

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 18.12.2019
CRA-D-187-DB-2011

Jasbir Singh and another ... Appellants

vs.

State of Punjab and another ... Respondents

CRA-D-249-DB-2011

Gurwinder Singh ... Appellant

vs.

Intelligence Officer, Directorate of Revenue Intelligence, Amritsar
.. Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Vipul Jindal, Advocate
for the appellant in CRA-D-187-DB-2011.

Mr. Vikas Gupta, Advocate
for the appellant in CRA-D-249-DB-2011.

Mr. H.S.Sullar, DAG, Punjab in CRA-D-187-DB-2011.

Mr. D.D.Sharma, Advocate, as standing counsel
for DRI.

VIVEK PURI, J.

1. The aforesaid two appeals have been preferred by the appellants-accused against the judgment of conviction dated 16.11.2010 and order of sentence of even date passed by Judge, Special Court, vide which they were convicted and sentenced which is as under:-

Jasbir Singh

Offence	Sentence	Fine	In default
18 of NDPS, Act	R.I.10 years	Rs.1,00,000/-	R.I. one year
21 of NDPS, Act	R.I.15 years	Rs.1,50,000/-	R.I. two year

Offence	Sentence	Fine	In default
23 of NDPS, Act	R.I.15 years	Rs.1,50,000/-	R.I. two year
25 of NDPS, Act	R.I.15 years	Rs.1,50,000/-	R.I. two year
29 of NDPS, Act	R.I.15 years	Rs.1,50,000/-	R.I. two year

Gurwinder Singh

Offences	Sentences	Fine	In default
18 of NDPS, Act	R.I.10 years	Rs.1,00,000/-	R.I. One year
21 of NDPS, Act	R.I.15 years	Rs.1,50,000/-	R.I. two year
23 of NDPS, Act	R.I.15 years	Rs.1,50,000/-	R.I. two year
29 of NDPS, Act	R.I.15 years	Rs.1,50,000/-	R.I. two year

Kewal Singh

Offences	Sentences	Fine	In default
18 of NDPS, Act	R.I.10 years	Rs.1,00,000/-	R.I. One year
21 of NDPS, Act	R.I.15 years	Rs.1,50,000/-	R.I. two year
23 of NDPS, Act	R.I.15 years	Rs.1,50,000/-	R.I. two year
29 of NDPS, Act	R.I.15 years	Rs.1,50,000/-	R.I. two year

2. It was further directed that all the substantive sentences shall run concurrently and the period of detention already undergone by the appellants-accused during inquiry/investigation and trial of the case shall be set off against the term of imprisonment imposed upon them.
3. Succinctly, factual matrix of the case is that a complaint has been instituted on the allegations that the complainant is an Intelligence Officer of Directorate of Revenue Intelligence, Amritsar (for short 'DRI'). On 03.09.2008, the Intelligence Officer, Directorate of Revenue Intelligence, Amritsar received a specific Intelligence report to the effect that a white coloured Tata Sumo vehicle bearing registration No. HR38M (T)-1888 would be used in carrying heroin and will be travelling along Jhabal-Amritsar road. The report was reduced into writing and sent to Senior Officer. The surveillance was mounted by the DRI Officers.
4. On 03.09.2008 at about 09:45 A.M. (mentioned as 09:45

P.M. in the judgment of learned trial Court), the aforesaid vehicle was intercepted, which was being driven by appellant-Gurwinder Singh. The other two appellants were also sitting in the vehicle. The identity of the appellants was verified and they were served with the notice under Section 50 of the the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act') and they were apprised of their legal rights to get the search the conducted in the presence of a Gazetted Officer or Magistrate. The appellants-accused opted to get the search conducted in the presence of a Gazetted Officer. It was further stated that the place of interception was not safe and secure for conducting the search proceedings due to high value of contraband and threat to their lives. On the request of the appellants-accused, they were taken to DRI Office at M-I/C, Green Avenue, Amritsar. The search of the vehicle led to the recovery of 55 packets wrapped in yellowish/brownish adhesive tape from the space between the last two seats of the vehicle. Heroin was found in 54 packets and opium was found in one of the recovered packet. The recovered substance was tested with the help of drug testing kit. The net weight of heroin contained in 54 packets came out to be 53.980 kgs and net weight of the opium came out to be 0.980 kg. The representative samples drawn. The parcels were marked and sealed. Voluntary statements of the appellants-accused under Section 67 of the Act were recorded. The samples were sent to CRCL and on receipt of the report, the complaint has been instituted.

