produced before PW-8 SI Sher Gir, SHO, Police Station Sadar, Nabha who sealed the entire case property with his seal bearing impression 'SG' and prepared sample seal impressions Ex. P-2 and P-1, respectively. The case property which was recovered and sealed at the spot on 31.10.1998 was produced before the Area Magistrate on 01.11.1998 vide request Ex. PN and the learned Magistrate made endorsement Ex. PN/1 thereupon. The case property recovered on 03.11.1998 was produced before the Area Magistrate on the same day vide request Ex. PR and the learned Magistrate made endorsement Ex. PR/1 on the application in this regard on 03.11.1998. PW-4 further stated that thereafter he produced the case property before SI Sher Gir who met him in the way near village Kakrala. The SHO

sealed all the parcels with his seal bearing impression 'SG' and prepared the sample seal also. One set of sample parcels recovered on 31.10.1998 were deposited in the office of Chemical Examiner on 02.11.1998 and those were recovered on 03.11.1998 deposited on 09.11.1998. The samples were found to be of poppy husk as per reports of Assistant Chemical Examiner, Ex. PT and Ex. PS, respectively. On completion of investigation, challan was presented before the Judge, Special Court, Patiala.

9. The prosecution examined 8 witnesses in support of its case. Rachhvinder Singh and Prabhdip Singh, the independent witnesses associated on both occasions were given up by the prosecution as won over on 29.11.2003. With regard to non examination of DSP Gurmit Singh Chauhan, the learned trial Court has dealt with the issue by observing that the DSP had been sent to U.N. Mission to Kosovo and thus, his absence was found justifiable.

10. During examination of the appellant under Section 313 Cr.P.C., he denied all the incriminating circumstances appearing against him in the prosecution evidence and pleaded false implication. In defence, he examined DW-1 Constable Raj Singh who brought register No. 19 and DDR registers and proved the relevant entries Ex. D-1 and D-2. The learned trial Court on appreciation of evidence convicted the appellant of the charges framed against him and awarded him the sentence as aforesaid.

11. I have heard learned counsel for the appellant, learned State counsel and also extensively gone through the records with their able

assistance.

12. The learned appellant's counsel has not been able to assail the findings of conviction recorded by the learned trial Court and confined his contention mainly on the plea that appellant may be granted the benefit of provisions of sub-section (1) of Section 427 Cr.P.C. for directing the imprisonment awarded in this case to run concurrently with the sentences in two other cases for the same offence recorded against him. Before dealing with this contention, I would discuss if the evidence of prosecution to prove the charge against appellant has been rightly believed by the trial Court.

13. It would be quite important to refer to the statement of PW-4 SI Karansher Singh, the Investigating Officer. While appearing in the witness-box, he reiterated the story of intercepting Tata 709 vehicle at about 2.00 p.m. on 31.10.1998, in the presence of independent witness. The second sample parcels Ex. P-2 to Ex. P-8 and 7 bags containing poppy husk Ex. P-9 to Ex. P-15 were produced in Court during his examination along with the truck in which the contraband was loaded. It was also testified by PW-4 that seals on all the parcels Ex. P-2 to P-15 are intact. PW-4 further stated that on return to the police station, he produced the case property before SI Sher Gir, SHO, Police Station Sadar, Nabha, who after verifying the same put his seal bearing impression 'SG' on all the sample parcels and the gunny bags. Under the directions of SHO, he deposited the samples with MHC Baljinder Singh. PW-4 then stated about production of case property and the accused before the Area Magistrate on 01.11.1998 on moving application Ex. PN.

The case property was again deposited with MHC of the police station after conducting those proceedings.

14. PW-4 further stated that on 03.11.1998, the appellant was taken out of the lock up and interrogated. The appellant made disclosure statement that he has kept concealed six bags of poppy husk in the area of village Chhintawala, 100 yards away from the Saim Nala Bridge and that bags were kept inside the bank of Saim Nala parallel to the fields of Jaswinder Singh. Ex. PO is the disclosure statement of appellant which was thumb marked by him and attested by the witnesses including Prabhdip Singh, PW. PW-4 further stated that he sent the information to DSP, Nabha Circle, telephonically who met the police in the way and the appellant then led to recovery of all the 6 bags containing poppy husk from the disclosed place for which necessary proceedings for separating the samples, putting seals on the samples and gunny bags were conducted. The rough sketch of that place recovery Ex. PQ was also prepared. The case property was produced by him before the Area Magistrate vide request Ex. PR and then deposited the same with MHC of the police station.

