

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

(1) **CRA-D-468-DB of 2018 (O&M)**

Jasbir Singh alias Jassi

.... Appellant

Versus

State of Haryana

..... Respondent

(2) **CRA-D-707-DB of 2018 (O&M)**

Soma

.... Appellant

Versus

State of Haryana

..... Respondent

**Reserved on : 10.05.2019
Date of decision : 14.05.2019**

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

Present: Mr. Jagdish Manchanda and Ms. Poonam Josan, Advocates,
for the appellant in CRA-D-468-DB of 2018.

Mr. Sultan Singh Gill, Advocate,
for the appellant in CRA-D-707-DB of 2018.

Mrs. Shubhra Singh, Addl. A.G., Haryana.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both the appeals, i.e. CRA-D-468-DB of 2018 and CRA-D-707-DB of 2018, therefore, these are taken up together and being disposed of by a common judgment.

2. Both these appeals are directed against judgment dated 19.02.2018 and order dated 21.02.2018, rendered by learned Judge, Special Court, Karnal. Appellants Jasbir Singh alias Jassi and Soma were charged with and tried for the offences punishable under Sections 15 and 25 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act' for brevity). They were convicted and sentenced to undergo rigorous imprisonment for 12 years and to pay a fine of ₹ 1,00,000/- each under Section 15 of the NDPS Act. In default of payment of fine, they were ordered to further undergo simple imprisonment for two years. They were, however, acquitted under Section 25 of the NDPS Act.

3. The case of the prosecution, in a nutshell, is that on 29.01.2014, ASI Surender Singh along with other police personnel was on checking and patrolling duty. He noticed two vehicles coming from the side of Aungadh. The drivers tried to turn back after seeing the police party. The vehicles were intercepted. The accused were apprehended. They disclosed their identity. They were issued notice under Section 50 of the NDPS Act. They desired the search of the vehicles to be carried out in the presence of some Gazetted Officer. The Gazetted Officer reached the spot. The vehicle bearing registration No. HR 99 RG (TP) 8682 was searched. It contained 8 plastic bags in its dicky. The bags contained poppy straw. Two samples of 200 grams each were drawn from each plastic bag. The bulk quantity in each bag weighed 19 kilograms 600 grams of poppy straw. The codal formalities were completed on the spot. Similarly, The vehicle bearing registration No. HR 05 AD 5445 was searched. It contained 7 plastic bags in its dicky. The bags contained poppy straw. Two samples of 200 grams each

were drawn from each plastic bag. The bulk case property was weighed. Each bag contained 19 kilograms 600 grams of poppy straw. The case property and the samples were sealed with the seal 'SK'. Ruqa was sent to the police station. FIR was registered. The case property was produced before the SHO. The case property along with samples was deposited in the Malkhana. The samples were sent for examination. The FSL report is Ex.PX. The investigation was carried out. Challan was put up after completing all the codal formalities.

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. They also produced two witnesses in support of their defence. They were convicted and sentenced, as noticed here-in-above. Hence, these appeals.

5. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove its case against their clients. Learned counsel appearing on behalf of the State has argued that the prosecution has proved its case beyond reasonable doubt. She has supported the judgment and order of the learned Court below.

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

7. PW.3 Sham Lal deposed that he was posted as DSP Assandh on 29.01.2014. He received wireless message from ASI Surender Kumar. He reached the spot. The Investigating Officer along with ASI Ramesh Chander and other police personnel was present. The Investigating Officer disclosed him about the facts of the case. The accused persons opted to get the search

of their vehicles conducted before some Gazetted Officer. In his presence, the vehicles were searched. The contraband was recovered. All the codal formalities were completed on the spot.

8. PW.4 ASI Lakhwant Singh produced register No. 19 of the year 2014 of Judicial Malkhana, Karnal. As per the record, the case property i.e. 15 plastic bags and 15 sample parcels sealed with seals of 'SK, 'SK' and 'JSM' were deposited in judicial Malkhana on 30.01.2014.

