

CRA-S-1259-SB-2013 and CRA-S-2300-SB-2013 (O/M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 3.5.2016

CRA No. S-1259-SB of 2013
Harpal Singh alias Raju

..... Appellant

Versus

Narcotics Control Bureau, Chandigarh

..... Respondent

CRA No. S-2300-SB of 2013
Ompal

..... Appellant

Versus

Narcotics Control Bureau, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. T.T.P. Singh, Advocate, for the appellant
in both the appeals.

Mr. D.D. Sharma, Senior Standing Counsel,
for respondent-NCB, Chandigarh.

KULDIP SINGH, J.

By this single judgment, I shall dispose of two connected
appeals i.e. CRA No. S-1259-SB of 2013, filed by accused/appellant
Harpal Singh alias Raju and CRA No. S-2300-SB of 2013, filed by
accused/appellant Ompal, arising out of the same judgment of

CRA-S-1259-SB-2013 and CRA-S-2300-SB-2013 (O/M)

-2-

conviction dated 31.1.2013, vide which the accused/appellants were convicted under Sections 21 (c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and order of sentence dated 4.2.2013, vide which they were sentenced to undergo rigorous imprisonment for 10 years each and fine of Rs. 1,00,000/- each, in default thereof, to further undergo rigorous imprisonment for 3 years each under Section 21 (c) of the NDPS Act, passed by the learned Judge, Special Court, Chandigarh. They were also sentenced to undergo rigorous imprisonment for 10 years each and fine of Rs. 1,00,000/- each, in default thereof, to further undergo rigorous imprisonment for 3 years each under Section 29 of the NDPS Act . Both the sentences were ordered to run concurrently.

The present appellants were tried on the complaint filed by Narcotics Control Bureau, Chandigarh, Zonal Unit (in short 'NCB'). The facts of the case are as under :-

The facts of the case are that on 9.7.2008, at about 1:00 PM, Ganesh Balooni, Intelligence Officer, posted at NCB Zonal Unit, received a secret specific information that one Om Pal and Harpal, residents of Chandigarh, are involved in narcotic trafficking cases. If raid is conducted, they can be apprehended with the contraband.

CRA-S-1259-SB-2013 and CRA-S-2300-SB-2013 (O/M)

-3-

The said information was reduced into writing, vide Ex.PW3/A. It was produced before Superintendent, NCB, Shri Balwinder Kumar, who put note Ex.PW3/B on the same and directed Ganesh Balooni, Intelligence Officer, to constitute a team and conduct a raid. Accordingly, a team was constituted. Two persons, namely, Anil Kumar Gautam and Kartar Singh were joined from Taxi Stand, Sector-11, Chandigarh, as independent witnesses. Thereafter, the entire NCB team alongwith independent witnesses reached near a culvert in Sector- 52, Chandigarh, and started picketing and surveillance there. At about 4.30 PM, accused Ompal was seen coming from ISBT, Sector 43, Chandigarh carrying a bag in his hand. He waited near culvert for somebody. Then, after 5/7 minutes, accused Harpal Singh came from the other side. Accused Ompal handed over the said bag to him. Thereafter, both the accused were surrounded by the NCB team. After questioning the accused about their name and identity, they served notices Ex.P5 and Ex.P6 upon accused Harpal Singh and Ompal respectively, informing them about their right to get themselves searched before a gazetted officer. The accused declined the offer and volunteered to be searched by the NCB team. Accused Harpal Singh opened the bag and accused Ompal took out a polythene bag, which

CRA-S-1259-SB-2013 and CRA-S-2300-SB-2013 (O/M)

-4-

contained three packets, wrapped with Brown tape. On inquiry, the accused disclosed that there is heroin in the said packets and that the same has been brought from Badayun (UP) for handing over to Harpal Singh. A small portion of contraband equivalent to head of match stick was taken out and handed over to Hardesh Kumar to conduct test with the help of field drug detection kit carried by the team. On testing, it was found to be Heroin. On weighment, it was found that each packet contained 1 kg heroin. The packets were taken into possession. As people started gathering at the spot, therefore, for security reasons, the entire NCB team alongwith independent witnesses, accused and seized contraband went back to the office of NCB, situated in House No. 80, Sector-2, Chandigarh. Two samples of 5 grams each was separated from each packet and were sealed. The case property was handed over to Shri Balwinder Kumar Superintendent, NCB, for depositing the same in the Malkhana. The statements of accused Harpal Singh as well as accused Ompal (Ex.P11 and Ex.P16) under Section 67 of NDPS Act were recorded. After completion of formalities of the investigation, the challan was presented.