15. The version of recovery dated 31.10.1998 is substantially corroborated by PW-7 SI Dalbir Singh who was then posted as ASI and member of the police party and the second recovery pursuant to the disclosure statement on 03.11.1998 is supported by PW-6 SI Gurcharan Singh. These witnesses were extensively cross-examined and they have withstood the test of scrutiny. Both PW-4 and PW-7 have consistently stated that DSP, came at the spot at about 3.00 p.m. in his official vehicle.

According to PW-7, the truck was seen by the police party from a distance of 100 yards from them which enabled the other accomplices to run away from there. The other important factor would be that the police party remained at the spot for about 8 hours after the arrest of accused. According to PW-7 SI Dalbir Singh, they returned to police station at about 10.00 p.m. The DSP had left the spot at about 5.30 p.m. The site plan according to him was prepared at about 6.00 p.m. Ruqa from the spot for registration of the case was sent at at about 5.15 p.m. as per endorsement made thereon. The DDR for recording the FIR Ex. PN/1 would show that it was concluded at about 7.40 p.m. and the FIR was delivered to the Magistrate on the same i.e. at about 8.50 p.m. So this FIR was delivered to the Area Magistrate, on the same day without loss of time which would bring authenticity to the whole story.

16. The defence has proved DDR Ex. D-2 of the relevant date which shows that SI Karan Sher Singh reached the police station at about 10.20 p.m. There is entry with regard to recording of present FIR so, there was no possibility of challenging the prosecution story especially when the documents of the vehicle would show the ownership in the name of Surinder Singh who is resident of village Katka Maja, Tehsil Behror, District Alwar (Rajasthan). The driver of the vehicle Ashok Kumar who has been acquitted was also the resident of Behror, District Alwar (Rajasthan).

17. There is nothing to suggest that any member of the police party had ulterior motive to falsely implicate the appellant. PW-4 SI Karansher Singh in cross-examination stated that the accused was not

known to him prior to this recovery. Despite so much extensive cross-examination of recovery witnesses, no material discrepancy has been brought on record to challenge their testimony except for minor discrepancies here and there which are bound to occur as the witnesses are not supposed to make parrot like statement nor they can narrate the incident with precision on small insignificant matters especially when they are examined in the Court after about 5 to 7 years of recovery.

18. In cross-examination, PW-4 stated that the culprits who were travelling in the truck on 31.10.1998 tried to run away from the driver's side. PW-7 SI Dalbir Singh stated that all the accused persons alighted from the rear side of the truck and the driver from the front door. The discrepancy of this kind as suggested above is quite immaterial and insignificant. Four police officials chased them for about 30-40 yards and ASI Dalbir Singh (PW-7) apprehended Dara Singh-appellant. Even PW-7 stated that after chase he apprehended Dara Singh-appellant. PW-4 did not fire upon the culprits as there was likelihood of someone being killed.

19. Similarly, with regard to second recovery pursuant to the disclosure statement suffered by the appellant that was also substantially supported by PW-6 SI Gurcharan Singh who was a member of the police party. The witnesses are quite consistent on various time factors relevant to interrogation of the appellant and recovery. The fact that Member Panchayat/Sarpanch of the area or locality were not associated would not bring any suspicion to the story in the absence of any material contradiction. This was not even essential in this case as there was

independent witness associated even at that time.

20. Learned counsel for the appellant also submitted that no special report from the second place of recovery was sent but I find it to be not required as the Investigating Officer interrogated the appellant in police station in the morning and after he made the disclosure statement they proceeded to the place of recovery. There was no suggestion to PW-4 or PW-6 that entry was not made in the DDR register for going from the police station to the spot of recovery. It has rather appeared that a message to DSP was also sent to join the police party. PW-4 in cross-examination stated that he recorded the presence of independent witness in the DDR register before returning to the police station at about 4.30 p.m.

21. PW-6 in the cross-examination stated that place of recovery is at a lower level from the road. So these are the factors which would bring exclusive knowledge of the contraband lying at the place disclosed by the appellant, otherwise, there was nothing in the cross-examination of PW-6 to suggest the witness to be unreliable.

22. The evidence of prosecution is so consistent and worth reliance that non-examination of independent witnesses would not bring any suspicion that the story, especially when the witnesses were given up as won over.

