

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

**CRA-D-No.1041-DB OF 2009**  
**DATE OF DECISION : 14<sup>th</sup> JANUARY, 2019**

**Manjit Kaur**

**.... Appellant**

**Versus**

**State of Punjab**

**.... Respondent**

**CRA-D-No.36-DB OF 2010**

**Gurmeet Singh**

**.... Appellant**

**Versus**

**State of Punjab**

**.... Respondent**

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI  
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

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Present : Mr. Ashok Giri, Advocate for the appellant-Manjit Kaur.

Mr. Sunil Kumar Chahal, Advocate for  
Mr. R. P. Dhir, Advocate for appellant-Gurmeet Singh.

Mr. K. K. Thakur, Advocate Legal Aid Counsel  
for the appellant-Gurmeet Singh.

Mr. H. S. Sullar, Deputy Advocate General, Punjab.

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**A. B. CHAUDHARI, J.**

1. Being aggrieved by the judgment and order dated 21.11.2009 passed by Judge, Special Court, Jalandhar in Sessions Case No.180 of 2007, by which the appellant Manjit Kaur wife of Guru Sant Parkash Singh in CRA-D- No.1041-DB of 2009 and Gurmeet Singh son of Naranjan Singh in CRA-D-No.36-DB of 2010 were convicted for offence punishable under Section 15 of Narcotics Drugs & Psychotropic Substances Act (in short, NDPS Act) and sentenced to undergo rigorous

imprisonment for a period of twelve years each and fine of ₹1,00,000/- each and in default of payment of fine to further undergo rigorous imprisonment of one year each, the present two appeals were filed by them.

**FACTS:**

2. Briefly stated, the prosecution case was that on 13.07.2004 SI, SHO Onkar Singh of Police Station Bhogpur along with other police personnel were holding a *naka* at G. T. Road turning Bholath. He received secret information that Gurmeet Singh alias Jeeta and Karnail Singh (PO) were running a trade of selling poppy husk and were having large quantity thereof stored at the residence of Manjit Kaur at village Bhatnura Lubana. With this information they proceed to conduct raid at the residence of Manjit Kaur where DSP Sarwan Singh also reached. Under the supervision of DSP they conducted the raid when they caught red handed accused Gurmeet Singh who was stacking the bags. Karnail Singh alias Suba however ran away from the house of Manjit Kaur. Thereafter search was conducted in the supervision of DSP. Poppy husk weighing 39 kilograms and 500 grams was found from which sample was drawn. All the samples and bags were then taken into police possession and site plan of the house of Manjit Kaur was prepared from where 13 bags of poppy husk were recovered. Thereafter the usual procedure of collection of sample and sending them to FSL was undertaken. The investigation was completed and the challan was presented before the Court. The trial Court thereafter framed the charge under Section 15 of the NDPS Act on 21.10.2004 and since the appellants did not plead guilty they were tried. Manjit Kaur was later on arrested on 29.09.2005 and

supplementary challan was filed against her. PW-9 SI Onkar Singh, who lodged the FIR and completed the investigation, was also examined by the prosecution. Learned trial Court after hearing the arguments convicted the appellants as stated above.

**ARGUMENTS:**

3. In support of the appeals, the learned counsel for the appellants in both these appeals made the submission that admittedly PW-9 SI Onkar Singh of police station Bhogpur had held naka at G.T. Road Bholath and had lodged the FIR Exhibit PA/1 with ruqa Exhibit PA. Admittedly, after lodging FIR it was PW-9 SI Onkar Singh investigating officer, who throughout conducted the investigation and also filed the challans. He also tendered his evidence before the Court confirming these facts. The counsel for the appellants, therefore argued that the decision in the case of ***Mohan Lal Vs. State of Punjab, AIR 2018 SC 3853*** would squarely apply in the present appeal and both the appellants should be acquitted.

