

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

(1) CRA-D-616-DB of 2013 (O&M)

Puran Chand

.... Appellant

Versus

Narcotics Control Bureau, Chandigarh Zonal Unit, Chandigarh

..... Respondent

(2) CRA-D-863-DB of 2013

Kamaljeet Singh alias Tinka

.... Appellant

Versus

Narcotics Control Bureau, Chandigarh Zonal Unit, Chandigarh

..... Respondent

Reserved on : 10.09.2019

Date of decision : 16.09.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Rajbir Atri, Advocate,
for the appellants.

Mr. D.D. Sharma, Advocate,
for the respondent.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in these
appeals, i.e. CRA-D-616-DB of 2013 and CRA-D-863-DB of 2013,

therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against the judgment and order dated 21.05.2013, rendered by learned Judge, Special Court (NDPS), Rupnagar, in Sessions Case No. 40 dated 25.07.2011. Appellants Puran Chand and Kamaljeet Singh alias Tinka were charged with and tried for the offences punishable under Sections 8 and 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act' for brevity sake). They were convicted and sentenced to undergo rigorous imprisonment for 14 years and to pay a fine of ₹ 1.5 lakhs each under Section 20 read with Section 8 of the NDPS Act. In default of payment of fine, they were sentenced to undergo simple imprisonment for two years each.

3. The case of the prosecution, in a nutshell, is that on 03.02.2011, Kuldeep Sharma was posted as Intelligence Officer at Narcotic Control Bureau, Chandigarh Zonal Unit. On that day, at about 2.00 PM, he received a secret information that a car bearing registration No. DL-9-CR-4167 was involved in transporting drugs, which may pass from 3.00 PM to 4.30 PM with two occupants. He sent the said information to the Zonal Director vide letter Ex.PA. He gave approval for the search vide Ex.PB. They constituted a team consisting of officers and two independent witnesses, who were joined at Kurali Barrier. They reached at Kurali Barrier at about 3.30 PM. The independent witnesses also met them at Kurali Barrier. At about 4.00 PM, the said vehicle came from the side of Ropar. It was proceeding towards Chandigarh. When the vehicle stopped at Toll Barrier for payment

of toll tax, the car was intercepted by them. Two persons were sitting in the car. They disclosed their names as Puran Chand and Kamaljeet Singh. Kamaljeet Singh disclosed that charas was concealed in both the rear doors of the vehicle. Puran Chand opened the rear door of right side of the vehicle. He took out 10 packets of charas. Thereafter, he opened the left side rear door and took out 10 packets of charas. All the packets were opened. Some substance from all the packets were given to Manjit Singh, IO for testing. All the tests were found positive for charas. These were taken into possession. The charas was weighed to be 9.550 Kgs. Recovery memo Ex.PC was prepared. The recovered contraband was mixed. Two samples of 25 Grams each were drawn. These were converted into parcels. Remaining bulk contraband weighing 9.500 Kgs. was sealed with the seal of NCB06. The samples were named as 'A1' and 'A2'. The substance was deposited in the godown for safe custody. Accused were arrested. Challan was put up after completing all the codal formalities and after receipt of the FSL report.

4. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. Accused Kamaljeet Singh alias Tinka examined one witness in his defence.

5. The appellants were convicted and sentenced, as noticed herein-above. Hence, these appeals.

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

7. PW.1 Manjit Singh deposed that he was posted as Intelligence Officer at Chandigarh in NCB Office on 03.02.2011. Kuldeep Sharma, Investigating Officer, received information. It was reduced into writing. He informed Zonal Director, NCB. He instructed Kuldeep Sharma to constitute the team. He was also member of the team. They left for Kurali Toll Barrier at about 2.30 PM. They reached there at about 3.15 PM. Kuldeep Sharma joined two independent witnesses, namely Pawan Katial and Raj Kumar. Kuldeep Sharma was having information, which was disclosed to them, that one white coloured Maruti car SX-4 bearing registration No. DL-9CR-4167 was coming from Himachal Pradesh. The suspicious vehicle was noticed at about 4.00 PM. It was intercepted. The occupants of the vehicle disclosed their identity. Kamaljeet Singh told that they had concealed charas in the doors of the car. The contraband was got recovered by the occupants of the vehicle. He tested the substance with drug detection kit and found it to be charas. In his cross-examination, he deposed that he was told by Kuldeep Sharma, Investigating Officer, in his office at about 2.15 PM on 03.02.2011 regarding the secret information. The independent witnesses met them at Kurali Toll Plaza. They remained at Toll Plaza for 1 ½ – 2 hours. Separate samples were taken from all the 20 packets. Thereafter the contents of each of the packets were taken out and after mixing the same, the homogeneous samples were taken. They took two samples of 25 Grams each. No efforts were made to call any Magistrate on the spot as the accused had not opted to be searched in the presence of Gazetted Officer or a Magistrate.

