

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

Crl. Appeal D-122-DB of 2012
Date of Decision : July 26, 2016

Suresh Kumar

.....Appellant

VERSUS

State of U.T., Chandigarh

.....Respondent

Crl. Appeal D-346-DB of 2012

Amarjit Singh

.....Appellant

VERSUS

The Narcotics Control Bureau, Chandigarh

.....Respondent

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

Present : Mr. Amit Dudeja, Advocate
for the appellants.

Dr. Sukant Gupta, Addl. Public Prosecutor
for U.T., Chandigarh.

Mr. D.D.Sharma, Advocate
for the Narcotics Control Bureau.

T.P.S. MANN, J.

The appellants, namely, Suresh Kumar and Amarjit Singh were tried for committing offences under Sections 20, 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “**the NDPS Act**”). Amarjit Singh-appellant was also tried for committing offences punishable under Sections 25 and 27 of the NDPS Act. Vide judgment and order dated 11/16.1.2012, learned Judge, Special Court, Chandigarh

acquitted Amarjit Singh-appellant of the charges under Sections 25 and 27 of the NDPS Act. Both the appellants were also acquitted of the charge under Section 29 of the NDPS Act. However, they were convicted under Section 20(b)(ii)(C) of the NDPS Act and sentenced to undergo rigorous imprisonment for fourteen years and to pay a fine of Rs.1,50,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three years. They were also convicted under Section 21(b) of the NDPS Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month. The substantive sentences were ordered to run concurrently. The period of detention already undergone by them during the trial of the case was ordered to be set off against their substantive sentences.

Aggrieved of the impugned judgment of conviction and sentence, Suresh Kumar preferred Criminal Appeal D-122-DB of 2012 while Amarjit Singh preferred Criminal Appeal D-346-DB of 2012. Both the appeals stood admitted and while issuing notice, the Court had summoned the records. As both the appeals arise out of one and the same judgment passed by the learned trial Court, they are being decided by a common judgment.

According to the prosecution, on 13.8.2008 at about

5.00 p.m., a secret information was received by Shri R.S.Sethi, Intelligence Officer, Narcotics Control Bureau, Chandigarh, Zonal Unit (hereinafter referred to as "**the NCB**") that two persons involved in drug trafficking were likely to reach Chandigarh from Kharar side with huge quantity of narcotic drugs by a vehicle of black colour Scorpio bearing registration No. PB-11U-9639 at around 6.30 p.m. One of them would be aged about 35 years having white patches on his head, neck and hands while the other, who would be driving the vehicle, was aged about 45 years. The information was reduced into writing and laid before the Superintendent, NCB. The Superintendent directed Sh. R.S.Sethi to constitute a team of the officials in order to organize a naka to apprehend both the drug peddlers red handed. Accordingly, Sh.R.S.Sethi alongwith Hardesh Kumar, Intelligence Officer, Ganesh Balooni, another Intelligence Officer, Ramesh Kumar, Driver-cum-Sepoy and Balwinder Singh, Sepoy after associating two independent witnesses, namely, Rajesh Kumar and Shiv Kumar went to nab the suspects near round about of Sector-39, Chandigarh. Sh. R.S.Sethi alongwith the NCB team reached near the round about of Sector-39, Chandigarh at about 5.30 p.m. and set up a naka. At 7.00 p.m., one black colour Scorpio bearing aforementioned registration number was seen coming from the side of Kharar and was made to stop by Sh. R.S.Sethi by