4. The next contention raised by learned counsel for the appellant-Manjit Kaur is that neither she was found in her alleged house nor it is the case of the prosecution that she was arrested from the spot or that she was having conscious possession of the contraband. It is the case of the prosecution that it was Gurmeet Singh who was found on the spot stacking the bags of poppy husk. According to the learned counsel for the appellant-Manjit Kaur, there is no iota of evidence on record that the house in which the contraband was found, belonged to her or it was not even remotely shown that she was in possession of the said house. The prosecution did not collect any evidence to that effect and therefore, it

was wholly wrong and illegal on the part of the trial Court to convict her in the absence of any evidence. The learned counsel for appellant-Gurmeet Singh submitted that procedure under Section 50 of NDPS Act was not followed and at any rate the appellant-Gurmeet Singh was entitled to be acquitted. They therefore prayed for allowing the appeals.

5. Per contra, learned counsel for the State submitted that the impugned judgment and order clearly reveal reasons for recording of conviction of both the appellants. He supported the reasons given by the trial Court for coming to the conclusion about the complicity of both the appellants. He, therefore, prayed for dismissal of the appeal.

**CONSIDERATION:**

6. The operative order was pronounced on 14.01.2019 by this Court and reasons were to follow. The judgment has been thereafter written by us in the 3<sup>rd</sup> week of February 2019. By that time the judgment of Supreme Court dated 11.02.2019 in the case of ***Varinder Kumar Vs. State of Himachal Pradesh*** in ***Criminal Appeal Nos. 2450-2451 of 2010*** was pronounced.

7. In ***Varinder Kumar (supra)*** the 3 Judges' Bench of the Supreme Court clarified the decision in the case of ***Mohan Lal (supra)***. It is for this reason we have incorporated the *dicta* in case of ***Varinder Kumar (supra)*** in the present case, though the operative part was pronounced on 14.01.2019.

8. At the outset, it is necessary to consider the submission made by learned counsel for the appellants based on the three judges' decision of the Apex Court in the case of ***Mohan Lal (supra)***. It was held in the said decision that if the police officer who lodged the FIR

and completed the investigation and filed the chargesheet then the trial will be vitiated. However, the decision in the case of **Mohan Lal (supra)** came for further consideration before the three Judges' Bench and it has been recently held by the Apex Court in the case of **Varinder Kumar Vs. State of Himachal Pradesh** passed in Criminal Appeal Nos.2450-2451 of 2010 vide order dated 11.02.2019, that trial will not be vitiated by giving the following reasons:

“15. Societal interest therefore mandates that the law laid down in **Mohan Lal (supra)** cannot be allowed to become a spring board by an accused for being catapulted to acquittal, irrespective of all other considerations pursuant to an investigation and prosecution when the law in that regard was nebulous. Criminal jurisprudence mandates balancing the rights of the accused and the prosecution. If the facts in **Mohan Lal (supra)** were telling with regard to the prosecution, the facts in the present case are equally telling with regard to the accused. There is a history of previous convictions of the appellant also. We cannot be oblivious of the fact that while the law stood nebulous, charge sheets have been submitted, trials in progress or concluded, and appeals pending all of which will necessarily be impacted.

16. xxx.... xxx.... xxx....

17. xxx.... xxx.... xxx....

18. The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it uni-directional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in ***Mohan Lal (supra)*** is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in ***Mohan Lal (supra)*** shall continue to be governed by the individual facts of the case.

9. In our considered opinion the second judgment ***Varinder Kumar (supra)*** by the three Judges' Bench of the Apex Court is based on the doctrine of prospective overruling. In the case of ***Ashok Kumar Gupta & another Vs. State of U.P. and others (1997) 5 Supreme Court cases 201***. The concept of prospective overruling been described as under:

“It is settled principle right from Golak Nath ratio that prospective over-ruling is a part of the principles of constitutional canon of interpretation. Though Golak Nath ratio of unamendability of fundamental rights under Article 368 of the