9. PW.5 ASI Surender Kumar is the material witness. He disclosed the manner, in which the vehicles were intercepted. The accused were apprehended. They opted to get the search of their vehicles conducted in the presence of some Gazetted Officer. He sent wireless message to Sham Lal, DSP, Assandh. Sham Lal, DSP, reached the spot. In his presence, both the vehicles were searched. The contraband, contained in 15 bags, was recovered from the vehicles. Two samples of 250 grams each were drawn from each bag. All the codal formalities were completed.

10. PW.6 ASI Ranbir Singh deposed that he went to the spot. The investigation was handed over to him. The accused along with the case property were produced before the Duty Magistrate. The Duty Magistrate issued certificate Ex.P14. Thereafter, the case property and sample parcels were deposited with judicial Malkhana. Accused Jasbir Singh made disclosure statement, on the basis of which temporary registration certificate Ex.P17 of the vehicle was recovered. Accused Soma also got recovered registration certificate Ex.P20.

11. PW.7 Jagdish Singh is the SHO, before whom the case property was produced. He put his seal 'JSM' on the case property. He prepared the

final report.

12. PW.8 ASI Satyawar deposited that ASI Ranbir Singh had deposited in the Malkhana 15 bags of poppy husk, each containing 19 Kgs. 600 Grams, sealed with seals of 'SK/2', 'JSM/1' and 'SK/1' along with 30 sample parcels, each weighing 200 grams, sealed with seals of 'SK/2', 'JSM/1' and 'SK/1'. The samples were deposited by him with FSL, Madhuban vide RC No. 39 dated 31.01.2014.

13. PW.9 ASI Subhash Chander also deposited the manner, in which the vehicles were intercepted and recoveries were made from the accused.

14. DW.1 Mahender Pal deposited that he along with Shishpal, Kushal Pal, Rajbir and one servant namely Kala Ram, was sitting in front of his house on 29.01.2004. At about 9.00/9.15 AM, one police vehicle passed from there. After 15 minutes, the said police vehicle again came and stopped there. The police personnel visited the temple. The police officials came out from the temple and asked him about the residence of Soma. He told the police officials about the house of Soma. After 10 minutes, the police officials came there along with brother of Soma. They again visited the temple. The villagers gathered in the temple. The car bearing registration No. HR 05AD-5445 was parked near the temple. It was taken away by the police with the help of a crane. In his cross-examination, he admitted that he did not remember the registration number of the police vehicle. He did not know for how many days, car No. HR 05AD-5445 was parked near the temple. He did not remember the registration number of the crane. He knew Soma since childhood.

15. DW.2 Sunil Diwan deposited that on 29.01.2014 at about 2.00

PM, he took the vehicle owned by Jasbir Singh for bringing his wife and children from Guhla. He stayed at Guhla. He went back to Nissing with his wife and children on 30.01.2014. Thereafter, he went to the house of Jasbir Singh at about 4.00/4.30 PM. When he entered into the house of Jasbir Singh, he found that two police personnel were sitting with the mother of Jasbir Singh. He returned the keys of the car to her. The keys were taken away by the police officials and they took away the car. He enquired the matter from the mother of Jasbir Singh. She told that her brother-in-law had got her son Jasbir Singh involved in some false case. In his cross-examination, he deposed that the police had taken away the Swift Dzire car of Jasbir Singh, just when he reached there. He did not know the registration number of the car of Jasbir Singh. He was not permanently employed as driver on the said car.

16. Learned counsel appearing on behalf of the appellants have vehemently argued that Section 50 of the NDPS Act has not been complied with in letter and spirit. The fact of the matter is that since the recovery was made from the cars, Section 50 of the NDPS Act was not required to be complied with at all. It is settled law that Section 50 of the NDPS Act is applicable only in those cases, where recovery is made from the person only.

17. Their Lordships of the Hon'ble Supreme Court in **Gulsher Mohammed vs. State of Himachal Pradesh, (2015) 17 Supreme Court Cases 682** have held that mandatory requirement prescribed under Section 50 is required to be complied with only when search is carried out on body of person. Their Lordships have held as under :-

“13. We do not find such a legal consequence getting attracted simply because under sub-section (5) of Section 50 a reference has been made to an officer duly authorized under Section 42 in the said sub-section. The said reference has been made to identify such of those officers who were all noted as empowered officers under Section 42(1) solely for the purpose of Section 50 when a search on a person is made and for which purpose due compliance of all other stipulations contained in Section 50 will have to be carried out. In the alternative, the requirement of compliance under Section 42 for effecting a search of the premises are entirely different from the requirements when a search is to be made on the body of a person under Section 50, though the search to be carried out are to be made by the officers duly authorized and specified in Section 42.