The accused were chargesheeted under Sections 8/21 and 29 of the NDPS Act. The accused pleaded not guilty to the

CRA-S-1259-SB-2013 and CRA-S-2300-SB-2013 (O/M)

-5-

charge and claimed trial.

In support of its case, the prosecution examined Balwinder Singh Sepoy (PW1), Hardesh Kumar, the then Intelligence Officer (PW2), Ganesh Balooni, complainant (PW3), Anil Kumar (PW4) and Bhuwan Ram, Assistant Chemical Examiner, CRCL, New Delhi.

When examined under Section 313 Cr.P.C., accused Harpal Singh alias Raju pleaded that the contraband is alleged to have been brought from Sher Singh of U.P. and given to Ompal and there was no need for the investigating officer to wait for Ompal to transfer the contraband to accused Harpal Singh. It is stated that the prosecution story is false. Both the independent witnesses are stock witnesses. The case property was tampered with. The samples were got analysed twice, in which their weight is different. The percentage of Diacetylmorphine in both the reports is different. In the first report, it is 15.9%, while in the second report it is 19.4%. The seal was not handed over to the independent witness. It was further alleged that the investigating officer and his team committed theft in the house of Harpal Singh. Rs. 3,00,000/-, gold jewellery, one necklace, gold ring, one watch, one purse containing ATM card, identity card, registration certificate of scooter, one digital camera,

CRA-S-1259-SB-2013 and CRA-S-2300-SB-2013 (O/M)

-6-

one ear ring, four IMF bottles of liquor and cane of containing mustard oil of 5 kg were stolen. At that time, Rajinder Singh, Sadhu Ram, Joginder Pal, Santosh Rani and Ramesh Kumar (neighbours) were present. It was further stated that Saji Mohan, Director of NCB was arrested by the police while he was in possession of 30 kg smack. It was alleged that the said Director use to collect weekly money from the drug peddlers and he was also directing the accused to bring money from different accused, to which he refused. The accused claimed that he was secret informer of Chandigarh police and he had got raided the premises of SI Satpal, who was convicted under the Prevention of Corruption Act by CBI Court. The NCB, in conspiracy with Chandigarh police, planted a false case upon him. One other false case was planted upon him, in which he has been acquitted.

Ompal in his statement also claimed that if the contraband was brought from Sher Singh of UP, then he should have been joined in the investigation, but he was let off. The sample seals were tampered with.

In defence, accused examined Rajidner Kaur (DW1), wife of Harpal Singh (accused), his neighbour Rajinder Singh (DW2), Gagan Pal son of Harpal Singh, accused (DW3), Hari

CRA-S-1259-SB-2013 and CRA-S-2300-SB-2013 (O/M)

-7-

Gobind, Intelligence Officer, NCB, Chandigarh (DW4), Balwinder Kumar, Superintendent, NCB, Chandigarh (DW5), SI Harpal Singh (DW6) and closed the defence evidence.

After hearing learned Special Public Prosecutor for the complainant, learned counsel for the accused and going through the evidence, learned Judge, Special Court, Chandigarh, convicted and sentenced the accused/appellants, as aforesaid.

I have heard learned counsel for the accused/appellants, learned counsel for respondent and have also carefully gone through the file.