Constitution was over-ruled in Kesavananda Bharati's case [1973 Supp. SCR 1] the doctrine of prospective over-ruling was upheld and followed in several decisions. This Court negatived the contention in Golak Nath's case that prospective over-ruling amounts to judicial legislation. Explaining the Blackstonian theory of law, i.e., Judge discovers law and does not make law, and the efficacy of prospective over-ruling at page 808 placitum D to H, this Court by a Bench of eleven Judges had held that the doctrine of prospective over-ruling is a modern doctrine and is suitable for a fast moving society. It does not do away with the doctrine of stare decisis but confines it to past transactions. While in strict theory, it may be said that the doctrine involves the making of law, what a Court really does is to declare the law but refuses to give retrospectivity to it. It is really a pragmatic solution reconciling the two conflicting doctrines, namely, that a Court finds law and that it does make the law. It finds the law but restricts its operation to the future. It enables the Courts to bring about a smooth transition by correcting the errors without disturbing the impact of those errors on past transactions. By implication of this doctrine, the past may be preserved and the future protected. The

Constitution does not expressly or by necessary implication speak against the doctrine of prospective over-ruling. Articles 32(4) and 142 are designed with words of width to enable this Court to declare the law and to give such direction or pass such orders as are necessary to do complete justice. Declaration of law under Article 141 is wider than words found or made. The law declared by this Court is the law of the land. So, there is no acceptable reason as to why the Court in dealing with the law in supersession of the law declared by it earlier could not restrict the operation of law, as declared, to the future and save the transactions, whether statutory or otherwise, that were effected on the basis of the earlier law. This Court is, therefore, not impotent to adjust the competing rights of parties by prospective over- ruling of the previous decision in Rangachari ratio. The decision in Mandal's case postponing the operation for five years from the date of the judgment is an instance of, and an extension to the principle of prospective over-ruling following the principle evolved in Golak Nath case. In Managing Director, ECIL, Hyderabad & Ors. vs. B.Karunakar & Ors. [(1993) 4 SCC 727], a Constitution Bench of this Court, while over-ruling Union of India V/s. Mohd.

Ramzan Khan [(1991) 1 SCC 588] had held that the benefit of decisions would be given only to the parties to the cases pending before the authorities from the date of the judgment but not to the actions already taken by the date of that judgment. In that behalf in separate but partly dissenting judgment to a limited extent, on the issue of the need to give benefit to the party that approaches the Court in that case, one of us, K. Ramaswamy, J., had held that as a matter of constitutional law retrospective operation of an over-ruling decision is neither required nor prohibited by the Constitution; it is a matter of judicial attitude depending on the facts and circumstances in each case; the nature and purpose the particular over-ruling decision seeks to serve are required to be taken into consideration. The Court would look into the justifiable reliance on the over-ruled case by the administration. All the factors, viz., ability to effectuate the new rule adopted in the over-ruling case, without doing injustice and whether the likelihood of its operation substantially burdens the administration or retards the purpose, are to be taken into account, while over-ruling the earlier decision or laying down a new principle. Equally, no distinction could be made between claims involving constitutional

rights, statutory right or common law right. The Court is required to adjust the competing rights taking into consideration the prior history of the rule in question, its purpose and effect and to find out whether retrospective operation will accelerate or retard its operation. Therefore, evolving of the appropriate rule to give effect to the decision of the Court over-ruling its previous precedent, is one of judicial craftsmanship with pragmatism and judicial statesmanship as a useful outline to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law operated prior to the date of the judgment over-ruling the previous law.

10. The judgment of the Apex Court in the case of ***P.V. George and others Vs. State of Kerala & others, 2007(3) SCC 557***, has also discussed about the doctrine of prospective, the relevant portion reads thus:

“The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term.

14. xxx.... xxx.... xxx.... The legal position as regards the applicability of doctrine of prospective overruling is no longer res integra. This Court in

exercise of its jurisdiction under Article 32 or Article 142 of the Constitution of India may declare a law to have a prospective effect. The Division Bench of the High Court may be correct in opining that having regard to the decision of this Court in *Golak Nath v. State of Punjab* [AIR 1967 SC 1643) the power of overruling is vested only in this Court and that too in constitutional matters, but the High Courts in exercise of their jurisdiction under Article 226 of the Constitution of India, even without applying the doctrine of prospective overruling, indisputably may grant a limited relief in exercise of their equity jurisdiction.