23. In **Ram Swaroop Vs. State (Govt. of NCT of Delhi), AIR 2013 SC 2068** and **Sumit Tomar Vs. State of Punjab, (2013) 1 SCC 395** it was held by Hon'ble Supreme Court that non-examination of independent witness cannot have affect on the prosecution case.

24. Hon'ble Supreme Court in Kashmiri Lal Vs. State of Haryana, 2013 (6) SCC 595 held that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. It was also held that if the testimony of the police officer is found to reliable and trustworthy, the court can definitely act upon the same. If in the course of scrutinizing the evidence the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence.

25. Apart from the evidence as discussed above which is seemingly natural and trustworthy, there is also the meticulous compliance of the requirements of Sections 50, 52, 55 and 57 of the Act. There is an endorsement on the FIR itself that copies of FIR being special reports were sent to senior police officers and the Area Magistrate through Constable Dhanpat Rai and as already observed that the FIR was delivered to the Area Magistrate at about 8.50 p.m. on the same day in evening.

26. There was absolutely no challenge to the link evidence in this case to connect the report of Chemical Examiner with the recovery made from the possession of appellant. Even otherwise, law is well settled that requirement of Sections 52, 55 and 57 of the Act is only

directory and not mandatory but this proposition has been referred for academic discussion.

27. From the above discussion, I am of the considered opinion that there is no scope of interference in the conviction recorded by learned trial Court on the charges framed against the appellant.

28. Now adverting to the main contention raised by the learned appellant's counsel it was submitted that conduct of the appellant while undergoing the jail term has been exemplary, therefore, discretion should be exercised for concurrent running of the sentence with the sentences already awarded to him in other cases. It was urged that in case, the aforesaid contention is not accepted, the appellant would have to undergo total imprisonment for 31 years and, therefore, he would end up his life without giving him the chance of reformation or improvement. It is further submitted that if given a chance, the appellant would definitely behave as a good human being.

29. For that purpose there is a specific prayer made in CRM-8514-2011 filed by the appellant. Another case against the appellant arose out of FIR No. 199 dated 26.09.1994 under Section 15 of the Act at Police Station Samana, District Patiala, with regard to recovery of 40 bags of poppy husk. That case resulted in conviction of the appellant in Sessions Case No. 155/T dated 09.02.1995 decided on 28.02.2001 and the appellant was awarded the sentence to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹ 1 lac and in default to further undergo rigorous imprisonment for a period of six months. Appeal against that judgment i.e. **CRA-S-418-SB-2001** was

preferred by the appellant and the same was dismissed by this Court on 08.04.2015.

30. The third case against the appellant is arising out of FIR No. 112 dated 22.07.1996 under Section 15 of the Act at Police Station Bhawanigarh, District Sangrur in respect of recovery of 25 bags of poppy husk from him. In that case he was sentenced to undergo rigorous imprisonment for 11 years and to pay a fine of ₹ 1 lac and in default of payment of fine to further undergo rigorous imprisonment for a period of 1 year. **CRA-D-448-DB-2004**, filed by the appellant against the judgment of conviction and sentence passed by the trial Court was dismissed by the Division Bench of this Court on 10.03.2010.

31. There is affidavit dated 14.03.2011 of Inspector General of Police (Prisons), Punjab, Chandigarh attached in the record of **CRA-S-418-SB-2001** that if the sentence awarded to the appellant in three cases is not made concurrent he is likely to be released from the jail on 19.10.2031 on completion of sentences. It was further stated that if the sentences in **CRA-S-418 -SB of 2001** and the instant appeal are made to run concurrently then the appellant would complete his sentence on 13.10.2021, if he deposits the fine. Further if the sentences in all the three cases are allowed to run concurrently then he would be released on 16.10.2011 on deposit of fine. Copy of this affidavit of IGP (Prisons), Punjab be also made part of the record of instant appeal.

32. It is thus, apparent that the appellant is undergoing imprisonment in three cases i.e. in (i) FIR No. 199 dated 26.09.1994; (ii) FIR No. 112 dated 22.07.1996 and (iii) FIR No. 109 dated

31.10.1998, all under Section 15 of the Act. It was canvassed by learned appellant's counsel that keeping in view the total period of incarceration that the appellant would have to undergo so long inasmuch as 31 years this would be an important and quite relevant circumstance for exercise of discretion in terms of sub-section (1) of Section 427 Cr.P.C. in favour of the appellant.

