

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRA-S No.2069-SB of 2008
Date of Decision: 20.05.2016

Satnam Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM:HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.K.P.S.Virk, Advocate, for
Mr. K.S.Dhaliwal, Advocate,
for the appellant.

Dr.Deepa Singh, Addl. AG, Punjab

Amol Rattan Singh, J.

The appellant in this appeal was charged with an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as the Act), for the alleged possession of 300 kgs of poppy husk, contained in 10 bags of 30 kgs each. He was convicted of the said offence by the learned Special Court, Patiala, vide its judgment dated 26.08.2008 and was sentenced to 10 years rigorous imprisonment and was also fined Rs.1,00,000/-, in default of which he was ordered to undergo further rigorous imprisonment for two years.

Thus, he is in appeal against his conviction and sentence.

2. The proceedings against the appellant are stated to be based on

secret information received by ASI Ranbir Singh of the CIA Staff, Samana, when he, alongwith Head Constable Ajaib Singh and Constables Jhirmil Singh, Karnail Singh and Nirmal Singh, were patrolling the area within the revenue limits of village Dhanetha, near a bridge over a canal minor, on 02.05.2004, on a Government vehicle bearing registration No.PB-11E-9738.

An informer is stated to have given information to ASI Ranbir Singh that Satnam @ Satta (the appellant), son of Sardul Singh, caste Jat, resident of village Haraiu Khurd, falling under Police Station Patran, alongwith another companion, had loaded “chura poppy husk” in a vehicle, “Canter Swaraj Mazda”, bearing registration No.HR-07-7775, and that they were to supply poppy husk in a village in the Samana area and that they would be coming from Haryana, from the side of Guhla, through villages, and that the aforesaid Satnam Singh was a “habitual” dealer in poppy husk.

3. The aforesaid information, as also action taken thereupon, was recorded by ASI Ranbir Singh in the form of a 'ruqa' (written note/message).

The 'ruqa' (Ex.PG), further reads to say that the secret informer had told the ASI that if a 'Naka Bandi' (check-post) is set up near village Rattan Heri, near the bridge of Ghaggar River, then 'chura' poppy husk, alongwith the Canter vehicle, can be recovered from the aforesaid two persons.

The 'ruqa' further reads to say that on the information having been received, the ASI alongwith his police force held a 'Naka Bandi' after crossing village Rattan Heri, just behind the Ghaggar River, near the “Smadh” of a Peer Baba. One Ram Singh son of Harbans Singh, caste Rai Sikh, resident of village Marori, Police Station Samana, came there and was talking to the ASI, when at about 6:00 AM, a 'Canter' vehicle was seen

coming from the side of Haryana, which then stopped about 100 yards from the police 'Naka', near the bridge of the Ghaggar, and two persons alighted from either door of the vehicle and ran away through the fields. They were chased by the police party but the distance being too much, both of them, who were wearing "parnas" (small turbans/head cloths) on their heads, succeeded in running away.

The height of the driver of the vehicle was given to be 5'7" with a slim and active body. The height of the other person was stated to be 5'6", with a healthy body and a fair coloured skin.

4. The writing further goes on to read that thereafter ASI Ranbir Singh alongwith his other associates and the aforesaid Ram Singh, reached the Canter Swaraj Mazda vehicle, bearing registration No.HR-07-7775, which was checked. Upon opening the "Dalla" (rear side door), some 'chura' poppy husk was stated to be lying spread out on the vehicle, which was checked thoroughly, and a "secret box" was found built under the floor of the vehicle, the iron sheet of which was removed. 10 jute bags were stated to have been found in the box, which were unloaded from the vehicle and upon checking the bags, 'chura' poppy husk was recovered. 100 gms of the poppy husk was taken as a sample from each jute bag by the ASI and two parcels were prepared, with the remaining jute bags containing the poppy husk weighed with spring weighing scales.

The 'ruqa' further goes on to read that the weight of each bag came to be 29.800 kgs. The mouth of each bag was tied up and all converted into "parcels" which the ASI sealed with his own seal, bearing the impression 'RS', "at about 20 sample parcels and 10 parcels jute bag containing chura poppy husk". The sample seals were prepared separately

and the seal, after use, is stated to have been handed over to the “private witness”, Ram Singh.

A memo of recovery is stated to have been prepared with regard to the recovery of the poppy husk, the vehicle, one polythene tarpaulin, one “Jack”, one iron rod and stepney. The memo is stated to have been got signed from the witnesses. The Punjabi version of the recovery memo (Ex.PB), also goes on to read that the bags were numbered 1 to 10 in serial order and the parcels containing the samples were also numbered separately.

