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

**Date of decision: June 01, 2018
CRA-S-3138-SB of 2011 (O&M)**

Amanpreet Kaur and another

.....Appellants

Versus

State of Punjab

....Respondent

CRA-S-3100-SB of 2011 (O&M)

Sunil Kumar and another

.....Appellants

Versus

State of Punjab

....Respondent

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

Present: Mr. G.S. Verma, Advocate
for appellant No.1 (in CRA-S-3138-SB of 2011).

Mr. N.S. Sodhi, Advocate with
Ms. Harjot Kaur, Advocate
for appellant No.1 (in CRA-S-3100-SB of 2011).

Ms. Satinder Kaur, Advocate
for appellant No.2 (in CRA-S-3100-SB of 2011).

Mr. H.S. Sullar, DAG Punjab.

A.B. CHAUDHARI, J

By this common order, above said both the appeals are being
disposed of.

Being aggrieved by the judgment and order dated 12.10.2011
passed by the learned Judge, Special Court, Ludhiana, in Sessions Case

No.117 dated 24.09.2005, by which the appellants 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 10 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 six months each, the present appeals have been filed by the appellants in this Court.

FACTS

Briefly stated, the prosecution case is that on 20.03.2005, police party headed by Bittan Kumar, Sub-Inspector/In-charge, police-post Shimlapuri was checking the vehicles in the area of bridge of Gill Canal, Shimlapuri. The police party was checking one scooter driven by Mukesh Kumar. In the meanwhile, at about 2:00 A.M., one Qualis car bearing No.PB-10BH-0756 came from the side of village Gill. A signal was given to stop. The car stopped and on enquiry, the driver disclosed his name as Gurbhej Singh alias Mannu. There were other occupants in the car. Occupant on the front seat disclosed his name as Sunil Kumar. On the back seat, another person disclosed his name as Parveen Kumar alias Mintu. On the central seat, two ladies were sitting, one disclosed her name as Gurmeet Kaur alias Preeti wife of Harjit Singh and another lady having a child in her lap, disclosed her name as Amanpreet Kaur wife of Surinder Singh. Four gunny bags were lying in the *dicky* of Qualis car. All the persons were apprised of their legal right of search in the presence of Gazetted officer but they reposed confidence in Bittan Kumar, Sub

Inspector. Joint consent statement was recorded which was also attested by Gurvir Singh, ASI, Harjit Kaur, lady Home Guard and independent witness. Gunny bags were removed from the *dicky*, sampling was done and thereafter, the FIR was registered and investigation was commenced and completed. The challan was filed before the trial Court. The trial Court heard the evidence and thereafter, convicted the appellants as above. Hence, these appeals.

ARGUMENTS

In support of the appeals, learned counsel for the appellants, in both these appeals, made the following submissions:-

- (i) That joint consent/offer made by the appellants violated the provision of Section 50 of the NDPS Act and therefore, the trial is vitiated;
- (ii) That search warrant was not obtained by the raiding party because the Qualis car was stopped at 2:00 A.M. and therefore, in the absence of warrant from the competent Magistrate, the action is illegal from the inception;
- (iii) That there was no compliance of Section 42 of the NDPS Act by the concerned police officer.

Learned counsel for the appellants relied on various decisions. They therefore, prayed for acquittal of the appellants.

Per contra, learned State counsel opposed the appeals and submitted that appellant-Gurmeet Kaur alias Preeti is a habitual offender. That apart, he submitted that there was no personal search as such carried out and therefore, the decisions cited by the counsel for the appellants would not apply. He then submitted that the conspectus of the Apex Court

decisions clearly show that the trial is not vitiated in respect of the alleged non-compliance of Section 50 of the NDPS Act. This is all the more so as has been held in the case of **Dilbagh Singh versus State of Punjab**, 2017 (1) R.C.R. (Criminal) 88. He, therefore, prayed for dismissal of the appeals.

CONSIDERATION

We have heard learned counsel for the rival parties. We have gone through the impugned judgment and the reasons recorded therein by the learned trial Court.

At the outset, we find that the submissions regarding obtaining search warrant does not appeal to us as the police is empowered to carry out the search when *naka* was laid and the chance recovery was made. In so far as the compliance of Section 42 of the NDPS Act is concerned, the same is equally not required and all the more so when the provision is directory in nature. We, therefore, reject both the submissions.

