

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

1. **CRA-S No.1441-SB of 2016**
Date of Decision:21.04.2018

Tarsem SinghAppellant
Vs
State of PunjabRespondent

2. **CRA-S No.1192-SB of 2016**

Rajinder KumarAppellant
Vs
State of PunjabRespondent

3. **CRA-S No.1587-SB of 2016**

Paramjit Singh and anotherAppellants
Vs
State of PunjabRespondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Ms. Amrita Nagpal, Advocate for
Mr. Sharad Aggarwal, Advocate
for the appellant in CRA-S No.1441-SB of 2016.

None for the appellant in CRA-S No.1192-SB of 2016.

Mr. Abhimanyu Kalsy, Legal Aid Counsel
for the appellants in CRA-S-1587-SB of 2016.

Ms. Ruchika Sabharwal, A.A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Vide this common order CRA-S Nos.1441-SB, 1192-SB
& 1587-SB of 2016 are being disposed of. Since all the appeals

have arisen from common judgment of conviction and order of sentence dated 16.02.2016 passed by the Judge, Special Court, Patiala, therefore, for the sake of brevity, common facts are being recorded.

[2]. The prosecution story started with the allegations that on 22.05.2013, the police party headed by ASI Attar Singh was on patrolling duty in government vehicle in search of suspects. The police party was present at the bridge of drain leading from village Mallo Majra to village Dhamo Majra. Barricades were put in order to check the suspects and vehicles passing on the road. In the meanwhile, one Gurnaib Singh son of Bharpur Singh met ASI Attar Singh with whom ASI was engaged in talking. At about 11.00 a.m., one vehicle make Tata 407 came from the side of village Mallo Majra which was signalled to be stopped. One more person was sitting by the side of the driver of the vehicle and two persons were sitting on the plastic bags lying backside in the vehicle. On enquiry, driver of the vehicle disclosed his name as Tarsem Singh and the person sitting by the driver side disclosed his name as Rajinder Kumar. One of the person sitting in the backside of vehicle disclosed his name as Harnek Singh @ Neki and other person disclosed his name as Paramjit Singh @ Pamma.

[3]. In this way driver of the vehicle was identified as

Tarsem Singh. The person found sitting by the side of driver was identified to be Rajinder Kumar. The persons sitting at the back of the vehicle were identified to be Harnek Singh @ Neki and Paramjit Singh @ Pamma. When ASI Attar Singh enquired about plastic bags lying in backside of the vehicle, they got perplexed and stated that bags were of animal feed. ASI Attar Singh disclosed his identity to the said persons and showed his suspicion that some narcotic substance was loaded in the vehicle. On being told about their right to be searched before the Gazetted Officer or Magistrate, the said persons expressed their desire to get their search conducted from the Gazetted Officer. Devinder Singh, DSP Samana was requested to reach at the spot and he rushed to the spot and disclosed his identity to the accused. On search of the vehicle make Tata 407 on naka, 15 bags were found containing poppy husk. All the bags were unloaded and were given serial numbers 1 to 15. Two samples of 250 grams each of the 15 boxes were separated as sample parcel. The residual was weighed and the same was found to be 29 kgs. 500 grams in each bag. Separate parcels of samples and residual of poppy husk were prepared and were sealed with the seal bearing impression 'AS' of ASI Attar Singh and 'DS' of DSP Devinder Singh. The seal of DSP was retained by him and seal of 'AS' after use was handed over to ASI

Karnail Singh. The case property was taken into police possession. On the basis of *ruqa* sent by ASI Attar Singh, the FIR was registered. On return to the police station, the accused and the case property were produced before Jaswinder Singh SHO, P.S. Passiana, Patiala, who then deposited the case property with MHC.

[4]. After investigation challan was presented and the charges were framed against the accused persons for the offence under Section 15 of the Act. The accused pleaded not guilty and claimed trial.

[5]. Prosecution led evidence. HC Bhupinder Singh was examined as PW-1. ASI Attar Singh (I.O.) was examined as PW-3 (No witness was examined as PW-2). Inspector Jaswinder Singh was examined as PW-4, ASI Harmeeek Singh was examined as PW-5. ASI Karnail Singh recovery witness was examined as PW-6. Tarsem Lal was examined as PW-7 and Devinder Singh SP was examined as PW-8. Thereafter the evidence was closed.

