

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

Sr. No.270

CRR-4006-2017 (O&M)
Date of decision : 16.03.2018

Jatin Salwan

..... Petitioner

VERSUS

State of U.T. Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. S.S. Narula, Advocate, for the petitioner.

Mr. Sukant Gupta, Addl. P.P., for U.T., Chandigarh.

SUDHIR MITTAL, J.

The petitioner-Jatin Salwan seeks setting aside of Order dated 13.10.2017 passed by the learned Judge, Special Court-cum-Additional Sessions Judge, Chandigarh, whereby, charges have been framed against him under Sections 18 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act') and Sections 489-C, 201 and 212 read with Section 120-B of the Indian Penal Code, 1860 as amended upto date (hereinafter referred to as 'IPC').

2. Bare essential facts are that on 16.06.2016, S.H.O, Police Station Maloya, Chandigarh, was on patrolling duty with his police party when secret information was received that a blue coloured Maruti Car bearing registration No. CH-01-AE-0224 was coming from Sector-38 (West), Chandigarh and was carrying opium. On receipt of this information, the police party intercepted the said vehicle and apprehended one Sh. Bhagwan Singh son of Naryan Singh. After his apprehension,

S.I Juldan Singh of Crime Branch also reached at the spot with his police party as he was also in possession of information regarding carriage of narcotics in blue Maruti car. Provisions of Section 50 of NDPS Act were complied with and the said car was searched, which yielded 02 kilograms and 600 grams of opium, which was hidden in between files. The search also yielded a sum of Rs.14,99,000/- in currency notes of Rs.1,000/-, packed in fifteen bundles. The currency was also hidden in a file cover, wherein the papers had been cut out to accommodate the currency. A paper cutting having a photo of Sikh youth with his name 'Montu' and two mobile numbers written on it, was also recovered. Formalities of sealing the case property and recording of statements of witnesses, were completed and Bhagwan Singh alongwith the seized contraband was produced in the Court of Judicial Magistrate First Class, U.T., Chandigarh. The Court drew two samples of 200 grams. each.

3. During the investigation, Bhagwan Singh disclosed that his employer one Sukhbir Singh Shergill had sent him to collect files from a person named 'Bhinder' and that he knew nothing about the opium and currency notes recovered from his car. His employer had directed him to call a person named Mr. Bansal on a particular mobile number, who directed him to collect some files from a person named 'Bhinder' from Dhillon Barrier, Manimajra. On reaching Dhillon Barrier, Manimajra, he did not find 'Bhinder' and he informed Mr. Shergill about the same. Meanwhile, Mr. Bansal called him again and directed him to collect files from near Shakti Bhawan, Panchkula. On reaching the spot, he was met by a lady, who placed a bundle of files in his car and on asking about her

identity, she made him talk to 'Bhinder' on mobile phone, who told him that he is waiting for him in Sector-40, Chandigarh. Sukhbir Singh Shergill joined investigation and he disclosed that certain persons including one Navjot Singh Dhaliwal were inimical towards him and that they might have involved him in a false case. Investigation revealed that Sukhbir Singh Shergill had received a call on 06.06.2016 from a stranger from Canada, who called himself Mr. Bansal who told Mr. Shergill that he could help him in his litigation against Punjab Infotech officials. Messages were exchanged on whatsapp between Mr. Bansal and Mr. Shergill and the meeting on 16.06.2016 was arranged.

4. The investigating officer then contacted S.I. Juldhan Singh aforementioned to confirm his source of information regarding the opium and he revealed that the Inspector Incharge, Crime Branch, namely, Gurmukh Singh had told him about the contraband being transported in blue Maruti car. Inspector Gurmukh Singh was contacted thereafter and he disclosed that one retired Inspector, namely, Tarsem Singh Rana had provided the information in the morning on 16.06.2016. On the instructions of Inspector Gurmukh Singh, S.I. Juldhan Singh contacted Tarsem Singh Rana, who personally met him in Sector-15, Chandigarh and informed the colour, registration number of car and the manner in which opium was concealed.

