

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

CRA-D No. 1484-DB of 2013 (O&M)

Reserved on : 07.3.2019

Date of decision : 11.3.2019

Raj Kumar and another

.... Appellants

versus

State of Punjab

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Kuldip Singh**

Present Mr. Sandeep Verma, Advocate, for the appellants.
Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment dated 25.10.2013 and order dated 26.10.2013, rendered by learned Special Judge, Ferozepur, in Sessions Case No. 43 of 12.3.2010, by appellants Raj Kumar and Naresh Kumar. Accused Raj Kumar, Jagdish Kumar and Naresh Kumar were charged with and tried for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'). Accused Jagdish Kumar expired during the proceedings. However, accused Raj Kumar and Naresh Kumar were convicted and sentenced under Section 18 of the NDPS Act to undergo rigorous imprisonment for 12 years and to pay a fine of ₹ 1,20,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year and six months.

2. The case of the prosecution in a nutshell is that on 29.9.2009 Sub-Inspector Sukhdev Singh, Incharge CIA Staff, Abohar, along with ASI Tilak Raj and other police officials was holding *nakabandi* at a distance of 50 karams from the bridge. A car make Indica bearing registration No. DL-4CU-1324 came from Matili side. It was made to stop. It was driven by Raj Kumar and Jagdish Kumar (since deceased) was sitting on the front seat of the car, whereas Naresh Kumar was sitting on the rear seat of the car. Sub-Inspector Sukhdev Singh introduced himself to all the three accused. He apprised the accused of their legal right to be searched in the presence of a Gazetted Officer or Magistrate. The accused replied to be searched before the Gazetted Officer. Thereafter, Inspector Sukhdev Singh called Taran Rattan, Deputy Superintendent of Police, Abohar, at the spot. He gave them the option. The search was carried out. Opium wrapped in a glazed paper, which was kept in a water cooler lying in front of the seat of the car, was recovered. Out of the recovered contraband, 10 grams was taken out as sample. The remaining bulk opium was found to be 8.990 kilograms. Sealing process was completed. CFSL Form Ex.P7 was prepared at the spot. Ruqa was sent to the police station. FIR, Ex.P13, was registered. Rough site plan was prepared. Inspector Sukhdev Singh produced all the accused and the case property before Sub-Inspector/ SHO Rattan Singh. He kept the case property in his possession, vide memo Ex.P23. On receipt of the report of Chemical Examiner, Ex.P24, the challan was put up.

3. The prosecution examined a number of witnesses in support of the case. The statement of the accused were also recorded under Section 313 Cr.P.C. According to them, they were falsely implicated in the case. Accused

Raj Kumar and Naresh Kumar were convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Inspector Sukhdev Singh deposed that on 29.9.2009, he along with other police officials laid the *naka*. One Indica car was seen coming from the side of Matili. The car was made to stop. Driver disclosed his name as Raj Kumar. The person sitting on the adjoining seat of driver disclosed his name as Jagdish Kumar (since deceased). The person sitting on the rear seat disclosed his name as Naresh Kumar @ Neki. They were told about their legal right to be searched before the Magistrate or a Gazetted Officer. They told that they want to get their search conducted in the presence of a Gazetted Officer. Their consent memos, Ex.P1 to. Ex.P3 were prepared. Thereafter, Taran Rattan, Deputy Superintendent of Police, Abohar, was summoned at the spot. He told the accused about their legal right. Their consent memos, Ex.P5 to Ex.P7, were prepared. Accused put their signatures. He conducted the search of the car under the supervision of DSP. Opium wrapped in a glazed paper was recovered which was kept in a water cooler lying in front of the left front seat of the car. Out of the recovered contraband, 10 grams was separated and sealed in a parcel. The

remaining bulk weighed 8.990 kilograms. Both the parcels were sealed by him with his seal 'SS'. Sample seal impression was separately prepared on CFSL Form, Ex.P7, at the spot. DSP also sealed both the parcels with his seal 'TR' and affixed one impression of his seal on CFSL Form, Ex.P7. The case property was produced before the SHO. In his cross-examination, he stated that the place of *naka* was about 8 kilometers from Abohar. He did not join any independent witness while going towards the place of *naka*, from the villages falling on the way. He told that even at the time of giving offer by DSP, there was no reference that he gave the offer to the accused one by one and as per *ruqa*, the offer was given to all jointly. He stated that there was no reference that the offer of search of the car or person of the accused was given one by one.

7. PW2 SI Tilak Raj corroborated the statement of PW1 Inspector Sukhdev Singh and the manner in which the contraband was recovered and the codal formalities were completed at the spot.