[6]. Incriminating material was put to the accused in their statements recorded under Section 313 Cr.P.C. The accused denied the allegations. They pleaded innocence and false implication. The accused took separate defence in their

statement recorded under Section 313 Cr.P.C. In defence the accused examined HC Shamsheer Singh as DW-1.

[7]. The trial Court after conducting trial convicted the accused for offence under Section 15 of the NDPS Act and sentenced them to undergo rigorous imprisonment for a period of 10 years along with fine of Rs.1,00,000/- each along with default clause.

[8]. Learned counsel for the appellant(s) submitted that CFSL Form No.29 was not filled at the spot. The said fact was admitted by the Investigating Officer, however SHO contradicted the same in an evasive manner. No registration number of vehicle of DSP was shown as the registered number of the vehicle was discrepant as per statement of his driver. On 25.05.2013, there was objection on the FSL form, thereafter sample was resealed on 27.05.2013 and then again sent to the FSL.

[9]. According to learned counsel, the contraband was not sent to the FSL within 72 hours. The case property was not found to be remained intact as the case property was not shown in Register No.19 maintained in the police station, nor Register No.19 was produced in Court. Statements of HC Bhupinder Singh as PW-1 and ASI Harmeeek Singh as PW-5 were

contradictory with each other. The seals remained with the officials and were not entrusted to the independent witness. The witness was very much present with the Investigating Officer and was known to him, still he was not examined by the prosecution.

[10]. Learned counsel further submitted that no representative samples were drawn in the presence of Magistrate, nor the seal of the Magistrate was affixed on the sample memos. The police officer who arrested the accused and seized the contraband subsequently proceeded to investigate the offence, however the same was not permissible in law. The alleged recovery was effected on 22.05.2013. For the first time samples were sent on 24.05.2013 and the same were objected *qua* sealing of the samples. The samples were again sealed and were sent to the FSL on 27.05.2013. Presence of Gazetted Officer was doubtful in view of statement of his driver, who was examined as DW-1. Registration number of the vehicle of DSP in the context of registration No.PB11-AE-2363 or PB23-K-4692 could not be dispelled by the prosecution.

[11]. Learned counsel at last submitted that there was total non-compliance to Sections 50, 42-A and 57 of the NDPS Act as the report was not sent to the higher officers. There was no material on record to show the source from where the alleged

contraband was procured and brought and, therefore, link evidence was missing altogether.

[12]. As against this learned State counsel submitted that the accused were apprehended at the spot. Huge quantity of poppy husk was recovered. Accused Paramjit Singh @ Pamma was also convicted in FIR No.223 for the offence under Section 15 of the NDPS Act.

[13]. I have considered the submissions made by learned counsel for the parties.

[14]. Statement of HC Bhupinder Singh as PW-1 would show that he took the case property to FSL on 24.05.2013. Objection was raised *qua* sealing of the samples. Seals were again affixed and case property was again sent to Chemical Examiner on 27.05.2013. The witness did not see DDR and register no.19 maintained in the police station.

[15]. Investigating Officer Attar Singh was examined as PW-3. His statement would show that after arrest and detention of the accused, he proceeded to investigate the case further. The witness admitted that he did not try to join any other passerby as independent witness. The witness did not remember as to whether the driver of their vehicle had filled log book or not. Driver had brought a *farsi kanda*. Weights and an

electronic scale was already with the Investigating Officer. The witness did not handed over his seal to independent witness Gurnaib Singh and did not tell the reason for not doing so. Investigating Officer did not verify the ownership and registration number of the vehicle. ASI Karnail Singh returned the seal of Investigating Officer after depositing the same in the Malkhana and the entire case property on the same day. The witness did not fill form no.29 at the spot, nor any special report was sent to the higher officers from the spot. The Investigating Officer further admitted no representative samples were drawn by the Magistrate. In the concluding part of the cross-examination, the witness further admitted that the recovered vehicle in question was not in a working condition and was brought in the Court with the help of crane carrier.