5. The investigating officer then met Tarsem Singh Rana at night on 16.06.2016 and he tried to conceal the source from which he had received information regarding the contraband. His call details were analyzed which revealed that immediately after the call made by the

investigating officer at night on 16.06.2016, Sh. Rana contacted Mr. Jatin Salwan on his landline phone. The analysis also revealed that on 16.06.2016, Sh. Rana had not received any other calls except the ones from the landline of Mr. Jatin Salwan. Thereafter, the statement of Sh. Rana was recorded under Section 164 Cr.P.C, in which it was stated that Mr. Jatin Salwan had provided the information regarding contraband. Thus, Mr. Jatin Salwan's calls were also analyzed which revealed that seven calls had been made from his landline to Sh. Rana. Mr. Salwan's interrogation revealed that he was close to one Sh. Narender Singh resident of Ludhiana, who provided him the exact information about the transportation of contraband and that Sh. Narender Singh had an old enmity with Mr. Shergill because of which a conspiracy was hatched with Sh. Navjot Singh Dhaliwal to falsely implicate Sh. Shergill. The interrogation of Narender Singh revealed the names of other co-accused, namely, Lovepreet Kaur (prepared the forged currency notes by scanning process), Kuldeep Singh and Jarnail Singh (who procured the opium), Ashok Kumar Jhatta (who impersonated Mr. Bansal) and Navjot Singh Dhaliwal (a co-conspirator with Narender Singh). The motive behind the conspiracy was a long standing dispute between Sh. Shergill and the father of Sh. Navjot Singh Dhaliwal over the issue of management of an institution at Mohali.

6. Final report dated 28.08.2016, under Section 173(2) Cr.P.C was prepared and filed in Court.

7. The above facts have been extracted from the said final report, which I have read thoroughly. The final report is based upon the

statements of witnesses recorded under Sections 161/164 Cr.P.C., recoveries effected and disclosure statements of the accused persons. The gist of the aforementioned facts is that Sh. Navjot Singh Dhaliwal and Sh. Narender Singh conspired to falsely implicate Sh. Shergill in a case under the NDPS Act on account of long standing enmity. Sh. Narender Singh involved Sh. Jatin Salwan in the conspiracy, who provided information of the contraband to the police through Sh. Tarsem Singh Rana. The contraband was however, recovered on secret information received by S.H.O, Police Station Maloya, Chandigarh. Thus, it appears that Sh. Narender Singh and Sh. Navjot Singh Dhaliwal also informed the police through some other secret source. The said secret source led to the recovery which unfolded the conspiracy. Thus, the accused including Sh. Jatin Salwan have been charged, as mentioned hereinabove.

8. Learned counsel for the petitioner has contended that:-

(a) the statement of Sh. Tarsem Singh Rana recorded under Section 164 Cr.P.C cannot be read into evidence as the said person is an accused in the challan presented in Court. In the alternative, it is submitted that the statement of Sh. Rana was only the statement of a witness and not a confession and therefore, there is no evidence to link the petitioner with the crime;

(b) Although, the information supplied by Sh. Jatin Salwan did not lead to the arrest of Sh. Bhagwan Singh yet, for the sake of arguments, if it is taken that Sh. Jatin Salwan's information led to the arrest of Sh. Bhagwan Singh, the petitioner can at the most be charged for offence under Section 182 IPC; and

(c) With reference to Section 227 Cr.P.C., it is contended that the trial Court has acted illegally by framing charge under the NDPS Act against the petitioner.

9. The above arguments have been refuted by learned counsel appearing for U.T., Chandigarh. His submissions are that:-

(i) the present petition has been moved during the pendency of a petition filed for quashing of FIR and hence, is not maintainable. The doctrine of election is pressed into service in support of this argument.

(ii) Statement under Section 164 Cr.P.C. cannot be discarded merely because the witness was subsequently arrayed as an accused.

(iii) Charge can be framed if, the material available on record justifies framing of the charge.