5. The 'ruqa'/message, Ex.PG, is shown to be prepared at 12:05 PM on 02.05.2004 by ASI Ranbir Singh and thereafter sent to the SHO/Chief Officer, Police Station Samana, for registration of an FIR in respect of the commission of an offence punishable under Section 15 of the Act. Constable Nirmal Singh is stated to have been sent alongwith the aforesaid 'ruqa', upon which FIR No.138 dated 02.05.2004 is shown to have been registered at Police Station Samana at 1:00 PM (Ex.PG/1). The Special Report in that regard was received by the Sub Divisional Judicial Magistrate at 3:00 PM on the same date, as per the signatures and time entered by that learned judicial officer on the FIR.

6. The appellant is stated to have been arrested on 28.07.2004 and presented before the Court, which remanded him to judicial custody. The other person shown to be unidentified at the time of recovery of the contraband, was subsequently investigated and found to be one Chattar Singh son of Sadha Singh, resident of village Ammu Pur, Police Station Nissing, District Karnal, Haryana, but was never apprehended.

Consequently, a report under Section 173 Cr.P.C. was

submitted to the competent Court arraigning the appellant as an accused, upon which he was charged as aforesaid by the Judge, Special Court, Patiala, vide his order dated 21.01.2005.

Pleading not guilty, the appellant claimed trial and consequently was tried by the said Court.

7. The first witness for the prosecution was Moharrar Head Constable Harjit Singh, who tendered his affidavit, Ex.PA, with regard to the depositing of 10 bags of poppy husk weighing 29.800 grams, each sealed with the seal 'RS'/'BS' and 20 parcels of samples of poppy husk each weighing 100 grams, again sealed with the aforesaid seals. The affidavit also reads to say that a “Canter Swaraj Mazda”, containing a polythene tarpaulin, a “jack”, an iron rod and a stepney (tyre) was deposited with him, for which he made an entry in his register. The aforesaid contraband and vehicle alongwith the items in it, are stated to have been deposited with this witness on 02.05.2004.

The affidavit further reads to say that on 03.05.2004 he had taken all the items out of the police “malkhana” and handed them over to ASI Ranbir Singh who, after having presented the aforesaid contraband and items before the Court, had again deposited all the aforesaid items, this time with the contraband and sample carrying the additional seal 'VK' (of the Judicial Magistrate), with this witness again, alongwith sample seals, which this witness again kept in the “malkhana”.

As per the affidavit, on 04.05.2004, PW1 handed over 10 parcels of the sample of poppy husk, duly sealed with the seal 'RS'/'BS', alongwith sample seals, to Constable Amritpal Singh, for depositing the same with the Chemical Examiner, Patiala, in respect of which he also

prepared a docket and road receipt bearing No.97/04.05.2004.

The aforesaid Constable Amritpal Singh, after that, is stated to have deposited the sample contraband with the Chemical Examiner, in respect of which he deposited a road receipt with PW1 on the same day, 04.05.2004.

The last part of the affidavit is to the effect that this witness did not allow the contraband to be tampered with in any manner, as long as it remained in his custody.

8. On cross-examination by the defence counsel, this witness stated that he did not remember the date on which his statement under Section 161 Cr.P.C. was recorded or by whom it was recorded, though it was recorded in the “5th month of 2004”.

He further stated that he remained posted as MHC in Police Station Samana upto 31.01.2005.

He next stated that the Investigating Officer returned to the police station at about 5:00 PM alongwith 4/5 police officials and that no “private person” was produced before him, nor had he recorded the name of any such private person in the DDR. He further stated that the Investigating Officer came to the police station on a Government vehicle and that he (PW1) had not sent any special report to higher police officials.

He next stated that the case property was taken out by him twice and deposited thrice.

He further stated that ASI Ranbir Singh remained at the police station for about 15/20 minutes.

9. The next witness was Head Constable Ajaib Singh, who testified that on 02.05.2004 he was posted at CIA Staff, Samana, and that on

that day, he alongwith ASI Ranbir Singh and other police officials were going on a Government vehicle bearing registration No.PB-11E-9738, driven by Constable Pargat Singh, on patrolling duty, in search of bad elements and had reached the canal minor of village Dhanetha, where ASI Ranbir Singh received secret information with regard to the accused coming in a Swaraj Mazda vehicle bearing registration No.7775 from Haryana, alongwith his companions, with poppy husk, to supply the same in villages of Punjab and that the accused was also in the “habit of selling poppy husk previously”. The rest of the testimony is also in terms of the 'ruqa'/message (Ex.PG), sent by ASI Ranbir Singh. While describing the respective heights of the two occupants of the vehicle who had run away, this witness also stated that they had been “seen by us”, even though in the same sentence he also stated that they had muffled their faces.

