

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

CRA-S-1759-SB-2004

Date of Decision:03.03.2020.

Boota Singh and others

... Appellants

vs.

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Argued by: Mr. Gaurav Mohunta, Advocate and
Mr. Gaurav Gogna, Advocate with
Ms. Preeti Aggarwal, Advocate
for the appellants.

Mr. Sulinder Kumar, AAG, Haryana.

VIVEK PURI, J.

1. The present appeal has been preferred against the judgment of conviction dated 12.08.2004 and order of sentence of even date passed by learned Additional Sessions Judge, Sirsa, vide which the appellants were convicted for having committed offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') and each of them was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lakh and in default thereof, to further undergo rigorous imprisonment for a period of two years. However, one of the co-accused, namely, Major Singh was acquitted.

2. The facts as put forth by the prosecution are to the effect that on 28.01.2002, S.I.Nand Lal alongwith fellow police officials were present at the canal bridge on Surtia-Rori road, where he received a secret information to the effect that the accused are selling poppy straw in a

vehicle bearing registration number GUD-4997 on a 'kacha path' at Rori-Jatana road and they can be apprehended if raid is conducted. Accordingly, a raid was conducted and the accused were found sitting in the jeep bearing registration number GUD-4997 at the aforesaid place. Major Singh, co-accused of the appellants, managed to slip away, whereas, the appellants were apprehend at the spot. They were found sitting upon two bags kept in the said jeep. Notices under Section 50 of the Act were served upon them but the appellants reposed faith upon the police officials. The search of the bags led to the recovery of poppy straw. One bag was containing 39 kg of poppy straw and the second bag was containing 36 kg of poppy straw. Two samples weighing 100 grams each were separated from each bag. The sample parcels and the bulk parcels were converted into separate parcels and sealed with the seal bearing impression 'CS'. The jeep alongwith weighing scale, two weights of 500 grams each were also recovered and taken into possession vide recovery memos. Ruqa was recorded and dispatched to the police station on the basis thereof, the FIR was registered. Subsequently, Major Singh, co-accused, was arrested. and on completion of investigation, the challan the presented in the Court.

3. The charge was framed. The contents thereof were read over and explained to the appellants, to which they pleaded not guilty and claimed trial.

4. In support of its allegations, the prosecution has examined four witnesses. Inspector Nand Lal (PW4) has conducted the search of the accused in the presence of ASI Jaswant Singh (PW3). The case property was retained in the malkhana by Kuldeep Singh (PW2) and Constable Gurjit Singh (PW1) took the sample parcels to the FSL. The prosecution has also

produced documentary evidence to substantiate the version as put forth by it.

5. The statements of accused under Section Section 313 Cr.P.C. were recorded and they have alleged false implication. The defence version put forth by appellants-Boota Singh and Gurmohinder Singh is to the effect that they were taken from their house in the presence of Gurmail Singh. The defence version of appellant-Gurdeep Singh is to the effect that he was taken from his house by the police in the presence of Darbara Singh.

6. The appellants-accused have examined Rajbir Singh (DW1), who has deposed with regard to the registration of two other FIRs i.e. FIR No. 16 dated 07.02.2002 and FIR No. 17 dated 08.02.2002 pertaining of offence under the Act at police Station Rori. Constable Dharamvir Singh (DW4) has deposed from the log book of the vehicle of the police party. Gurmail Singh (DW2) and Sardara Singh (DW3) have testified with regard to the false implication of the accused on account of political rivalry.

7. Vide the judgment of conviction and order of sentence dated 12.08.2004, the appellants were convicted and sentenced, as mentioned in para No.1 of this judgment.

8. Aggrieved by the aforesaid judgment and order of sentence, the appellants have preferred the present appeal.

9. I have heard learned counsel for the parties and perused the record.

10. While assailing the judgment of the learned trial Court, it has been mainly contended by learned counsel for the appellants that no public witness has been joined at the time of recovery; the mandatory provisions of Section 42 of the Act have not been complied with; there are discrepancies

and infirmities in the case of prosecution and the appellants have been falsely implicated on account of party faction.

11. On the contrary, while supporting the judgment of the learned trial Court, it has been argued by the learned State counsel that there is no requirement of law to join independent witnesses at the time of recovery; the provisions of Section 42 of the Act are not attracted in the instant case; the discrepancies or infirmities are inconsequential and the defence version as propounded by the appellants does not inspire confidence. The learned trial Court has recorded the findings on the basis of satisfactory and reliable evidence which do not call for any interference.

