

In the High Court of Punjab & Haryana at Chandigarh.

Crl. Appeal D-955-DB-2013
Date of decision: 21.12.2016

Raj Kumar @ Raju and Surinder Pal SinghAppellants.

vs.

State of Punjab and another Respondents.

Crl. Appeal D-798-DB-2014

Surinder Kumar Khanna Appellant.

vs.

Intelligence Officer, Directorate of Revenue Intelligence Respondent.

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

Present: Ms. Monita Mehta, Advocate
for the appellants (in Crl. Appeal D-955-DB-2013)

Mr. Tarundeep Kumar, Advocate
for the appellants (in Crl. Appeal D-798-DB-2014)

Mr. S.S.Dhaliwal, Addl. A.G.Punjab.

Mr. D.D.Sharma, Sr. Standing counsel, for DRI.

H.S. MADAAN,J.

Vide this judgment, we propose to dispose of two criminal appeals, one bearing CRA-D-955-DB of 2013 filed by Raj Kumar @ Raju and Surinder Pal Singh accused and the second bearing CRA-D-798-DB of 2014 filed by Surinder Kumar Khanna accused, all of them having been convicted and sentenced by the Judge, Special Court, Hoshiarpur, vide

judgment dated 24.04.2013 as follows:-

Name of Convict	Offence under Section(s)	Sentence Awarded
<i>Raj Kumar @ Raju</i>	<i>21(c) of the NDPS Act</i>	<i>To undergo rigorous imprisonment for a period of 12 years and to pay a fine of ₹1 lac. In default of payment of fine, to further undergo rigorous imprisonment for three years.</i>
<i>Surinder Pal Singh</i>	<i>21 (c) of the NDPS Act</i>	<i>To undergo rigorous imprisonment for a period of 12 years and to pay a fine of ₹1 lac. In default of payment of fine, to further undergo rigorous imprisonment for three years.</i>
<i>Surinder Kumar Khanna</i>	<i>21 (c) read with Section 29 of the NDPS Act</i>	<i>To undergo rigorous imprisonment for a period of 12 years and to pay a fine of ₹1 lac. In default of payment of fine, to further undergo rigorous imprisonment for three years.</i>

The accused, who are appellants before this Court, pray that the appeals be accepted, the impugned judgment of conviction and sentence be set aside and they be acquitted of the charges framed against them.

Briefly stated facts of the case as per prosecution story are that acting on a specific information that narcotic drugs were going to be transported from Jammu side to Chandigarh via Hoshiarpur in a white

colour Indica car bearing registration No.PB-02AJ-7288, the officers of Directorate of Revenue Intelligence (for short 'DRI') laid picket at toll barrier at Hoshiarpur-Garhshankar road towards Garhshankar side. At 10:35 hours, they intercepted an Indica car of white colour which was coming from Hoshiarpur side bearing registration No.PB-02AJ-7288. The car was being driven by Raj Kumar @ Raju accused whereas accused Surinder Pal Singh was sitting on the front seat of the car. To ensure safe search of the car and personal search of occupants, the car was taken to office of Superintendent, Central Excise Range, Model Town, Hoshiarpur. The officers of DRI served notice under Section 50 of the Narcotic Drugs Psychotropic Substances Act, 1985 (for short 'NDPS Act') upon Raj Kumar @ Raju and Surinder Pal Singh. As desired by the accused, their personal searches and that of the car were conducted in the presence of independent witnesses and Shri SJS Chugh, Senior Intelligence Officer. Personal searches of the accused did not result into recovery of any incriminating material. However, when their Indica car was searched and its rear boot was opened, four packets wrapped with yellowish adhesive tapes were found concealed in the door of rear boot (dickey of the car). The gross weight of those four packets came out to 4.300 kg. All the four packets were then cut open one by one. Each of the packet was containing white colour grannules/powder which gave a very pungent smell. The pinch of each of the packet was tested, which showed the presence of heroin. The recovered heroin weighing 3.990 kgs was valued at ₹19,95,000/-. Those four packets were taken into possession. Two representative samples of 5 gms each were taken out from each of the packet as per rules. Indica car was also seized by the officers of DRI. Statements of both the accused were recorded. From

