

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-653-SB of 2012

Date of Decision: 16.05.2018

Gurdev Singh

.....Appellant

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Mani Ram Verma, Advocate with
Mr. Nipun Verma, Advocate
for the appellant

Mr. Kirat Singh Sidhu, DAG Punjab

Sudhir Mittal, J.

FIR No. 538 dated 31.03.2007 came to be registered at Police Station 'A' Division Amritsar, under Sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). This was registered because Inspector Balbir Singh of Special Narcotic Cell, Punjab, Amritsar, received secret information in his office that the accused persons are involved in the trade of drugs from Jammu, Ferozepur, Amritsar Border and the same are delivered in Amritsar and Delhi. The accused persons names were Balwinder Singh and Dilbagh Singh and the information was that they are present near Sangam Cinema in a Maruti Wagon R car and raid should be conducted. Inspector Balbir Singh brought this information to the notice of Sh. Makhan Singh, Senior Superintendent of Police, Special Narcotic Cell, Amritsar, who directed him to carry out a raid at once. A raid was carried out and Balwinder Singh and Dilbagh Singh were apprehended at the spot. One independent witness Taptej Singh was associated with the search and the same was conducted in the presence of a Gazetted Officer. The search yielded ten packets of Heroin from a bag in

possession of Balwinder Singh @ Jagjit Singh @ Jaggi, each of one Kg with a stamp of Pak Afghan Limited. Two packets of Heroin of one Kg each were recovered from a bag being carried by Dilbagh Singh @ Bagga and six packets of Heroin of one Kg each, were recovered from Wagon R car. Thus, a total of 18 Kgs of Heroin was recovered. Necessary samples, were taken and sealed and the seized drugs, were converted into parcels and sealed.

2. Balwinder Singh @ Jagjit Singh @ Jaggi managed to escape from judicial custody and was declared proclaimed offender.

3. The investigation of the case revealed that the Maruti Wagon R car was owned by the appellant. He was lodged in Tihar Jail, New Delhi at that time and was formally arrested in this case after being produced on production warrants.

4. Vide judgment of conviction dated 20.09.2011, the trial Court returned a finding that the appellant and his co-accused hatched a criminal conspiracy to transport 18 Kgs of Heroin in Maruti Wagon R car and convicted Dilbag Singh under Sections 21 and 29 of the Act, whereas the appellant – Gurdev Singh was convicted under Section 29 of the Act. Sentence of rigorous imprisonment for 10 years and fine of Rs. 1,00,000/-, in default of payment of which, to further undergo rigorous imprisonment for a period of one year, was imposed upon the appellant.

5. Hence, the present appeal.

6. Learned counsel for the appellant primarily submits that the appellant was not the owner of the Wagon R car. The said car was infact owned by Balwinder Singh and the appellant was only his driver. He was unaware that the drugs were being transported in the said car. There is no evidence on record to connect him with the crime apart from the statement of PW-6 Sukhram Singh, who has deposed that he had sold the Wagon R car to the appellant on 06.03.2007 and had proved the receipt Ex. PW6/A for a sum of Rs. 2,20,000/- and the delivery

owner of the said vehicle because Sukhram Singh continued to be the registered owner of the vehicle and said Sukhram Singh admitted in his evidence that the car was sold through dealer Manmohan Singh c/o Lucky Motor o/o Rajinder Palace, New Delhi. This transaction would show that the purchase was actually made by Balwinder Singh in the name of the appellant and the appellant had no knowledge of the transaction. This argument is sought to be fortified by a statement of Balwinder Singh made under Section 67 of the Act, after his arrest.

7. Learned counsel for the appellant has also submitted that at the time of seizure of the contraband the appellant was confined in Tihar Jail, New Delhi, in another case under the Act. In the said case, a Bolero vehicle had been seized with drugs and the appellant was the driver thereof. The arrest was made on 19.03.2007 and after his arrest the appellant had made a statement in that case that he was aware of drugs being transported in the Bolero vehicle. This fact shows that the appellant was unaware of the transaction being done on 31.03.2007 and, therefore, his conviction on the ground of criminal conspiracy is illegal.