12. The deposition of official witnesses cannot be viewed with distrust or suspicion merely because of their official status unless or until, there are cogent grounds therefor. There is no provision of law which requires the presence of an independent witness at the time of search of a suspect. The case of the prosecution cannot be discarded merely on the score that no independent witness has been opted to be joined at the time of recovery. It is a matter of common observation there is general reluctance on the part of the people to join the investigation and depose against the accused to avoid enmity. There can be variety of reasons as to why the witness is not interested to come forward and join the investigation. It is no doubt true that there was a secret information against the accused, but had much time been wasted in joining the independent witness, it would have provided an opportunity to the accused to slip away and frustrate the raid. However, in such like circumstance, a stringent duty is cast upon the Court to scrutinize the evidence with more care and caution. On the basis of this yardstick, the material on record has to be evaluated and appreciated.

13. It has been contended by the learned counsel for the appellants that the recovery has been effected from a conveyance and as such the mandatory provisions of Section 42 of the Act were required to be complied with. The information was neither reduced into writing nor sent to the senior officer and the same is fatal to the case of prosecution. In this regard, it may be mentioned here that there was a secret information that the accused were carrying narcotic substance and in the event any information had been reduced into writing, it would have consumed some time and possibility of the accused having fleeing from the spot could not be ruled out. A note of caution has been recorded in a decision reported as 2001 (3) R.C.R. (Criminal), 808, titled as Sajan Abraham versus State of Kerala and it has been held that the Court while construing the provisions strictly, should not interpret so literally to render its compliance impossible. In the event, there was possibility of the accused to escape, the case of the prosecution cannot be thrown out on the score that no information was reduced into writing.

14. Furthermore, in the case in hand, the accused were present in a jeep on a public path and in such circumstance, the provisions of Section 43 and not of 42 of the Act come into play. As per explanation to Section 43 of the Act, the public place includes a conveyance also. Section 43 of the Act contemplates a **seizure made** in a public place or in transit. As such, Section 42 of the Act is not applicable to the facts of the present case and in this regard reference can be made to the decision reported as 2004 (2) R.C.R. (Criminal) 960, titled as State of Haryana versus Jarnail Singh and others wherein, it has been laid down as following:-

“The next question is whether [Section 42](#) of the NDPS Act applies to the facts of this case. In our view [Section 42](#) of the NDPS Act has no application to the facts of this case. [Section 42](#)

authorises an officer of the departments enumerated therein, who are duly empowered in this behalf, to enter into and search any such building, conveyance or place, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance etc. is kept or concealed in any building, conveyance or enclosed place. This power can be exercised freely between sunrise and sunset but between sunset and sunrise if such an officer proposes to enter and search such building, conveyance or enclosed place, he must record the grounds for his belief that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender.

Section 43 of the NDPS Act provides that any officer of any of the departments mentioned in Section 42 may seize in any public place or in transit any narcotic drug or psychotropic substance etc. in respect of which he has reason to believe that an offence punishable under the Act has been committed. He is also authorized to detain and search any person whom he has reason to believe to have committed an offence punishable under the Act. Explanation to Section 43 lays down that 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.

Sections 42 and 43, therefore, contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit. If seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is no such proviso in Section 43 of the Act and, therefore, it is obvious that if a public conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act for searching the vehicle between sunset and the sunrise.

In the instant case there is no dispute that the tanker was moving on the public highway when it was stopped and searched. Section 43 therefore clearly applied to the facts of this case. Such being the factual position there was no requirement of the officer

conducting the search to record the grounds of his belief as contemplated by the proviso to [Section 42](#). Moreover it cannot be lost sight of that the Superintendent of Police was also a member of the searching party. It has been held by this Court in [M. Prabhulal vs. Assistant Director, Directorate of Revenue Intelligence](#), (2003) 8 SCC 449 that where a search is conducted by a gazetted officer himself acting under [Section 41](#) of the NDPS Act, it was not necessary to comply with the requirement of [Section 42](#). For this reason also, in the facts of this case, it was not necessary to comply with the requirement of the proviso to [Section 42](#) of the NDPS Act.”

15. The aforesaid decision has also been followed in a subsequent decision reported as **2007 (3) R.C.R (Criminal) 602**, titled as **State, NCT of Delhi versus Malvinder Singh**.

16. Learned counsel for the appellants has drawn attention of the Court to the cross-examination of Inspector Nand Lal (PW4) wherein he has deposed to the effect that the seal was handed over back to him by ASI Jaswant Singh after a period of about 20 days from the date of recovery. However, the certified copies of the statements Ex.D1 and Ex.D2 indicate that he had used the seal bearing impression 'CS' in two other cases under the NDPS Act which were registered vide FIR No. 16 dated 07.02.2002 and FIR No. 17 dated 08.02.2002 i.e. within a period of 20 days from the date of present recovery.