giving it a signal. The team members of NCB surrounded the vehicle. A man of about 45 years of age was driving the vehicle whereas the other man of about 35 years of age and having white patches on his head, neck and hands was seated next to the driver's seat. Sh. R.S.Sethi introduced himself and the team to the suspects and asked for their introduction. The one who appeared to be about 35 years' old and having white patches disclosed his name as Suresh Kumar son of Shri Giani Ram, resident of House No. 346, Sector-20, Chandigarh whereas the other, who was driving the vehicle, disclosed his name as Amarjit Singh @ Kaka son of late Shri Gurdial Singh, resident of House No. 5452 (Ground Floor), Modern Housing Complex, Manimajra, Chandigarh. Sh. R.S.Sethi apprised them that he had information about their involvement in drug trafficking and he wanted to search their vehicle. He also showed them the search authorization on which both the suspects appended their signatures in the presence of the witnesses. The witnesses also put their signatures on the search authorization. Sh. R.S.Sethi further disclosed that if they so wanted, their search could be carried out in front of any Magistrate or any Gazetted Officer which was their legal right and they may ask for. On this, both the suspects said that they did not need the presence of a Magistrate or a Gazetted Officer and any one from the NCB team could

effect their search. Notice under Section 50 of the NDPS Act was served upon both of them. The search authorization and notice under Section 50 of the Act were read over before the suspects. Sh. R.S.Sethi also offered himself, the other team members of the NCB and the witnesses for the search which was declined by the suspects. Sh. R.S.Sethi then started search of the vehicle and found a black coloured bag under the seat next to the driver's seat. The bag was containing brown coloured substance in the shape of fingers and biscuits in a black plastic bag. A small transparent plastic pouch containing white coloured powder substance was also found. On asking, both the suspects told that the black coloured bag contained charas whereas plastic pouch was having cocaine. Sh. Hardesh Kumar, Intelligence Officer took small portion of the suspected material from the transparent plastic pouch for conducting search with the help of drug detection kit which he was carrying and found it positive for cocaine. The same test was conducted by Sh.Hardesh Kumar for the suspected material contained in black coloured bag from each finger and biscuit shaped pieces and the tests answered positive for charas. Sh. Hardesh Kumar weighed pieces of finger and biscuit shaped charas with the manual weighing scale and all pieces were found to be 5 kgs. The cocaine contained in small plastic transparent pouch was also weighed and found to be 110

grams. The contraband material alongwith black coloured Scorpio vehicle with the aforementioned registration number was taken into possession at the spot by Sh. R.S.Sethi by preparing a recovery-cum-seizure memo. which was duly witnessed and signed by the suspects and the witnesses. Due to security concern, darkness, possibility of heavy rains and the crowd having started gathering, the NCB team under the supervision of Sh. R.S.Sethi alongwith the two independent witnesses as well as the suspects besides recovered material and Scorpio vehicle proceeded to NCB's Zonal Office at House No. 80, Sector-2, Chandigarh where further proceedings were started. Sh.R.S.Sethi homogeneously mixed the substance contained in small plastic pouch and drew two representative samples of 5 grams each and each sample was packed in transparent polythene pouch and was sealed and placed in separate white envelopes and on the opening side of every envelope a white paper slip was pasted and marked as A-1 to A-2. Four seals on each sample with the seal of NCB-06 were also put after taking it from Sh. Hardesh Kumar. After that the homogeneously mixed contents were kept in plastic pouch and after sealing it, kept in a markin cloth and sewed from the opening side and sealed with the three seals of NCB-06 and marked as lot-A. The small quantity of charas kept in black coloured bag was randomly taken

from all pieces and homogeneously mixed. From the mixture, two representative samples of 25 grams each were drawn and marked as B-1 and B-2. Black coloured bag containing charas was closed and packed in white markin cloth. It was sewed and sealed which was marked as lot-B. Three seals of NCB-06 were affixed on lot-B and four seals were affixed on representative samples B-1 and B-2. The two suspects Suresh Kumar and Amarjit Singh, the two witnesses Rajesh Kumar and Shiv Kumar, Sh. R.S.Sethi and Sh.Hardesh Kumar appended their signatures in the presence of each other on each and every sample packet. The test memo. was filled up in triplicate with impression of seal of NCB-06. Panchnama was also prepared during the proceedings. Sh.R.S.Sethi, Sh. Hardesh Kumar, the two accused and the two witnesses put their signatures on the panchnama. Impression of NCB-06 was taken on panchnama. The seal was, thereafter, returned to Hardesh Kumar. Both the lots i.e. lot-A and lot-B and two sample packets marked A-1, A-2, B-1and B-2 alongwith black coloured Scorpio with its keys were produced before and handed over to the Superintendent, NCB, Sh.Balwinder Kumar for safe custody. The Superintendent deposited the case property in the NCB godown and in that regard he issued godown receipt.

