

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

**Criminal Appeal S-278-SB of 2009 and
CRM 16348 of 2015**

Date of Decision: March 2, 2017

Amar Pal @ Amar	Versus	Appellant/Applicant
State of Haryana		Respondent

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

Present: Mr. Sumeet Singh Brar, Advocate
for the applicant/appellant.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S.MANN, J.

The appellant, namely, Amar Pal @ Amar alongwith Mangat @ Satbir, was arraigned as accused in FIR No. 224 dated 14.12.2002 registered at Police Station Sadar, Dabwali, District Sirsa under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS' Act). During the trial of the case, Mangat @ Satbir absented himself and, accordingly, he was declared a proclaimed offender. The trial of the case, which went on against the

appellant, ended in his conviction under Section 15 of the NDPS Act and he was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two years.

Against his conviction and sentence, the appellant filed the present appeal, which was admitted on 4.2.2009.

According to the prosecution, on 14.12.2002, SI Rajbir Singh, Station House Officer, Police Station Sadar, Dabwali alongwith ASI Mahender Singh, HC Jaibir Singh and Constable Sumer Singh was present on the bridge of Raj Canal in the area of Abub Shahar for patrolling and detection of crime in Government vehicle No. HR-24F/8629. A Maruti car came from the side of Sangria. On seeing the police vehicle, the driver of that car tried to make a u-turn but could not succeed as the bridge was narrow. On suspicion, SI Rajbir Singh with the help of other police officials stopped the car. Two persons were sitting inside the car. One of them on inquiry, disclosed his name as Mangat @ Satbir son of Leela Ram, caste Meghwal, resident of Shergarh and the person by his side disclosed his name as Amarpal @ Amar son of Ravta Ram, caste Meghwal, resident of Bhavwala, Police Station City, Abohar (at present resident of Shergarh) and on checking, the number of the car was noted as

HR-03/5790. Two bags were lying loaded in the rear portion of the car. SI Rajbir Singh served notices Ex.PW6/A and Ex.PW6/B under Section 50 of the NDPS Act on accused Amarpal @ Amar and Mangat @ Satbir, respectively to the effect that he suspected some contraband in the bags and for search of those bags any Gazetted Officer or Magistrate could be called at the spot or they (accused) could be taken before them. The accused, as per their replies Ex.PW6/C and Ex.PW6/D, respectively, desired the search of the bag before a Gazetted Officer or a Magistrate. The notices and replies were signed by them and were attested by ASI Mahender Singh and HC Jaibir Singh. Through the wireless fitted in the vehicle, SI Rajbir Singh requested the DSP, Dabwali to reach the spot. On arrival, Shri Chander Singh, DSP, Dabwali, directed the Sub-Inspector to conduct the search of the bags lying in the car. The bags were found containing poppy straw. Two samples of 100 grams each were taken from both the bags and the residue in each bag was found to be 39 kilograms and 800 grams. All the four samples and residue of the bags were made into different parcels and were sealed with seal "RS" by SI Rajbir Singh and seal "CS" of DSP Chander Singh. SI Rajbir Singh prepared two sets of specimen seal impressions of his seal "RS" and the seal after use was given to ASI Mahender Singh. All the sample parcels and the residue parcels were taken into

possession vide recovery memo Ex.PW6/E alongwith Maruti car bearing registration No.HR-03/5790 which was attested by above-said witnesses. SI Rajbir Singh sent ruqa Ex. PA through Constable Sumer Singh No. 958 to P.S. Sadar, Dabwali, on the basis of which, formal FIR Ex.PA/1 was recorded by SI Satbir Singh. SI Rajbir Singh prepared rough site plan Ex.PW6/F with its correct marginal notes and recorded the statements of witnesses under Section 161 Cr.P.C. He arrested both the accused. SI Rajbir Singh also prepared report Ex.PW6/J under Section 57 of the NDPS Act at the spot. After completion of investigation at the spot and reaching the police station, SI Rajbir Singh deposited the case property with the MHC and put both the accused persons in the police lock up. Report under Section 57 of the NDPS Act was sent to DSP Dabwali, which was seen by him as per his initials Ex.PW6/K.

After completion of investigation and presentation of challan, the appellant and Mangat @ Satbir were charged for committing offence punishable under Section 15 of the NDPS Act, to which, they pleaded not guilty and claimed trial.

At the trial of the case, the prosecution examined eight witnesses, namely, SI Satbir Singh as PW1, HC Rameshwar Singh as PW2, HC Bharat Singh as PW3, ASI Ranjit Singh as PW4, Constable Om Parkash as PW5, SI Rajbir Singh

(Investigating Officer) as PW6, DSP Chander Singh as PW7 and ASI Mahender Singh (witness of recovery) as PW8. HC Jaibir was given up as unnecessary.