11. Insofar as the present case is concerned, the incident in question took place on 13.07.2004 and in the light of the perspective overruling as aforesaid obviously the decision in the case of ***Mohan Lal (supra)*** will have no application. We hold accordingly.

12. The next question is about the complicity of appellant-Gurmeet Singh. The prosecution has relied on the evidence of witnesses who had conducted the raid in the house allegedly belonging to Manjit Kaur, that Gurmeet Singh was caught red handed in the house stacking poppy husk bags. That evidence has gone unchallenged in the cross-examination. There is no explanation by Gurmeet Singh as to why he was stacking the contraband. Obviously he was in conscious possession of the bags in which poppy husk was found. The evidence is overwhelming and there is no need to have any doubt about it. We,

therefore, hold that Gurmeet Singh was in conscious possession of the contraband seized by the police and consequently we affirm his conviction under Section 15 of the NDPS Act.

13. The next appellant-Manjit Kaur in our opinion was unnecessarily convicted in the absence of any legal evidence. In our opinion the provision of NDPS Act are required to be interpreted in a strict manner as to the proof. We do not find a single piece of evidence pointed out by the trial Court in the judgment to show that the house belonged to Manjit Kaur or that she was in conscious possession either by producing any documentary evidence or examining neighboring witness, all the more so, in the wake of the admitted fact that Manjit Kaur was not even present in the house. Had Manjit Kaur also been caught on the spot with Gurmeet Singh, perhaps the matter could have been different. But that is not the case of the prosecution. We, therefore, find that there was no reason whatsoever, to record her conviction. Nothing prevented the prosecution from leading such evidence to show complicity of Manjit Kaur as well. We are, therefore, convinced that conviction of the appellant-Manjit Kaur will have to be set aside.

14. The next question is about the sentence of 12 years awarded to appellant-Gurmeet Singh. He has been sentenced to undergo rigorous imprisonment for 12 years and to pay fine of ₹1,00,000/-. Looking to the fact that there is no other offence against Gurmeet Singh shown by the prosecution anywhere under any Act and looking to the period spent by him in jail and further looking at the fact that he will have to undergo the remaining sentence, we are inclined to modify the order of sentence

and make it the minimum sentence provided by the Act, namely 10 years. We confirm the sentence of fine and default clause. In the result we make the following order:

**ORDER**

- (i) Criminal Appeal CRA-D-No.1041-DB OF 2009 filed by the appellant-Manjit Kaur is allowed.
- (ii) The impugned judgment and order dated 21.11.2009 passed by Judge, Special Court, Jalandhar in Sessions Case No.180 of 2007, is set aside and the appellant-Manjit Kaur is acquitted of the charge framed against her. Fine if any be refunded to her.
- (iii) Criminal Appeal CRA-D-No.36-DB of 2010 filed by appellant-Gurmeet Singh is partly allowed. His conviction for sentence under Section 15 of the NDPS Act is confirmed.
- (iv) The order of sentence, however, is modified qua-Gurmeet Singh and he is sentenced to undergo rigorous imprisonment for 10 years with fine of ₹1,00,000/- and in default of payment of fine he has to undergo rigorous imprisonment for one year.

**(A. B. CHAUDHARI)**  
**JUDGE**

**14<sup>th</sup> JANUARY, 2019**  
*‘raj’*

**(HARNARESH SINGH GILL)**  
**JUDGE**

|                                   |            |            |
|-----------------------------------|------------|------------|
| <i>Whether speaking/reasoned:</i> | <i>Yes</i> | <i>No</i>  |
| <i>Whether Reportable:</i>        | <i>Yes</i> | <i>No.</i> |