

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

CRA-S-4214-SB of 2013 (O & M)
Date of decision : 12.5.2016

Jagmohan Singh @ Rinku and anotherAppellants
v.

State of Punjab and anotherRespondents

CRA-S-4389-SB of 2013 (O & M)

Harpreet Singh @ Happy @ HeeraAppellant
v.

State of PunjabRespondent

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Present : Mr. R.S. Bains, Advocate
for the appellants (in CRA-S-4214-SB of 2013)

Mr. Ramandeep Singh, Advocate, for
Mr. A.S. Barnala, Advocate
for the appellant (in CRA-S-4389-SB of 2013)

Ms. Svaneel Jaswal, DAG, Punjab

RAMENDRA JAIN, J.

This order shall dispose of two appeals bearing Nos. CRA-S-4214-SB of 2013 jointly filed by accused Jagmohan Singh and Darshan Singh

convicted under Section 20 of the Unlawful Activities (Prevention) Act, 1967 (in short “the Act”) and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹ 10,000/- with default clause, and CRA-S-4389-SB of 2013 filed by accused Harpreet Singh @ Happy @ Heera convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹ 5000/- with default clause, as both the appeals are arising out of the common judgment and order dated 14.11.2013 passed by Judge, Special Court, SAS Nagar (Mohali).

For brevity, the facts are taken from CRA-S-4214-SB of 2013.

On 25.9.2009, on a secret information that terrorists of Babbar Khalsa International (a banned terrorists organization) namely, Harjot Singh @ Sukhwinder Singh, Harpreet Singh @ Happy @ Heera (appellant), Jagmohan Singh @ Rinku (appellant), having connections with ISI of Pakistan, were operating in Punjab by procuring weapons and explosive from one Sodha Khan of Jaisalmer (Rajasthan) to create lawlessness were roaming in the area in an Indigo car, after getting a case registered, Deputy Superintendent of Police, laid a barrier near the drain of PCA Stadium, SAS Nagar (Mohali). In the meanwhile, a golden coloured Indigo car bearing No. CH 03 L 4858 reached there which was stopped by giving signal. On enquiry, its driver disclosed his name as Harpreet Singh @ Happy @ Heera. On search, a pistol of .30 bore, loaded with eight cartridges from left dub and seven live cartridges of the same bore were recovered from left pocket of his trouser. The pistol and recovered live cartridges were taken into possession by converting the same into two separate parcels. Sketch of the pistol was prepared. Indigo car with its registration documents was also taken into possession. Appellant Harpreet

Singh was formally arrested. On the next date, on interrogation, Harpreet Singh suffered disclosure statement that he along with Sukhwinder Singh, Harjot Singh and others had been visiting Rajasthan to smuggle arms into Punjab being supplied by aforesaid Sodha Khan. On further interrogation of Harpreet Singh, on 2.10.2009 he made another disclosure statement that he along with Ranjodh Singh had stayed in a hotel 'Bachan Niwas' situated near Jaisalmer in Rajasthan and was having a visiting card of the said hotel duly kept concealed by him in his personal trunk at his residence. The police party pursuant thereto got recovered the said visiting card. The police party also visited the aforementioned hotel and found that Harpreet Singh and Harjot Singh had stayed there on 13.8.2009.

Consequently, police remand of appellants Jagmohan Singh and Darshan Singh was obtained. During the course of their interrogation, appellant Jagmohan Singh suffered disclosure statement that in August 2008, he had visited Lahore (Pakistan) and had met one Malik Satar, a tent house owner, who had facilitated his meeting with Wadhawa Singh Babbar (a terrorist of Babbar Khalsa outfit). At the direction of Wadhawa Singh Babbar, he accompanying Malik Satar went to Kurki (Pakistan) near Indian border and had brought two assault rifles and a bag containing RDX to village Bharowal near Tarn Taran (Punjab) to deliver the same under instructions of uncle of aforesaid Wadhawa Singh Babbar near the drain and had kept concealed the same in a ditch.

Similarly, appellant Darshan Singh suffered disclosure statement that he had smuggled two pistols from Jodhpur (Rajasthan) to Punjab by bus and had kept concealed the same by alighting from the bus near Jodhpur. Further on 24.10.2009, pursuant to his disclosure statement Darshan Singh got recovered

photocopies of letters Mark P1 to P7 allegedly written by Wadhawa Singh, Chief Babbar Khalsa to him from his house. On 26.10.2009 Jagmohan Singh pursuant to his disclosure statement got recovered an Indigo car from near SYL Canal, Village Pawala, Bassi Pathana, allegedly used by him for transporting arms and conducting recce. From the dash board of the car, 10 letter pads of Babbar Khalsa Mark P8 to P17 were recovered. Since complicity of one more accused Amarjit Singh was also found, his house was raided, but he could not be arrested, despite numerous raids. Subsequently he was arrested from Chennai International Airport. On his personal search several articles like telephone dairy, Apple I-pad, Identity card of Bar Association, Chandigarh, three sims etc. were recovered from his possession.