In order to prove the recovery, Ganesh Balooni, Intelligence Officer, who is complainant in this case, himself appeared as PW3 and narrated the entire occurrence. He further proved that on receiving the information, they found Ompal coming from the side of ISBT, Sector-43, Chandigarh, carrying a bag. When they kept watch on him, it was found that accused Harpal came there and the bag was handed over to him. When the accused were arrested, 3 packets wrapped with brown tape were recovered. From the said packets, 3 kg. Heroin was recovered. He also proved the separation of sample and taking the same into possession. He further stated that both accused Ompal and Harpal Singh alias Raju

made statements under Section 67 of the NDPS Act, which are Ex.P-11 and Ex.P-16 respectively. His statement was corroborated by Intelligence Officer Hardeh Kumar (PW2) and Anil Kumar, independent witness (PW4).

Learned counsel for the accused Harpal Singh alias Raju has argued that he has been falsely involved in the present case. The story sought to be put-forward by the accused is that Saji Mohan, Director of NCB, who was later on arrested and tried by the police for keeping in his possession 30 kg smack, was infact involved in a racket. The said Saji Mohan was collecting weekly money from the drug peddlers and directed the accused to bring money from other drug peddlers. He further stated that he was the target of the NCB since he was informer of Chandigarh police and on his information, SI Sat Pal, who was arrested by CBI and later on convicted by the CBI Court under the Prevention of Corruption Act, 1988. Therefore, it was a conspiracy of the NCB and Chandigarh police to arrest him. He has also relied upon the statements of his wife Rajinder Kaur (DW1), his (Harpal's) son Gagan Pal (DW3) and neighbour Rajinder Singh (DW2).

I am of the view that there is no proof that Saji Mohan, Director of NCB is anyway involved in the present case. In the

present case, a secret information was received by complainant Ganesh Balooni (PW3) and he laid the trap and arrested both the accused from the spot. The mere fact that Harpal Singh alias Raju is a witness in some other case against one police official is no ground to hold that he was not involved in the present dealing of Heroin. It is very easy to procure the statement of wife, son and neighbour of an accused. It is common knowledge that after such recovery, many times, the police also search the house of the culprit and, therefore, though the NCB party might have visited the house of accused Harpal Singh alias Raju, but his story of theft, as claimed in statement under Section 313 Cr.P.C. and as corroborated by his wife, son and neighbour, cannot be believed and was rightly discarded by the lower Court.

The learned counsel has relied upon the authority of Hon'ble Supreme Court in Ramu Versus State of Punjab, 2008 (3) RCR (Criminal) 506 to press that the conscious possession of contraband is not proved. In this case, both the accused were apprehended with three packets wrapped in brown tape, wherein 3 kg. heroin was found. Therefore, the conscious possession of contraband from both the accused is proved beyond all reasonable doubts.

The learned counsel for the appellants has further argued that in this case, CFSL form was not filled. The learned counsel has relied upon the authority of this Court in Didar Singh alias Dara Versus The State of Punjab, 2010 (3) RCR (Criminal) 337. The said authority is not attracted in the present case as in this case, in place of CFSL form, the NCB had prepared the details of the recovery.

The lower Court has dealt with this aspect and held that the NCB had filled in the details of the sample and sent the same to the Chemical Laboratory, New Delhi. This is what exactly done in the CFSL form. Therefore, as per the practice of the agency, the details were separately recorded and there is nothing wrong in the same. I also find no force in the contention of the learned counsel for the appellants that the NCB should have first apprehend Ompal when he was found with the packets and should not have waited for him to make the delivery of the contraband to accused Harpal Singh.

I am of the view that the NCB wanted to see as to who else is involved in the drug smuggling. Therefore, the procedure adopted by the NCB in waiting for Ompal to make the delivery to Harpal Singh alias Raju, is correct. The mere fact that the NCB

CRA-S-1259-SB-2013 and CRA-S-2300-SB-2013 (O/M)

-11-

could not proceed against Sher Singh of U.P., from where the consignment was brought, is no ground to acquit the accused.

The learned counsel for the appellants has further argued that the case property was taken from the spot to the office of NCB. It is suspicious activity particularly in view of the fact that as per the report of CRCL, New Delhi (Ex.PW-8/A), the weight of first sample was found to be 6.4 grams, whereas 5 grams sample was separated.