(iv) Even if, it be accepted that the petitioner maliciously gave false information leading to the arrest of Sh. Bhagwan Singh, he is guilty of offence under Section 58(2) of the NDPS Act.

10. Each of the above contentions shall be independently examined by me in the succeeding paragraphs.

11. It would be appropriate to first examine the contention raised by learned counsel for U.T., Chandigarh that the present petition is not maintainable. In this regard, reliance is placed upon the doctrine of election and the judgment of Hon'ble Supreme Court of India in **'A.P State Financial Corporation Vs. GAR Re-rolling Mills, 1994(2), SCC 647'**. The contention is that when two remedies are available for

the same relief, a party has to elect either of them. Since, a petition for quashing of FIR is pending therefore, as per learned counsel for U.T., Chandigarh, petition for quashing of charge is not maintainable. I have gone through the judgment of **A.P. State Financial Corporation** (supra). According to the ratio thereof, a party may elect either of the remedies available to him for the same relief, but in case, the scope of the two remedies is different then the doctrine of election is not attracted. Thus, in my view the doctrine of election is not attracted in the present case because on registration of an FIR a cause arose in favour of the petitioner for seeking its quashing, if no offence is made out on a bare perusal thereof. The charge is framed after completion of investigation and the consideration for framing of charge, is entirely different. After framing of charge, a fresh cause arises in favour of an accused. Thus, the two remedies are different in nature and the doctrine of election is not attracted. This argument is therefore, rejected.

12. The next contention of the leaned counsel for the petitioner is that the statement of Tarsem Singh Rana cannot be read into evidence because he has been arrayed as an accused subsequently. The ground for this submission is that an accused cannot be expected to give a statement against himself. Thus, the statement of Tarsem Singh Rana has to be taken out of the equation. In this situation, there is nothing on record to link the petitioner with the alleged crime. This has been countered by counsel for U.T., Chandigarh by submitting that the statement under Section 164 Cr.P.C. of Tarsem Singh Rana is not waste-paper merely because subsequently, he has been found to be an accused.

13. It is settled law that a statement under Section 164 Cr.P.C is not placed at a higher pedestal than a statement under Section 161 Cr.P.C. merely because it is recorded before a Magistrate. It is also not in dispute that an accused cannot be made to suffer a statement, which points a finger at himself. However, in the present case, the statement of Tarsem Singh Rana was recorded to uncover the source of his information regarding transportation of contraband in the blue Maruti car. During the course of interrogation, he preferred to make a statement before a Magistrate and thus, his statement was recorded under Section 164 Cr.P.C. instead of Section 161 Cr.P.C. The said statement can be relied upon and can be taken into consideration against the petitioner. Merely because Tarsem Singh Rana became an accused at a later stage, his statement made earlier cannot be taken out of the equation. It may be that his statement cannot be read against himself, but it surely can be read against the petitioner. So construed, the statement of Tarsem Singh Rana is part of the police investigation and being material in support of the challan, surely it can be taken into consideration by the trial Court while framing the charge. There is no illegality on this account and the submission of learned counsel for the petitioner is rejected.

14. Learned counsel for the petitioner has placed reliance upon the judgment in **‘Ram Kishan Singh Vs. Harmit Kaur, 1972(3), SCC 280’** and **‘Vineet Kumar Vs. State of U.P., 2017(2), RCR (CrI.) 497’** in support of his arguments. I am afraid that the said judgments do not advance the case of the petitioner. In **Ram Kishan Singh’s** case (supra), it was held that a statement under Section 164 Cr.P.C is not substantive

evidence. This is not in dispute and can never be. The statement under Section 164 Cr.P.C. of Sh. Rana is not being read as evidence during the trial, but is only being considered at the stage of framing of charge and the trial Court is justified in doing so. The judgment in Vineet Kumar's case (supra) is distinguishable because in that case, apart from the statement under Section 164 Cr.P.C., there was no other evidence on record for summoning the accused and thus, it was held that the summoning order should be quashed. In the present case, there is other corroborative evidence apart from the statement of Sh. Rana, implicating the petitioner. The petitioner fits into the sequence of events and it cannot be said that there is merely one statement under Section 164 Cr.P.C implicating him.