[16]. SHO Jaswinder Singh was examined as PW-4. His statement to the effect that the Investigating Officer had prepared the CFSL Form before him went contradictory to the statement of Investigating Officer as PW-3, wherein he admitted that no form no.29 was prepared by him at the spot. The SHO did not verify the documents of the vehicle himself, nor signed the log book. He did not see the samples. The witness further admitted that he himself deposited the case property with MHC, whereas as per deposition made by the Investigating Officer,

ASI Karnail Singh returned the seal of Investigating Officer after depositing the case property in the *Malkhana* on the same day.

[17]. ASI Harmeeek Singh while appearing as PW-5 submitted that the case property was deposited with him at about 9.30 p.m. The witness did not enquire about ownership of the recovered vehicle. The entries were made in register no.19, but the witness did not produce the same in the Court. Investigating Officer redeposited the case property with the witness i.e. 15 sample parcels on the same day as remaining case property was deposited in judicial *malkhana*. The witness handed over these samples to HC Bhupinder Singh on 24.05.2013 at 9.00 a.m., who gave him the receipt of these samples after depositing the same in the laboratory at 5/6 p.m. After that no proceedings were initiated by the witness, nor any entry was made in register no.19 as stated by him. This witness has not stated anything about resealing of samples and sending the same again on 27.05.2013 whereas as per deposition of HC Bhupinder Singh PW-1, objections were raised by the FSL on 24.05.2013 regarding sealing of samples and the same were resealed and sent on 27.05.2013 to the FSL. In view of aforesaid link evidence, the case property was never proved to be remained intact in police custody. Register no.19 though was referred in the statements of PW-1 and PW-5, but the same was

never produced in the Court in order to show any entry made in the register. The samples were not sent to FSL within 72 hours.

[18]. Perusal of the record would show that Investigating Officer PW-3 ASI Attar Singh had admitted in his cross-examination that CFSL Form No.29 was not filled at the spot. Even though the SHO has contradicted the aforesaid statement, but statement of Investigating Officer has to be given credence as SHO was not present at the spot. Non-production of Register No.19 in the Court would further bring the link evidence on questionable note. Sampling was done on 22.05.2013. The samples were sent to FSL for the first time on 23.05.2013. Samples were objected to *qua* its sealing and were again resealed by the prosecution and then again sent to FSL on 27.05.2013. The entire exercise if seen in the light of ratio of **Union of India vs. Bal Mukund and others, 2009(2) R.C.R. (Criminal) 574** would create questionable mark on the authenticity of allegations raised against the accused. The non-compliance of aforesaid aspect would render the prosecution case to be doubtful on the aspect of link evidence.

[19]. The statements of PW-1 and PW-5 would project the contradictory stand inasmuch as PW-5 never disclosed about resealing and sending of samples again to FSL on 27.05.2013, rather PW-5 stated that he received the receipt of deposit on

24.05.2013 itself. How receipt of sample of 24.05.2013 was possible in the light of resealing of the samples and sending the same again on 27.05.2013 to the FSL. Representative samples were not drawn before the Magistrate in compliance to Section 52 of the NDPS Act. The ratio as laid down in **Union of India vs. Mohanlal and another, 2016(1) R.C.R. (Criminal) 858 (SC)** would come into play in order to doubt fair and impartial investigation in the case.

[20]. The person effecting search and seizure himself proceeded to investigate the offence at a later stage. The investigating Officer was not competent to investigate the offence being judge of his own cause. In **Gannu and another vs. State of Punjab, 2017(3) R.C.R. (Criminal) 566**, it was observed that after arrest of the accused and seizure of contraband, the arresting officer should refrain from conducting further investigation being judge of his own cause. In order to have fair and impartial investigation, the investigation should have been conducted by the any other officer.

[21]. In **State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu vs. Rajangam, (2010) 15 SCC 369**, the Hon'ble Apex Court considered the aforesaid controversy on the basis of earlier precedents and held that the

person arresting and effecting search of the accused being complainant should not have undertaken the exercise of further investigation in the case. Such officer was not only the complainant of the case, but he carried on with the investigation and examined the witnesses under Section 161 Cr.P.C and this would negate the concept of fair and impartial investigation.