He also testified with regard to the contraband and its samples, the Canter vehicle and remaining articles being taken into possession vide the recovery memo, Ex.PB, which this witness stated was signed by himself and Ram Singh. He also testified with regard to serial numbers given on the bags.

10. On cross-examination, PW2 stated that his statement under Section 161 Cr.P.C. was recorded on the same date, i.e. 02.05.2004, after which no statement of his was recorded. He further stated that Harvevinder Singh was the SHO at Police Station Samana, at that time. He next stated that they (police party) had started from the CIA office at about 5:00 AM on 02.05.2004 and that they were six officials in all, going in the Government vehicle driven by Constable Pargat Singh. The witness further stated in cross-examination that they had no special information with regard to any

crime nor had they sent any information to any higher officials about their working in the Samana area.

He next stated that “the revenue limit of Haryana Border” started after 50 yards from the bridge on the River Ghaggar and that they had received the secret information at about 5:30 AM, with the informer coming to them from the Haryana side. He did not remember the vehicle used by the informer but stated that he remained with the Investigating Officer for about 5/4 minutes and that the Investigating Officer was standing about 5/7 “karams” (about 30 to 40 ft.) from the rest of the police party. PW2 next stated in his cross-examination that he had not heard the information given by the informer to the Investigating Officer but that the Investigating Officer had told the police party about it.

As per PW2, they reached the place of recovery at about 5:45 AM but had not sent any message about having received the secret information, to anyone at Police Station Samana.

He also stated that the Investigating Officer could tell if any special report was sent to higher officials or not. He next stated that he could not tell whether any information about the informer, or the recovery, was written down by the Investigating Officer or not.

As per PW2, he did not know the “private witness” to the recovery, Ram Singh, and he did not know whether the said Ram Singh was known to the Investigating Officer or not. However, he stated that Ram Singh belonged to village Marori, which was at a distance of 3/4 km from the “place of occurrence” and that the bridge on the Ghaggar River was at a distance of 50 yards from the place of occurrence.

The witness next described village Marori to be towards the

Southern side of the place of occurrence and Western side of the bridge on the river. He further stated that the check-post (Naka) was also set-up on the Western side of the bridge.

PW2 further stated that village Rattan Heri and village Dhanetha were linked with the place of occurrence and that village Bhatian falls in Haryana, after crossing the bridge.

In the next part of the cross-examination, PW2 stated that ASI Ranbir Singh had done the writing work, had also prepared the site plan and had also recorded the statement of this witness. However, he did not remember whether he had recorded in his statement that the bags were marked with numbers 1 to 10 or not. On this point, his statement under Section 161 Cr.P.C. is recorded to have been shown to him, where the bag numbers are not given.

Thereafter, PW2 stated that the entire police party had chased the accused, with him running behind the accused Satnam Singh towards the Northern side. He also stated that the fields were adjoining the main road but there was no crop sown in the fields. He also did not remember as to how many police officials chased the accused alongwith him and also could not state as to who they were, or what their names were.

This witness next stated that he had seen the accused for the first time in the Court.

He further stated that the 'ruqa' was sent at 12:03 PM through Constable Nirmal Singh and that the accused was not arrested by any police official at the spot.

As per this witness, they returned to the police station at about 4:00/4:15 PM.

He, lastly, stated that thereafter, he was transferred to the Police Lines, Patiala, and that nobody had got the accused identified from him.

He also denied that the occurrence had not actually occurred and that he was actually a “false witness”.

11. The next witness, PW3, was SI Kuldeep Singh who stated that on 28.07.2004 he was posted as SHO, Police Station Patran and that the investigation of the case was with him.

He further stated that on that day, he alongwith HC Gulzar Singh and Head Constable Lakhwinder Singh, had raided the house of the appellant, Satnam Singh, to arrest him in the present case as he was absconding and was wanted not just in this case but also in 4/5 other cases.

This witness testified that when the police party raided the house of the accused he ran away to 'Chehri' (fodder) crop fields from where he was arrested. The witness identified the accused in Court and further stated that nothing was recovered from him at the time of his arrest. A search memo, Ex.PC, was also prepared, which was thumb marked by the accused and attested by witnesses.

PW3 next testified with regard to the arrest memo, Ex.PD, giving the grounds of arrest, which he stated was also thumb marked by the accused and attested by the witnesses.

The last part of the examination-in-chief states that the accused was arrested after interrogation and that the statement of HC Gulzar Singh had also been recorded under Section 161 Cr.P.C.

