

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

(1) **CRA-S-2331-SB-2004**
Date of decision:-15.5.2018

Dara Singh
...Appellant

Versus

State of Haryana
...Respondent

(2) **CRA-S-2377-SB-2004**

Rajwant Singh
...Appellant

Versus

State of Haryana
...Respondent

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

Argued by :Mr.Mandeep Singh Bains, Advocate as
Legal Aid Counsel for the appellant in
CRA-S-2331-SB-2004.

Mr.K.P.S. Virk, Advocate for
Mr.K.S. Dhaliwal, Advocate
for the appellant in CRA-S-2377-SB-2004.

Mr.Sulinder Kumar, AAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of two appeals i.e.

CRA-S-2331-SB-2004 filed by appellant Dara Singh and **CRA-S-
2377-SB-2004** filed by appellant Rajwant Singh, both of them being

accused, who were tried and convicted by the Court of Presiding Officer, Special Court, Kurukshetra vide judgment dated 21.10.2004 for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**') and vide order of the same date, they were sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of ₹1,00,000/- each and in default thereof to further undergo rigorous imprisonment for a period of two years each.

The accused-convicts, who are appellants before this Court pray that the appeals be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story is that on 23.4.2002, ASI Mahavir Singh (hereinafter referred to as the Investigating Officer/I.O.) from Police Station Babain had received a secret information that Rajwant Singh and Dara Singh were indulging in smuggling of narcotics and drugs in the said area bringing the contraband in Contessa car bearing No.HR01-E-0948 of Rajwant Singh and then selling the same in the area of Barara. It was further informed that on the said day, Rajwant Singh had gone in his aforesaid car, whereas Dara Singh had gone on his Rajdoot motorcycle to bring narcotics and they would be returning to area of Barara via villages Dhantori, Machhroli, Kharindwa and Yara. It was informed that if a *NAKA* was laid, then they could be caught red handed. Finding the information to be reliable ASI Mahavir Singh recorded formal FIR at the police station and sent special reports to the higher police officers and

Illaqa Magistrate. He requested ASI Baljeet Singh, SHO Police Station Babain as well as DSP Headquarter, Kurukshetra telephonically to reach at the spot and he himself along with other police officials proceeded towards Yara-Buhava road to laid picket there. The police party accordingly reached there and laid a picket. After some time, accused Rajwant Singh came there driving his Contessa car having No.HR01E-0948. He was followed by accused Dara Singh on his Rajdoot motorcycle. ASI Mahavir Singh signalled the vehicles to stop. Dara Singh turned back his motorcycle and fled from the spot. However, Rajwant Singh was apprehended. His car was searched and five gunny bags were recovered therefrom, out of which three were kept on rear seat of the car and two in the dicky of the car. On being checked, the gunny bags were found to contain poppy husk. Two samples of 250 gms. each were drawn from each gunny bag and the residue on being weighed came to 36.500 kgs. in each bag. The samples and residue were converted into separate parcels, sealed with seal of ASI Mahavir Singh having inscription 'MS'. After use the seal was handed over to HC Rohtas Singh. The Investigating Officer served notice under Section 50 of the Act upon accused Rajwant Singh seeking his option whether he wanted to be produced before a gazetted officer or Magistrate. The accused opted to be produced before Gazetted Officer. He was formally arrested and documents in that regard were prepared. In the meanwhile, ASI Baljit Singh, SHO Police Station Babain and Sh.Anil Kumar Dhawan, DSP Headquarter, Kurukshetra reached at the spot. The accused along with the case property and witnesses were produced before them and they were informed regarding the facts of the case. ASI

Baljit Singh put his seal having impression 'BS' on all the parcels i.e. samples and residue. He did so after verifying the facts. Similarly Anil Kumar Dhawan, DSP put his seal having inscription 'AKD' on the sample parcels and residue parcels. Then all the parcels along with Contessa car were taken into possession vide recovery memo attested by the witnesses. The Investigating Officer prepared rough site plan of the place of recovery. On return to the police station, the Investigating Officer deposited the case property with MHC. The accused was put in the lock up. During the course of investigation, sample parcels were sent to FSL, Madhuban and vide report received therefrom, they were found to be those of poppy straw. Accused Dara Singh was also arrested.

