

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

CRA-S-919-SB-2002

Date of decision:25.07.2017

Kashmir Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.K.P.S. Virk, Advocate for
Mr.K.S. Dhaliwal, Advocate
for the appellant.

Mr.Gaurav Bansal, Assistant Advocate General, Haryana.

H.S. MADAAN, J.

This appeal is directed against the judgment dated 8.2.2002 passed by Judge, Special Court, Kaithal vide which accused Kashmir Singh and Ranjha Ram were convicted for offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*the Act*') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- each and in default thereof, to further undergo rigorous imprisonment for one year.

The accused-convict – Kashmir Singh, who is appellant

before this Court prays that the appeal be accepted, the impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that on 2.12.1999, a police party led by Sub-Inspector Randhir Singh, Station House Officer of Police Station Cheeka (hereinafter referred to as Investigating Officer/IO) was proceeding from Cheeka towards Sadarheri on Patiala road in a Government vehicle No.HR08-B-2019 in connection with crime checking duty and patrolling. In the meanwhile, SI Randhir Singh received a secret information that truck No.DL-I-G-0169 driven by Joginder Singh son of Mehnga Singh of Labana Sikh community, resident of Malout (Punjab) with Kashmir Singh alias Shera, son of Bhal Singh of Kamboj Sikh community, resident of Shiv Majra, Police Station Guhla as cleaner and Ranjha Ram, son of Bala Ram of Bajigar community, resident of village Kallar Majra, a poppy husk smuggler was coming towards kacha path, Gau Charand, Tatiana for the purpose of distributing the poppy husk to smugglers having mares and if a picket was laid, then persons so named along with the truck having contraband could be caught red handed. The information being reliable, the police party led by SI/SHO Randhir Singh with Sub-Inspector Paras Ram associated therewith reached the disclosed place, which was near fields of Jiwan Singh son of Thakur Singh, Jat, resident of village Tatiana. At about 11:00 p.m. (night), a truck came from Patiala side on Cheeka-Patiala road taking a turn on the passage towards Gau Charand, Tatiana. SI Randhir Singh signalled the truck to

stop and it came to a halt. The headlights of the truck were glowing. However, the truck driver got down from the window and fled towards the fields. In the meanwhile, another persons also alighted from the side of driver's window and ran away towards driver direction. However, the persons who had fled were identified by the Investigating Officer and other police officials as Joginder Singh – driver and Ranjha Ram, poppy husk smuggler. The third person was apprehended, who on being asked, disclosed his name as Kashmir Singh @ Shera son of Bhal Singh of Kamboj community, resident of village Shiv Majra, Police Station Guhla. He disclosed that the other two persons, who managed to flee were Jogender Singh, resident of Malout as a truck driver and Ranjha Ram resident of Kallar Majra as owner of the poppy husk. The registration number of the truck was found to be DL-IGA-0169.

As the Investigating Officer suspected that some narcotic substance was being carried in the bags, he served notice Ex.PE upon Kashmir Singh for carrying search either before the Gazetted Officer or a Magistrate or before the Investigating Officer. Accused Kashmir Singh opted to get the search conducted before a Gazetted Officer. Since Kashmir Singh stated that he was not knowing the driving, Constable Narinder Kumar, Driver of the official police jeep was directed to drive the truck. Accused Kashmir Singh, the truck and the witnesses were taken to office of Tehsildar, Guhla at his residence and produced before him, who verified the facts and under his directions, the truck was searched and 230 bags of cement (filled) whereas 40 bags of poppy husk was

recovered from the truck. The Investigating Officer carried out weighment and found that 40 kgs of poppy husk were found in each bag. The Investigating Officer took out 250 gms. of poppy husk each as a sample from the recovered bags. Thereafter, all the samples and residue bags were converted into separated parcels and Tehsildar affixed his seal AKG on the samples and the residues. SI/SHO Randhir Singh also affixed his seal having inscription RS on the samples and residues. The seal impressions were prepared and seal of RS was handed over to SI Paras Kumar. The Tehsildar had retained his own seal having inscription AKG. The truck, cement bags, residues and samples were taken into police possession along with seal impression vide recovery memo Ex.PD. The Investigating Officer sent ruqa Ex.PB to Police Station Cheeka through Constable Atma Ram on the basis of which formal FIR Ex.PB/1 was recorded by MHC Ramesh Kumar. Accused Kashmir Singh was arrested as per arrest memo Ex.PF. Thereafter, accused was brought to place of occurrence by SI Randhir Singh, whereas the truck along with the case property was left at the residence of Tehsildar, Guhla under the supervision of HC Balbir Singh. The Investigating Officer prepared rough site-plan Ex.PG at the spot. After carrying out the investigation proceedings at the spot, SI Randhir Singh again reached at the residence of Tehsildar and thereafter took the accused along with the case property to Police Station Cheeka and deposited the case property and samples with MHC and accused was lodged in police lock up.

