

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

CRA-D-426-DB-2016 (O&M)
Reserved on : May 16, 2019
Date of Decision: July 17, 2019

Sanjeev Kumar alias Rana

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Davinder Lubana, Advocate for the appellant.

Ms. Shubhra Singh, Addl. AG, Haryana.

HARINDER SINGH SIDHU, J.

This appeal is instituted against the judgment and order dated 12.12.2014 rendered by the Judge, Special Court, Patiala in Sessions Case No.438/13 of 2011 whereby the appellant, who alongwith co-accused Harmeet Singh was charged with and tried for offence punishable under Sections 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') has been convicted and sentenced to undergo rigorous imprisonment for a period of fourteen years and to pay fine of Rs.1,50,000/- and in default to further undergo simple imprisonment for a period of one year. Harmeet Singh has been acquitted.

2. The case of the prosecution in a nutshell is that on 03.02.2011 Sub- Inspector Sarabjit Singh SHO, P.S. Bhadson along with SI Maghar Singh, ASI Harminder Singh and other police officials was on patrolling duty in a private vehicle. They were present at Tarkheri Chowk Bhadson

where Shakti Kumar S/o Narayan Dass R/o Bhadson came and joined them. At about 11:30 PM one TATA 407 was seen coming from Sirhind Road side which was being driven by one gentleman with trimmed hair. Another gentleman with trimmed hair was sitting on the seat adjoining the driver seat. Inspector Sarabjit Singh signalled it to stop. The occupants stopped the TATA 407, opened its window and ran away. SI Sarbjit Singh apprehended the driver of the vehicle with the help of police party. The other person ran away. The driver disclosed his name as Sanjeev Kumar @ Rana S/o Surinderpal Singh R/o Kacha Machhiwara. He disclosed the name of the person who had run away from the spot as Dev Pandit R/o Village Punia. SI Sarabjit Singh disclosed his identity to accused Sanjeev Kumar and that he had suspicion that accused was carrying some narcotic substances in the vehicle TATA-407 in jute bags and that he intended to search the vehicle. Accused was informed of his legal right to get the search conducted in the presence of a gazetted officer or a magistrate who could be called at the spot. Accused Sanjeev Kumar did not repose faith in SI Sarabjit Singh and his dissent statement Ex.PE was recorded. Thereafter, SI Sarabjit Singh sent a wireless message to Arshdeep Singh Gill, DSP Nabha who reached the spot. DSP Arshdeep Singh Gill disclosed his identify to the accused Sanjeev Kumar and informed him about his intention to search the vehicle which was suspected to be carrying some narcotic substance. Accused was also appraised of his legal right to get search conducted in the presence of another gazetted officer or a magistrate who could be called at the spot. The accused reposed faith upon DSP Arshdeep Singh Gill. The consent statement of accused Sanjeev Kumar Ex.PC was recorded.

conducted the search of TATA 407 bearing No.PB-10T-9605. 23 bags containing poppy husk were recovered. They were marked as serial no. 1 to 23. Thereafter two samples of 250 gram each were taken from each bag. These total 46 samples were separated. Each bag on weightment thereafter was found to contain 34kg 500 gram of poppy husk. Sample chit Ex.P1 was prepared. SI Sarabjit Singh sealed the 46 sample parcels and 23 bulk parcels including Ex.P1 with his seal bearing impression 'SS'. They were taken into police possession vide memo Ex.PD. DSP Arshdeep Singh also affixed his seal 'AS' on the sample parcels and bulk parcels. SI Sarabjit Singh handed over his seal to SI Maghar Singh after use. TATA-407 bearing no. PB-10T-9605 was also taken into police possession vide memo Ex.PF. SI Sarabjit Singh sent ruqa Ex.PW8/A through HC Harish Kumar on the basis of which formal FIR Ex.PW8/B was registered by ASI Baljinder Kumar. He prepared rough site plan vide memo Ex.PW8/C.

4. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. They denied the allegations levelled against them and pleaded false implication. Accused Sanjeev Kumar pleaded that false recovery had been planted upon him after picking him from his village by the police officials. There was a dispute between him and ASI Partap Singh. In order to settle scores ASI Partap Singh had planted the false case against him. Accused Harmeet Singh stated that nothing was recovered from him. He did not even know Sanjeev Kumar. False recovery had been planted upon him by the police officials in order to involve him in the case. They examined DW1 Shakti Kumar in defence.

The appellant was convicted and sentenced as referred to

above. Hence, this appeal.

