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

**Date of decision: May 08, 2018
CRA-D-1112-DB of 2011 (O&M)**

Balwinder Pal and another

.....Appellants

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE B.S. WALIA**

Present: Ms. Satinder Kaur, Advocate for the appellants.

Mr. H.S. Sullar, DAG Punjab.

A.B. CHAUDHARI, J

Being aggrieved by the judgment and order dated 05.10.2011 passed by the Judge, Special Court, Patiala, in Sessions Case No.469/14.06.2008, by which the appellants, namely Balwinder Pal and Gurmeet Kaur, were convicted for commission of offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and were sentenced to undergo Rigorous Imprisonment for 11 years and to pay fine in the sum of ₹1,00,000/- each; in default of payment of fine, to further undergo Rigorous Imprisonment for one year, the present appeal has been preferred by them.

FACTS

The case of the prosecution is that on 09.03.2008, ASI Salinder Singh along with other police officials were present at T-point Chamaru when a car bearing registration No.12-J-9911 was coming from Ambala side on National Highway. ASI Salinder Singh signaled to stop

the car. The car was stopped by the driver and he tried to run away with a bag; the bag fell down and the poppy-husk in said bag was scattered. The driver was apprehended. On inquiry, he disclosed his name as Balwinder Pal. He also disclosed that there is one more bag of poppy-husk in the car with his wife and the same was also recovered from Gurmeet Kaur who is appellant No.2 in the present appeal. Both the bags were taken into possession, samples were taken, poppy-husk was weighed to 34.500 Kg. and thereafter, investigation was carried out and the challan was filed against the appellants-accused persons. The prosecution examined the official witnesses. The trial Court accepted the evidence of the witnesses and convicted the appellants. Hence, this appeal.

ARGUMENTS

In support of the appeal, learned counsel for the appellants, *inter alia*, submitted that the concerned police officer did not follow the procedure contemplated by Section 50 of the NDPS Act and as such, no memo of search was recorded in accordance thereof. According to her, no procedure for making discovery of the contraband under Section 27 of the NDPS Act was followed. Form No.29 bearing date 24.03.2008 did not tally with the date of incident, i.e. 09.03.2008. The prosecution did not prove by evidence that appellant No.2-Gurmeet Kaur was wife of appellant No.1-Balwinder Pal. On the contrary, ration card shows that she is not the wife of Balwinder Pal. Learned counsel, then argued that no information to higher officer was given, which was contemplated under Section 42 of the NDPS Act. She also submitted that the entire

prosecution case is false and the seizure is said to have been made on National Highway near Ambala in the night time, when hundreds of cars pass on the said Highway. No independent witness was examined by the prosecution and therefore, the whole prosecution story is doubtful. She also argued that there was no authority with the police officers to conduct the alleged raid. She, therefore, prayed for allowing the appeal.

Per contra, learned State counsel supported the impugned judgment and order and the reasons recorded therein. He submitted that the requirement of Section 50 of NDPS Act is not attracted at all in the present case, as there was no personal search carried out. Section 42 of the NDPS Act was also not required to be complied with as it was the case of raid on National Highway. He then, submitted that recovery was a chance recovery and burden shifted on the accused persons with reference to Section 35 of the NDPS Act. Finally, he prayed for dismissal of the appeal.

CONSIDERATION

Heard learned counsel for the rival parties. We have perused the entire evidence and the reasons recorded by the learned trial Court in the impugned judgment, with the assistance of the learned counsel for the rival parties.

The facts narrated above clearly show that the police party had been present in connection with *nakabandi* on National Highway near Ambala. They signaled the car to stop. The first question that arises before us is about the very genesis of the prosecution case in conducting the

alleged raid on National Highway by way of *nakabandi*. The cross-examination of the main witness ASI Salinder Singh and in particular, in relation to the aforesaid aspect about the genesis of the prosecution case, is relevant. We quote the following evidence in the cross-examination:-

“We started from police station at 6:30 pm. We were in all 5/6 police officials. We were on private Qualis car. That was arranged through C. Kulwant Singh. I do not know from where said Qualis car was brought by C. Kulwant Singh. He brought it in the morning. However, I cannot tell the exact time. It was brought for the purpose of raid, checking etc. I cannot tell the registration number of the said Qualis car. The number of that Qualis car is not mentioned in any of the documents in this case. That Qualis car was not used for conducting investigation in any other case. I cannot tell the time when that Qualis car was returned by C. Kulwant Singh. I do not know if it was brought on Bagaar by C. Kulwant Singh or not.”