On the same day, SI Randhir Singh sent detailed report

Ex.PA to DSP, Guhla. Samples were sent to FSL, Madhuban for analysis.

After completion of investigation and other formalities, challan against accused Kashmir Singh, who was arrested at the spot was prepared and filed in the Court of Judge, Special Court, Kaithal. It is pertinent to mention here that co-accused Joginder Singh and Ranjha Ram were declared proclaimed offenders.

On presentation of challan in the Court of Judge, Special Court, Kaithal, he supplied copies of documents relied upon in the challan to the accused Kashmir Singh free of cost as provided under Section 207 Cr.P.C. After that, co-accused Joginder Singh and Ranjha Ram were arrested and supplementary challan was filed against them by the prosecution and copies thereof were supplied to the above-said co-accused free of costs as envisaged under Section 207 Cr.P.C.

Learned Judge, Special Court, Kaithal finding that charge for offence under Section 15 of the Act was disclosed against all the accused, charge-sheeted all the accused for the said offence, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

However when the case was at the stage of recording prosecution evidence, accused Joginder Singh absented from the Court and ultimately he was declared as proclaimed offender.

To bring home guilt to the accused, the prosecution examined as many as eleven witnesses as per details below:

PW1 Om Parkash, DSP Guhla stated that on 4.12.1999 while

posted as such, he had received report under Section 57 of the Act regarding recovery of 40 bags of poppy husk and arrest of the accused. He stated that he had forwarded the report Ex.PA to Superintendent of Police, Kaithal on the same day.

PW2 Inspector Dilpazir Singh, AEC Karnal deposed that on 18.5.2000, he was posted as SI/SHO at Police Station Cheeka and on that day he had prepared supplementary report under Section 173 Cr.P.C. against accused Ranjha Ram and Joginder Singh after they were arrested in the case.

PW3 HC Ramesh Kumar stated that on 3.12.1999, he was posted as MHC at Police Station Cheeka and on that day SI/SHO Randhir Singh had deposited with him 40 bags of poppy husk, 40 sample parcels bearing seals of RS and AKG along with specimen seal impressions besides a truck bearing No.DL-IG-0169 and 230 bags of cement in intact position; that on 6.12.1999, he had handed over 40 sample parcels along with specimen seal impressions, docket vide R.C. No.324 to Constable Raghbir Singh for depositing the same at FSL, Madhuban and said police official after doing the needful handed over to him receipt on the same day. The witness stated that so long as the sample parcels and other case property remained with him, neither he tampered with the same nor he allowed anybody else to do so. Going further, this witness deposed that on 3.12.1999, Constable Atma Ram had brought ruqa Ex.PB to him at Police Station Cheeka, on the basis of which he had recorded formal FIR Ex.PB/1, sending special reports to Illaqa Magistrate, DSP Guhla and SP

Kaithal through Constable Nisrudin. He stated that he had made endorsement Ex.PB/2 on the ruqa.

PW4 Constable Raghubir Singh deposed that on 6.12.1999 while he was posted on general duty at Police Station Cheeka, MHC Ramesh Kumar had handed over to him 40 sample parcels, sample seal impressions bearing seals of RS and AKG along with docket vide RC No.324 for depositing the same with FSL, Madhuban. He accordingly did so on the same day and on return to the police station, he handed over receipt to MHC. In the concluding lines of his examination-in-chief, he deposed that so long as the sample parcels and specimen seal remained with him, neither he tampered with the same nor he allowed anybody else to do so.

PW5 Constable Nisrudin testified that on 3.12.1999, he was posted on general duty at Police Station Cheeka; that on that day Ramesh Kumar MHC handed over to him three envelopes containing special reports for delivering the same to Illaqa Magistrate, DSP Guhla and SP Kaithal. He accordingly did so without any delay on his part.