6. We have heard learned counsel for the parties and have gone through the judgment and record.

7. PW1 DSP Arshdeep Singh, Circle Nabha stated that on 03.02.2011 he was posted as DSP Circle Nabha. On that day, he received a wireless message from SI Sarabjit Singh of P.S. Bhadson at about 11.50 PM that he had apprehended one Sanjeev Kumar alongwith Tata-407 vehicle No.PB10-T-9605 and he suspected that the latter was carrying some narcotic substance. SI Sarabjit Singh asked DSP Arshdeep Singh to reach at the spot as accused -Sanjeev Kumar had expressed his dissent to be searched in his presence. SI Sarabjit Singh also disclosed that one person had fled away from the spot. On receiving this information PW1 alongwith his gunmen reached the area of Tarkheri road, Bhadson at about 12.15 AM on 4.2.2011 where police party was present there alongwith accused and Tata-407. The IO disclosed to the DSP that person who had been apprehended had disclosed his name as Sanjeev Kumar. Sanjeev Kumar disclosed the name of the person who had fled away from the spot to be Dev Pandit of Punia. Later on, during investigation, it was revealed that actual name of the person who fled away was Harmeet Singh son of Rajbir Singh resident of Rajoana, PS Sudhar. PW1 disclosed his identity to accused- Sanjeev Kumar and told him that he was suspected to be carrying some narcotic substance in the vehicle and that he intended to conduct the search of the same. PW1 also apprised the accused of his right to get the search conducted in the presence of some other Gazetted Officer or a Magistrate who could be called at the spot. The accused reposed confidence in PW1. The consent statement

Kumar and attested by Shakti Kumar, SI Maghar Singh, SI Sarabjit Singh and PW1 himself. Then on directions of PW1, IO conducted the search of the Tata-407. 23 bags were recovered from it. On opening them poppy husk was found. The bags were numbered as 1 to 23. Two samples of 250 grams each were separated from all the 23 bags. Separate parcels of 46 samples and 23 bulk parcels were prepared and sealed with seal bearing impressions 'SS' of the IO and 'AS' of PW1. Specimen seal Ex.P1 was prepared. The IO handed over his seal to SI Maghar Singh. PW1 retained his seal with himself. The incriminating articles were taken into possession vide recovery memo Ex.PD which was signed by aforesaid witnesses and attested by PW1. PW1 identified accused Sanjeev Kumar in Court.

8. PW2 Maghar Singh retired Inspector stated that on 04.02.2011 he was posted at P.S. Bhadson. On that day he along with SI Sarabjit Singh, ASI Harminder Singh, HC Harish Kumar, HC Harjit Singh, C Surjit Singh, HC Palwinder Singh, PHG Jora Singh and PHG Harminder Singh were on patrolling duty in a private vehicle. They were present at Tarkheri Chowk, Bhadson. Shakti Kumar s/o Narian Das R/o Bhadson came there and he was talking with SI Sarabjit Singh. At about 11.03 PM one TATA-407 vehicle was seen coming from Sirhind Road. One gentleman with trimmed hair was driving the same and another gentleman with trimmed hair was sitting on the front seat near the driver seat. SI Sarabjit Singh gave signal with the light of torch. They stopped the TATA-407, opened the windows of the vehicle and ran away. The driver of the vehicle was apprehended by SI Sarabjit Singh with the help of police party. On inquiry he disclosed his name as Sanjeev Kumar @ Rana s/o Surinderpal Singh R/o Kacha Macchiwara. He disclosed

the name of the person who ran away as Dev Pandit R/o Punia. SI Sarabjit

Singh disclosed his identity to the accused. The SI further told the accused that he suspected that the accused was carrying some narcotic substances in the TATA-407 vehicle in the jute bags and that the SI wanted to conduct search of the vehicle. Accused was appraised of his right for the search to be conducted in the presence of Magistrate or gazetted officer and they could be called at the spot. Accused Sanjeev Kumar stated that he wanted the search to be conducted in the presence of Gazetted officer. SI Sarabjit Singh recorded non-consent memo Ex.PE and read over the same to accused Sanjeev Kumar. Sanjeev Kumar put his signatures on his non-consent memo. PW2 and Shakti Kumar signed as witnesses. SI Sarabjit Singh attested it. Then SI Sarabjit Singh called DSP, Nabha through wireless message. DSP Arshdeep Singh Gill came to the spot. DSP Arshdeep Singh disclosed his identity to the accused Sanjeev Kumar that he was DSP and a Gazetted Officer and about his intention to search the vehicle. The accused was appraised of his right to get the search conducted in the presence of some other gazetted officer or a Magistrate who could be called at the spot. The accused reposed faith in the DSP. The consent statement of accused Sanjeev Kumar ExPC was reduced to writing. It was read over to him. Accused Sanjeev Kumar put his signatures on his consent memo statement Ex.PC. SI Sarabjit Singh also signed it. DSP Arshdeep Singh attested it. On the direction of DSP, the IO conducted the search of TATA-407. 23 bags were recovered from TATA 407 which were found to contain poppy husk. The bags were numbered as 1 to 23. Thereafter two samples from each bag containing 250 grams poppy husk were separated and those samples were marked as per bags 1 to 23. The 46 samples were converted into parcels.

