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

**CRA-D-982-DB-2015 (O&M)
Date of Decision : 12.12.2019**

Barinder Kumar Bansal @ Billa

..... Appellant

Versus

State of Punjab

..... Respondent

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

Present : Mr. V. Kanakraj, Senior Advocate with
Mr. K.S. Chahal, Advocate
for the appellant.

Mr. H.S. Sullar, D.A.G., Punjab.

AJAY TEWARI, J. (ORAL)

1. This appeal has been filed against the conviction and sentence of the appellant, in case FIR No.190 of 06.12.2013, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Sadar Kharar, District Mohali. Vide judgment and order dated 04.05.2015, the appellant was convicted under Section 18(b) of the NDPS Act and sentenced to undergo rigorous imprisonment of 14 years and fine of Rs.1,50,000/- and, in default of payment of fine to further undergo rigorous imprisonment of 1 year.

2. As per the facts alleged by the prosecution, on 06.12.2013

when PW2 Sub Inspector Charan Singh, Investigating Officer alongwith PW3 Head Constable Rakesh Kumar and some other police officials were present near Bus Stand of Village Gharuan in connection with routine police duty, he received a secret information that the appellant was getting opium in bulk from Rajasthan through trucks and on that day he would come to Petrol Pump of Village Mamupur in his white coloured Verna Car bearing No.PB-23-J-4242 and immediately if a raid is conducted, a large amount of contraband could be recovered. PW2 Charan Singh, Investigating Officer immediately forwarded this information by way of ruqa Ex.P5 to the police station through PW3 Head Constable Rakesh Kumar and on its basis the FIR Ex.P6 was recorded by SI Lakhbir Singh, who made endorsement Ex.P7 on the ruqa. Simultaneously, PW2 Charan Singh, Investigating Officer laid the Nakabandi near Petrol Pump of Village Mamupur on Kharar-Morinda main road. At about 5.15 PM, the offending car was seen coming from Kharar side. When PW2 Charan Singh gave signal to stop the offending car, it first slowed down and then fled away towards Morinda side which was hotly chased by the police and then near Village Hassanpur the driver of the offending car stopped the car and tried to flee away. However, PW2 Charan Singh with the help of other police officials apprehended the driver i.e. the appellant. The offer was made to him regarding the search of his vehicle and the appellant refused to get it searched by the Investigating officer. His dissent memo Ex.P8 was prepared which was signed by the appellant. Thereafter, the PW1 DSP(D), Ajitgarh, Swaranjit Singh, PPS reached the spot at about 6.30 PM. On the appellant having

reposed confidence, the offending car was searched and an amount of 13 Kg opium was found secreted therein. The formalities were completed and the appellant was sent up for trial.

3. In the course of the trial, as many as 9 prosecution witnesses were examined. The accused-appellant was examined under Section 313 Cr.P.C. in the course of which he took the plea of being falsely implicated in the offence alleged and made a statement that he was innocent. On the other hand, defence evidence was led and 7 witnesses examined. Thereafter, at the conclusion of the trial the learned trial Court, on consideration of the evidence and material on record, passed the impugned judgment and order convicting and sentencing the appellant as mentioned above.

4. Learned Senior Counsel for the appellant has firstly argued that in this case the requirement of Section 42 of the N.D.P.S. Act has not been made. As per him, the ruqa which was sent to the police station could not be said to be in compliance of the requirement of Section 42 of the N.D.P.S. Act and in this connection has relied upon the judgment of the Supreme Court in the matter of ***Darshan Singh vs. State of Haryana, 2016(1) R.C.R.(Criminal) 333***, wherein it has been held as follows:-

“11. Having given our thoughtful consideration to the submission advanced at the hands of the learned counsel for the respondent, we are of the view that the mandate contained in Section 42(1) of the NDPS Act, requiring the recording in writing, the details pertaining to the receipt of secret information, as also, the communication of the same to the superior officer are separate and distinct from the procedure stipulated under the provisions of the Criminal

Procedure Code.....”

12. In the above view of the matter, it is not possible for us to accept the submission of the learned counsel for the respondent State that the registration of the first information report at the hands of the Station House Officer, Police Station Shahar, Panipat and its communication to the Superintendent of Police, Panipat would constitute sufficient compliance with the mandate of Section 42 of the NDPS Act.”

5. Learned Deputy Advocate General on the other hand has argued that the facts of the present case would be covered by Section 43 of the N.D.P.S. Act because the offending car of the appellant was searched in a public place. Strongly rebutting this argument, the learned Senior Counsel for the appellant has drawn the attention of the Court to the Explanation to Section 43 of the N.D.P.S. Act which reads as under:-

“Explanation : For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.”