their statements, it transpired that four packets of heroin had been taken from Mr. Goldy r/o Vijaypur, Jammu and those packets were to be delivered to a person of African origin near PGI Chandigarh. During investigation, involvement of Surinder Kumar Khanna in the drug racket was found to be there as a drug trafficker. He too was arrested in this case. His statement was also recorded. Initially, a complaint under Sections 21, 22, 23, 28, 29 and 60 of the NDPS Act, was filed against Raj Kumar @ Raju and Surinder Pal Singh, as Surinder Kumar Khanna was not arrested by that time. Subsequently, when Surinder Kumar Khanna was arrested, a supplementary complaint was presented against him in the Court which was ordered to be attached with the main complaint.

On appearance of accused in the Court, copies of documents were supplied to them free of cost. After hearing arguments, charge for offence under Sections 21, 29 and 60 of the NDPS Act was framed against the accused, to which they pleaded not guilty and claimed trial and the case was fixed for prosecution evidence.

During the course of trial, the prosecution had examined PW1-SJS Chugh, Senior Intelligence Officer, DRI, Ludhiana, who supported the prosecution case on material aspects as regards officers of DRI intercepting Indica car bearing registration No.PB-02AJ-7288 on 24.04.2008, the said car being driven by Raj Kumar accused and Surinder Pal Singh sitting on the front seat; the search of car being done, resulting in recovery of heroin weighing 3.990 kg; drawing of two representative samples of 5 gms each; and preparation of various memos and documents showing arrest of both the accused in this case. He deposed that as a follow up action, he issued summons to Surinder Kumar Khanna to appear before him but he did not

appear. Ultimately, his production warrants were obtained from the Court and then his statement was recorded.

PW2 Rajesh Sarswat, who on 28.04.2008, was posted as Inspector, Customs House, Amritsar, deposed that on that day case property was deposited with him by Investigating Officer Sanjeev Kumar Sharma, DRI and he had made an entry in the *malkhana* register; copy of the inventory being Ex. PW2/A. He proved the case property as Ex. PW2/B.

PW3 Sanjeev Kumar Sharma, Intelligence Officer, DRI, Ludhiana, Investigating Officer of this case, deposed as per prosecution story supporting it on material aspects proving various documents. Thereafter, the prosecution evidence was closed.

Statements of accused were recorded under Section 313 Cr. P.C. in which all the incriminating evidence and circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case. The accused did not lead any evidence in defence.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned above which left them aggrieved and they have filed the present appeals praying that the same be accepted, impugned judgment and conviction be set aside and they be acquitted of the charges framed against them.

We have heard Ms. Monita Mehta, Advocate and Mr. Tarundeep Kumar, Advocate, counsel for the appellants, Mr. S.S.Dhaliwal, Addl. A.G.Punjab and Mr. D.D.Sharma, Sr. Standing counsel for DRI.

Learned counsel for the appellants-accused have contended that no recovery has been effected from the accused and a false recovery has

been planted upon them; that the case of the prosecution is based upon depositions of official witnesses only with no independent witness coming forward to support the prosecution story. Therefore, the prosecution case is rendered doubtful and giving benefit of doubt to the accused, they should be acquitted of the charges framed against them.

On the other hand, learned State counsel and learned counsel for the DRI have submitted that the official witnesses had no previous enmity with the accused prompted by which they might have treaded on the dangerous path of false implication, risking their services and career. Therefore, there is no question of accused being involved in this case falsely. Furthermore, keeping in view the fact that recovery involved is about 4 kg of heroin, there are little chances of such heavy quantity being planted upon the accused and furthermore, the prosecution has proved its case beyond a shadow of reasonable doubt. Merely because of absence of independent corroboration, the prosecution story cannot be disbelieved.