[22]. In **Laltu Prasad vs. The State of West Bengal, 2017(2) R.C.R. (Criminal) 237**, it was held that the plinth of justice dispensation system is founded on the faith, trust and confidence of the people. A litigant reasonably expects adherence to the rules pertaining to fundamental adjective and seminal substantive law while delivering reasoned decisions. The fair trial is depending upon fair investigation which should have been conducted by any person, other than the one who arrested and effected seizure of the contraband. In **Ajay Singh and another vs. State of Chhatisgarh and another, 2017(1) R.C.R. (Criminal) 559** the aforesaid view can be noticed as an obiter of the Hon'ble Supreme Court.

[23]. The compliance of Section 50 of the Act would also remained wanting in terms of absence of clear, unambiguous and individual communication given to the accused in respect of existence of their right to be searched before the Gazetted Officer or Magistrate. In **State of Rajasthan vs. Parmanand**

and another, (2014) 2 R.C.R. (Criminal) 40 it was held that such communication should be clear and unambiguous, even if the accused reposed faith in the Investigating Officer and he should have been taken to the nearest Magistrate in order to impart authenticity, transparency and creditworthiness to the entire prosecution case. Independent witness in the form of Gurnaib Singh was very much present with the police party at the time of arrest and seizure. The non-examination of aforesaid independent witness has further created a dent in the prosecution story as seal after use was not handed over to the independent witness.

[24]. The prosecution story remained conspicuous in respect of non-examination of independent witness, who was present with the police party at the relevant time. The prosecution could not collect any material to show the source of procurement of the contraband nor could collect any evidence of ownership of the vehicle. The provisions in terms of NDPS Act are so stringent that non-compliance of the mandatory provisions would entail in acquittal of the accused. Accused Parminder Singh @ Pamma and Harnek Singh @ Neki were sitting at the back of vehicle. The complicity in transporting the poppy husk in the truck was to be brought on record with reference to evidence. The belongingness of the contraband to these

persons was to be brought on record with reference to their ownership as to the contraband and as the truck. No material was produced by the prosecution that the poppy husk was belonging to the accused, who were found sitting in the truck. **In Harbans Singh vs. State of Punjab, 2000(4) R.C.R. (Criminal) 288**, the said proposition was discussed by the Court and it was held that on the basis of no evidence in respect of ownership of the contraband and the vehicle, no such liability can be fastened upon the accused, particularly when provision of the NDPS Act are so stringent. No nexus between the accused and the poppy husk which was being transported in the truck could be established by the prosecution. Benefit of doubt was given to the accused and they were acquitted.

[25]. Non-recording of statement of HC Bhupinder Singh under Section 161 Cr.P.C., would also give rise to explanation in the context of ratio of decision rendered in **Pargat Singh vs. State of Haryana, 2008(4) R.C.R. (Criminal) 596**. Provision in terms of Section 57 of the NDPS Act was not complied with as no report was sent by the Investigating Officer to his superior officers. Even if, Section 57 of the Act are directory in nature, but in case of non-compliance of the same deliberately and intentionally by the Investigating Officer, the ratio of **Gurbax Singh vs. State of Haryana, 2001(1) R.C.R. (Criminal) 702**

(SC), would come into play wherein it was held that compliance of provisions in terms of Sections 52, 55 and 57 of the NDPS Act are directory, but violation thereafter would not *ipso facto* vitiate the trial or conviction, however Investigating Officer cannot totally ignore these provisions and such failure will have bearing on apprehension and evidence regarding search of the accused and seizure of the contraband thereof. The examination of driver of DSP in defence evidence would make presence of Gazetted Officer at the spot doubtful.

[26]. After considering all aspects of the case and failure of the prosecution to stand to the mandatory requirement of law, I deem it appropriate to accept the appeals and acquit the accused by giving them benefit of doubt. Consequently, judgment of conviction and order of sentence dated 16.02.2016 passed by the Judge, Special Court, Patiala are hereby set aside.

April 21, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No