12. On cross-examination, PW3 stated that he was not the Investigating Officer in any other cases registered against the appellant,

though there was a photo of the appellant at the police station.

In the next part of the cross-examination, this witness stated that he had made his report “regarding checking” in the file, though that file “cannot be attached with this file”.

He further stated that the FIRs of the other cases were also not attached with the file and volunteered that the report of the MHC was attached therein.

As per PW3, he did not join any official of the investigation team of ASI Ranbir Singh, in his own investigation and he also did not get any identification conducted from the officials who were present with ASI Ranbir Singh on 02.05.2004. He further volunteered that the appellant was named in the FIR and that he (PW3) had knowledge of the contents of the FIR.

PW3 next admitted to be correct that only the appellant, Satnam Singh, was named in the secret information received by the Investigating Officer and that it was not stated in the FIR as to who the other person was, who had fled away from the spot.

He next stated that he himself had received the secret information about the presence of the accused in his house, though he did not know whether he had recorded that in the DDR or not and could say so only after checking the DDR.

PW3 however, again volunteered that a note regarding the information had been mentioned in the case diary and that the case diary was dictated by him, written by HC Lakhwinder Singh.

He next stated that he had not seen the DDR register in the Court and that the statement of (HC) Gulzar Singh was written by HC

Harmail Singh.

The SI further stated in his cross-examination that before the arrest of the appellant, he had only seen his photograph and that it was recorded in the statement of HC Gulzar Singh, Mark-DA, that the name of the person who fled away from the fields was Satnam Singh.

Lastly, this witness stated in his cross-examination that he had not recorded the statement of HC Hamail Singh and had given a note to that effect in the case diary.

13. One Inspector Chhubeg Singh, is seen to have been given up by the Additional Public Prosecutor, being an unnecessary witness, though he was present in Court.

PW4 was Constable Amritpal Singh who tendered his affidavit, Ex.PE, in evidence, a perusal of which reveals that it is with regard to depositing the case property, i.e. 10 parcels of sample of poppy husk, sealed with the seal 'RS'/'BS', as also the sample seals, with the Chemical Examiner, Patiala and depositing of the receipt in respect thereof, with MHC Harjit Singh at Police Station Samana, on 04.05.2004.

13. PW5 was ASI Ranbir Singh, the first Investigating Officer of the case, who was incharge of the police party on the date that the contraband is stated to have been recovered, i.e. on 02.05.2004.

He deposed in terms of his 'ruqa' with regard to the secret information received by him while he was on patrolling duty, in search of suspected persons, on the morning of 02.05.2004, and with regard to the vehicle having come to the spot, the presence of Ram Singh, and the fleeing away of the appellant and his unnamed co-accused.

He also stated that the accused persons were wearing “parnas”

on their heads and succeeded in fleeing. This witness also identified the appellant in Court and stated that he was the same person as had fled away from the spot and that he recognized him, as it was broad day light at that time.

The next part of the examination-in-chief is also in tune with 'ruqa', leading to the registration of the FIR.

PW5 further testified with regard to ASI Balbir Singh (PW6) being on duty as SHO on that day and with regard to the said ASI having verified the factum of recovery and having sealed the case property with his own seal, bearing the impression 'BS', as also having attested the sample seals, Ex.P1 and having imposed his own seal impression on it.

This witness further testified that on the next day he had taken the case property from the MHC with whom he had deposited it on the previous day, and thereafter, had produced it before the Sub Divisional Judicial Magistrate, whose signatures he also identified. He further identified the inventory memo as Ex.PH, with his signatures on it, as also the application for disposing off the case property, Ex.PJ, again signed by him.

He further testified that the seals of the bulk bags were broken upon the order of the Court and from each bag, samples weighing 100 grams each were separated and the photographer called. The samples and the bulk poppy husk were then converted into parcels, sealed with the seal of Court, bearing the impression 'VK'. Thereafter, PW5 testified to having deposited the case property again with the MHC at the police station. He identified the samples as Exs.P2 to P21. This witness also testified with regard to SI Kuldeep Singh (PW3) having arrested the appellant.

(It is recorded during the course of the testimony of this witness, by the learned Special Court, that the request of the Additional Public Prosecutor for an adjournment to produce the Canter vehicle was declined, as the last opportunity to do so had already gone by).

Thereafter, PW5 stated that he had enquired about the ownership of the recovered vehicle, which was registered at Kurukshetra and a no objection certificate was also issued by the Transport Authority, Kurukshetra, in the name of Balwan Singh son of Giani Ram, resident of village Gharaunda, but due to non-availability of the correct address of Balwan Singh, this person could not be traced.