The bags were sealed with seal of SI Sarabjit Singh bearing impression 'SS' and seal of DSP Arshdeep Singh bearing impression 'AS'. Specimen seals were prepared including Ex.P1. SI Sarabjit Singh handed over the seal after use to PW2. The 46 sample parcels and 23 bulk parcels along with sample seals were taken into police possession vide memo Ex.PD. SI Sarabjit Singh signed the memo. DSP Arshdeep Singh attested it. Thereafter SI Sarabjit Singh took the above TATA-407 No. PB-10T-9605 in police possession vide memo PF which was witnessed by PW2. The IO attested the same. Then IO sent ruqa through HC Harish Kumar to the police station for registration of case. IO inspected the place of recovery and prepared rough site plan. Information regarding arrest of accused was given on mobile phone number as per number disclosed by the accused. IO served ground of arrest to the accused vide memo Ex.PH. Accused Sanjeev Kumar put his signatures on the memo. PW2 appended his signatures as witness. The IO attested the same. IO recorded the statement of witness and police proceedings.

9. On return to the police station, case property was deposited with MHC Mohan Singh by SI Sarabjit Singh. Accused was kept under lockup. The same day SI Sarabjit Singh prepared inventory report Ex.PJ, request for police remand Ex.PK, request for depositing the case property with malkhana judicial Ex.PL and handed over the same to PW2 with direction to take the case property from the MHC and accused from lockup and produce them before Illaqa Magistrate, Nabha. On the direction of Sarabjit Singh PW2 produced the above said 23 gunny bags of poppy husk along with 46 sample parcels, sample seals and vehicle along with accused before the then

JMIC, Nabha. Learned Magistrate checked the case property and inventory

report and compared the seals with sample seals of the bulk parcel and sample parcels. On his satisfaction the Ld. Magistrate passed an order Ex.PM. The Ld. Magistrate also put his signatures on all the bulk parcels and sample parcels and attested the sample seals. Due to late hours PW2 re-deposited the entire case property with the MHC on return. On 05.02.2011 PW2 again took case property i.e. 23 gunny bags of poppy husk and 23 sample parcels along with copy of order from MHC and deposited it with Incharge Malkhana, Judicial Patiala as per the order of learned Magistrate.

10. PW2 Maghar Singh stated that on 27.02.2011 investigation of the case was marked to him. On that day he recorded the statement of HC Mohan Singh HC Nirmal Singh. Chemical Examiner report Ex.PN was received and he placed the same on the file. He retired on 30.04.2011 and handed over the file to MHC on 11.04.2011 for further investigation.

11. PW3 ASI Mohan Singh stated that on 04.02.2011 he was posted as MHC at PS Bhadson. He tendered his affidavit Ex.PO, in which he deposed regarding the deposit of the case property with him by SI Sarbjit Singh on 4.2.2011, which was deposited in the Malkhana of Police Station after making entry in Register No.19. On 4.2.2011 he took out the entire case property from the Malkhana of Police Station and handed it over to SI Maghar Singh to produce the same in Court after making entry in Register No.19. On 4.2.2011 SI Maghar Singh after production of case property in the court of JMJC Nabha brought it back and deposited it in the Malkhana of the Police Station due to paucity of time. An entry was made in Register No.19. On 5.2.2011 HC Mohan Singh took out 23 parcels of sample weighing 250 grams each and 23 parcels of gunny bags containing 34

Malkhana of Police Station and handed over the same to SI Maghar Singh for depositing in the Malkhana of CJM Patiala. An entry was made in Register No.19. On 5.2.2011 SI Maghar Singh deposited the case property in the Malkhana of CJM Patiala and obtained receipt which he handed over to the deponent the same day. The same had been kept in record. On 7.2.2011 sample parcel of 250 grams of poppy husk duly sealed were sent through HC Nirmal Singh to the office of Chemical Examiner. HC Nirmal Singh deposited the sample in the office of Chemical Examiner. On return he handed over the receipt to the deponent which was kept in record. Till the time the case property remained with him he did not tamper with it nor allow anybody else to tamper with it.