The next question is about joint consent (Exhibit PL) and the alleged violation of Section 50 of the NDPS Act. From the perusal of the entire record and the evidence, we find that at no point of time, the personal search of any of the appellants was at all taken, though, the joint consent (Exhibit PL) was obtained. The perusal of the entire evidence nowhere shows that at any point of time, there was even an attempt to take personal search of any of the appellants. In other words, there was search of *dicky* of Qualis car, in which the contraband in question was found in huge quantity. Therefore, in the absence of personal search being carried

out, it would be idle to contend that the joint consent would vitiate the trial. It is not necessary for us to cite number of judgments placed before us by the learned counsel for the appellants as the Apex Court has, after consideration of the judgments including Constitution Bench of the Apex Court in the case of **State of Punjab versus Baldev Singh**, 1999 (3) R.C.R. (Criminal) 533 and **Vijaysinh Chandubha Jadeja versus State of Gujarat**, 2010 (4) R.C.R. (Criminal) 911, stated thus, in Para 13, in the case of **Dilbagh Singh versus State of Punjab**, 2017 (1) R.C.R. (Criminal) 88:-

*“13. Whereas the conditions under which, the search as contemplated in Section 50 are limited only to the contingency of search of any person, Section 57 prescribes that whenever any person makes any arrest or seizure under the Act, he would within 48 hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior. As it is no longer res integra that the application of Section 50 of the Act is comprehended and called for only in the case of search of a person as distinguished from search of any premises, etc. having been authoritatively propounded by the two Constitution Bench rulings of this Court in **State of Punjab versus Baldev Singh**, 1999 (3) R.C.R. (Criminal) 533 : (1999) 6 SCC 172 and **Vijaysinh Chandubha Jadeja versus State of Gujarat**, 2010 (4) R.C.R. (Criminal) 911 : 2010 (6) Recent Apex Judgments (R.A.J.) 326 : (2011) 1 SCC 609, further dilation in this regard, in the attendant facts and circumstances of the case, is considered inessential. This is more so as the contraband in the case in hand had been recovered from inside the car in*

which the petitioner and the co-accused were travelling at the relevant point of time and not in course of the search of their person. Noticeably, it had also not been the plea of the defence ever that the alleged seizure according to the accused persons had been from their person. In the contextual facts therefore, Section 50 has no application to espouse the cause of the defence.”

We thus, find that we must follow the conclusion drawn by the Apex Court and as stated in Para 13 above in the aforesaid decision.

As a sequel, the submission about violation of Section 50 of the NDPS Act will have to be rejected. In the result, we find no merit in the present appeal and therefore, will have to uphold the conviction as well as sentence.

We find from the impugned judgment and order that the appellants have been awarded minimum sentence to undergo Rigorous Imprisonment for 10 years and fine in the sum of ₹1 lakh and in default of payment of fine, to further undergo Rigorous Imprisonment for 6 months. According to us, there is no scope for us at all to reduce the substantive sentence of 10 years. But then we are inclined to reduce the sentence in default of payment of fine of ₹1 lakh, from 6 months to one month, in view of the incident which relates to the year 2005. Hence, we make the following order:-

ORDER

- (i) **CRA-S-3138-SB of 2011** and **CRA-S-3100-SB of 2011** filed by the appellants are dismissed;
- (ii) The impugned judgment dated 12.10.2011 passed by the

learned Judge, Special Court, Ludhiana, in Sessions Case No.117 dated 24.09.2005, convicting the appellants for commission of offence punishable under Section 15 of the NDPS Act, is upheld;

- (iii) The impugned order dated 12.10.2011 passed by the learned Judge, Special Court, Ludhiana, in Sessions Case No.117 dated 24.09.2005, sentencing the appellants to undergo Rigorous Imprisonment for 10 years and to pay fine in the sum of ₹1,00,000/- each, is also upheld;
- (iv) However, the impugned order dated 12.10.2011 of sentence in-default of payment of fine amount of ₹1 lakh, is modified and the sentence awarded is reduced from 6 months to one month.

(A.B. CHAUDHARI)
JUDGE

(B.S. WALIA)
JUDGE

June 01, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No