15. The next submission of learned counsel for the petitioner is that the petitioner is not guilty of any offence under the NDPS Act and cannot be so charged on the basis of challan and supporting material. At the most, the petitioner may be charged for giving false information under Section 182 IPC because the information supplied by him led to the arrest of Bhagwan Singh, who was ultimately discharged. This has been countered by the counsel for U.T., Chandigarh by submitting that the investigation has revealed that the petitioner was intrinsic part of the conspiracy to falsely implicate Sukhbir Singh Shergill and therefore, the submission of learned counsel for the petitioner is misplaced. Further submission is that Section 58(2) of the NDPS Act would be attracted even if the submission of the learned counsel for the petitioner is accepted.

16. As recorded earlier, I have minutely gone through the challan. All the events mentioned therein are linked by a common chain i.e. the intention of falsely implicating Sukhbir Singh Shergill. As part of this conspiracy, Narender Singh gave information to Jatin Salwan so that the said information may be supplied to the police through his contacts. Accordingly, Jatin Salwan got in touch with Tarsem Singh Rana, who communicated with the Crime Branch leading to S.I. Jaldan Singh being present at the spot. It may be that Bhagwan Singh had already been intercepted before arrival of S.I Jaldan Singh at the spot, but that does not detract from the fact that the conspiracy led to planting of contraband and fake currency notes in the car of Bhagwan Singh. Accordingly, learned counsel for U.T., Chandigarh is correct when he submits that the petitioner was closely linked with the conspiracy. It is not a simple case of false information under Section 182 IPC, as projected by learned counsel for the petitioner. This argument is otherwise also illogical because Jatin Salwan was not acting independently. In this view of the matter, this submission also deserves to be rejected. Since, I have held the petitioner to be a part of the conspiracy to falsely implicate Sh. Shergill, it is not necessary to examine the submissions of the parties regarding applicability of Section 58(2) of the NDPS Act.

17. Finally, learned counsel for the petitioner has placed reliance upon the language of Sections 227 and 228 Cr.P.C to contend that 'sufficient ground' does not exist for framing the charge under the NDPS Act. He relies upon **'Century Spinning and Manufacturing Company Limited Vs. State of Maharashtra, 1972(3), SCC 282'** and

‘P. Vijayan Vs. State of Kerala and another, 2010(2), SCC 398.’

Learned counsel for U.T., Chandigarh has countered this argument by placing reliance on **‘Sheoraj Singh Ahlawat and others Vs. State of U.P and another, 2013(11), SCC 476.’**

18. To examine the contentions of the parties, it would be apposite to reproduce Sections 227 and 228 Cr.P.C.

“Section 227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.’

‘Section 228. Framing of charge-(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which;

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.’”

19. The plain language of Section 227 Cr.P.C. indicates that the trial Judge has to consider the record and documents submitted therewith, submissions of both the parties and then decide whether the accused deserves to be discharged. Section 228 Cr.P.C relates to framing of charge

and the expression used therein is ‘there is ground for presuming.’ Reading both the provisions together, it emerges that the Court framing the charge has to evaluate the material and documents on record and then to conclude whether the facts emerging therefrom disclose the commission of an offence. Based on the said evaluation the Court has to be convinced that sufficient ground exists for presuming that the accused had committed the offence. The evaluation is not regarding sufficiency of the evidence, which may lead to conviction and it has been so held in Sheoraj Singh Ahlawat’s case (supra). Applying these principles, the challan and the statement of witness Tarsem Singh Rana leads to the conclusion that the petitioner-Jatin Salwan was an integral part of the conspiracy. Therefore, framing of charge under the NDPS Act cannot be faulted. Judgments relied upon by the learned counsel for the petitioner also postulate the same principles and are of no assistance to him. Accordingly, this argument of the learned counsel for the petitioner is also not acceptable.

20. For the reasons aforementioned, this petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

16.03.2018

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No