12. PW4 Shashi Bhushan, Sr. Assistant of the office of DTO, Ludhiana produced the record pertaining to vehicle TATA-407 bearing registration No.PB-10T-9605 as per which it was registered in the name of Harminder Singh s/o Nirmal Singh r/o Kullewal, District Ludhiana.

13. PW6 HC Nirmal Singh P.S. Bhadson tendered his affidavit Ex.PW6/A dated 28.7.2014 wherein he stated that on 7.2.2011 HC Mohan Singh had taken out 23 parcels of sample of poppy husk, which were sealed with seals bearing words S.S./A.S with sample seals, each weighing 250/250 grams, in intact position from Malkhana. HC Mohan Singh had handed over the same to PW6 after preparing the docket with directions to get the docket forwarded from the office of SSP, Patiala and deposit the same in the office of Chemical Examiner, Kharar (Mohali). The same day i.e. 7.2.2011 he first got the docket forwarded from the office of SSP, Patiala and the case property i.e. 23 packets of poppy husk along with seal and docket was

was delivered to MHC Mohan Singh. Till the aforesaid case property remained in his possession, it was not tampered by him nor did he allow anybody to tamper the same.

14. PW8 Inspector Sarabjit Singh stated that on 03.02.2011 he was posted as SHO, P.S. Bhadson. On that day he along with SI Maghar Singh, ASI Harminder Singh and other police officials were on patrolling duty in a private vehicle. They were present at Tarkheri Chowk Bhadson. Meantime Shakti Kumar s/o Narain Dass R/o Bhadson came there and started talking with him. At about 11:30 PM one TATA 407 was seen coming from Sirhind Road side which was being driven by one gentleman with trimmed hair. Another gentleman with trimmed hair was sitting on the seat adjoining the driver seat. He signalled it to stop. They stopped the TATA 407, opened its window and ran away. He apprehended the driver of the vehicle with the help of police party. The other person ran away. The driver disclosed his name as Sanjeev Kumar @ Rana S/o Surinderpal Singh R/o Kacha Machhiwara. The driver disclosed the name of the person who ran away as Dev Pandit R/o Village Punia. SI Sarabjit Singh disclosed his identity to accused Sanjeev Kumar and that he had suspicion that accused was carrying some narcotic substances in the vehicle TATA-407 in jute bags and that he intended to search the vehicle. Accused was informed of his legal right to get the search conducted in the presence of a gazetted officer or a Magistrate who could be called at the spot. Accused Sanjeev Kumar did not repose faith in Inspector Sarabjit Singh and his dissent statement Ex.PE was recorded on which accused Sanjeev Kumar appended his signatures. It was attested by SI Maghar Singh and Shakti Kumar. Thereafter SI Sarabjit Singh

sent a wireless message to Arshdeep Singh Gill, DSP Nabha to reach at the

spot. After sometime DSP Arshdeep Singh Gill reached the spot along with his driver and gunman. DSP Arshdeep Singh Gill disclosed his identity to the accused Sanjeev Kumar and informed him about his intention to search the vehicle which was suspected to be carrying some narcotic substance. Accused was also apprised of his legal right to get search conducted in the presence of another gazetted officer or a magistrate who could be called at the spot. The accused reposed faith in DSP Arshdeep Singh Gill. The consent statement of accused Sanjeev Kumar Ex.PC was recorded. He signed it after admitting it to be correct. SI Maghar Singh, and independent witness Shakti Singh signed as witnesses. It was attested by DSP Arshdeep Singh.