Further case of the prosecution is that the two

suspects were served notice under Section 67 of the NDPS Act after explaining them their rights. They tendered separate confessional statements with their free will and without any undue influence which was recorded by the Intelligence Officer in the presence of two independent witnesses. They were read over to both the suspects, who signed them. On preliminary questioning, Suresh Kumar disclosed that he had taken delivery of 110 grams of cocaine from an NRI of Ludhiana on 13.8.2008 at about 6.00 p.m. but did not know his name and address whereas 5 kgs charas was taken from Pradeep Kumar of village Kasol, District Kullu (HP) in Kharar and after taking delivery of the drugs, proceeded for Chandigarh. He used to sell these drugs to his customers in Chandigarh. Even on five earlier occasions, he was arrested by the Chandigarh Police under the NDPS Act. Both the suspects were arrested after explaining them the grounds of their arrest and their jama talashi was also carried out in the presence of the witnesses. The information qua arrest of the suspects was passed on to their family members. The statements of witnesses Rajesh Kumar and Shiv Kumar under Section 67 of the NDPS Act were also recorded by the Intelligence Officer and read over to them. The witnesses appended their signatures on their respective statements after understanding them to be correct and true. Sh.Ganesh Balooni, Intelligence Officer also gave report

under Section 57 of the NDPS Act to the Superintendent, NCB on 14.8.2008. The suspects were medically examined on 14.8.2008 at General Hospital, Sector-16, Chandigarh. On 14.8.2008, they were produced before Dr. Rajnish, Duty Magistrate, Chandigarh alongwith the case property and relevant documents and then sent to judicial custody upto 28.8.2008. On 16.8.2008, two samples packets A-1 and B-1 were sent alongwith two copies of test memos bearing seal NCB-06 to the Chemical Examiner, CRCL, New Delhi through Sh. Hardesh Kumar, Intelligence Officer, who deposited the same with the Chemical Examiner and receipt dated 18.8.2008 was issued. The aforementioned facts disclosed commission of offences under Sections 8, 20, 21, 25, 27, 29 and 60 of the NDPS Act. Accordingly, with the aforementioned allegations, complaint Ex.P31 was instituted by the NCB, Chandigarh Zonal Unit on 6.2.2009.

As per the reports received from the Chemical Examiner, CRCL, New Delhi, the sample in the form of greenish brown coloured lumps answered positive test for charas whereas the sample in the form of white powder answered positive test for cocaine.

At the trial, copies of the complaint and other documents were supplied to the two suspects free of costs. They were, thereafter, charged for the aforementioned offences to

which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Sh.Hardesh Kumar, Intelligence Officer, NCB as PW1 and Sh.R.S.Sethi, Intelligence Officer, NCB as PW2. The two independent witnesses could not be examined as they were not found present at their given addresses and had left without intimation.

When examined under Section 313 Cr.P.C., both the suspects denied the incriminating evidence and claimed that they were falsely involved. Suresh Kumar stated that there was a rift between the NCB and the local police. The NCB officials wanted to use him as a tool against the local police and compelling him to give statement against the local police officials. He also stated that he was first picked up from Indo German Dhaba, Nillon Bridge, Barnala and when people gathered there, they took his colleague Amarjit Singh, who was made to drive a car and he (Suresh Kumar) was made to sit in the car. Two persons from NCB brought them to NCB Office, Sector-2, Chandigarh where his signatures were obtained on blank papers. Amarjit Singh stated that on the day of the occurrence, he alongwith Suresh Kumar was at Indo German Dhaba at about 2.00 p.m., where two or three persons in white clothes picked up Suresh and when the people gathered there, he was also taken by them. They were

describing to the persons there that they were habitual of drug trafficking. He was made to drive his car whereas Suresh Kumar was made to sit by his side. Two persons, who were in white clothes, took them straightway to NCB office. He was falsely implicated in the case and his signatures were obtained on blank papers in the NCB office.