6. As per the learned Senior Counsel for the appellant, in the present case it was proved that the alleged offending car was the personal property of the appellant and therefore is, by definition, outside the purview of Section 43 of the N.D.P.S. Act.

7. The Second argument of the learned Senior Counsel for the appellant is that even if the strict view taken by the Supreme Court in the matter of ***Mohan Lal vs. State of Rajasthan, 2015(2) R.C.R. (Criminal) 779*** is under reconsideration. Yet in ***Mohan Lal vs. State of Punjab, 2018(4) R.C.R. (Criminal) 101***, it was laid down that in

normal circumstances the informant could not be the investigating officer and therefore wherever the informant is actually the investigating officer, the prosecution has to be tested on a higher touch-stone.

8. Further the learned Senior Counsel for the appellant has drawn the attention of the Court to the testimony of DW1 to DW7 who had deposed as follows:-

- i) DW1 HC Kewal Krishan deposed that no application had been moved by Rama Rani, mother of the accused-appellant for her protection. No order had been passed to send SI Charan Singh to the house of mother of the appellant situated in Khanpur for her protection as per record.
- ii) DW2 Rantej Singh, Transporter, deposed that he knew the appellant because he was doing the work of property dealer and he had been supplying the building material to him. He was bearing a good moral character and had not been involved in any anti-social activities. He further deposed that on 05.12.2013, at about 6 PM, he was present at bus stop Gharuan. He gave signal to the appellant to stop whereupon he stopped there and they both talked for 2-3 minutes and in the meantime police officials came there and stated that they wanted to enquire something from the appellant and wanted to take him to the police station. The said police officials were SI Charan Singh alongwith others. He further deposed that he had seen the photograph Ex.D1 and the said photograph was of SI Charan Singh. They took him to the police station. The appellant was in his own Verna Car bearing No.PB23J-4242 of white colour. Thereafter, he went to the village of appellant where the mother of the appellant met him and he told that police had

apprehended the appellant. On 07.12.2013, he came to know from his nephew that the appellant had been falsely implicated in this case. Thereafter he alongwith mother of the appellant and 2-3 other villagers of the village out of whom Harchand Singh and Malkit Singh went to the office of DSP, Kharar and apprised him about the facts of the case who directed us to move an application and then ensured that thereafter enquiry would be conducted.

- iii) DW3 HC Gurdev Singh deposed that an application was moved by Shikha Bansal wife of the appellant against ASI Charan Singh, CIA Staff, Kharar, copy of which was Ex.D9 and other complaint moved by Shikha Bansal against ASI Charan Singh, copy of which was Ex.D10. The above said applications were marked to SP(Investigation), Mohali vide endorsement Ex.D11 but no report in this regard had been received as yet.
- iv) DW4 ASI Nanak Chand deposed that their office had received a complaint moved by Shikha Bansal against ASI Charan Singh, copy of which was already exhibited as Ex.D9. Their office had marked the said application to DIG, Ropar Range for investigation vide endorsement Ex.D12 but no action report had been received so far. However, no complaint could be traced out in their office moved by the mother of the appellant.
- v) DW5 Harchand Singh deposed that he knew the appellant who was doing the business of property dealer. He was bearing a good moral character and not involved in any anti-social activities. He further deposed that on 05.12.2013 at about 7.00 PM the mother of the appellant came to him and told that the appellant had been caught by the police officials of

CIA Staff and he alongwith the mother of the appellant had gone to CIA Staff where SI Charan Singh met them and one Gurdeep Singh resident of Gharuan was also present there. He further deposed that he brought the appellant with him at his own responsibility and the police official had kept the car of the appellant and mobile phone in their possession. On the next day, he produced the appellant at about 10 A.M. on 06.12.2013. SI Charan Singh had been visiting the house of the appellant. There was rumor in the village that due to illicit relations of mother of the appellant with SI Charan Singh, the appellant had beaten SI Charan Singh and thereafter the appellant had been falsely implicated by SI Charan Singh in the present case. Nothing was recovered from the appellant.