15. On the direction of DSP Arshdeep Singh Gill he (SI Sarabjit Singh) conducted the search of TATA 407 bearing no. PB-10T-9605. 23 bags containing poppy husk were recovered. They were marked as serial no. 1 to 23. Thereafter two samples of 250 gram each were taken from each bag. These total 46 samples were separated. Each bag on weightment thereafter was found to contain 34kg 500 gram of poppy husk. Sample chit Ex.P1 was prepared. He sealed the 46 sample parcels and 23 bulk parcels including Ex.P1 with his seal bearing impression 'SS'. They were taken into police possession vide memo Ex.PD. DSP Arshdeep Singh also affixed his seal 'AS' on the sample parcels and bulk parcels. SI Sarabjit Singh handed over his seal to SI Maghar Singh after use. DSP Arshdeep Singh retained his seal. TATA-407 bearing no. PB-10T-9605 was also taken into police possession vide memo Ex.PF. The recovery memo was also attested by DSP Arshdeep Singh. SI Sarabjit Singh sent ruqa Ex.PW8/A through HC Harish Kumar on

Kumar. SI Sarabjit Singh prepared rough site plan vide memo Ex.PW8/C. He recorded the statement of witnesses and DSP Arshdeep Singh U/s 161 Cr.P.C.

16. On return to police station he deposited the case property with MHC Mohan Singh. The accused was kept in police lockup. Inspector Sarabjit Singh prepared inventory Ex. PJ, request for police remand Ex.PK and an application for depositing the case property in judicial malkhana Ex. PL and handed over the same to SI Maghar Singh for further proceedings. On the case property being produced in court he identified the second samples Ex.MO1 to Ex.MO23 and bulk parcels Ex.MO24 to Ex. MO46. He also identified the vehicle TATA-407 bearing No.PB-10T-9605 in the Court complex . This was Ex.MO47 (for identification purpose).

17. DW1 Shakti Kumar stated that he was doing the work of electric goods and electronic items at Bhadson. He was also a social worker. He denied that he knew accused-Sanjeev Kumar. He stated that he had never met the accused and the police had not arrested the accused in his presence. He admitted that the documents Ex.PC, Ex.PD, EX.PE, Ex.PF, Ex.PG and Ex.PH bore his signatures. He stated that being a social worker he often visited the police station. He did not remember when his signatures were obtained by the police on the blank papers. He denied that he had accompanied SI Sarabjit Singh at any time during investigation of the case.

18. The accused was apprehended at the spot. He was duly apprised of his right to be searched before a gazetted officer or a Magistrate. He reposed faith in DSP Arshdeep Singh Gill (PW1). Two samples of 250 grams each were taken out from each of the 23 bags

recovered at the spot. These samples and the 23 bags each weighing 34

kilogram 500 grams were separately sealed. The case property was deposited in the Malkhana of the Police Station. Thereafter, it was produced before the Judicial Magistrate and kept in the Judicial Malkhana. The Chemical Examiner report is Ex.PW. 'Morphine' and 'Meconic Acid' was found present in all the 23 samples. The final report of the Chemical Examiner regarding the contents of the samples was 'All Chura Poppy Heads'. The case property had remained intact from the time of recovery at the spot till the same was produced before the JMIC and before the Chemical Examiner.

19. The recovery and the apprehension of the accused has been proved by the testimony of the official witnesses. Merely because the independent witness DW1 Shakti has not supported the prosecution does not dent the case. It is significant that he has not denied his signatures on Ex.PC to PH (Consent Memos, recovery memos, personal search memo and arrest memo). His plea that his signatures were taken on blank papers does not seem credible.

20. The contention of the learned counsel for the appellant based on decision of Hon'ble the Supreme Court in the case of **Mohan Lal vs. State of Punjab, AIR 2018 SC 3853** that the trial is vitiated as the Investigating Officer himself is the complainant in this case cannot be accepted. Hon'ble Supreme Court in **Varinder Kumar vs. State of Himachal Pradesh, 2019(1) RCR(Criminal) 1003** has considered its earlier decision in **Mohan Lal** (supra) and held that the law laid down in Mohan Lal's case cannot be allowed to be a springboard for the accused to be acquitted irrespective of all considerations pursuant to an investigation and prosecution before the

all pending criminal prosecutions, trials and appeals prior to the law laid down in Mohan Lal's case (supra) shall continue to be governed by the individual facts of the case.

21. In **Baljinder Singh vs. State of Punjab 2019(2) RCR (Criminal) 871** after exhaustively considering the entire case law, this Court has held that whether an investigation in a case where the complainant himself is the Investigating Officer has vitiated the trial or not, would depend upon the facts and circumstances of each case.

22. In the present case, the appellant has not taken the plea that the investigation by PW8 SI Sarabjit Singh was biased. The appellant had ample opportunity to cross-examine the Investigating Officer but he was not cross-examined on this aspect. Thus, there is no prejudice to the appellant on this account.

23. Accordingly, the prosecution has proved its case against the appellant beyond reasonable doubt. There is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 17, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No