After completion of investigation, challan against the accused was presented in the Court.

Copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

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

To bring home guilt to the accused, the prosecution examined as many as eight witnesses, namely, HC Mange Ram as PW1, HC Baljit Singh as PW2, Constable Sanjeev Kumar as PW3, HC Balbir Singh as PW4, HC Rohtas Singh as PW5, Anil Kumar Dhawan, DSP as PW6, ASI Mahavir Singh as PW7 and ASI Baljit Singh as PW8.

With that the prosecution evidence stood closed.

Statements of the 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 were innocent and had been falsely involved in this case.

Further accused Rajwant Singh pleaded that nothing was recovered from his possession and as a matter of fact his car was found abandoned by the police and on being inquired, the registration number was found to have been allotted to some scooter; that the owner of the scooter disclosed that it was being used by the said accused prior to the case and for that reason he has been involved in this case by planting false recovery of contraband.

Further accused Dara Singh pleaded that he remained under treatment of doctors in different hospitals since 1997 till date and was totally handicapped; that 100% disability certificate was issued; that he cannot walk or drive any vehicle since 1997 and remained on bed since then and he was picked up by the police from his house and falsely involved in the case.

During the course of defence evidence, the accused Dara Singh examined Dr.Himanshu Anand as DW1 and Dr.G.D. Mittal as DW2 and Dr.Ishwinder Sidhu of PGI, Chandigarh as DW4, whereas accused Rajwant Singh examined Rajesh Kumar, Registration Clerk, Registering Authority, Ambala as DW3.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and

sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals.

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

As far as accused Dara Singh is concerned, CRA-S-2331-SB-2004 filed on his behalf seems to have merit. Admittedly, no recovery had been effected from him. According to the prosecution, he was following the car being driven by accused Rajwant Singh on Rajdoot motorcycle and on seeing the police party, he turned back his motorcycle and ran away. It has to be noticed that it is not the case of the prosecution that he was carrying some bag or sack having contents on his motorcycle or that he had thrown any such article on seeing the police party, which was found to contain contraband. He has solely been convicted for the reason that he was following the car on his motorcycle. The contraband was recovered from the car, which was being driven by accused Rajwant Singh. If Dara Singh had been found sitting in the car, then conscious possession of contraband could be attributed to him but not for the simple reason that he was coming along with the car. There is nothing on record to connect him with the recovery of contraband. Learned counsel representing such appellant has placed on record disability certificate of Dara Singh showing that he is totally disabled and cannot move. Some other medical documents are also attached. It becomes doubtful whether a person with such medical condition could drive a motorcycle or could manage to run away on the motorcycle on seeing the police party. This plea has been taken by the accused Dara

Singh while being examined under Section 313 Cr.P.C. also. The accused had not been arrested at the spot but later on. All these factors collectively result in causing a doubt in the mind about truthfulness of the prosecution story with regard to appellant-accused Dara Singh.

However, regarding CRA-S-2377-SB-2004 filed by appellant/accused Rajwant Singh, the prosecution has led enough evidence in the form of examining several witnesses of recovery including PW6 Anil Kumar Dhawan, DSP, PW7 ASI Mahavir Singh and PW8 ASI Baljit Singh. All three of them were cross-examined at length on behalf of the accused but they remained unshattered and unanimous regarding material details of the incident. A few minor contradictions in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. Their presence at the spot at the relevant time cannot be doubted. No previous enmity between them and the accused – convict Rajwant Singh has been alleged or proved prompted by which they might have involved the accused Rajwant Singh in this case wrongly and deposed against him to secure his conviction.

The appellant/accused Rajwant Singh cannot possibly feign ignorance with regard to the contraband being carried in the vehicle.