In their defence, none of the suspects produced any evidence.

After hearing learned counsel for the parties and on going through the record, the trial Court convicted and sentenced the appellants, as mentioned above.

Learned counsel for the appellants has submitted that the prosecution is basing its case upon the testimonies of only officials witnesses i.e. PW1 Hardesh Kumar, Intelligence Officer, NCB and PW2 R.S.Sethi, another Intelligence Officer. There is no independent corroboration to their testimonies. Rajesh Kumar and Shiv Kumar, the two independent witnesses, who were stated to have been joined while effecting recovery of the contraband, were not examined on flimsy grounds. Therefore, the conviction of the appellants stood vitiated.

It is true that the prosecution is placing reliance upon the testimonies of PW1 Hardesh Kumar and PW2 R.S.Sethi, the Intelligence Officers of NCB. The two independent witnesses,

namely, Rajesh Kumar and Shiv Kumar were not examined. The explanation given by the prosecution in this regard that none of them was found present at the given address and they had left without intimating the authorities, is sufficient enough to establish that there were valid reasons for non-production of the two public witnesses. Even otherwise, merely because the prosecution case is based upon the official witnesses is no ground to reject it. The person acts honestly, applies as much in favour of official witness as of other person and it would not be judicious to distrust and suspect them merely for the reason that they happened to be official witnesses.

Learned counsel for the appellants has submitted that the mandatory provisions of Section 50 of the NDPS Act were not complied by the NCB officials while effecting the recovery of the contraband. Cyclostyled/printed proformas were used by the NCB to bring on record that the necessary information/option as contemplated by Section 50 of the NDPS Act was given to the appellants. However, it may be noticed that it was a case of recovery of the contraband from the bags and not from the person of the appellants. Section 50(1) of the NDPS Act comes into play when the accused is suspected to be carrying some contraband on his person. Even otherwise the NCB officials had given an offer to the appellants as to whether they wanted to be

searched before any Gazetted Officer or Magistrate and in reply thereto both the appellants reposed confidence in the NCB officials and having asked for not being taken or searched in the presence of a Gazetted Officer or a Magistrate.

It is further submitted that the appellants were falsely involved on account of the earlier Zonal Head of NCB being inimical towards certain Officers of Chandigarh Police and in order to settle score with the Officers of the Chandigarh Police, the earlier Zonal Head in connivance with Balwinder Kumar had falsely implicated the appellants, who were easy targets. Their statements under Section 67 of the NDPS Act were also recorded for the sole purpose of involving Officers of Chandigarh Police.

From the evidence available on the record as well as from the statements of the appellants under Section 313 Cr.P.C., it is not made out that the earlier Zonal Head of the NCB and others were inimical towards the Chandigarh Police. Neither any such suggestion was put to PW1 Hardesh Kumar or PW2 R.S.Sethi nor any plea taken by the appellants in their respective statements under Section 313 Cr.P.C. As such, it cannot be said that the appellants were the tools used by one agency or the other to paint the other black by falsely planting the present case.

According to learned counsel for the appellants, Suresh Kumar-appellant was shown to have taken the delivery of

the contraband from Pradeep Kumar of village Kasol, District Kullu but said Pradeep Kumar was not joined as an accused nor arrested. However, in para 28 of the complaint Ex. P31, it is specifically averred that aforementioned Pradeep Kumar was arrested by NCB, Chandigarh on 22.12.2008 at Ropar Bus Stand for possessing 15 kgs of charas and a case stood registered vide NCB Crime No. 15/2008 dated 22.12.2008 under Sections 8 and 20 of the NDPS Act whereas after detailed enquiry and interrogation from SI Harinder Singh Shekhon, HC Mohan Singh of Chandigarh Police and one Vimal of Hallo Majra, no link was found between them in the dealing of 110 gms of cocaine and 5 kgs of charas which had been recovered from the appellants. As per the testimony of PW2 R.S.Sethi, only prima facie liability of Pradeep Kumar was made out in the case but that is not sufficient to come to the conclusion that Pradeep Kumar had neither been joined as an accused nor arrested in the present case.