17. The discrepancy pointed out by the learned counsel for the appellants is inconsequential and does not affect the genuineness of the version of the prosecution. It is significant to note that the case property was deposited with MHC Kuldeep Singh (PW2) on 29.01.2002 and officer who had effected the recovery ceased to have any access to the same. Furthermore, the deposition of Constable Gurjit Singh (PW1), MHC Kuldeep Singh (PW2) and the report of FSL (Ex.PK) indicate that the

sample parcel was delivered in the FSL on 05.02.2002 i.e. prior to the dates on which the seal was used by Inspector Nand Lal (PW4) in the other two cases. Furthermore, it cannot be expected from a witness to remember even the minute facts after a lapse of period of time. It shall not be out of place to mention here that statement of Inspector Nand Lal (PW4) has been recorded after a period of more than two years after the recovery. As such, some discrepancy was bound to appear in his statement due to lapse of time.

18. The defence version as sought to be put forth by the appellants are to the effect that they have been falsely implicated. Appellants-Boota Singh and Gurmohinder Singh were lifted from their house by the police officials in the presence of Gurmail Singh (DW2) and appellant-Gurdeep Singh was lifted in the presence of Darbara Singh. However, the name of the said witness emerges as Sardara Singh (DW3), who has deposed to the effect that Gurdeep Singh was picked up by the police from his house in his presence. Gurmail Singh (DW2) and Sardara Singh (DW3) have deposed to the effect that the accused have been falsely implicated on account of party faction in the village. It is also emerging in the statement of Gurmail Singh (DW2) that Gurmohinder Singh was falsely implicated under the influence of Gurcharan Mahant on account of political rivalry and Sardara Singh (DW3) has deposed to the effect that Gurdeep Singh accused has been falsely implicated at the instance of Balwant Singh, Lambardar due to political influence.

19. It is significant to note that such defence version has not been sought to be put forth by the appellants during the course of cross-examination of Inspector Nand Lal (PW4). He has been cross-examined on the aspect that Major Singh accused was falsely implicated at the instance of

Gurcharan Mahant and significantly Major Singh has been acquitted by the learned trial Court. He has not been suggested that any of the appellants was falsely implicated at the instance of Gurcharan Mahant or Balwant Singh, Lambardar. Furthermore, Gurmail Singh (DW2) has not deposed to the effect that appellant-Boota Singh was also lifted from his house in his presence, as alleged by him in his statement recorded under Section 313 Cr.P.C. Moreover, the defence version as sought to be put forth in the deposition of Gurmail Singh (DW2) and Sardara Singh (DW3) does not sound to be convincing and acceptable. It is emerging in their cross-examination that they never submitted any complaint to the higher police officers with regard to the false implication of the accused. They had maintained studded silence and inaction on their part is indicative of the fact that a false defence version has been sought to be put forth as a result of afterthought.

20. In the case in hand, the recovery has been effected by Inspector Nand Lal (PW4) in the presence of ASI Jaswant Singh (PW3). Both the witnesses to the recovery have deposed in a fairly satisfactory manner on all the material aspect of the case. They have given a satisfactory count with regard to the sequence of events leading to the recovery of incriminating articles from the possession of the appellants. No ill will, animosity or bias is made out against the appellants by the police officials and no reason is made out for their false implication. The deposition of the witnesses inspire confidence and are fairly reliable to base the conviction of the appellants. The deposition of the witnesses sufficiently proves and establishes the material fact of recovery of the incriminating articles from the conscious joint possession of all the three appellants beyond the shadow of reasonable

doubt. Once the material fact of recovery of incriminating articles from the conscious possession of the appellants is proved and established by satisfactory and reliable evidence, the inconsequential infirmities and unimportant flaws in the case of prosecution tend to pale into insignificance. The learned trial Court has recorded the findings of conviction on the basis of satisfactory and reliable evidence establishing the guilt of the appellants beyond the shadow of reasonable doubt and the same does not call for any interference by this Court. Furthermore, adequate sentence has been imposed upon the appellants in conformity with the provisions of the Act. As such, the judgment of conviction and order of sentence dated 12.08.2004 passed by the learned trial Court are upheld.

21. For the aforesaid reasons, finding no merit in the present appeal and the same is, hereby, dismissed. The appellants are on bail. Necessary steps be initiated for effecting their re-arrest so that they may undergo the sentence imposed upon them.

03.03.2020.
smriti

(VIVEK PURI)
JUDGE

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