I am of the view that the mere fact that there is difference of 1.4 grams is no ground to hold that the sample was tampered with. It could be human error. Unless it is found that the case property was tampered with, no benefit can be extended to the accused. It is the specific case of the NCB that the people started gathering at the sport and for security reasons, the work of separating the sample was done in the office of the NCB.

I also do not find any force in the contention of the learned counsel for the appellants that as per the statement of Dr. Bhuwan Ram (PW5), he analysed the sample under the supervision of R.P. Singh, Chemical Examiner and that the Chemical Examiner himself should have personally examined the sample.

I am of the view that Dr. Bhuwan Ram (PW5) is a

Assistant Chemical Examiner. The work of chemical analysis is not suppose to be done solely by Chemical Examiner himself and he can cause the sample to be tested under his overall supervision and there is nothing wrong in the same. Similarly, if in the first report of sample (Ex.PW-8/A), the percentage of Diacetylmorphine was 15.5%, but in the report of second sample (Ex. PW3/K), its percentage was 19.4%, this difference in the percentage hardly helps the accused. The lower Court has dealt with the same and found that the contraband was in granule form. Therefore, in one set of the granule, the percentage of Diacetylmorphine could be different. Had it been in crushed form, there could be reason as to why there was difference in the percentage of Diacetylmorphine when the entire case property was thoroughly mixed and made homogeneous. The granule can never be made homogeneous and the possibility of variation is there.

The learned counsel for the appellants has further argued that the independent witnesses of the prosecution are stock witnesses.

I am of the view that one independent witness Anil Kumar was examined. Even if, the statement of independent witness is ignored, there is no ground to disbelieve the statement of

the complainant and Intelligence Officer, who proved the recovery. Further, the accused had made statement under Section 67 of the NDPS Act, which is admissible in evidence. In their statements, accused have admitted recovery of contraband from them. The lower Court has dealt with the presumption under Section 54 of the NDPS Act to hold that the accused have failed to rebut the said presumption. The lower Court has also dealt with the fact that the acquittal of Harpal Singh alias Raju in another case is no ground to hold that the present case is false.

The learned counsel has referred to authority of the Hon'ble Supreme Court in Tofan Singh Versus State of Tamil Nadu, 2013 (4) RCR (Criminal) 631 and has argued that the statement made under Section 67 of the NDPS Act cannot be relied upon.

On the other hand, the learned senior standing counsel for NCB has relied upon the authority of the Hon'ble Supreme Court in M. Prabhulal Versus Assistant Director, Directorate of Revenue Intelligence, 2004 (1) RCR (Criminal) 160, wherein the scope of admissibility of statement under Section 67 of the NDPS Act was discussed.

I am of the view that though the sole reliance could be placed on the statement under Section 67 of the NDPS Act, but

when the same is corroborated from the statement of Investigating Officer, record, witnesses and other documents placed on file, it could be safely relied upon. Accused have not retracted from the statement made under Section 67 of the NDPS Act. Therefore, as held by the Hon'ble Supreme Court in Kanhaiyalal Versus Union of India, 2008 (1) RCR (Criminal) 610, the same could be relied upon. The Apex Court has even gone to the extent that the extent that the conviction can be maintained solely on the basis of confession made in the statement under Section 67 of the NDPS Act.

The learned counsel for the appellants has argued that in this case, Gazetted Officer Balwinder Kumar, Superintendent was not examined by the prosecution. He has relied upon the authority of this Court in Kapil Dev Versus State of Punjab, 2004 (2) RCR (Criminal) 275.

I am of the view that in this case, the Investigating Officer and the recovery witnesses have been examined. Their evidence coupled with the confession made under Section 67 of the NDPS Act is sufficient to prove the guilt of the accused.

After going through the statements of the witnesses and documents placed on file, I am of the view that all these aspects have been dealt with by the lower Court. The guilt of both the

CRA-S-1259-SB-2013 and CRA-S-2300-SB-2013 (O/M)

-15-

accused/appellants has been proved beyond all reasonable doubts. Therefore, there is no ground to interfere in the judgment of conviction and order of sentence. Consequently, I do not find any force in both the appeals. Accordingly, same are dismissed.

(KULDIP SINGH)
JUDGE

3.5.2016
sjks