When examined under Section 313 Cr.P.C., the appellant pleaded his false implication. According to him, he had taken lift in the car of Mangat @ Satbir at Bus Stand of Abub Shahar while he was coming to his house in village Shergarh. He had no knowledge about any contraband loaded in that car and nothing was recovered from him. In his defence, he did not lead any evidence.

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

This Court has heard learned counsel for the parties and perused the evidence.

Learned counsel for the appellant has submitted that though according to the prosecution, DSP Chander Singh was present at the time of recovery of the contraband yet his statement under Section 161 Cr.P.C. was not recorded. There was a delay of one month in sending the sample of the contraband to the laboratory. At the time of the chemical examination of the contraband, samples already stood broken. Though the sample said to be having four seals were put on it yet

only one was found and, that too, in a damaged condition. It is also submitted that the appellant could not be said to be in conscious possession of the contraband as he was sitting on the front seat whereas the contraband was recovered from the rear seat of the car. No independent witness was examined by the prosecution in support of its case. Even the report under Section 57 of the NDPS Act was not sent to the higher authorities. It is further submitted that the prosecution evidence was contradictory and full of discrepancies. As such, the conviction and sentence of the appellant is not sustainable in law and on facts. Therefore, the appeal be accepted and he be acquitted of the charge against him.

Per contra, learned State counsel has submitted that the prosecution has led cogent and convincing evidence to prove the charge against the appellant. Therefore, he does not deserve any interference in the impugned judgment of conviction and sentence.

PW1 SI Satbir Singh was a formal witness, who deposed that on 14.12.2002 on receipt of ruqa Ex.PA received through Constable Sumer Singh, he had recorded the formal FIR Ex.PA/1.

PW2 HC Rameshwar Singh had tendered in evidence his affidavit Ex.PB deposing therein that sealed samples bearing

seals of “RS” and “CS” alongwith other case property deposited with him by SI Rajbir Singh on 14.12.2002, were further handed over by him to MHC Bharat Singh on 11.1.2003 and he did not tamper with the parcels of the case property.

PW3 HC Bharat Singh had tendered in evidence his affidavit Ex.PC deposing therein that sealed samples having seals of “RS” and “CS” deposited with him by PW2 HC Rameshwar Singh on 11.1.2003 were handed over to Constable Om Parkash on 13.1.2003 for onwards transmission to FSL, Madhuban. During that period the seals on the sample remained intact.

PW4 ASI Ranjit Singh was a formal witness, who had recorded the statement of MHC Bharat Singh, Om Parkash and HC Rameshwar under Section 161 Cr.P.C.

PW5 Constable Om Parkash had tendered in evidence his affidavit Ex.PD in support of the fact that sealed samples handed over to him by MHC Bharat Singh on 13.1.2003 were deposited by him with FSL, Madhuban on 14.1.2003 and during that period the seals of the sample were not tampered with.

PW6 SI Rajbir Singh was the Investigating Officer, who had supported the factum of recovery of 80 kilograms of poppy straw from the possession of both the accused which was

kept in two bags while travelling in car No. HR-03/5790. He deposed about the formalities conducted at the spot including taking samples of poppy straw from the bag, weighment of the residue poppy straw etc. the factum of recovery of poppy straw from the bags possessed by the accused which was further supported by PW8 ASI Mahender Singh, who was with the police party at that time and by PW7 Chander Singh DSP, who was called at the spot by the Investigating Officer.

At the time of the apprehension of the appellant, two bags containing 80 kilograms of poppy straw in all were found lying on the rear seat of the car, in which, the appellant was sitting on one of the front seats and the car was being driven by Mangat @ Satbir accused. From the facts and circumstances of the case, it cannot be said that the appellant was not aware of the factum of poppy straw being transported in the car. According to the appellant, he had taken the lift in the car. However, he has not been able to establish his plea by adducing any evidence. Even otherwise, once such a large quantity of contraband, i.e. 80 kilograms was lying on the rear seat of the car, it cannot be said that the appellant while taking lift failed to notice the same. Without objecting to the presence of the contraband in the car, the appellant willingly occupied one of the front seats of the car and, therefore, he was very much in conscious possession of the

contraband.

As regards the non-joining of independent witnesses at the time of the recovery of the contraband as pleaded by the appellant, it has come in the evidence that the Investigating Officer had made a request to the independent witnesses to join the investigation but the independent witnesses refused to do so. As such, no benefit of non-joining of independent witnesses can be granted to the appellant.