On completion of investigation, initially final report under Section 173 Cr.P.C. was presented only against the appellants before the Illaqua Magistrate. On arrest of co-accused Amarjit Singh, supplementary challan was also presented against him.

On commitment the appellants and said Amarjit Singh, were charge sheeted under Section 20 of the Act and Section 25 of the Arms Act to which they pleaded not guilty and claimed trial.

The prosecution in support of its case examined as many as 18 witnesses.

Statements of accused-appellants under Section 313 Cr.P.C. were recorded putting entire incriminating evidence brought on record.

On appraisal of the prosecution evidence and hearing learned counsel for both the sides, the appellants were convicted and sentenced in the manner as indicated above in the opening part of the judgment.

Learned counsel for the appellants jointly contended that the impugned judgment is based on surmises and conjectures, because no objectionable article was recovered from any of the appellants. Recovery of photocopies of letters Mark P1 to P7 from Darshan Singh and letter pads of Babbar Khalsa mark P8 to P17 from Jagmohan Singh in any manner do not prove their complicity in the terrorists activities. Even otherwise, the alleged disclosure statements pursuant to which appellants Darshan Singh and Jagmohan Singh had got recovered the aforesaid documents were not admissible in evidence being suffered in police custody and not supported by any independent corroboration. The police never tried to trace the originals of Mark P1 to P17 and further that who was their author. They are simply the photocopies. The prosecution could not bring any evidence to show that the same were ever used by the appellants as a member of Babbar Khalsa outfit. In the absence of any such evidence, nexus between the appellants and the Babbar Khalsa International outfit or their complicity in any terrorists activities could not be proved by the prosecution. Even otherwise, the said documents Mark P1 to P7 have no evidentiary value being not legally proved and exhibited. Nothing was brought on record by the prosecution that the appellants had done any act which threatened the sovereignty of India or which spread any fear amongst the people or any section of the people in India or any foreign country. Even no explosive substance i.e. dynamite etc. or illicit arms and ammunition or poisonous substance was recovered from the possession of the appellants. The alleged recovery of pistol from Harpreet Singh by in itself does not prove his complicity in any terrorist activity and thus, all the appellants have wrongly been convicted.

The last leg of their arguments is that compliance of Section 45 of the Act and Rule 4 of the Unlawful Activities (Prevention)(Recommendation and Sanction of Prosecution) Rules, 2008 (in short “the Rules”) for prosecution of appellants was not proper and thus, there was a legal lacuna in the prosecution case which has held them entitled to claim their acquittal.

On the other hand, the learned State counsel contended that since, pursuant to disclosure statements of appellants Darshan Singh and Jagmohan Singh, incriminating documents Mark P1 to P17 related to Babbar Khalsa terrorists organization were recovered from their possession, therefore, their complicity in terrorists activities was well proved on record. Recovery of pistol and 15 live cartridges from the possession of Harpreet Singh in itself was sufficient to convict him.

To resolve the controversy in an effective manner, Section 15 of the Unlawful Activities (Prevention) Act, 1967 is reproduced hereunder :-

“15. Terrorist act – (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security (economic security) or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.”

In light of the above provision, the evidence led by the prosecution has to be scrutinized.

As per the case of the prosecution, the appellants being members of Babbar Khalsa (a banned terrorists outfit named Babbar Khalsa International) and having connection with ISI (Pakistan), by procuring weapons, bombs, dynamite or other explosive substances from Jaisalmer (Rajasthan) were indulging in terrorists activities to create lawlessness in Punjab.

On receipt of above secret information on 25.9.2009, a barrier was laid and appellant Harpreet Singh @ Happy @ Heera was apprehended. From his custody a pistol of .30 bore loaded with 8 cartridges besides, 7 live cartridges of the same bore were recovered from him. Harpreet Singh @ Happy also suffered a disclosure statement that he along with Sukhwinder Singh, Harjodh Singh and others had been visiting Rajasthan to procure arms to smuggle the same into Punjab. Similarly, seven photocopies of letter Ex.P1 to P7 were recovered from Darshan Singh and 10 photocopies of letter pads Ex.P8 to P18 from Jagmohan Singh. Jagmohan Singh also confessed to have brought two assault rifles and a bag containing RDX from Pakistan which he had kept concealed near the drain near village Bharowal. Darshan Singh is said to have confessed regarding smuggling of two pistols from Rajasthan to Punjab which he had kept concealed near Jodhpur.

However, it is pertinent to mention here that no such recovery of rifles or pistols was effected by the police, pursuant to the disclosure statements of Darshan Singh and Jagmohan Singh.