8. PW3 DSP Taran Rattan deposed that he received the message from Sub-Inspector Sukhdev Singh, Incharge CIA Staff, Abohar. He reached the spot. The accused were told about their rights to be searched before the Gazetted Officer or Magistrate. All the accused reposed faith in him. He prepared consent memos, Ex.P4 to Ex.P6. The same were signed and thumb marked by the accused. The contraband was recovered. All the codal formalities were completed at the spot. In his cross-examination, he admitted that place of occurrence was about 5 kilometers from Abohar. *Ruqa*, Ex.P12, was correctly prepared as per the proceedings conducted at the spot. He denied the suggestion that consent memos Ex.P4 to Ex.P6 were

fabricated later on to complete the legal formalities. They remained at the spot about four hours.

9. PW4 Constable Bhupinder Singh deposed that on 21.10.2009, he was posted at Police Station, Sadar Abohar. On that day, Sub-Inspector Rattan Singh handed over to him one sample parcel containing 10 grams of opium. It was duly sealed with impressions 'SS', 'RS' and 'TR' along with CFSL Form Ex.P7. He deposited the same on 22.10.2009.

10. PW5 Retired Inspector Rattan Singh deposed that on 30.9.2009, he was posted as SHO at Police Station, Sadar Abohar. The case property was comprising of one sample parcel containing 10 grams opium, one bulk parcel containing 8.990 kilograms opium. Both were produced before him. The Investigating Officer handed over the CFSL Form, Ex.P7, bearing the seal impression 'SS' and 'TR'. He affixed one impression of his seal 'RS' on the parcels and CFSL Form, Ex.P7. On the same day, he produced the accused and the entire case property along with applications, Ex.P25 to Ex.P27, before the learned SDJM, Abohar. The Court passed the orders, Ex.P28 to Ex.P30. On 21.10.2009, he took out sample parcel containing 10 grams opium bearing seal impressions 'SS', 'TR' and 'RS' from his safe custody. He filled CFSL Form Ex.P7 by putting his signatures and date on it. He handed over the same to Constable Bhupinder Singh. It was deposited on 22.10.2009 in the office of Chemical Examiner, Kharar. In his cross-examination, he deposed that the case property was ordered to be deposited in the Judicial Malkhana at Ferozepur, vide order Ex.P30. He did not remember when the case property was deposited in the Judicial Malkhana.

11. As per the entire evidence led by the prosecution, the appellants were apprehended at *naka*. The accused disclosed their names as Raj Kumar, Jagdish Kumar and Naresh Kumar. They were apprised of their legal right to be searched before a Gazetted Officer or Magistrate. The accused told that their personal search be conducted in the presence of a Gazetted Officer. Their consent memos were prepared. DSP was called at the spot. Search was conducted under his supervision.

12. We have gone through the consent memos. It is specifically mentioned therein that as there was doubt about intoxicant articles in the possession of the accused so their personal and their vehicle's search was to be conducted. The accused had a legal right to be searched in the presence of Magistrate or Gazetted Officer. The statement made by PW1 Inspector Sukhdev Singh is contrary to the consent memos. PW3 DSP Tarn Rattan has specifically deposed that he had given option to the accused one by one. He had apprised the accused of their legal right to be searched before the Gazetted Officer or Executive Magistrate and he had given option to them individually.

13. The case property was required to be deposited with the Chemical Examiner immediately. There is delay in sending the samples. The contraband was recovered on 29.9.2009, however, it was deposited on 22.10.2009 with the Chemical Examiner, Kharar vide Ex.P7. The sample was sent through Constable Bhupinder Singh. As per Chemical Laboratory report, the seals on the exhibits were intact and tallied with sample seal sent. The sample recovered was found to be opium. The case property remained intact throughout. The case property was produced before SDJM, Abohar,

who passed the orders. The statements of the official witnesses can be taken into consideration if the same inspire confidence. The Court can take judicial notice of the fact that the people are reluctant to be part of investigation.

14. The prosecution has proved the case against the appellants beyond reasonable doubt. However, the submission of learned counsel for the appellants made at the time of arguments that since the accused have already undergone more than 9 years of their imprisonment, their sentence of imprisonment be reduced to 10 years. We find merit in his submission. Accordingly, the appeal is disposed of and the sentence awarded to the appellants is reduced from 12 years to 10 years. They shall complete their remaining period of sentence.

(Rajiv Sharma)
Judge

11.3.2019
vs

(Kuldip Singh)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No