8. PW.2 Kuldeep Sharma testified that on 03.02.2011 at about 2.00 PM, he received secret information to the effect that car bearing

registration No.DL-9CR-4176 was involved in transporting the drugs. The car may pass from 3.00 PM to 4.30 PM. He sent the said information to the Zonal Director vide letter Ex.PA. He gave approval for the search vide Ex.PB. They constituted a team. They went to Kurali Barrier. The car was intercepted at about 4.00 PM. The contraband was concealed in both rear doors of the vehicle. Substance of the contraband was tested by PW.1 Manjit Singh. It was found to be charas. All the codal formalities of seizure and sealing were completed on the spot. The contraband was deposited in the godown for safe custody. Receipt was obtained. In his cross-examination, he deposed that confessional statement of the accused was also recorded. The independent witnesses belonged to Chandigarh. The contraband was weighed at Kurali. The electric scale was with them.

9. PW.4 Constable Ramesh Kumar deposed that he was posted as NCB, Chandigarh, on 05.02.2011. He was handed over samples, covering letter and two test memos by Malkhana Incharge to deposit the same at CRCL at Delhi. He deposited the same at Delhi on 07.02.2011. He deposited the same in the same condition in which he received it from his office. The department issued receipt of the sample. He deposited the same in the office of NCB.

10. Appellant Kamaljeet Singh alias Tinka also produced DW.1 Ravi Lal. According to him, on 03.02.2011, he was standing at Bus Stand Bhuntar to take bus for Kullu. Kamaljeet Singh alias Tinka was also standing there. He was known to him. He enquired from Kamaljeet Singh alias Tinka where he had to go. He told that he was waiting for a bus for Chandigarh. One other person was also standing there. One car Maruti SX4

bearing registration No. 4167 came from the side of Kullu. Driver of the car was a Hindu gentleman. He stopped the car at Bus Stand and enquired from Kamaljeet Singh alias Tinka where he had to go. Tinka told him that he was to go to Chandigarh. The driver of the car told him that he was also going to Chandigarh. Tinka sat in the car. In his cross-examination, he deposed that he did not know the car driver. He did not make any complaint or gave information to any authority regarding false implication of Tinka.

11. The prosecution case precisely is that the car was intercepted. The appellants were occupying the car. They disclosed their identity. Charas was recovered from the rear doors of the car. It was sealed with the seal of NCB06. All the codal formalities were completed at the spot strictly in accordance with law. Samples were sent for chemical examination. The FSL report is Ex.PGG. According to the report, on the basis of chemical and chromatographic examinations, it was concluded that the sample under reference answered positive test for Tetra hydrocannabinol (charas).

12. The secret information received by PW.2 Kuldeep Sharma was reduced into writing. He sent communication to the Zonal Director, NCB. He gave approval for search. The substance was also tested on the spot by PW.1 Manjit Singh. It was found to be charas. The samples were taken by PW.4 Constable Ramesh Kumar to the laboratory. The case property remained in the safe custody in the godown. The independent witnesses were also joined. There is compliance of Section 42 of the NDPS Act.

13. Learned counsel for the appellants submits that Section 50 of the NDPS Act has not been complied with. Since the recovery in this case is from the car, personal search of the appellants was not required to be carried

out at all.

14. Appellant Kamaljeet Singh alias Tinka has taken the plea of alibi. However, he could not prove the same. He had disclosed his identity at the time when the car was intercepted and arrest memo was prepared. DW.1 Ravi Lal did not know even the name of the driver. He had not made any complaint regarding false implication of Kamaljeet Singh alias Tinka. The quantity recovered from both the appellants is huge. Same could not be planted on them. The statements of the official witnesses inspire confidence.

15. Accordingly, the prosecution has proved its case against the appellants beyond reasonable doubt. There is no merit in these appeals and the same are dismissed. The impugned judgment and order are upheld.

(RAJIV SHARMA)
JUDGE

September 16, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

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