Hence, in the absence of any such recovery, disclosure statements of appellants Darshan Singh and Jagmohan Singh that they were indulging in terrorists activities being members of Babbar Khalsa outfit became inadmissible in evidence in view of the provisions of Section 25 of the Evidence Act.

Even otherwise, the prosecution has miserably failed to lead any evidence, in as much as, that any of the appellants had ever done any act with intent to threaten the unity, integrity, security or sovereignty of India or carry out any terrorist attack to create terror in the people or any section of people in the society in India. Even the prosecution could not prove that the appellants ever

indulged in any unlawful activities as defined in Sections 2 and 15 of the Act.

The entire prosecution case revolves around the recovery of one pistol, 15 live cartridges and 15 photocopies from appellant Harpreet Singh and alleged photocopies Mark P1 to P17, from appellants Jagmohan Singh and Darshan Singh which pertain to the period 1999-2000 i.e. 17 years old. Some of them are circulars not addressed to anyone. The prosecution did not make any effort to examine the author and recipient of these documents. Even no effort was made by the Investigating Agency to procure their originals.

In view of the above factual position, the aforesaid documents have lost their significance in such a long span of 17 years, more particularly, when the original of the same are not proved as envisaged in Section 62 of the Evidence Act, 1872. Even the prosecution did not ever seek any permission to prove these documents by way of secondary evidence as envisaged in Section 65 of the Evidence Act, thus, the same are inadmissible in evidence. The recovery of the aforesaid documents by itself does not prove the involvement of the appellants Jagmohan Singh and Darshan Singh in any terrorists activity, in as much as, the Investigating Agency could not collect any evidence in this regard.

So far as, alleged recovery of pistol and 15 live cartridges from appellant Harpreet Singh is concerned, the same is proved from the statements of PW9 DSP Hardevinder Singh and PW4 SHO Atul Soni. They both in unequivocal terms have testified about recovery of a pistol loaded with 8 live cartridges in its magazine and 7 live cartridges from the left pocket of trouser of appellant Harpreet Singh @ Happy. They were cross examined at length, but nothing favourable to the appellant could be elicited from their depositions.

PW5 Armourer ASI Bhupinder Singh has testified that on 2.10.2009 he had checked the said pistol and found the same in working condition. His report in this regard was Ex.PW5/A. Hence, it is well proved on record that the pistol allegedly recovered from appellant Harpreet Singh @ Happy is in working condition. However, since the prosecution has miserably failed to prove that the aforesaid pistol recovered from Harpreet Singh @ Happy was ever used in terrorists activities, therefore, he too cannot be held liable for conviction under Section 20 of the Act. Reference can be made to **“1995(1) SCC (Criminal) 815 Azad Singh v. State of Haryana” (SC)**.

So far as contention of learned counsel for the appellant regarding compliance of Section 45 of the Act and the Rules is concerned, the same deals with the sanction of prosecution by the prescribed authority. The sanction has to be given only after considering the report of such authority appointed by the Central Government or the State Government, as the case may be, who shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed. Rule 2 speaks about the appointment of authority by the Central Government or the State Government and Rule 4 prescribes “7 working days” for sanction of prosecution after receipt of the recommendation of the authority.

PW12 Yash Pal Sharma, the then Under Secretary, Department of Home Affairs and Justice, Punjab Government, has testified that the Principal Secretary for Home Affairs and Justice Mr. A.R. Talwar had given sanction in this case and the copy of sanction order Ex.PW11/A was issued under his signature.

Perusal of sanction order Ex.PW11/A shows that the entire

evidence collected by the Investigating Agency along with relevant papers was perused by the prescribed authority. Hence, it is evident that proper application of mind and review was made before giving sanction of the prosecution of appellant Harpreet Singh @ Happy in compliance of Section 45 (2) of the Act was made.

So far as, time frame of “7 days” is concerned as prescribed under Rule 4, the same is not mandatory but directory in nature. Therefore, it is held that proper sanction was obtained from prescribed authority for prosecution of appellant Harpreet Singh @ Happy. Even otherwise, learned counsel for the appellants could not point out that what prejudice is being caused to appellant/accused Harpreet Singh @ Happy, if Rule 4 was not strictly followed.

In view of the discussion above, appeal bearing No. CRA-S-4214-SB of 2013 filed by appellants Jagmohan Singh and Darshan Singh is allowed and the impugned judgment qua their conviction under Section 20 of the Act is set aside. They are acquitted of the charges framed against them. They be released forthwith from the custody, if not required in any other case.

Appeal bearing No. CRA-S-4389-SB of 2013 filed by appellant Harpreet Singh @ Happy @ Heera is dismissed and his conviction and sentence under Section 25 of the Arms Act is maintained. He be arrested forthwith to undergo the remaining sentence of his imprisonment.

(RAMENDRA JAIN)
JUDGE

12.5.2016
Ashwani