33. I have heard learned appellant's counsel and learned State counsel on this contention too and given my thoughtful consideration on the issue.

34. A Full Bench of this Court in Jang Singh Vs. State of Punjab, 2008 (1) RCR (Criminal) 323, observed as under:-

15. It may, thus, emerge that discretion to make the sentences to run consecutively or concurrently would be governed by different consideration, like facts of each case, nature and character of the offences, criminal history sheet and record of the offender, his age, sex. In our view, these considerations would appear relevant for the exercise of discretion by the courts under Section 427 (1) Cr.P.C. It is not possible to exhaustively lay down all the factors that may be relevant to be taken into consideration and basically it would depend upon facts of each case to be so noted by the Court while exercising its discretion in this regard. It may, however, need to be noted that normal rule under Section 427 Cr.P.C. appears to be

consecutive sentences. It is thereafter discretion is given to the sentencing Court to direct concurrency. It may also have to be kept in view that if principle of concurrency is applied in case where the offender is habitual, it may repel the very basic and the normal rules as laid down in Section 427 Cr.P.C. If such principles are universally applied unmindful to such consideration of the offender being habitual, then it may lead to hostile discrimination negatively because then it would amount to giving similar treatment to a normal as well as a habitual offender. Accordingly, segregation of the habitual offender by making them to undergo sentences consecutively can also be accepted as principle.”

It was further held as under:-

“18.What principle and consideration will govern the exercise of this discretion, as already noted above, can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character, his age and sex etc. ghastly nature of the crime. The offender being habitual

would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Cr.P.C., as observed by Hon'ble Supreme Court, is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.

19. There are, thus, no set guidelines, principles available which would govern the exercise of discretion under Section 427 (1) Cr.P.C. Section leaves a judicial discretion with the courts to exercise such discretion depending on the facts and circumstances of each case. Some indication of such consideration is available from judicial pronouncements as enumerated above, which we would approve to be relevant and valid for taking into account while exercising discretion.”

35. A Full Bench of Bomaby High Court in Satnam Singh

Puransing Gill Vs. State of Maharashtra, 2009 (1) RCR (Criminal)

703, held as under:-

“58. xxxx xxxx xxxx xxxx

(a) Neither the Court of competent jurisdiction is divested Of its power to pass appropriate order in terms of Section 427(1) of the Code of Criminal Procedure, 1973 nor does the accused lose this statutory benefit of right of consideration by the Court, only on the ground that the accused has been tried in two or more cases separately and they arise from distinct and separate offences arising out of different transactions/ incidents.

(b) It is neither permissible nor possible to spell out universal principle or formula which would be applicable to all cases for exercise of power vested in Court under Section 427(1) of the Code. Such power and judicial discretion has to be exercised in terms of the settled precepts of criminal jurisprudence, sentencing policy and with reference to the facts and circumstances of a given case, where the previous and subsequent sentences of imprisonment awarded to the accused are in two or more cases for distinct and separate offences arising out of

different transactions/incidents and even under different enactments.”

36. It would be quite important to refer to a judgment of Hon'ble Supreme Court in **V.K. Bansal Vs. State of Haryana and others, 2013 (7) SCC 211**. The appellant was a Director in a group of companies including Arawali Tubes Ltd., Arawali Alloys Ltd., Arawali Pipes Ltd. and Sabhyata Plastics Pvt. Ltd. The appellant's case before Hon'ble Supreme Court was in connection with his business conducted in the name of the above companies. He had approached the Respondent, Haryana Financial Corporation for financial assistance and facilities. The Corporation had accepted the requests made by the Companies and granted financial assistance to the first three of the four companies mentioned above. Several cheques towards repayment of the amount borrowed by the appellant in the name of the above companies were issued in favour of the Haryana Financial Corporation which on presentation were dishonoured by the banks concerned for insufficiency of funds. Consequently, the Corporation instituted complaints under Section 138 of the Negotiable Instruments Act against the appellant in his capacity as the Director of the borrowing companies. These complaints were tried by Judicial Magistrates at Hissar culminating in the conviction of the appellant and sentence of imprisonment which ranged between 6 months in some cases to one year in some others besides imposition of different amounts of fine levied in each complaint case and a default sentence in the event of non payment of amount awarded in each one of those cases. The general principle(s) applicable in the case to subsequent

sentences have been enumerated by the Hon'ble Supreme Court as under:-

10.It is manifest from Section 427 (1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any strait jacket approach in the matter of exercise of such discretion by the Courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427 (1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises.