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15. In the light of our above conclusion, we do not find any scope even to invoke Section 100 Cr.P.C. as was canvassed by the learned counsel by the learned counsel on behalf of the appellant by relying upon Section 50 which has no application relating to a search of a premises.

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18. The above statements in the evidence of PW2 were more than sufficient to support the case of the prosecution in having made the recoveries from the premises of the appellant, inasmuch as PW2 was not only an independent witness but he was also very close friend of the appellant but yet

he came forward with a very fair statement about the contraband materials found in the premises of the appellant which were recovered in his presence and his statement was also truly recorded, which he signed after going through the same and understanding its correctness. However, when he was cross-examined on behalf of the appellant, he made a contradictory version and thereby virtually withdrawing whatever categorical admission he made in the earlier part of his testimony.

19. Having noted the manner in which PW2 deposed before the Court and the subsequent expressions contained in the document having been admitted to have been made by him without any hesitation including the correctness of those contents, the documents as well as his attestation on the parcels which contain the samples, the contraband which were duly admitted by him, the contrary statements contained in the latter part of his evidence are all liable to be rejected as containing no truth in it. In fact, when the contents of the documents have been accepted to be true after ascertaining it before the Court, the said part of his evidence alone should carry weight and the latter part of his statement which are made by simply adopting the suggestions put to him at the instance of the appellant will be of no consequence.”

18. Their Lordships of the Hon'ble Supreme Court in **Dilbagh Singh vs. State of Punjab, (2017) 11 Supreme Court Cases 290** have held that Section 50 is not applicable when the recovery of contraband is from

the car. Their Lordships have held as under:-

“11. As the essence of the impeachment is the non-compliance of the enjoinder of Sections 50 and 57 of the Act, for ready reference, these provisions are extracted herein below:

“50. Conditions under which search of persons shall be conducted -

(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with

possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under subsection (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

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57. Report of arrest and seizure -
Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.”

12. *Whereas the conditions under which, the search as contemplated in Section 50 are limited only to the contingency of search of any person, Section 57 prescribes that whenever any person makes any arrest or seizure under the Act, he would within 48 hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior. As it is no longer res integra that the application of Section 50 of the Act is comprehended and called for only in the case of*

search of a person as distinguished from search of any premises etc. having been authoritatively propounded by the two Constitution Bench rulings of this Court in State of Punjab vs. Baldev Singh – (1999) 6 SCC 172 and Vijaysinh Chandubha Jadeja vs. State of Gujarat – (2011) 1 SCC 609, further dilation in this regard, in the attendant facts and circumstances of the case, is considered inessential. This is more so as the contraband in the case in hand had been recovered from inside the car in which the petitioner and the co-accused were travelling at the relevant point of time and not in course of the search of their person. Noticeably, it had also not been the plea of the defence ever that the alleged seizure according to the accused persons had been from their person. In the contextual facts therefore, Section 50 has no application to espouse the cause of the defence.”

19. The appellants were apprehended while driving two vehicles. Contraband was recovered from the vehicles. The case property was produced before the SHO. Thereafter, the case property was also produced before the Ilaqa Magistrate. He had verified the contents. Thereafter, some samples were sent to the FSL. According to the report of FSL, the samples (1 to 15) were identified as poppy straw (choora post) of papaver somniferum L.

20. The statements of DW.1 Mahender Pal and DW.2 Sunil Diwan do not inspire confidence. DW.1 Mahender Pal did not know the registration number of the police vehicle. He did not know the registration number of crane. DW.2 Sunil Diwan was not permanently employed as

driver of vehicle of Jasbir Singh.

21. Accordingly, the prosecution has proved its case against the appellants beyond reasonable doubt. There is no merit in the instant appeals and the same are dismissed.

(RAJIV SHARMA)
JUDGE

May 14, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

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