15. In cross-examination, this witness stated that the records of the Registration Authorities, Karnal and Kurukshetra, were obtained but he admitted that the reports of the said authorities were not attached to the judicial file, though he volunteered to say that they were with the police files as photocopies.

He further stated in his cross-examination that once Constable Gurnam Singh was sent and the next time Constable Karnail Singh was sent, for verification regarding the ownership of the Canter vehicle. He further stated that a note in this regard was given in the police diary, though no registration certificate was recovered at the time when the vehicle had been recovered and no other document regarding the sale and purchase of the vehicle, or its ownership, was recovered.

He further stated that he himself had conducted the raid in the house of the owner of the Canter, and thereafter immediately volunteered that the house was not traceable at that time.

It is to be noticed here that in his examination-in-chief, this

witness had stated that due to non-availability of the proper address of Balwan Singh at Gharaunda, he was not traceable. Hence, as to in whose house the raid was conducted, is not elaborated in the examination-in-chief or even in the cross-examination, though this specific contradiction was not put to him, possibly because he had volunteered to say that the house was not traceable. Even so, the contradiction should have been specifically put to him, as to whose house he had raided.

The ASI (PW5) further stated in the cross-examination that the appellant was arrested after he himself was transferred from the CIA Staff at Samana and as such, he could not give the exact date of arrest. He however, admitted that he had not been called upon to identify the accused at the time of the arrest.

The next part of the cross-examination is again with regard to the events on the date of recovery, to which questioning this witness again stated that they had left office at about 5:00 am on a Government vehicle, driven by Constable Pargat Singh, who had filled up the log book 'after the proceedings of the case' at the office of the CIA Staff. Like PW2, this witness also stated that the secret information was received at about 5:30 a.m.

He also stated that after the recovery of the bag, information was sent on telephone to the DSP but he did not visit the spot and immediately volunteered to say that he was not available at that time. He further stated that no message was sent to the SHO, Police Station, Samana, upon receipt of the secret information and that such secret information was also not sent to any higher officers at the time of having received it.

The witness next stated in his cross-examination that the

informer remained with him for about 4 to 5 minutes and that the other person present on the spot, Ram Singh, who was on a bicycle, was not known to him. He also expressed ignorance as to whether Ram Singh was known to any other official of the police party.

This witness next stated that the Canter vehicle had stopped at that time and was seen from about 150 yards. He further stated that he himself was in uniform but he did not remember as to whether the other police officials with him were wearing uniforms or not.

PW5 further stated in his cross-examination that he had prepared a site plan but admitted that in that site plan he had not shown the direction in which the accused had run away.

He next stated that he himself had chased the driver but did not remember the name of the official who ran after the person who fled away from the "conductors' side". He further stated that he chased the driver upto 200/300 yards towards the fields but did not remember what crop was standing in the fields.

He next testified that the police party remained at the spot for about 8/9 hours and that the nearest village was Rattanheri, at a distance of about ½ km and that the nearest Police Station, P.S. Samana, was about 9/10 km from the spot. However, he further admitted that no member of the Panchayat was called from the said village. He also admitted that no photographs were attached with the judicial file.

He stated that he did not remember if any wireless message was sent to Police Station Samana to round up the accused.

PW5 further stated in his cross-examination that Constable Nirmal Singh had driven the truck (recovered vehicle) back to the police

station and that the recovery had taken place at a distance of about 20 yards from the bridge over the river Ghaggar, whereas the check-post (Naka) was set-up on the Punjab side of the bridge, i.e. on the Western side of the bridge.

The next part of the cross-examination is with regard to the method of weightment of the contraband, which the witness stated was done by spring weighing scales and with weights of 100 grams each, which were already with the police party.

He further stated that the 'ruqa' was sent through Constable Nirmal Singh at about 12:00 noon.

Towards the last part of the cross-examination, PW5 stated that he had not raided the house of the appellant on 02.05.2004 itself but had thereafter raided it 5 to 6 times and had also informed the brother of the appellant. He however admitted that no statement of either the Sarpanch of the village, or brother of the accused, was recorded.

Lastly, before denying the suggestion that nothing was recovered from the accused or that he had not investigated with regard to the ownership of the recovered Canter intentionally, PW5 also stated that the informer had not disclosed the physique of the accused persons but volunteered to state that he had only given him their names.

16. It is significant that Ram Singh, who was stated to be the non-official witness on the spot, was given up by the learned Additional Public Prosecutor, as having been won over by the accused, as per the application made by the police, though the said witness was stated to be present in Court on the date that he was given up, 01.02.2008.

