IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **Crl. Appeal S-1999-SB of 2003**
Date of Decision : April 21, 2015

Ravinder Singh

.....Appellant

VERSUS

State of Punjab

.....Respondent

2. **Crl. Appeal S-2034-SB of 2003**

Mohinder Pal

.....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Narinder Singh, Advocate
for appellant-Ravinder Singh.

Mr. P.C.Chaudhary, Advocate
for appellant-Mohinder Pal.

Mr. R.S.Randhawa, Addl. A.G., Punjab.

T.P.S. MANN, J.

Appellants-Ravinder Singh and Mohinder Pal were tried for committing offence punishable under Section 20 of the

Narcotic Drugs & Psychotropic Substances Act, 1985, (hereinafter referred to as '**the Act**') on the allegations that on 17.9.2000 at 5.10 p.m. in the area of village Malakpur, they were found in possession of 3 kgs and 20 grams of charas without any valid permit or licence. Vide judgment and order dated 17/18.9.2003, the Special Judge, Gurdaspur convicted them for the aforementioned offence and sentenced them to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1,00,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year.

The facts leading to the filing of the appeals by the appellants are that on 17.9.2000, Inspector Kuljit Singh, Incharge, CIA Staff, Pathankot alongwith fellow police officials was present at the small canal in village Malakpur, falling within the jurisdiction of Police Station Sadar, Pathankot, in connection with patrolling and checking of bad elements. He received secret information that one bus No. DL-IP-5848 being driven by one person having Mula cut fashion and one Sikh gentleman sitting in the bus were carrying a bag containing charas and coming from the side of Madhopur. In case, a raid was conducted or naka set up, the contraband could be recovered. The information was found to be reliable. Accordingly, Inspector Kuljit Singh, sent a ruqa to Police Station Sadar, Pathankot for registration of the case. On the basis of which FIR No. 221 dated 17.9.2000 under Section 20 of the Act was registered by ASI Jassa Singh.

Inspector Kuljit Singh alongwith fellow officials set up a naka on the canal. After 4/5 minutes, one bus was seen coming from the side of Madhopur which was signalled to stop. The bus was being driven by Mohinder Pal whereas Ravinder Singh was sitting by his side. The accused stopped the bus. Accused Ravinder Singh was having a gunny bag in his lap. Both the accused were apprehended. The Inspector suspected that the accused were in possession of the contraband. Accordingly, he asked both of them that their search was to be conducted and whether they wanted their search to be conducted in the presence of some Gazetted Officer or Magistrate. Both the accused opted to have the search conducted in the presence of some Gazetted Officer. Their separate consent memos were prepared which were duly signed by them. The Inspector then sent a wireless message to Sh. Gurdev Singh, S.P.(Operation), who reached the spot and disclosed his identity of being a Gazetted Officer to the accused. He enquired from them as to whether their search be conducted in his presence or in the presence of some Magistrate. The accused reposed faith in the S.P. The Inspector then conducted the search of the accused which led to recovery of charas wrapped in a glazed paper and kept in the bag which Ravinder Singh-accused was carrying in his lap. 20 grams of charas was separated as sample and the remaining charas when weighed came to be 3 kgs. The sample and the bag containing charas were converted into separate parcels and sealed with the seal bearing inscription 'KS' of the Inspector and also with seal bearing inscription 'GS' of Sh.Gurdev Singh, S.P. Separate specimen seal impressions were prepared. The seals after use were handed over to ASI Tarsem Lal. The entire case property was taken into possession by preparing recovery memo. which was attested by the S.P. and other police officials. One driving licence in the name of Ravinder Singh was recovered from the bag which he was carrying and taken into possession. The bus alongwith its registration certificate was also taken into possession. Personal search of both the accused was conducted. Rough site-plan of the place of recovery was prepared. On return to CIA Staff, Pathankot, the Inspector put the accused in the lock-up whereas the case property was retained by the Inspector in safe custody. On the next day, he produced the case property and the accused before the Illaqa Magistrate. On return to the Police Station, the Inspector deposited the case property with MHC Subash Chander. Sample parcel and the specimen impression of seal were sent to the office of Chemical Examiner. On receipt of report of the Chemical Examiner and after completion of investigation, final report under Section 173 Cr.P.C. was prepared against the accused and presented in the Court. The accused were charged for the aforementioned offence to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 MHC Subash Chander, who had kept the case property in the Malkhana, PW2 Constable Kewal Krishan, who deposed about taking the sample parcel to the office of the Chemical Examiner, PW3 Prem Pal, Senior Assistant, District Treasury Officer, Gurdaspur, who testified that the case property was deposited in the Treasury in double lock-up, PW4 Constable Sohan Singh, who delivered the special report, PW5 ASI Tarsem Lal, recovery witness, PW6 Shri Gurdev Singh, S.P. and PW7 Inspector Kuljit Singh, who by then stood promoted as DSP. Report Ex.PX of the Chemical Examiner was tendered in evidence.