PW6 HC Mohinder Singh deposed that he received proclamation under Section 82 Cr.P.C. against accused Jogender Singh and Ranjha Ram on 21/22.1.2000 and he went to the houses of above-said both the accused and he was told by the villagers/inhabitants that they were not residing in their respective villages and on the same day, he pasted the proclamation on the doors of the houses of accused persons.

PW7 S.K. Nagpal, Senior Scientific Officer, FSL,

Madhuban deposed that on 6.12.1999, 40 sealed cloth parcels, each sealed with two seals having inscription RS and two seals having inscription AKG were received in their laboratory through Constable Raghbir Singh; that seals of the parcels were found intact and tallied with the specimen seals as per forwarding authority; that chemical test and techniques were implied to detect the major alkaloids of opium in the exhibits 1 to 40. He added that Morphine, codeine, thebaine, papaverine, narcotine along with miconic acid were detected in Exhibits 1 to 40. Based upon the examination carried out in the laboratory, the samples were identified as poppy straw (choora post) of papaver somniferum. He proved the report in that regard in his hand bearing his signatures as Ex.PC.

PW8 Sh.Ashok Kumar, Tehsildar deposed that on 3.12.1999, he was posted as Tehsildar – cum Executive Magistrate at Guhla; that on that day at about 5:00 a.m. in the morning, SI/SHO Randhir Singh from Police Station Cheeka produced before him accused Kashmir Singh along with truck bearing No.DL-I-G-A/169 in loaded condition and PWs; that he had verified the facts and under his directions, the truck was searched in which 40 bags of poppy husk were found lying underneath the cement bags; that 250 gms. of poppy husk was separated from each bag and residue on weighment was found to be 39 kgs. 750 gms in each bag. The witness stated that he had affixed his seal having inscription AKG after converting the sample parcels and residues while Investigating Officer SI Randhir Singh had affixed his seal having inscription RS on the sample parcels and residue bags; that he retained his seal with him whereas

Investigating Officer had handed over his seal having inscription RS to SI Paras Ram and that 40 sample parcels, 40 bags of poppy husk, truck No.DL1GA-0169 and 230 bags of cement along with specimen seal impressions were taken into possession vide memo Ex.PD signed by him and attested by the witnesses. He proved the case property bags as Ex.P1 to Ex.P40 and truck as Ex.P41.

PW9 Paras Kumar, SI, who was associated with the police party headed by SI Randhir Singh on 2.12.1999 when SI Randhir Singh had received the secret information and then had led NAKA intercepting truck with three occupants, Joginder Singh – accused having jumped down from driver window, Ranjha Ram jumping down from the side of conductor window and running away whereas Kashmir Singh was apprehended while sitting in the cabin deposed in that regard. He further deposed regarding recovery of contraband and other proceedings being carried out by Investigating Officer preparing various documents. So did PW10 SI Mewa Ram, who on 2.12.1999 was posted at Police Station Cheeka.

PW11 SI Randhir Singh (since promoted as Inspector), who was leading the police party, which had intercepted the truck and affected the recovery of contraband deposed in detail supporting the prosecution story on material aspects proving various documents. He further testified regarding the investigation conducted by him including arrest of accused Joginder Singh in the case on 19.3.2000 and arrest of accused Ranjha Ram and preparation of supplementary challan etc.

The Public Prosecutor closed the evidence of prosecution after tendering report of FSL Ex.PX.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Further, accused Kashmir Singh took up a plea that he is innocent; that he has no concern with the alleged recovery and truck in question and he does not know how to drive the truck and the alleged recovery was planted upon him.

Accused Ranjha Ram took the plea that he is innocent and he never indulged in such activities; that no such case was ever registered or pending in any court against him or against his family members; that he has been falsely implicated and he was not present on the alleged date of recovery even in Haryana; that from 1.12.1999 to 4.12.1999, he remained in his in-laws house at village Sanghera, Tehsil Barnala, District Sangrur along with his family to attend the marriage in his in-law's house. He further pleaded that on 1.12.1999, he fell seriously ill and Dr.R.G. Singla, Medical Officer, Civil Hospital, Barnala gave treatment to him and he advised him three days complete bed rest, so he was not present on the alleged date of recovery with the truck; that neither he has any connection with the alleged truck, recovery or the other accused nor they belonged to him in any way.