5. During the course of trial, the prosecution has examined four witnesses besides producing documentary evidence.

6. Swaran Singh (PW-1), HC, DRI Office, had carried the

sample parcels to CRCL, New Delhi. Paramjit Singh (PW-2), Inspector Customs, had retained the case property in the Malkhana. Ramesh Sharma (PW-3), at that time, was working as Senior Intelligence Officer in DRI, Amritsar and is a witness to the proceeding conducted at the spot. The information was received by R.K.Saini (PW-4), Intelligence Officer, DRI, Amritsar and the proceedings culminated into the recovery of the contraband and subsequent investigation including recording of the statements under Section 67 of the Act has been conducted by him.

7. In the statement, recorded under Section 313 Cr.P.C., the appellants-accused have denied the correctness of the incriminating evidence appearing against them and have pleaded false implication. However, no defence evidence has been led by them.

8. Vide judgment of conviction dated 16.11.2010 and order of sentence of even date, the appellants-accused were convicted and sentenced as mentioned hereinabove.

9. Aggrieved by the aforesaid judgment, the present appeals have been preferred.

10. We have heard learned counsels for the parties and perused the record.

11. It has been argued on behalf of the appellants-accused that two public witnesses, namely, Sunil Kumar and Vikas Thapa were joined during the course of investigation but they have not been examined during the course of trial. The case of the prosecution hinges on the deposition of official witnesses only and non-examination of independent witnesses renders the version of prosecution to be doubtful. It has been further argued that the mandatory provision of Section 50 of the Act has

not been complied with and there is a delay in depositing the case property in Malkhana and sending the sample parcels to CRCL. It has also been pointed out that sufficient quantity of contraband was not drawn as sample. It has been further argued that the confessional statement of the appellants-accused without corroboration cannot be looked into to arrive at the guilt of the accused.

12. On the contrary, it has been contended by the counsel appearing for respondent-DRI that there is no bar to base the conviction on the deposition of official witnesses only. They have deposed in a fairly, satisfactory and reliable manner on all the material aspects of the case. Huge quantity of contraband has been recovered from the appellants-accused which rules out the possibility of false implication. It has been further argued that the mandatory provision of Section 50 of the Act has been complied with and search of the appellants-accused has been conducted in the presence of a Gazetted Officer as per the choice given by them. There is insignificant delay in deposit the case property in the Malkhana and sending the sample parcels to the CRCL. The sufficient quantity required for the chemical examination of the contraband was drawn. Statements of appellants-accused under Section 67 of the Act indicate that the vehicle was owned by Jasbir Singh and the appellants were indulging in transborder smuggling of the contraband.

13. On perusal of the material on record and on appreciation of rival arguments, as put forth by both the parties, we are of the considered view that the judgment of conviction recorded against all the appellants-accused is liable to be upheld for the reasons stated hereinafter.

14. It is no doubt true that the case of the prosecution hinges on

the deposition of official witnesses only. Admittedly, Sunil Kumar and Vikas Thapa were joined during the course of proceedings but they have not been examined at the time of trial. Non-examination of such witnesses cannot be termed to be, in any manner, sufficient to render the version of the prosecution to be doubtful. The deposition of official witnesses cannot be viewed with distrust or suspicion merely because of their official status until or unless there are cogent grounds therefor. In the case in hand, the recovery of contraband has been effected from the vehicle in which all the three appellants-accused were travelling. Ramesh Sharma (PW-3) and R.K.Saini (PW-4) have testified in a fairly satisfactory manner on all the material aspects of the case and recovery of contraband during the course of search of the vehicle. There is nothing on record to indicate that these witnesses have deposed falsely against the appellants-accused on account of any extraneous reason. The option was given to the appellants-accused and were apprised of their legal right under Section 50 of the Act and the search has been conducted at a safer place, as per the choice given by them. The deposition of both the witnesses to the recovery inspire confidence and form a valid ground for the purpose of founding the conviction of the appellants-accused.

15. The argument raised on behalf of the appellants-accused to the effect that there is a delay in depositing the case property in the Malkhana and sending the samples to CRCL, is not of much significance. It is pertinent to mention here that the recovery was effected on 03.09.2008 and appellants-accused were taken to the office of DRI as per the choice given by them. Thereafter, the entire proceedings were conducted. The samples were drawn; parcels were sealed; the writing