When examined under Section 313 Cr.P.C., both the accused denied the prosecution evidence and pleaded false implication. In defence, they examined DW1 Surinder Kumar Pachnanda, owner of the bus, DW2 Inspector Kashmir Singh, DW3 Mohan Khajuria, Senior Assistant, Sales Tax Check Post, Lakhanpur and DW4 Manmohan Singh, Excise and Taxation Officer, Toll Post, Lakhanpur.

After hearing Additional Public Prosecutor for the State and the counsel for the accused besides going through the evidence brought on record by the prosecution and the accused, the trial Court came to the conclusion that the prosecution had fully proved its case against both the accused for keeping in their possession 3 kgs and 20 grams of charas when they were travelling in the bus on 17.9.2000 in the area of Malakpur and no other passenger was in the bus. Accordingly, they were convicted and sentenced, as mentioned above.

This Court had heard Mr. Narinder Singh, Advocate for Ravinder Singh-appellant, Mr. P.C.Chaudhary, Advocate for Mohinder Pal-appellant and Mr.R.S.Randhawa, Additional Advocate General, Punjab and with their able assistance, minutely scanned the evidence available on the record.

The main plea of the appellants was that the offer of search as contemplated under Section 50 of the Act was not in accordance with law as it was partial in the sense that the Gazetted Officer, who could be summoned for effecting the search, was limited to the police department only whereas the prosecution was required to give a clear offer to the accused of being searched in the presence of a Magistrate or a Gazetted Officer of any of the departments as mentioned in Section 42 of the Act. No fault can be found with the plea of the appellants but the question to be seen is as to whether the provisions of Section 50 of the Act were attracted to the facts and circumstances of the case or not. In the present case, the recovery was effected from the bag which appellant-Ravinder Singh was carrying in his lap at the time of apprehension. On the other hand, the provisions of Section 50 of the Act would have been attracted if the case related to search of the person of the accused and not of any bag or container held by him. Keeping in view the settled law that the provisions of Section 50 of the Act are not attracted when the recovery of the contraband is made from the bag and not from the person of the accused, the prosecution case cannot be rejected on account of strict non-compliance of the provisions of Section 50 of the Act.

A half hearted attempt was made by the appellants to challenge the credibility of the prosecution case on account of non-joining of independent witness by Inspector Kuljit Singh at the time of apprehension of the appellants and recovery of the contraband. However, from the statements of PW7 Inspector Kuljit Singh, PW5 ASI Tarsem Lal and PW6 Shri Gurdev Singh, S.P., it is made out that at the relevant time of apprehension of the appellants and recovery of the contraband from their possession, no independent witness was available. PW7 Inspector Kuljit Singh also testified that he had made an attempt to join some independent witnesses but none agreed to do so. He denied the suggestion that no effort was made by him to join the independent witness. In such a situation, when no independent witness was available or forthcoming to witness the recovery, the prosecution case cannot be rejected outrightly. Even otherwise the police officials are as good witnesses as independent witnesses. There is no rule of law which requires association of independent witnesses. It is only a rule of prudence. Further, none of the aforementioned three witnesses, who testified regarding recovery of the contraband was shown to be inimically disposed towards the appellants. Needless to say that non-joining of independent witness does not render the prosecution case improbable.

The defence had made an attempt to doubt the presence of Shri Gurdev Singh, S.P. at the spot. In this regard, attention of the Court was drawn towards memos Exs. DA and DB regarding grounds of arrest which did not bear the signatures of the said S.P. However, on perusal of the records, it is made out that after taking out sample, the case property as well as the sample were taken into possession vide recovery memo. Ex. PD prepared by Inspector Kuljit Singh. The same was duly witnessed by the S.P. PW6 Shri Gurdev Singh, S.P. testified in his examination-in-chief that after the case property was taken into possession and the appellants arrested by Inspector Kuljit Singh, he had left the place of occurrence. In such a situation, he would not have witnessed memos Exs. DA and DB which were prepared in regard to the arrest of the appellants and conveying of information in that regard to their respective families.

