

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

(1) CRA S-872-SB of 2015.
Date of Decision: 28.04.2017.

Basant Singh @ Laddu

... Appellant

Versus

State of Punjab

... Respondent

(2) CRA S-3505-SB of 2016.

Rajwinder Singh @ Gabbar

... Appellant

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Ankush Singla, Advocate for
Mr. Achin Gupta, Advocate,
for the appellant in CRA S-872-SB of 2015.

Mr. A.S. Brar, Advocate,
for the appellant in CRA S-3505-SB of 2016.

Mr. Mehardeep Singh, Addl. AG, Punjab.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned two appeals bearing CRA S-872-SB of 2015 and CRA S-3505-SB of 2016 as both pertains to the same FIR No.22 dated 26.01.2011 registered under Sections 18 and 25 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) at Police Station Sadar Jagraon.

The accused-appellants were convicted and sentenced as under:-

Offence	Sentence	Fine	In default
18 of NDPS Act	RI for one year	Rs.2000/-	RI for 10 days

In brief the case of the prosecution as mentioned in the judgment passed by the trial Court is as under:-

“The prosecution case in brief is that on 26.1.2011 IO PW6 S.I. Gurpreet Singh along-with other police officials in connection with checking were present at Chuhar Chak Chowk, Galib Kalan along-with Govt. Vehicle no. PB-10BF-6058 and two persons came from Chuhar Chak Side at about 5:30 P.M on Maruti Car bearing registration No. HNW-5657 which was signaled to stop in which two clean shaven persons were present who became nervous on seeing the police party. The person seated along side the driver was holding a plastic bag who after keeping the plastic bag on the seat came out of the car and on questioning, person driving the car disclosed his name to be Rajwinder Singh @ Gabbar whereas the other person disclosed his name to be Basant Singh @ Laddu. IO disclosed his identity and about his apprehension that he suspected the plastic bag to contain some contraband and that they had a right to get their search effected by a Gazetted Officer or

Magistrate on which Basant Singh and Rajwinder Singh reposed their confidence in him and their consent statements EX.PD and EX.PC was recorded separately. Thereafter, IO checked the contents of the plastic bag which was found to contain opium and two samples of 10 grams each were separated and remaining on measurement came to be 480 grams which all were made into sample parcels and bulk parcel and IO sealed the sample as well as bulk parcel with his seal bearing impressions 'GS' and sample seal slip EX.PB and form M-29 EX.PE was also prepared at the spot and seal after use handed was over to H.C.Tilak Raj by IO. The entire case property along-with car without RC was taken into possession by IO vide memo EX.PF. IO then sent Ruqa EX.PF from the spot through HC Braham Dass and on personal search memo and arrest memos of both the accused were prepared which is EX.PI to EX.PN which included the intimation of arrest memo. IO also prepared the site plan EX.PH and recorded the statement of witnesses.”

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free

of cost.

Charge under Section 18 of the NDPS Act was framed against the accused to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, Kamaljit Singh, Ahalmad, PW-2, MHC Sukhwinder Singh, PW-3 HC Jatinder Singh, PW-4 HC Kewal Krishan, PW-5 SHO SI Swaran Singh, PW-6 SI Gurpreet Singh, PW-7 HC Tilak Raj and thereafter closed its evidence.

The statements of accused were recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which the accused denied and pleaded false implication.

It is to be noticed that when the case was pending for recording defence evidence, accused Rajwinder Singh absented from the trial so, he was declared proclaimed offender. Accused Basant Singh faced trial and vide judgment and order dated 27.01.2015, he was convicted and sentenced as narrated above.

Accused Rajwinder Singh was arrested and the proceedings against him commenced from the stage he was declared proclaimed offender. Vide judgment and order dated 07.09.2016 he was convicted and sentenced as stated above.

Feeling aggrieved against the judgment and order dated 27.01.2015 passed by the trial Court, accused Basant Singh @

Laddu has filed CRA S-872-SB of 2015 whereas, against the judgment

and order dated 07.09.2016, accused Rajwinder Singh has filed CRA S-3505-SB of 2016.

On behalf of accused-appellant Basant Singh @ Laddu, it is contended that concededly from the perusal of statement of PW-6 and PW-7 and the prosecution story, accused Basant Singh was allegedly driving the vehicle in question and the recovery is from co-accused Rajwinder Singh. Hence, conscious possession of accused Basant Singh has not been proved. It is further contended that the car from which the alleged recovery had been effected was not owned by accused Basant Singh and the prosecution agency did not make any effort to trace out the owner of the car and the vehicle had also not been taken on superdari, hence, the recovery in this case was planted on the present accused. The trial Court has failed to appreciate the fact that the appellant cannot be said to have been in conscious possession of the alleged recovered contraband. The alleged contraband was recovered from the lap of co-accused Rajwinder Singh. In this manner, neither the recovery had been effected from the appellant, nor the appellant had any concern with the alleged car as the car admittedly did not belong to the appellant. It is further submitted that in case the accused had been carrying any opium and had seen the police party, there was no reason with them to continue towards police party as they had reasonable chance to escape.

On behalf of accused Rajwinder Singh @ Gabbar, it

is contended that it was a case of secret information. As per the

provisions of Section 42 of the NDPS Act, information was required to be sent to the higher officer(s). The provisions of Section 42 of the NDPS Act have not been complied with.

On the other hand, the learned State counsel contends that the prosecution has successfully established its case against both the accused. The Court below has rightly convicted and sentenced the accused/appellants. There is no major contradiction. The accused have not led any evidence to disprove the case of the prosecution.

I have heard the learned counsel for the parties and have gone through the case file.

It is to be noticed that as per the case of the prosecution, the contraband in question was held by accused/appellant Rajwinder Singh whereas, accused/appellant Basant Singh had been driving the vehicle in question. The plastic bag containing 500 grams opium was in the hands of Rajwinder Singh. On being signalled, the vehicle in question was stopped and the recovery of opium was effected from accused Rajwinder Singh. The prosecution has not led any evidence that the contraband was in the conscious possession of accused Basant Singh or he was connected with the contraband in any manner. Consequently, accused Basant Singh deserves to be acquitted. It is ordered accordingly.

As regards accused Rajwinder Singh, the recovery was effected from his conscious possession. Further, since the case was not based on secret information, the provisions of Section 42 of the

NDPS Act are not attracted in the present case. The factum of recovery has been proved by PW-6, IO SI Gurpreet Singh and PW-7 HC Tilak Raj. Both the witnesses were cross-examined at length but nothing could be elicited from their testimony to shake the veracity of the case of the prosecution.

In view of above, the appeal filed by appellant, Basant Singh @ Laddu is allowed and the impugned judgment and order dated 27.01.2015 are set aside. He is acquitted of the charges framed against him. However, the appeal filed by accused Rajwinder Singh @ Gabbar is dismissed. He is stated to be on bail. He be taken into custody to serve the remaining part of the sentence.

28.04.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

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