Another argument raised by the learned counsel for the appellants is that the seal of NCB-06 was not handed over by Sh.R.S.Sethi, Intelligence Officer to any of the two independent witnesses, rather, it was handed over to Sh. Hardesh Kumar, Intelligence Officer and this would suggest that there was no independent witness present at the time of the recovery of the contraband. However, the prosecution case cannot be rejected

on this short ground especially when no suggestion was put by the defence to PW1 Hardesh Kumar that the seal which had been entrusted to him by Sh. R.S.Sethi had been misused by him.

It has further been argued by learned counsel for the appellants that the statements suffered by the appellants under Section 67 of the NDPS Act and recorded by Sh. R.S.Sethi, Intelligence Officer could not be read against them as the parent department of Sh. R.S.Sethi, Intelligence Officer was Custom and Central Excise and he was on deputation with NCB.

Merely because Sh. R.S.Sethi happened to be from the Department of Custom and Central Excise is no ground to hold that he was not competent to record the statements of the suspects under Section 67 of the NDPS Act. At the relevant time, he was on deputation with the NCB and, therefore, very much competent to record the statements of the suspects under Section 67 of the NDPS Act. Even otherwise, if the statements under Section 67 of the NDPS Act are ruled out that will not demolish the prosecution case.

Another plea taken by the learned counsel for the appellants is non-examination of Shri Ganesh Balooni, who had instituted the complaint and was a member of the team constituted on the instructions of Shri Balwinder Kumar, the then Superintendent, NCB, Zonal Office, Chandigarh. However, there

is no hard and fast rule that all the witnesses or a particular number of witnesses are required to be examined in order to enable the prosecution to prove its case against the accused. Here in the present case, the prosecution is relying upon the testimonies of PW1 Hardesh Kumar and PW2 R.S.Sethi, the two Intelligence Officers of the NCB, who have testified unequivocally about the apprehension of the appellants alongwith the contraband.

From the report Ex. P30 of the CRCL, it is made out that the sample of white powdered tested positive for cocaine whereas sample of greenish brown coloured lumps tested positive for charas. Similarly, during the trial of the case, second sample of cocaine was sent to CRCL for retesting and the percentage of cocaine had been determined by 19% vide report Ex. P33.

In view of the above, no case is made out for any interference in the conviction of the appellants for the various offences, as recorded by the learned trial Court. However, keeping in view the fact that Amarjit Singh-appellant is not involved in any other case whereas Suresh Kumar-appellant had been earlier involved in a couple of cases under the provisions of the NDPS Act; both the appellants had remained in jail as undertrials for about 3½ years and now in jail as convicts for 4½ years; and the fact that both

the appellants have their own families to look after, a case is made out for some reduction in the sentences of imprisonment.

Resultantly, the conviction of the appellants under Sections 20(b)(ii)(C) and 21(b) of the NDPS Act is upheld. The sentence of imprisonment for fourteen years imposed upon Suresh Kumar-appellant for the offence under Section 20(b)(ii)(C) of the NDPS Act is reduced to rigorous imprisonment for twelve years whereas that of Amarjit Singh-appellant is reduced to ten years. The fine of Rs.1,50,000/- imposed upon each of them is also reduced to Rs.1,00,000/- and in default thereof, the appellants shall undergo rigorous imprisonment for two years. The sentence of imprisonment and fine alongwith its default clause imposed upon them for the offence under Section 21(b) of the NDPS Act is upheld. Both the substantive sentences of imprisonment shall run concurrently.

But for the modification in the quantum of sentence of imprisonment and fine, as mentioned above, the appeals fail and, are therefore, dismissed.

**(T.P.S. MANN)
JUDGE**

July 26, 2016
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**(GURMIT RAM)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No