

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

CRA-S-648-SB of 2003
DATE OF DECISION : February 10, 2015

Hanso and another **...Appellant**

Versus

State of Punjab **...Respondent**

CRA-S-672-SB of 2003

Darshan Kaur **...Appellant**

Versus

State of Punjab **...Respondent**

CRA-S-1311-SB of 2003

Toshi **...Appellant**

Versus

State of Punjab **...Respondent**

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. B.S. Kathuria, Advocate
and Mr. Kunal Mulwani, Advocate (Amicus Curiae)
for the appellants in CRA-S-648-SB of 2003

Mr. B.S. Kathuria, Advocate for the appellant
in CRA-S-672-SB of 2003

Mr. Imran Farooqi, Advocate for Mr. D.S. Pheruman,
Advocate and Mr. Kunal Mulwani, Advocate (Amicus
Curiae)
for the appellant in CRA-S-1311-SB of 2003

Mr. PPS Thethi, Addl. Advocate General, Punjab.

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

M.JEYAPPAUL, J.

1. The accused-appellants have challenged the conviction and sentence passed by the trial Court under Section 15 of the NDPS Act.

2. It is the case of the prosecution that on 9.9.2000, PW1 S.I. Sucha Singh received a secret information about the involvement of accused Darshan Kaur @ Darsho, Toshi, Hanso and Banso in narcotic trade along with Rattan Kaur @ Ratto. Having associated PW3 ASI Pardeep Singh and other police officials he headed towards the house of Darshan Kaur and conducted raid. PW4 DSP Pushkar Sandal was informed of the search they

conducted and he came present. In his presence, 25 gunny bags containing 35 Kgs. of poppy husk in each of the bags were recovered. Accused Toshi, Hanso and Banso were arrested but accused Darshan Kaur and Rattan Kaur managed to give a slip to the police party. Darshan Kaur was arrested on 30.7.2001 and was brought to face the trial. Accused Rattan Kaur has been declared as a proclaimed offender.

3. Sample from the recovered contraband was drawn and sent for examination. FSL gave a finding that the sample sent for examination was nothing but poppy husk.

4. On the side of the prosecution six witnesses were examined. The accused set up a plea in their statements under Section 313 Cr.P.C. that they were innocent but a false case was foisted on them.

5. The trial Court having adverted to the evidence on record, came to the conclusion that accused committed the offence under Section 15 of the NDPS Act.

6. Mr. Kunal Mulwani, Advocate who was appointed by this Court from the panel of State Legal Services Authority, Punjab, was asked to assist the counsel who originally entered appearance for the appellants.

7. The learned counsel appearing for the appellants referring to the evidence of PW1 S.I. Sucha Singh, would submit that PW1 though received a secret information as regards the

contraband hidden in the house of accused Darshan Kaur, the said information was not reduced into writing as mandated under Section 42 of the Narcotic Durgs and Psychotropic Substances Act, 1985. He would also submit that the prosecution has come out with an unbelievable story that at about 6.00 P.M. when the raid was conducted by the police officials, two women-accused, namely, Darshan Kaur and Rattan Kaur gave a slip to the police party. Therefore, it is his submission that the accused are entitled to acquittal.

8. To the contrary, the learned State counsel would submit that necessary information was passed on to PW4 DSP Pushkar Sandal and the search was conducted only in his presence. Further, it is his submission that the witnesses examined on the side of the prosecution have categorically deposed that accused Darshan Kaur and Rattan Kaur in fact escaped from the house of Darshan Kaur, the moment the police party descended on the house of Darshan Kaur. PW1 received the secret information when he was on patrol duty and, therefore, the question of complying with the mandatory provisions of Section 42 of the NDPS Act does not arise. It is his submission that the trial Court has rightly recorded the verdict of conviction, finding that the accused were in conscious possession of huge quantity of poppy husk.

9. As rightly pointed out by the learned counsel appearing for the appellants, Section 42 of the NDPS Act categorically

mandates that any secret information received from any person as regards the concealment of contraband in an enclosed place shall be reduced into writing and a copy thereof shall be sent to the immediate superior.

10. The Constitution Bench of the Hon'ble Supreme Court in ***Karnail Singh versus State of Haryana 2009(5) RCR (Criminal) 515*** was pleased to answer the issue, as to whether compliance of Section 42 of the NDPS Act is mandatory, as follows :-

“In conclusion, what is to be noticed is Abdul Rahsid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham 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 concerned Register 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 of requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of 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 a copy of such information to the official superior forthwith, may not be treated a 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. The Hon'ble Supreme Court in the above decision has held that the total non compliance of the requirements of Section 42 (1) and (2) of the NDPS Act is impermissible but in case the police officer was on patrol duty and he happened to receive the secret information during the course of such duty, he may conduct the raid based on the secret information he received, in order to avoid the depletion of the contraband by the accused concerned but it shall be

reduced into writing after the raid was conducted and a copy of the same be dispatched to the official superior. In other words, the Hon'ble Supreme Court has observed that the delayed compliance of the mandates of Section 42 of the NDPS Act is condonable.

12. Of course, the learned Additional Advocate General appearing for the State of Punjab would submit that PW1 after conducting the raid, reduced the secret information further into writing in the form of First Information Report which culminated in registration of the case and a copy thereof was sent to the official superior.

13. In my considered view, lodging of First Information Report by PW1 after the raid was conducted, contraband was recovered and the accused was arrested cannot be equated with the recording of the secret information mandatorily under Section 42 (1) of the Act. Such a mandate under Section 42 has been contemplated only to put a check on the official who proceeds to conduct a raid based on some secret information he received. If PW1 had sent the substance of the secret information at least immediately after the raid was conducted, the superior official may instruct based on the materials available to him that no further proceedings were warranted the case. Therefore, the police official who conducts the raids based on the secret information shall independently reduce into writing the substance of the secret information he received and dispatch the same to the superior officer to subject himself for a check by the

superior officer. Lodging of an F.I.R after the entire ceremony was over, cannot at all be equated with dispatching the summary of the secret information he received to official superior.

14. The evidence of PW1 would disclose that he had not recorded the substance of the secret information he received and dispatched to the higher officials, even belatedly. Therefore, it is concluded that there is a total non compliance of Section 42 of the NDPS Act, which is not at all permissible in light of the decision referred to above. Consequently, prejudice has been caused to the accused. Therefore, the accused-appellants are entitled to acquittal.

15. In view of the above facts and circumstances, the judgment of conviction and sentence passed by the trial Court under Section 15 of the NDPS Act stands set aside and the accused-appellants are acquitted of the charge. The accused-appellants in all the three appeals are on bail. Therefore, the bail and surety bonds executed by them shall stand discharged. Consequently, the Criminal Appeals, namely, CRA-S-648-SB of 2003, CRA-S-672-SB of 2003 and CRA-S-1311-SB of 2003 are allowed.

(M. JEYAPPAUL)
JUDGE

February 10, 2015

p.singh