17. PW6 was retired ASI Balbir Singh, who testified that on

02.05.2004 he was posted as an ASI at Police Station Samana but was working as SHO on that day, when ASI Ranbir Singh produced the case property and PWs of the case. This witness further testified that he had verified the factum of recovery, had enquired from the witnesses and had sealed the case property with his seal impression 'BS' and had also attested the sample seal, Ex.P1, with the seal impression on it.

He further testified that on his direction the Investigating Officer had deposited the case property with MHC Harjit Singh, with its seals intact, in the presence of the witness and on the next day, on his direction, ASI Ranbir Singh had produced the said case property before the Area Magistrate and that his own statement (the statement of PW6) was recorded by the Investigating Officer.

He also signed the FIR, Ex.PG/1, registered on the receipt of 'ruqa' by ASI Ranbir Singh.

In his cross-examination, this witness admitted that the Investigating Officer did not disclose to him the description and particulars of the persons who fled away from the spot and that he (PW6) had himself not visited the spot, though he had personally checked the truck. He however, did not remember the colour of the vehicle, though he stated that the number was 7775.

Lastly, in his cross-examination, this witness stated that he had not recorded the statement of any of the witnesses.

18. In his statement under Section 313 Cr.P.C., the appellant, other than denying all other questions put to him, eventually stated that he was innocent and had been falsely implicated by the police and further, that nothing had been recovered from him.

19. No witness was examined by the defence, nor was any documentary evidence tendered.

The Chemical Examiners' report was tendered by the prosecution as Ex.PX.

20. Mr. K.P.S.Virk, learned counsel appearing for the appellant, submitted that the entire story of the prosecution falls completely flat, in view of the fact that the vehicle from which the contraband is stated to have been recovered, i.e. the Swaraj Mazda Canter, was never ever produced before the Court and no explanation, whatsoever, as to where the vehicle had disappeared, was ever given to the trial Court, as is obvious from firstly, the recording of that Court in the testimony of the Investigating Officer, PW5, wherein the request of the Additional Public Prosecutor for another adjournment to produce the Canter vehicle was declined, a last opportunity already having been given.

Further, learned counsel submitted that though PW5 had stated that the vehicle was driven back from the place of seizure by Constable Nirmal Singh, he submitted that the said explanation was not possible in view of the fact that Nirmal Singh is stated to have already been sent with the 'ruqa', Ex.PG, for registration of the FIR. Hence, with him having already left the spot, he could not have thereafter driven the recovered vehicle again to the police station.

Learned counsel submitted that the vehicle is also not shown to have been deposited in the police "malkhana". Hence, the whole story of the vehicle being apprehended on a secret information received, and the appellant having run away from the spot alongwith another person, was a concocted story which could not have believed.

21. He next submitted that the secret information was also not reduced into writing, as required under Section 42 of the Act and therefore, on this ground also, the entire proceedings against the appellant, are vitiated and as such, he deserves to be acquitted on this ground alone.

22. Mr. Virk next submitted that though PW2, the only other alleged eye witness to the recovery, as was examined, i.e. Head Constable Ajaib Singh, had testified that both the persons who had run away from the recovered truck had muffled their faces, PW5, i.e. the Investigating Officer, ASI Ranbir Singh, while identifying the appellant in Court, stated that he was the same person who had fled away from the spot and he had recognized him, it being broad day light (on the day of the recovery).

Thereafter, learned counsel submitted that right upto the submission of the report under Section 173 Cr.P.C., the identity of the second person who allegedly had run away from the spot, alongwith the appellant, was never established by the police, thereby furthering the actual truth that no such recovery was ever made from any truck driven or owned by the appellant, and that actually no such occurrence had taken place on 02.05.2004, as contended by the prosecution.

Next, learned counsel submitted that both the alleged eye witnesses, i.e. PWs2 and 5, had admitted that no identification parade was conducted at the time of the appellants' arrest or thereafter, and in fact PW2 had admitted in cross-examination that he had seen the appellant for the first time in Court.

Lastly, learned counsel submitted that even the so called independent witness, Ram Singh, was never examined, ostensibly on the ground that he had been won over by the appellant-accused. Mr. Virk

submitted that actually he was not examined because he had refused to testify falsely, as he was never present at any such occurrence, which actually was not an occurrence but simply a concocted story.

23. Dr. Deepa Singh, learned Additional Advocate General, Punjab, submitted that all the PWs, despite saying that the appellant and his companions had muffled faces, had given the height of both the accused and as such, there was no question of the identity of the appellant being in doubt.