The defence also made an attempt to doubt the link evidence by pointing out that PW1 MHC Subash Chander deposed that on 18.9.2000 he had handed over the sample parcel to Constable Kewal Krishan and directed him to obtain the necessary docket from the office of Senior Superintendent of Police, Gurdaspur and then to deposit the parcel in the office of the Chemical Examination and PW2 Constable Kewal Krishan also testified that it was MHC Subash Chander, who had handed over the sample parcel to him on 18.9.2000 for depositing the same in the office of the Chemical Examiner after obtaining the docket from the Senior Superintendent of Police's office. On the other hand, PW7 Inspector Kuljit Singh deposed that he had retained the case property and the sample parcel in his safe custody and on the next day he himself had sent the sample to the office of the Chemical Examiner. However, on close scrutiny of the statement of PW7 Inspector Kuljit Singh, it is decipherable that the sample parcels were sent through Constable Kewal Krishan. To the same effect was the statement of PW1 MHC

Subash Chander when he mentioned that Inspector Kuljit Singh had deposited the sample parcels with him on 18.9.2000 and on the same day, he had handed over the parcel to Constable Kewal Krishan for being deposited in the office of the Chemical Examiner, meaning thereby that the sample was virtually in the hands of Constable Kewal Krishan once Inspector Kuljit Singh had handed it over to MHC Subash Chander.

The plea of the appellants was that they were conductor and driver, respectively of the bus in question and no recovery was effected from them. Further, 42 passengers were travelling in the said bus, who were issued tickets in this regard. In support of their pleas, they examined DW1 Surinder Kumar Pachnanda, owner of the bus, DW2 Inspector Kashmir Singh, who was posted at Madhopur barrier, DW3 Mohan Khajuria, Senior Assistant, Sales Tax Check Post, Lakhanpur and DW4 Manmohan Singh, Excise and Taxation Officer, Toll Post. DW1 Surinder Kumar Pachnanda testified that the bus in question left Jammu Bus Stand for Delhi on 12.9.2000 at about 10.00 p.m. but did not reach Delhi till 15.9.2000. The bus could not be traced. Ultimately, it was learnt that the bus had crossed the police naka at Madhopur on the intervening night 12/13.9.2000. DW2 Inspector Kashmir Singh testified that the vehicles passing through the barrier used to be checked and entries made to that effect. However, he was not posted at the said Naka on 13.9.2000. DW3 Mohan Khajuria proved entry Ex. DB made in the register of passenger tax on 12.9.2000 existing at serial No.130 in regard to bus No. DL-IP-5848. He further stated that there was no entry in the register, thereafter, i.e. upto 20.9.2000. All the vehicles passed through Lakhanpur Check Post pay the passenger tax. DW4 Manmohan Singh, Excise and Taxation Officer, Toll Post, Lakhanpur proved photocopy Ex. DC of Remittance register made on 12.9.2000 as per which Rs.100/- was charged as basic toll tax on 12.9.2000 from bus No. DLIP-5848 as it was carrying passengers numbering 35 from Jammu to Delhi onwards. He also proved photocopy Ex. DD of receipt regarding collection of Rs.100/- as basic toll tax. From the defence evidence, it is made out that the bus which was admittedly driven by Mohinder Pal with Ravinder Singh as its conductor had entered the Punjab territory on 12/13.9.2000. The bus was to reach Delhi on 13.9.2000 at about 9.00 a.m. Despite the bus not reaching Delhi on time, its owner Surinder Kumar Pachnanda made no attempt to find out as to what had happened with the bus as well as its driver and the conductor. According to him, he was able to trace the bus on 15.9.2000 when it was found parked in CIA Staff, Pathankot and its driver and the conductor detained by the police. No steps were taken by him, thereafter, to get his bus and his employees released. Moreover, no such version had come on record when the statements of the appellants were recorded under Section 313 Cr.P.C. They only stated that no recovery was effected from them and a false case was planted by the police. Under these circumstances, the plea taken by the appellants does not carry any weight.

In view of the above, no fault can be found with the impugned judgment passed by the trial Court whereby the appellants were convicted under Section 20 of the Act and sentenced to undergo imprisonment for 10 years besides paying a fine of Rs. 1,00,000/- each.

The appeals are without any merit and, accordingly, dismissed.

(T.P.S. MANN)
JUDGE

April 21, 2015
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