It is thus, clear from the above evidence that they had proceeded in a private Qualis car. It would make no difference even if they proceeded in a private car or a government car. But then the question will arise, whether they were assigned the duty of going on the National Highway near Ambala for *nakabandi* in accordance and whether there are contemporaneous entries in the police station diary or by any other authority or by any higher officer. What is stated is that they started from the police station at 6:30 P.M. with 5/6 officials in a private car. There is nothing on record to show about the registration number of the private car in the police diary or anywhere or the information to the higher officer

about the said car. There is no police station diary produced on the record that they were directed to proceed in a private car for *nakabandi* and it is in that context, they were authorized to lay *nakabandi* and then conduct the raid as aforesaid. To repeat, they started from the police station in a private Qualis car and they signaled to stop the car driven by the accused persons and then they found contraband, would not mean that they were authorized to go for *nakabandi*, which should be supported by the contemporaneous entries in the police diary to show that they were so authorized particularly because the same is in question. There have been number of cases where police personnel have acted without any authorisation in such matters for extraneous consideration and for their self-gain. It was, therefore, most essential for the prosecution to bring evidence about their authority to do so because there is a challenge in this case. The above part of the cross-examination is interesting in the sense that ASI Salinder Singh says that the car was brought by Constable Kulwant Singh. But Kulwant Singh was never examined. Then, he says that he does not know from where Qualis car was brought. He further says, it was brought in the morning and he cannot tell the exact time. It creates doubt about raid, seizure etc. It was all the more necessary to have registration number of the car recorded in the police station diary, which records minute to minute developments. He then, stated that he cannot tell the registration number of the car nor the same is mentioned anywhere in the documents, which have been prepared after the raid was conducted. He then also stated that he does not know when the car was returned by

Kulwant Singh. To repeat, Kulwant Singh was never examined by the prosecution.

We are aghast in reading the aforesaid evidence and find that the burden was on the prosecution to prove that ASI Sailnder Singh and other officials were authorised to lay *nakabandi* and to conduct such raid as alleged by them. The prosecution has not discharged the burden as aforesaid. The trial Court cannot mechanically acted on what has been shown by the police officers in conducting the raid and seizing the contraband. The Court must be satisfied with the genesis of the raid conducted by these police officers. The evidence of ASI Salinder Singh is not corroborated by any other evidence. In fact, there is no other evidence brought by the prosecution. The entire operation appears to be doubtful.

In so far as the submission regarding non-compliance of Section 50 of the NDPS Act is concerned, we reject the same outright as there was no personal search. Then, there is other aspect of the matter that police alleged that Gurmeet Kaur is the wife of appellant No.1. However, ration card shows that she is not. In other words, the burden was on the prosecution to prove that appellant No.2 was the wife of appellant No.1.

For the reasons given by us as aforesaid, we find that the benefit of doubt must be extended to the appellants. Hence, we make the following order:-

ORDER

- (i) **CRA-D-1112-DB of 2011** filed by the appellants-Balwinder Pal and Gurmeet Kaur, is allowed;

- (ii) The impugned judgment and order dated 05.10.2011 passed by the Judge Special Court, Patiala, in Sessions Case No.469/14.06.2008, by which the appellants, namely Balwinder Pal and Gurmeet Kaur, were convicted for commission of offence punishable under Section 15 of NDPS Act and were sentenced to undergo Rigorous Imprisonment for 11 years and to pay fine in the sum of ₹1,00,000/- each; in default of payment of fine, to further undergo Rigorous Imprisonment for one year, is set aside;
- (iii) They are acquitted of the charge framed against them;
- (iv) Fine, if paid, be refunded to them.

(A.B. CHAUDHARI)
JUDGE

(B.S. WALIA)
JUDGE

May 08, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No