Learned State counsel next submitted that there would be, in any case, no ground for the police to implicate the appellant falsely. She further submitted that such a heavy quantity of 300 kg. of poppy husk could not have been planted upon anybody and as such, the recovery was obviously genuine.

Lastly, she submitted that all required procedure had been followed and that the secret information was not mandatorily required to be reduced into writing. Towards this contention, learned State counsel cited a judgment of the hon'ble Supreme Court in Narayanaswamy Ravishankar v. Asstt. Director, Directorate of Revenue Intelligence, (2002 (4) RCR (Criminal) 470).

She, therefore, prayed for dismissal of the appeal, as the trial Court had rightly convicted the appellant.

24. Having heard learned counsel for the parties and having appraised the evidence in detail, the findings of this Court are given hereinafter.

25. Firstly, as regards non-compliance of Section 42 of the Act, first of all the provision itself needs to be looked at. It reads as follows:-

“42. Power of entry, search, seizure and arrest without warrant or authorization. (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any narcotic drug, or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset,-

- (a) enter into and search any such building, conveyance or place;
- (b) in case of resistance, break open any door and remove any obstacle to such entry;
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter IV relating to such drug or substance; and
- (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance:

Provided that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sun set and sun rise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.”

26. The aforesaid provision has been subject matter of much debate and in **Karnail Singh v. State of Haryana**, (2009) 8 SCC 539, a five Judge Bench of the hon'ble Supreme Court held as follows:-

“17. In conclusion, what is to be noticed is Abdul Rashid 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 as 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.

27. In short, in the context of the ratio applicable to the present case, it was held that if the officer receiving the information is outside the police station and the requirement of reducing the information in writing and sending it to his superior officer may result in non-seizure of the goods, due to the fact that the suspect may escape with them, then even information sent later with delay, would sufficiently comply with the mandatory requirement of Section 42.

In the present case however, admittedly no information in writing was sent to the superior officer of PW5, ASI Ranbir Singh, when he received the information in the morning at 5:30 a.m. on 02.05.2004, as per the prosecution version.

Undoubtedly, at that time, the police party led by PW5 was not in the police station as per their own version and was on patrolling/checking duty. Consequently, with information being received that the appellant was coming in a truck from Haryana to sell the contraband in Punjab villages, the first reaction of any police officer would have been to set-up the check post to try and ensure that the accused does not escape, or that he does not completely miss the vehicle and the accused.

However, that part being accepted, thereafter also no information is shown to have been sent by PW5 to his immediate superior

officer other than the 'ruqa', Ex.PG, sent to the SHO of Police Station Samana. In this regard, it is to be noticed that PW5, ASI Ranbir Singh, was posted in the CIA Staff, Samana, and his immediate superior officer was not the SHO of Police Station Samana but an officer from the CIA Staff to whom no such information was sent. That is another matter that even the SHO of Police Station Samana, on that date, was an officiating SHO, of the same rank as ASI Ranbir Singh, i.e. it was PW6, ASI Balbir Singh. Hence, admittedly no compliance whatsoever of Section 42 of the Act was made by the Investigating Officer, ASI Ranbir Singh, PW5.

Further, though the said official, in his testimony deposed that he had informed the Circle Deputy Superintendent of Police, admittedly the said officer was not in station as admitted in cross-examination by PW5 and in any case, no such information sent to the DSP was ever produced by way of evidence before the learned Special Judge.

28. Another aspect would be as to whether the sending of reports to higher officers, upon registration of the FIR, since the same is also shown to have been done on the same date (02.05.2004) and thus within 72 hours in any case, would amount to compliance of the mandatory provisions of Section 42 of the Act.

Again, the factual position apart, i.e. the fact that the special report was sent only to the Sub Divisional Judicial Magistrate and is not shown to have been sent to any superior police officer, otherwise too, the sending of such information is at a different stage than the one envisaged under Section 42. Such a special report in any case is to be made within 48 hours of the arrest of a person, or seizure of contraband, in terms of Section 57 of the Act. Of course, it can be argued that the report under Section 42

not being possible in view of the urgency of detaining the vehicle in question, the report made under Section 57 would suffice. That, though otherwise an attractive argument, does not stand scrutiny because the report on the seizure is a post seizure event, with regard to the entire process of seizure etc. such as the process of weighment of contraband etc.

Thus, the information received earlier, leading to the seizure, should have been sent by PW5 through any of the 4 officials present with him, to his superior officer, especially in view of the fact that the two accused are stated to have fled away in any case and hence, no excuse was available that the remaining staff was required to remain on the spot to ensure that any apprehended person did not escape.