formalities were completed and even the statements of the appellants-accused under Section 67 of the Act were recorded. The entire exercise must have consumed substantial time. The appellants-accused along with the case property were produced before the learned Judicial Magistrate 1st Class (Duty) on 04.09.2008. The case property was seen and signed by him and, thereafter, returned to R.K.Saini (PW-4), Intelligence Officer. The copy of the order (Ex.P26/A) indicates that the same has been recorded at 07.15 p.m. It is also emerging in the cross-examination of R.K.Saini (PW-4) that they reached back the office of DRI, Amritsar after producing the appellants-accused in the Court at about 7:00 p.m. on 04.09.2008. In such circumstances, it cannot be said that the depositing of case property with Paramjit Singh (PW-2), who was working as Inspector Customs in the Malkhana on 05.09.2008, was on account of any intentional delay. The sample parcels were carried by HC Swaran Singh (PW-1) on 08.09.2008 to CRCL. There is nothing to suggest that during the intervening period the case property was tampered with at any point of time. It has already been mentioned on the report of CRCL that the seals on the samples tallied with the facsimile on the test memos. Moreover there are categorical statements of HC Swaran Singh (PW-1) and R.K.Saini (PW-4) that the case property was not tampered with during that period it remained in their custody. As per the report of CRCL, diacetylmorphine was found in 54 parcels whereas opium was found in 55th parcel. Furthermore, there is nothing to suggest that the quantity of contraband drawn as samples was insufficient for chemical analyses. The report of CRCL is indicative of the fact that the quantity of sample parcels was sufficient to draw analyses.

16. In these set of circumstances, it is sufficiently proved and established that all the appellants-accused were found in joint conscious possession of 53.980 kgs of heroin and 0.980 kg. of opium which were being carried by them in the vehicle bearing registration No. HR38M (T)-1888.

17. On the basis of the statements recorded under Section 67 of the Act, the appellants-accused have also been convicted for having committed the offence under Section 23 of the Act. Besides appellant-Jasbir Singh has also been convicted for the offence under Section 25 of the Act. Except the statements under Section 67 of the Act, there is nothing to indicate that the appellants-accused had indulged in transborder smuggling of the contraband. No call details or other evidence in this regard have been produced on record. Furthermore, in the statement under Section 67 of the Act, it has been pointed out by Jasbir Singh that he had purchased the vehicle from one Rekha, resident of Faridabad. However, it is emerging in cross-examination of R.K.Saini (PW-4) that no document was recovered from the vehicle with regard to the ownership of vehicle. There is nothing to suggest that the vehicle was transferred in the records of Registration Authority in the name of any of the appellants. Even Rekha, the registered owner of the vehicle has not been examined in the instant case.

18. In the judgment dated 04.09.2019 rendered by Hon'ble the Supreme Court in case titled as **Mohammed Fasin vs. State Rep. By The Intelligence Officer**, reported as **2019 (4) R.C.R. (Criminal), 362**, it has been held that the confession recorded while the accused is in custody is a weak piece of evidence and there must be some corroborative

evidence. In such circumstances, the conviction of the appellants-accused with regard to the offences under Sections 23 and 25 of the Act is liable to be set aside, whereas, the conviction with regard to other offences is maintained.

19. Faced with the situation, it has been contended by the learned counsel for the appellants-accused that the appellants-accused have already undergone imprisonment for a period of more than 09 years and a lenient view in the matter of sentence may be taken.

20. It may be mentioned here that the quantity of opium recovered from the possession of the appellants-accused falls in the category of less than commercial quantity. There is nothing to suggest that the appellants-accused are convicts in any other case under the NDPS Act. However, it has also to be borne in mind that the appellants-accused had formed a group and in criminal conspiracy with each other, they were carrying the contraband in the vehicle. Keeping in view the totality of the circumstances, the sentence imposed upon the appellants-accused is modified which is as follows:

Jasbir Singh

Offences u/s	Sentences	Fine	In default
18 of NDPS, Act	R.I.05 years	Rs.50,000/-	R.I. One year
21 of NDPS, Act	R.I.12 years	Rs.1,00,000/-	R.I.Two years
29 of NDPS, Act	R.I.10 years	Rs.1,00,000/-	R.I.Two years

Gurwinder Singh

Offences u/s	Sentences	Fine	In default
18 of NDPS, Act	R.I.05 years	Rs.50,000/-	R.I. One year
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Kewal Singh

Offences u/s	Sentences	Fine	In default
18 of NDPS, Act	R.I.05 years	Rs.50,000/-	R.I. One year
21 of NDPS, Act	R.I.12 years	Rs.1,00,000/-	R.I.Two years
29 of NDPS, Act	R.I.10 years	Rs.1,00,000/-	R.I.Two years

21. All the substantive sentences of imprisonment shall run concurrently and the period of detention already undergone by the appellants accused during the course of inquiry/investigation and trial shall be set off against the term of imprisonment imposed upon them.

22. With the aforesaid partial modification, both the appeals are dismissed.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

18.12.2019
smriti

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No