8. Learned State counsel contends that a reference be made to the statement of the appellant under Section 313 Cr.P.C., which would show that it is not his case that the Wagon R vehicle belonged to Balwinder Singh and that he was unaware of drugs being transported in the said vehicle on 31.03.2007. Thus, the appellant can not be permitted to raise this point in appeal.

9. From the statement of PW-6 Sukhram Singh, it is clear that the Wagon R car was sold by him through the agency of Lucky Motor to the appellant. Receipt Ex. PW6/A for a sum of Rs. 2,20,000/- is on record and has been proved by the said witness. Delivery receipt Ex.PW6/B with the signature of the appellant has also been proved by him. Thus, it is proved on record that physical possession of the vehicle was handed over to the appellant on receipt of consideration and the transaction of sale was complete. By virtue of this transaction the appellant became

the owner of the vehicle even though his name may not have been entered in the registration certificate. Since drugs were recovered from that vehicle, the owner has to face the consequences of the recovery. Reliance upon judgment, dated 06.02.2018 passed, in Civil Appeal No. 1427 of 2018 titled as *Naveen Kumar vs. Vijay Kumar and others*, is of no assistance because the said case is under the Motor Vehicles Act, 1988. The question involved therein was regarding the question of payment of compensation. The definition of “owner” in the Motor Vehicles Act, 1988, has been referred to for concluding that the registered owner is liable to pay compensation in case of an accident, even though the vehicle may have been sold. The claimant should not be put to unnecessary hardship in trying to trace a vendee of the vehicle and that as per the provisions of the Motor Vehicles Act, 1988, the owner is liable to pay compensation. These principles can not be imported into criminal law as culpability would be of the person in physical possession of the vehicle. Moreover, learned counsel for the appellant has himself admitted that the appellant was a driver of Balwinder Singh and was aware of transportation of drugs, in the case in which he was arrested in Delhi. This clearly establishes that the appellant was a member of the gang of Balwinder Singh and was involved in its activities. He can not, thus, escape from the consequences.

10. The argument that the appellant was in judicial custody in New Delhi at the time of the incident and, thus, he had no knowledge thereof is fallacious because it is not denied that the appellant was an employee of Balwinder Singh and that Balwinder Singh was dealing in drugs. Assuming that the Wagon R car was paid for by Balwinder Singh, the delivery receipt Ex. PW6/B conclusively shows that the appellant was aware that the vehicle was being purchased in his name. The irresistible conclusion that emerges from these two facts is that the appellant knew that the Wagon R vehicle was being purchased for drug trafficking. This conclusion is further fortified by the fact that learned counsel for the appellant admits that in

the case in which the appellant was arrested in Delhi he was aware of the factum of drugs being transported in the vehicle driven by him.

11. Thus, the conclusion of the trial Court that the appellant was also involved in the conspiracy can not be faulted.

12. Another argument has been raised by learned counsel for the appellant that the independent witness allegedly associated at the time of search and seizure was not examined during the trial. From this an adverse inference needs to be drawn because had he been examined he would have deposed against the prosecution. Thus, the entire prosecution case is rendered doubtful.

13. A perusal of the record shows that the independent witness Taptej Singh was not examined as he had been won over by the accused persons. Thus, no useful purpose would be served by examining him at the trial. The prosecution has been able to prove its case even otherwise as the recovery was effected in the presence of a Gazetted Officer and samples were drawn and sealed at the spot. The record further reveals that the seals were not tampered with when the samples were sent to the Forensic Science Laboratory. Forensic examination has clearly established that the recovered contraband, was 'Heroin'. Learned counsel for the appellant has not even attempted to argue that Balwinder Singh and Dilbagh Singh were not apprehended at the spot. Thus, the non-examination of the independent witness can not render the prosecution case doubtful.

14. No other point has been raised or argued.

15. The appeal is, thus, without any merit and is dismissed.

16.05.2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No