Coming to the argument of learned defence counsel about the sample of the contraband being in damaged condition, it may be worthwhile to mention here that the recovery was effected on 14.12.2002 whereas the statements of the recovery witnesses were recorded after a couple of years and all this while the case property used to be brought to the Court and in the process, the seals might have been broken. The recovery was effected on 14.12.2002 and the sample was dispatched to the laboratory on 13.1.2003. As per the report Ex.PE of the Forensic Science Laboratory, the seals on the sample were intact and tallied with the specimen sheet. The prosecution has led evidence that the seized articles were kept in proper and safe custody. Simply because, there was delay of about a month in sending of the sample of the contraband to the laboratory would not vitiate the trial of the case.

As regards the statement of DSP Chander Singh not being recorded by the Investigating Officer under Section 161 Cr.P.C., it may be seen that DSP Chander Singh was not the sole witness of the factum of recovery. Even no independent witness examined by the defence to dispute the factum of recovery. As such, non-recording of the statement of DSP Chander Singh under Section 161 Cr.P.C. was not fatal to the prosecution.

PW6 SI Rajbir Singh, who was the Investigating Officer deposed that DSP Chander Singh had attested the recovery memo after the signatures of the other recovery witnesses. On the other hand, PW7 DSP Chander Singh deposed that he had attested the recovery memo in the first instance and, thereafter, the recovery witnesses and the Investigating Officer had attested the memo prepared in that regard. According to the Investigating Officer, the weighing capacity of the weighing scale was 100 kilograms whereas according to PW8 ASI Mahender Singh, the scale had the capacity of 50 kilograms. PW6 SI Rajbir Singh deposed that village Abub Shahar was at a distance of 10 acres from the place of recovery whereas according to PW8 ASI Mahender Singh abadi of the village started after one and half acres from the place of recovery. The aforementioned contradictions and discrepancies referred to by the learned defence counsel are minor and trivial in nature and do not go to

the root of the case.

Report under Section 57 of the NDPS Act was sent to the DSP, Dabwali, which was seen by him as per his initials Ex.PW6/K. As such, it cannot be said that no such report as envisaged by Section 57 of the NDPS was not sent to the DSP.

In view of the above, no case is made out for any inference in the conviction and sentence of the appellant under Section 15 of the NDPS Act, 1985. The appeal (S-278-SB of 2009) is without any merit and, therefore, dismissed.

CRM 16348 of 2015

This application has been filed by the appellant under Section 427 read with Section 482 Cr.P.C. wherein he has prayed for directing the sentence awarded to him in FIR No. 215 dated 11.11.2001 under Section 15 of the NDPS Act, Police Station Sadar Dabwali to run concurrently alongwith the sentence awarded to him in the present case/appeal.

The present appeal had arisen out of FIR No. 224 dated 14.12.2002 Police Station Sadar Dabwali District Sirsa under Section 15 of the NDPS Act, which culminated in his conviction and sentence by the learned trial Court on 28/31.3.2008. Before the aforementioned FIR came to be registered, the appellant already stood involved in another

criminal case, i.e. FIR No. 215 dated 11.11.2001 Police Station Sadar Dabwali under Section 15 of the NDPS Act. The trial of FIR No.215 dated 11.11.2001 has also ended in his conviction and sentence, which conviction and sentence stands challenged by him by filing Criminal Appeal S-1458-SB of 2007.

Keeping in view the law laid down by the Hon'ble Supreme Court in **Nand Kishore Vs. State of Haryana 2014 (1) DC (Narcotic) 405 (SC)**, the benefit of concurrent running of sentences cannot be extended to a person, who stands convicted and sentenced in the cases under the provisions of the NDPS Act. The observations made by the Supreme Court are as under:-

6. The prayer made by the appellant is, that the second conviction and sentence vide order dated 24.5.2001, should be directed to run concurrently with the sentence which he was undergoing in furtherance of the first conviction in Case FIR No. 235 dated 15.10.1995.

7. It needs to be noticed, that the first conviction of the appellant was under the NDPS Act. Even, the second conviction was under the same enactment. Insofar as the punishment for a second offence under NDPS Act is concerned, it is necessary to make a reference to section 31 thereof. Section 31 of the NDPS act is, accordingly, being extracted hereunder:

"31.Enhanced punishment for offences after previous conviction -

(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment and also be liable to fine which shall extend to one-half of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a court in India."

8. A perusal of Section 31 leaves no room for any doubt, that the intent of the legislature for a second

conviction under the NDPS Act is, to an enhanced punishment. In case, the appellant is allowed the benefit of Section 427 of the Cr.P.C., there would be factually, a reduction in the sentence, which will have to be undergone by the appellant (consequent upon the two convictions, referred to hereinabove). Since it is not the intent of the legislature, to reduce the punishment for a second conviction under the NDPS Act, but to enhance the same, we are satisfied that the benefit of Section 427 of the Cr.P.C. cannot be extended to a second conviction under the provisions of the NDPS Act.

In view of the above, the application (CRM 16348 of 2015) is devoid of any merit and, therefore, dismissed.

March 2, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No