After hearing the rival contentions, we find that there is little merit in the contention of learned counsel for the appellants-accused. Though the case of prosecution is based upon deposition of official witnesses but since no previous enmity is alleged or proved between the accused and such official witnesses, their testimonies cannot be discarded for such reason. It needs to be mentioned here that at the time of recovery two independent witnesses, namely, Shri Parteek Kapoor and Shri Balbir Ram had been associated but they were not examined by the prosecution during the trial. It needs to be mentioned here that the prosecution is not required to examine each and every witness cited by it in the list of witnesses and non-examining of independent witness does not affect the

case of the prosecution adversely. Therefore, the statements of official witnesses in the absence of independent corroboration can certainly be relied upon. The prosecution has successfully proved its charge against the accused conclusively and affirmatively by leading sufficient cogent, convincing, reliable, ocular and documentary evidence, therefore, there is no question of accused being involved in this case falsely.

Another argument put forward by learned counsel for the appellants-accused was that the mandatory provisions of the Act were violated while arresting the accused and effecting recovery from them, rendering the recovery to be doubtful. However, learned counsel for the appellants could not pin-point any specific provisions of the Act which might have been violated/flouted by the officers of the DRI while apprehending accused Raj Kumar @ Raju and Surinder Pal Singh and effecting recovery from them as well as while arresting Surinder Kumar Khanna.

In the instant case though Section 50 of the NDPS Act is not applicable, since recovery was not effected from personal search of accused but even then the officers of DRI had served both the accused with notice under Section 50 of the NDPS Act and the accused had given their option that their personal search and search of the car might be conducted in the presence of Gazetted Officer. Shri SJS Chugh, being Gazetted Officer was there and search of both the accused and that of the car was conducted in his presence. Therefore, there was no violation of Section 50 of the NDPS Act in this case. The recovery having been effected from the car in which accused Raj Kumar @ Raju and Surinder Pal Singh were traveling clearly goes to show their conscious possession of the contraband. As regards the

involvement of accused Surinder Kumar Khanan, the same stood established from perusal of call details of his phone which goes to show that he was in regular contact with one Mr. Chaudhari of Dubai besides other evidence produced by the prosecution.

Offence of abetment under Section 29 of NDPS Act stood established against accused Surinder Kumar Khanna, showing that he was involved in drug trafficking. He was specifically named by accused Raj Kumar @ Raju and Surinder Pal Singh in their statements. Such statements of accused Raj Kumar @ Raju and Surinder Pal Singh recorded under Section 67 of the NDPS Act are admissible in evidence and are not hit by Section 25 of the Evidence Act because the officers of DRI, who had apprehended Raj Kumar @ Raju and Surinder Pal Singh, traveling in an Indica car and effecting recovery from them do not come within the definition of police officers. Though counsel for the appellants-accused has submitted that Section 42 of the NDPS Act was not complied with but in the absence of the accused showing any prejudice having been caused to them, such non-compliance does not vitiate the trial.

The judgment passed by the trial Court is well reasoned one based upon proper appraisal, appreciation of evidence and correct interpretation of law. We do not find any illegality and infirmity with the said judgment as regards the conviction part, therefore, conviction of all the appellants-accused is maintained. However, as far as sentence part is concerned, we are of the view that the accused-convicts can be granted certain concession in that regard, keeping in view the facts and circumstances of the case and considering that no previous conviction is alleged or proved against the accused, they are stated to be only earning

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member of their family and they are behind the bars for several years.
Therefore, the sentence of all the appellants-accused is reduced to rigorous imprisonment for a period of 10 years each and to pay a fine of ₹1 lac each, in default of payment of fine to further undergo RI for 1 ½ years in each case.

With such modification in the sentence, both the appeals stand disposed of.

(T.P.S. MANN)
JUDGE

(H.S. MADAAN)
JUDGE

21.12.2016
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No