Other than that, since the time period of 72 hours is stipulated, the factum of information received should have been sent in any case even subsequently separately to his superior officer by PW5, which he did not do. Hence, simply sending a 'ruqa' to the SHO of the Police Station in the area, or the sending of a special report, did not amount to information given to his superior officer in terms of Section 42(2) of the Act.

On this aspect (though in the present case the issue of a report under Section 57 having been sent, to substitute for a report under Section 42 was never actually raised), nevertheless a judgment of the Supreme Court in that respect, to the effect that sending of a report under Section 57 would not amount to sending mandatory information to a superior officer, can be cited, i.e. in case of **Kishan Chand v. State of Haryana**, (2013) 2 SCC 502. (Reference paragraph 24 of the said judgment).

To conclude on this issue, in the present case, there was no compliance of Section 42 at all, thereby vitiating the entire prosecution

case.

29. Even having held as above, it is still felt necessary to look at the other contentions as raised by the learned counsel for the appellant as also the learned State counsel, purely on facts, *de hors* any statutory provisions.

The first, of course, is that though learned counsel for the appellant is incorrect in stating that PW1, Moharrar Head Constable Harjit Singh, had not stated that he received the Canter Swaraj Mazda vehicle in his possession on 02.05.2004, whereas actually in his affidavit, Ex.PA, he specifically states so, however, no such vehicle is seen to have been produced even at the initial stage before the learned Sub Divisional Judicial Magistrate, Samana, before whom the contraband, i.e. 10 bags containing 29.800 gram of each of poppy husk of 20 sample parcels and seals, were produced on 03.05.2004. The order of the learned SDJM dated 03.05.2004 (Ex.PH/1), does not even refer to any vehicle produced before him, though it gives the details of the contraband produced, the seals on it, the opening of the bags and the samples and re-sealing thereof.

Subsequently, as is obvious from the recording made by the trial Court, while recording the testimony of PW5 to the effect that the vehicle had not been produced even at that time (20.12.2007) during trial, despite opportunities earlier given, shows that, very strangely, if at all any such vehicle was seized by PW5 and police party with him, it thereafter disappeared. No explanation, whatsoever, is forthcoming from the evidence, as to what happened to the truck shown to be recovered vide the recovery memo Ex.PB, which is also the recovery memo in respect of the contraband.

Hence, the prosecution story obviously falls completely flat on this score alone.

30. This is in addition to the fact that there is obvious contradiction in the version given by PW2, to the effect that the appellant and his alleged co-accused had escaped with their faces muffled, whereas PW5 deposed that though they had “parnas” on their head, he could identify them as it was broad day light. It needs to be clarified here that a “parna” is only a piece of cloth, tied on the head alone, to substitute for a turban. A “parna” on the head, thus, does not amount to a cloth hiding/'muffling' the face of a person.

Other than that, it is also strange that whereas PW2 stated that the fields were empty and he had run to catch the appellant and not the other person, PW5 stated that he did not remember which crop was growing in the fields. Of course, these can be taken to be minor contradictions but seen with all the other factors, including the fact that the alleged non-official witness also was not examined (though on the ground that he had been won over), in all wholly falsify the story of the prosecution, especially in view of the non-production of the vehicle seized, even before the Area Magistrate at the time of production of the contraband before him.

31. Hence, on the above grounds, as also, of course, on the ground of non-compliance of the mandatory provision of Section 42 of the Act, in the opinion of this Court, the learned Special Court, Patiala, wholly erred in convicting the appellant and sentencing him to 10 years rigorous imprisonment.

Consequently, the judgment of that Court dated 26.08.2008 and the order of sentence of the same date, are both set aside and the appellant is acquitted of the charge framed against him under Section 15 of the Narcotic

Drugs and Psychotropic Substances Act, 1985.

32. Learned counsel for the appellant submitted that, as a matter of fact, since the appellant was never released on bail, he has completed his entire sentence, but is in custody in connection with another case in which he was arrested/convicted. Consequently, if that be so, the period of imprisonment undergone by the appellant pursuant to his conviction vide the impugned judgment and order of sentence, shall be treated to be imprisonment undergone by him in connection with the other case in which he was arrested/convicted.

Though otherwise, the appellant may be entitled to compensation for the long period of incarceration undergone by him, with no crime committed by him, as was projected by the prosecution, however, since he is also stated to have been arrested in another criminal case, under the NDPS Act itself, and the sentence undergone by him pursuant to his conviction in this case by the trial Court, is being set off against the sentence undergone in the other case, it is not felt necessary to award any compensation, with the other conviction stated to be standing against him.

(AMOL RATTAN SINGH)
JUDGE

May 20, 2016
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