The remaining evidence adduced provided the vital link evidence, which is of supportive and corroborative in nature and it comes out that no tampering of seals had taken place during the period the case property remained in malkhana of the police station till the

sample parcels reached FSL, Madhuban. From the perusal of FSL report Ex.PK, it comes out that the sample parcels were those of poppy husk/straw. The plea taken by appellant/accused Rajwant Singh is simply of denial. Admittedly, till date the accused has not submitted any written representation to the higher police officers complaining against his alleged false implication in this case. If the accused had been roped in wrongly, he would not have kept quiet with damoclean sword of conviction hanging over his head. His silence and inaction goes to show that his plea of false implication lacks merits.

Learned counsel for the appellant/accused Rajwant Singh has referred to various authorities in support of his contention that several mandatory provisions of law have been violated. The first authority referred to by him is **Darshan Singh Versus State of Haryana, 2016(1) R.C.R.(Criminal) 333** wherein accused had been acquitted on account of non-compliance of Section 42 of the NDPS Act. In the instant case on receipt of the secret information ASI Mahavir Singh had not only recorded formal FIR sending special reports to the higher police officers but had informed SHO of Police Station Babain as well as DSP(Headquarter), Kurukshetra telephonically asking them to reach the spot. Even otherwise, no prejudice is shown to have been caused to the accused Rajwant Singh. The authority referred to is not applicable due to different facts and circumstances.

The next authority referred to by learned counsel for the appellant/accused – Rajwant Singh is **Union of India Versus Mohanlal & Another, 2016(1) R.C.R.(Criminal) 858** in support of his contention that the sample was not properly drawn, as such the report received from

FSL, Madhuban on the basis of sample sent, which was not in accordance with law, is illegal. However, this argument of learned counsel for the appellant/accused Rajwant Singh is without merit. Section 52-A NDPS Act deals with disposal of seized narcotic drugs and psychotropic substances and the authority in question specifically deals with disposal of quantities of seized drugs and narcotics dilating the procedure for disposal of narcotic substances and it is not related to the sample of contraband to be taken and it does not mean that sample from the recovered contraband is to be taken in presence of the Magistrate only and that the sample otherwise drawn by the police officer would not be taken as properly drawn. This authority does not come to help of the appellant/accused Rajwant Singh.

Learned counsel for the appellant/accused Rajwant Singh referred to authority **State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu Versus Rajangam, 2010(15) SCC 369** in support of his contention that the officer, who arrested accused should not have proceeded with investigation of the case. However, this authority also does not help the appellant-accused Rajwant Singh in view of law laid down by the Apex Court in **S. Jeevanantham Versus State through Inspector of Police, TN, 2004(3)R.C.R.(Criminal) 333** wherein it has been held that when the Investigating Officer is not personally interested in the case, it cannot be said that he is biased in the process of investigation.

No prejudice has been shown to have been caused to the appellant/accused Rajwant Singh and furthermore the search had been conducted in presence of DSP and Investigating Officer ASI Mahavir

Singh alone was not involved in the investigation of the case. In ***Surender @ Kala Versus State of Haryana, 2016(2) R.C.R.(Criminal) 10***, which was a case under NDPS Act where conviction was challenged on the ground that that investigation in the matter was conducted by Sub-Inspector of Police, who himself was the complainant, the contention was not found to be tenable for the reason that search was conducted in the presence of gazetted officer and recovery was effected and depositions of witnesses showed that it was not the S.I. of police alone, who was involved in the investigation.

The prosecution has successfully proved its case as against the appellant/accused – Rajwant Singh beyond shadow of reasonable doubt.

The judgment of conviction and sentence passed by the trial Court as regards appellant/accused Rajwant Singh is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. I do not find any illegality or infirmity with the impugned judgment as regards appellant/accused Rajwant Singh.

Therefore, CRA-S-2377-SB-2004 filed by appellant/accused stands dismissed.

Whereas CRA-S-2331-SB-2004 filed by appellant-accused Dara Singh stands allowed. The appellant – accused Dara Singh is acquitted of the charge for which he has been held guilty and convicted vide the impugned judgment. The appellant-accused Dara Singh is on bail and as such he and his surety also stand discharged from their liability of bail bonds and surety bonds.

Appellant – accused Rajwant Singh is stated to be on bail

granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Kurukshetra is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

15.5.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No