11. High Courts in this country have, therefore, invoked and exercised their discretion to issue directions for concurrent running of sentence as much as they have declined such benefit to the prisoners. For instance a direction for concurrent running of the sentence has been declined by the Gujarat High Court in **Sumlo @ Sumla Himla Bhuriya and Ors. v. State of Gujarat and Ors., 2007 Cri. L.J. 612** that related

to commission of offences at three different places resulting in three different prosecutions before three different Courts. The High Court observed:

“The rule of 'single transaction' even if stretched to any extent will not bring the cases aforesaid under the umbrella of 'single transaction' rule and therefore, this application fails. The application is rejected.”

37. By applying the principle of single transaction, the Hon'ble Supreme Court further held as under:-

“18. Applying the principle of single transaction referred to above to the above fact situations we are of the view that each one of the loan transactions/financial arrangements was a separate and distinct transaction between the complainant on the one hand and the borrowing company/Appellant on the other. If different cheques which are subsequently dishonoured on presentation, are issued by the borrowing company acting through the Appellant, the same could be said to be arising out of a single loan transaction so as to justify a direction for concurrent running of the sentences awarded in relation to dishonour of cheques relevant to each such transaction. That being so, the substantive sentence awarded to the Appellant in each case relevant to the

transactions with each company referred to above ought to run concurrently. We, however, see no reason to extend that concession to transactions in which the borrowing company is different no matter the Appellant before us is the promoter/Director of the said other companies also. Similarly we see no reason to direct running of the sentence concurrently in the case filed by the State Bank of Patiala against M/s. Sabhyata Plastics and M/s. Rahul Plastics which transaction is also independent of any loan or financial assistance between the State Financial Corporation and the borrowing companies. We make it clear that the direction regarding concurrent running of sentence shall be limited to the substantive sentence only. The sentence which the Appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 of the Code of Criminal Procedure do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation.”

38. The present case involves a huge quantity of contraband and a stringent punishment for violation of the provisions of the Act is provided. The appellant had been consistently indulging in the same.

The instant FIR is of the year 1998 and other two FIRs, in which the appellant was convicted for the same offence are of the years 1994 and 1996 and convictions of the appellant in those cases were upheld by this Court. Despite the appellant facing trial in the above-stated FIRs of the years 1994 and 1996, he indulged in the same crime consistently and was apprehended each time within a gap of two years approximately. Some benevolence could be shown in his favour if recovery in the instant case was quite small or may be little above the commercial quantity but this again is a huge recovery and a distinct offence of carrying the contraband in a vehicle and further leading to recovery of many more bags in pursuance to the disclosure statement suffered by him. The persons like appellant are a menace to the society and deserve no discretion for concurrent running of the sentences.

39. However, keeping in the view the very long period of imprisonment which the appellant would have to undergo, the period of imprisonment in default of fine is reduced from two years to six months.

40. Before parting with the judgment, I would find that there is a serious lapse and rather dereliction of duty on the part of Investigating Agency for not proceeding against the owner of vehicle who is liable in terms of Section 25 of the Act. The name and particulars of the owner were clearly known from the documents recovered from the vehicle at the spot. Section 25 of the Act reads as under:-

“25. Punishment for allowing premises, etc., to be used for commission of an offence-Whoever, being the owner or occupier or having the control or use of

any house, room, enclosure, space, place, animal or conveyance knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.”

41. Further sub-section (1) of Section 35 of the Act says that 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. Explanation to this section says that "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

42. The Investigating Officer as PW-4 stated that he does not know if owner of the vehicle was proceeded against because the witness was transferred from the police station on 15.12.1998. The driver of the vehicle was from the same village to which the owner belongs. There is seemingly a motivated lapse for not proceeding against the owner under Section 25 of the Act when huge recovery of contraband was made from the vehicle. A copy of this judgment be sent to Principal Secretary (Home), Government of Punjab, for holding a departmental probe and if

required, to proceed against owner of the vehicle in terms of aforesaid provisions.

43. With the aforesaid directions and modification in the punishment in default of payment of fine, the instant appeal is dismissed.

May 20, 2015
rishu

(R.P. NAGRATH)
JUDGE