

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

**Date of decision: May 01, 2017
CRA-1455-SB of 2005**

Narender Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

CRA-1892-SB of 2005

Mohan Lal

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate
for the appellant (in CRA-1455-SB of 2005).

Ms. Aditi Girdhar, Amicus Curiae
for the appellant (in CRA-1892-SB of 2005).

Mr. Chetan Sharma, DAG Haryana.

A.B. CHAUDHARI, J

Being aggrieved by the judgment and order dated 15.07.2005 passed by the Additional Sessions Judge, Hisar by which the appellants were convicted for offence under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act') and were sentenced to undergo rigorous imprisonment for 10 years and fine in the sum of ₹1,00,000/- each; in default, rigorous imprisonment for 2½ years each, the present appeals were filed by

both the accused-appellants.

In support of the appeal, learned Senior counsel for the appellants vehemently argued that the prosecution case is clearly a false case and the recovery was planted. According to him, there is tampering with the evidence on record to show the clear-cut preparation of documents by scoring out the dates in the documents to show the recovery on the date of occurrence. He submitted that there are admissions given by the Investigating Officer as well as Naib Tehsildar to the effect that there was tampering of dates in the vital documents relating to the occurrence. Learned Senior counsel has taken me through the documents as well as evidence to buttress his contentions. He, then submitted that Naib Tehsildar was not competent to take search or prepare any document and therefore, the search itself has vitiated the prosecution case. Learned Senior counsel contended that there was delay of 17 days in forwarding the sample and as per the judgment rendered by this Court, the delay of 13 days was found to be fatal. He, further contended that the property was not deposited with the Illaqa Magistrate as required under Section 52(2) of the NDPS Act and that vitiate the trial.

Per contra, learned State counsel submitted that the prosecution tendered its evidence and has proved its case beyond reasonable doubt. Naib Tehsildar is a gazetted officer as contemplated by the relevant provisions under NDPS Act and therefore, no fault can be found out with the personal search made by the gazetted officer. He,

then contended that there is enough evidence on record and the conviction is required to be upheld. He prayed for dismissal of the appeals.

With the assistance of learned counsel for the rival parties, I have gone through the entire evidence as well as documents referred to by the learned counsel for the rival parties. I have also gone through the evidence in support of which the learned Senior counsel for the appellants stated that there were admissions given by Naib Tehsildar as well as Investigating Officer.

It is stated that the occurrence had taken place on 29.11.2003 that a Contessa car which was going from the village Adampur to village Daroli was stopped by the police party and the appellant-Narender Kumar was the driver of the car while the appellant-Mohan Lal was sitting by the side of the driver. When the search was made, contraband, namely 5 bags containing 41 kgs poppy husk in each bag were found. I have carefully perused the documents Exhibit P4 (recovery memo), Exhibit P6/A (notice under Section 50 of NDPS Act, without date), Exhibit P6/B (Reply to the notice under Section 50 of NDPS Act), Exhibit P7 (recovery memo) and Exhibit P8 (site plan). All these documents clearly show that the date 27.11.2003 or 28.11.2003 in all these documents was converted into the date 29.11.2003 so on and so forth. The use of the ink and the change of digits under the signatures of Naib Tehsildar also show that there is a change of the date in these documents. The witnesses namely, Naib

Tehsildar as well as police officer PW2-Roshan Lal also admitted that these documents appear to have been corrected and the dates were changed. Though, upon bare perusal, I find that the date might be 29.11.2003 that was put on all the documents, but fact remains that there is change of dates in all these documents and correction or as the case when made. ought to have been explained by the prosecution itself. This Court cannot supply or imagine any explanation or reason for the fact of all change of those dates in all these documents. The prosecution miserably failed to ask all these questions by re-examining both these witnesses for getting explanation from them. I think the flaw appears to have been deliberately left by the prosecution rather than explaining the same. But then this Court is helpless and cannot supply explanation or any reason for the change of dates in these documents. Consequently, this court has no alternative but to hold that the prosecution has not proved its case beyond reasonable doubt and the benefit of doubt must go to the accused.

The submissions made by learned Senior counsel for the appellants about the delay of 17 days in sending the sample does not appeal to me since the contraband was early non-perishable poppy husk. The submission that property was not deposited with the Illaqa Magistrate is equally unacceptable in view of the directory nature of provision. In the result, these appeals will have to be allowed. Hence, the following order is passed:-

ORDER

- (i) CRA-1455-SB of 2005 and CRA-1892-SB of 2005 are allowed;
- (ii) Impugned judgment and order dated 15.07.2005 passed by the Additional Sessions Judge, Hisar by which the appellants were convicted for offence under Section 15 of NDPS Act and were sentenced to undergo rigorous imprisonment for 10 years and fine in the sum of ₹1,00,000/- each; in default, rigorous imprisonment for 2½ years each, is set aside.
- (iii) Appellants-Narender Kumar and Mohan Lal are acquitted of the charges framed against them;
- (iii) Fine, if paid, be refunded to them.
- (iv) Fees to amicus curiae as per rules.

(A.B. CHAUDHARI)
JUDGE

May 01, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No