During their defence, accused examined two witnesses as per

details below:

DW1 Jattu Ram son of Sardara Ram, son of Sawan Ram, aged 42 years, resident of village Sanghera, Tehsil Barnala, District Sangrur as then was stated that Ranjha Ram accused is his brother-in-law, married to his real sister Pohli about 5 years back (statement of this witness was recorded in the Court on 31.1.2002); that in the year 1999, his daughter's Saravjeet marriage was solemnized at village Sanghera with Jagga Ram of village Rajla and on 1.12.1999, Ranjha Ram along with his family reached their village to attend the said marriage; that on 1.12.1999 in the evening there was function in the village with regard to the marriage of his daughter and marriage was solemnized on 2.12.1999; that in the evening of 1.12.1999, Ranjha Ram had acute pain in his abdomen and he got treatment from Civil Hospital, Barnala and his brother Raja Ram accompanied Ranjha Ram to the hospital. The witness further stated that Ranjha Ram along with his family remained in their house up to 4.12.1999. The witness proved the marriage invitation card of his daughter as Ex.DF, marriage photographs Ex.DF/1 and Ex.DF/2 said to have been taken on the night of 1.12.1999 and 2.12.1999. He stated that regarding innocence of Ranjha Ram, his affidavit was prepared in Barnala and it was submitted to senior police officers, original affidavit being Ex.DF/3.

DW2 Raju Ram, son of Bali Ram, son of Nihal Ram, aged 80 years, Cultivator, resident of village Senghera deposed on the similar lines as that on DW1.

After hearing arguments, learned Judge, Special Court, Kaithal convicted and sentenced the accused Kashmir Singh and Ranjha Ram as mentioned supra, which left appellant – accused Kashmir Singh aggrieved and has filed the present appeal.

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record.

Learned counsel for the appellant argued that there are many flaws in the investigation which the trial Court failed to appreciate and wrongly convicted the accused. The first ground of attack was non-compliance of Section 42 of the Act, which is mandatory in nature, therefore, the conviction cannot be sustained. In support of his that contention he has referred to authority of **Kishan Chand vs. State of Haryana 2013(2) R.C.R. (Criminal) 67**.

He further referred to citation **Darshan Singh vs. State of Haryana 2016(1) RCR (Criminal) 333** in support of this very contention. As per facts of said authority on receipt of secret information, Station House Officer carried out raid and recovered 18 packets of Opium, 7 packets of Charas and 23 packets of Smack. However, compliance of Section 42 was not made posing a question as to whether registration of FIR as also the communication of the FIR to the Superintendent of Police would constitute an effective compliance of provisions contained in Section 42 of the Act, the answer was given in negative and conviction recorded by Courts below was set aside.

On the other hand learned State counsel countered the arguments submitting that when the Investigating Officer received the secret information at that time raiding party was in remote area and was required to reach the spot at evening hours in winter season, therefore, if Investigating Officer had got busy in sending secret information in writing to his superior officer in terms of Section 42 of the Act, then the accused might have escaped with contraband and furthermore when the truck was intercepted, two of the accused had managed to flee. He has further argued that the recovery of contraband was so huge that it is difficult to plant upon some innocent person. Therefore, non-compliance of Section 42 of the Act does not have much effect in this case more particularly when no prejudice is shown to have been caused to the accused.

Learned State counsel has referred to citations **Ranjit Singh vs. State of Punjab 2005(2) RCR (Criminal) 550**, **Dharminder Kumar vs. State of Punjab 2002(4) RCR (Criminal) 278** and **Sajan Abraham vs. State of Kerela 2001(3) RCR (Criminal) 808** in support of his arguments.

I find that explanation rendered by State counsel is quite satisfactory. It has to be kept in mind that the recovery had taken place at a public place. In a similar case when a police officer was on patrolling had received secret information that accused were travelling on a scooter possessed Opium and he had stopped scooter at public place and on search recovered Opium, it was observed that in such situation provision of Section 42 of the Act is not applicable in that regard reference can be

made to citation **State, NCT of Delhi vs. Malvinder Singh AIR 2007 (SC) 237**. As regards authorities so referred by learned counsel for the appellant **Darshan Singh vs. State of Haryana** (supra), the facts were a little bit different, since the recovery was effected from a raid at residential house, whereas the present case is one of recovery from truck at public place on the basis of secret information. In this authority itself there is reference to Constitutional Bench Judgement of Apex Court on the subject cited above i.e. **Karnail Singh vs. State of Haryana, 2009(5) RCR (Criminal) 515** to the following effect:-

“xxxxxxx

In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section (42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to

take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act.

Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001.”

The Investigating Officer SI Randhir Singh since promoted as Inspector appearing as PW-11 had categorically stated that on the same day he had sent detailed report Ex.PA to DSP, Guhla as such it amounts to necessary compliance under Section 42 (1) of the Act since the report had been sent by Investigating Officer to his Superior Police Officer on the same day though a little bit belatedly.

The second argument advanced by learned counsel for the accused was that only one sample had been taken and not two as required. In that way the prosecution case is hit badly.

Learned State counsel, however, submitted that the purpose of taking two samples is that one sample is sent to Chemical Examiner for analysis whereas second sample is retained to be used, if the first sample gets damaged or destroyed and merely because only sample has been drawn does not provide any ground for conception to the accused.

I find such explanation by learned State counsel to be quite convincing and satisfactory. Learned counsel for the accused could not convince me as to what prejudice had been caused to the accused during the trial as a result of prosecution drawing only one sample from the bulk.

The third argument advanced by learned defence counsel was that link evidence in this case is missing, as such, the recovery is defective. However, I do not find any merit in this contention. Since Ramesh Kumar Head Constable who was posted as MHC at Police Station Cheeka on 03.12.1999 when SI Randhir Singh had deposited with him the case property including 40 sample parcels bearing seals of “RS” and “AKG” deposed that it was so done along with specimen seal impression, truck bearing No.DL-IG-0169 and 230 bags of cement deposed in that regard. Further stating that on 06.12.1999 he had handed over 40 sample parcels along with specimen seal impression to C. Raghbir Singh for depositing the same with FSL, Madhuban, Karnal, Haryana and he after needful handed over to him receipt on the same day. He has categorically stated that so long as sample parcels and other case property remained within him no tampering therewith had taken place. Testimony of C.Raghbir Singh who had taken parcels to FSL, Madhuban appearing as PW-4 is to the similar effect coupled with that a testimony of SI/SHO Randhir Singh as PW-7 and report from FSL, Madhuban, Karnal, Haryana Ex.PC wherein it is mentioned that seals of the parcels are found intact and tallied with the specimen seals as per forwarding authority. Thus no link evidence is missing, it is established on record that the sample had reached the FSL, Madhuban, Karnal, Haryana with seals intact.

Another argument advanced by learned counsel for the appellant was that since Kashmir Singh-appellant was neither owner nor driver of the truck in question, therefore, his conscious possession of the

contraband is not proved.

However, learned State counsel contended that there were three occupants in the truck, two of them managed to ran away, whereas appellant-Kashmir Singh was apprehended along with contraband in the truck. It is not his case that he had just taken a lift in the truck, he has not explained as how he came to be there in the truck. He has only pleaded false implication without taking a specific stand that he had only taken lift in the truck and was not aware of what was being carried therein, as such, the prosecution has successfully proved conscious possession of contraband by Kashmir Singh and his co-accused Ranjha Ram and Joginder Singh both of them though had ran away from the spot but was subsequently arrested and tried along with Kashmir Singh and were convicted.

One more argument put forward by learned counsel was regarding non-compliance of Section 52-A of the Act.

However, learned State Counsel argued that Section 52-A of NDPS Act read with disposal of seized narcotic drugs and psychotropic substances and as such, does not provide that sample drawn by the Magistrate, is to be sent to FSL for analysis.

After hearing rival contentions, I find there is nothing to show that the recovery effected was illegal or that the accused was put to any prejudice for the said reason in that way argument of learned counsel for the appellant does not cut much ice.

The judgment passed by the trial Court is well reasoned one,

based upon proper appraisal and appreciation of evidence and correct interpretation of law. It does not suffer from any illegality or infirmity, as such, the same is upheld.

The appeal is found to be without merit, as such, appeal stands dismissed.

Accused-Kashmir Singh, who is stated to be on bail in terms of order passed by this Court be taken into custody immediately so as to undergo the remaining sentence.

Necessary direction in that regard be issued to the Chief Judicial Magistrate, Kaithal.

25.07. 2017

Brij/Gaurav Sorot

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes

Whether reportable : Yes