- vi) DW6 Shikha Bansal wife of the appellant deposed that her father-in-law had been doing the work of agriculture and now he was ill and unable to move. Her husband i.e. the appellant was doing the work of property dealer. She knew SI Charan Singh who had been coming to their house regularly. Usually, he straight away went to the room of her mother-in-law whenever he visited their house. She suspected that both were having illicit relations. She did not disclose this fact to anybody due to fear and further because of the fact that she was the daughter-in-law. She further deposed that 2-3 days prior to Deepawali of 2013, SI Charan Singh had come to their house with gift and went to the room of her mother-in-law and locked the door from inside. She went to kitchen for preparing tea. After some time, her husband i.e. the appellant came to house and found them in compromising position. Her husband gave beatings to SI Charan Singh. SI Charan Singh threatened her husband that

he would see him in future. On 05.12.2013, her husband had gone to village Gharuan to fetch milk. At about 7.00/7.30 PM Ranjit Singh, resident of Gharuan came to their house and informed her and parents-in-law that SI Charan Singh had lifted her husband and Hardeep Singh. Thereafter, her mother-in-law, Harchand Singh and other persons of the village visited police station and brought back her husband at about 10.00/10.30 PM. SI Charan Singh kept their Verna car and mobile phone in the police station on the excuse that same would be returned after enquiry. On 06.12.2013, at about 9.00 AM, her husband and some other persons of the village went to the police station and thereafter they came to know that a case had been registered against her husband and Gurdeep Singh was left without any case. She moved various applications regarding false implication of her husband to the higher police officers. She further deposed that even after registration of criminal case against her husband, SI Charan Singh had been visiting their house. She had clicked the photographs of SI Charan Singh when he visited their house by her mobile phone. Even thereafter, he had also been visiting their house and she recorded conversation of SI Charan Singh and other members of her family in her mobile phone. Then she got prepared a CD of the said conversation and attached the said CD with an application in the Court. SI Charan Singh got his husband implicated in a false case in order to take revenge.

- vii) DW7 Rajinder Singh deposed that his house and fields were touching with Main Chandigarh-Ludhiana Road and Link Road Village Hassanpur. On 06.12.2013 there was a function in their family in connection with

birthday of his nephew and he alongwith other persons was sitting in the cattle shed from 5.00 PM to 11.00 PM. No body including the police official came there during their stay there. Nobody called them. They came to know after 5-7 days that the appellant had been falsely implicated in this case. This fact came to their notice when they visited Village Gharuan where people were telling about the present case. After 10 days, the wife and mother of the appellant came to them and enquired from them that any police official came there and he alongwith others replied that no police official visited to their tubewell room. If anything was happened on the road, they mostly know about it because every sound was listen to them in their home.

9. Learned Senior Counsel for the appellant has further pointed out that PW2 Sub Inspector Charan Singh in his testimony had admitted that he knew the mother of the appellant since 1981 (when he was posted as Incharge in Police Station City Kharar). He had further accepted his presence alongwith the family of the appellant in the photograph Ex.D1 to D8. Learned Senior Counsel for the appellant has further pointed out to the strange fact that after being apprehended and taken to the police station the appellant was initially allowed to leave the police station and admittedly the appellant appeared in the police station on the next day at 10 AM. As per the learned Senior Counsel for the appellant, it is also equally strange that the owner of the truck (in which the contraband was allegedly brought from Rajasthan) was associated with the investigation initially and even his statement was recorded but thereafter he was allowed to leave and nothing further was heard of him.

10. Learned Deputy Advocate General is not in a position to deny these factual submissions.

11. In our considered opinion, the appeal must succeed. At this stage, we are not giving any final opinion on the argument regarding applicability of Section 42 of the N.D.P.S. Act because the other facts which have been brought out entitle the appellant to acquittal. The issue whether a search of a car in a public place would be covered by Section 42 or Section 43 of the N.D.P.S. Act can be more profitably discussed in a case where that may be a determinant. In the present case, the admission of the investigating officer regarding his old relationship with the mother of the appellant; the fact that the appellant was allowed to go back from the police station and presented himself for the next day at 10 A.M. and the fact that owner of the truck, Gurdeep Singh was associated in the investigation though not charged, but rather nothing was heard from him later on, clearly bring out to one of those cases where the commonality between the informant and the investigating officer can reasonably be said to have caused prejudice to the appellant and falls within the mischief pointed by the Supreme Court in Mohan Lal vs. State of Punjab's case (supra).

12. We are, therefore, of the view that the conviction of the accused-appellant as recorded by the learned trial Court and the sentence imposed is not legally tenable. We, therefore, set aside the same, acquit the accused-appellant and allow the appeal.

13. The appellant is in custody. He be released forthwith, if not required in any other case.

14. Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

December 12, 2019
ashish

(VIVEK PURI)
JUDGE

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