

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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[1] Criminal Appeal-S-1899-SB of 2004
Date of Decision: March 18, 2020.

Nasib Singh and othersAppellants

versus

State of HaryanaRespondent

[2] Criminal Appeal-S-2303-SB of 2004

Tehal SinghAppellant

versus

State of HaryanaRespondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.KPS Virk, Advocate and
Mr.J.S.Virk, Advocate, for the appellants.

Mr.Sulinder Kumar, AAG, Haryana.

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Vivek Puri, J.

[1] The aforesaid two appeals have been preferred against the judgment of of conviction dated 15.07.2004 vide which Nasib Singh, Darshan Singh, Balwinder Singh and Gurpreet Singh have been convicted under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and order dated 16.07.2004 vide which they have been sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.one lakh each, in default whereof, to further undergo rigorous imprisonment for a period of two years. It was further directed that the trucks bearing registration number PB 10H 9774 and HNU 9589, which

were used in transporting the contraband be confiscated to the State.

[2] The facts as put forth by the prosecution are to the effect that during the intervening night of 03.04.2001 and 04.04.2001, S.I. Paras Kumar, the Officer Incharge, Police station, Shahabad received a secret information on telephone to the effect that some unknown persons were present on the link road leading from GT Road to village Charuni Jattan in between Pipli and Shahabad alongwith aforesaid two trucks which were standing by joining their back with each other. Some persons are unloading the goods from the Truck bearing registration no. PB 10H 9774 and loading the same in Truck bearing registration number HNU 9589. Accordingly, S.I. Paras Kumar alongwith A.S.I Ram Dutt and fellow police officials arrived at the spot and found both the trucks at the spot. Truck number PB 10H 9774 was loaded with goods and two persons were transferring the gunny bags by handing over the same to two other persons standing in the empty truck bearing registration number HNU 9589. Upon seeing the Police Party, they tried to run away but were apprehended at the spot. Two persons standing in the truck number PB 10H 9774 disclosed their names as Gurpreet Singh and Balwinder Singh accused and the two persons standing in the other truck disclosed their names as Darshan Singh and Nasib Singh. The Truck number PB 10H 9774 was found to be containing 7 gunny bags and 4 gunny bags were lying in the other truck. It was suspected that there was some contraband in the gunny bags. A notice under section 50 of the Act was served on the accused and were asked if they want to get their personal search conducted in the presence of a gazetted officer or a Magistrate. The accused opted to get the search conducted in the presence of a gazetted officer. Anil Kumar Dhawan, the Deputy Superintendent of Police, Kurukshetra was informed through wireless message and requested

to arrive at the spot. On his arrival, the bags were checked and they were found to be containing poppy husk. One sample on 250 kg each were separated from each gunny bag. The remaining poppy husk in each gunny bag weighed 34 kg 750 gms. Separate parcels of all the samples and the bulks were prepared. Balak Ram photographer was also summoned at the spot and he took the photographs. The sample parcels and the bulk parcels were sealed with the seal bearing impression 'PK' and 'AKD'. Specimen seal was prepared and incriminating articles were taken into possession vide separate recovery memos. Both the trucks alongwith the documents were also taken into possession. Ruqa was recorded and dispatched to the police station on the basis whereof FIR has been registered. On completion of the investigation, challan was presented. On presentation of challan, a prima facie case under section 15 of the Act was made out against the accused. The charge was accordingly framed to which the accused pleaded not guilty and claimed trial.

[3] To substantiate its version, the prosecution has examined as many as nine witnesses, namely, PW-1 HC Bhushan Dass, PW-2 C.Ramesh Kumar, PW-3 ASI Harish Chander, PW-4 HC Varinder Kumar, PW-5 SI Chander Pal, PW-6 DSP Anil Kumar Dhawan, PW-7 Balak Ram Photographer, PW-8 ASI Ram Dutt and PW-9 SI Param Kumar, besides producing documentary evidence.

[4] In the statements recorded under section 313 Cr.P.C., the accused have denied the correctness of the incriminating evidence appearing against them and pleaded false implication. The accused have examined DW-1 Sukhjit Singh and DW-2 Iqbal Singh in their defence evidence.

[5] Vide the aforesaid judgment of conviction and order of sentence, the accused were convicted and sentence as aforesaid. Furthermore, both the trucks were also confiscated to the State.

[6] Aggrieved by the aforesaid judgment, the accused have preferred this appeal challenging their conviction and sentence whereas Tehal Singh, the owner of the truck bearing registration number HNU 9589 has filed separate appeal challenging the order with regard to the confiscation of the vehicle.

[7] I have heard learned counsel for the parties and perused the record.

[8] At the very outset it may be mentioned here that during the pendency of the appeal Gurpreet Singh accused-appellant has died and in terms of the order dated 24.04.2014 the appeal qua him stood abated.

[9] While assailing the judgment of the trial court, it has been argued by learned counsel for the accused that no independent witness has been joined at the time of recovery; the mandatory provisions of Section 42 of the Act have not been complied with; there is a delay of seven days in sending the samples to the office of Forensic Science Laboratory and furthermore, the probability of the defence version cannot be ruled out. Consequently the accused become entitle to the acquittal. It has also been argued on behalf of Tehal Singh that he was the owner of the truck bearing registration number HNU 9589. He was not present at the spot and was having no knowledge with regard to the fact that contraband is being carried there in the truck. Furthermore, he has not been arrayed as an accused by invoking the provisions of Section 25 of the Act and even no notice has been issued to him before ordering the confiscation of the vehicle.

[10] On the contrary, while supporting the judgment of the learned trial court, it has been argued by the learned State counsel that there cannot be any bar to base the conviction on the deposition of the official witnesses only. The provisions of Section 42 of the Act are not attracted in the instant case. The delay in sending the sample parcels to the Forensic Science Laboratory is inconsequential and the defence version is unreliable. It has been further argued that the contraband was being carried in the trucks and as such the same were liable to confiscated.

[11] In the case in hand, the version of the prosecution hinges on the deposition of official witnesses only. It is well settled that the evidence of search and seizure made by the police will not be vitiated solely for the reason that the deposition of official witnesses is not supported by independent witness. The deposition of official witnesses cannot be disbelieved merely because of their official status unless or until there are cogent grounds therefor. Moreover the recovery has been effected during the night hours. Though raid was conducted in pursuance of the secret information, but had much time consumed in joining the independent witness, it would have frustrated the purpose of raid and provide opportunity to the accused to slip away from the spot. In **In Surinder Kumar versus State of Punjab, 2020(1) RCR (Criminal) 576d**, it has been held by the Hon'ble Supreme Court of India as following:-

“14. Further, it is contended by learned senior counsel appearing for the appellant that no independent witness was examined, despite the fact they were available. In this regard, it is to be noticed from the deposition of Devi Lal, Head Constable (PW-1), during the course of cross-examination, has stated that efforts were made to join independent witnesses, but none were available. The mere

fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed.

15. The judgment in the case of *Jarnail Singh v. State of Punjab*, (2011) 3 SCC 521: 2011(1) R.C.R. (Criminal) 925, relied on by the counsel for the respondent-State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status. In the case of *State, Govt. of NCT of Delhi v. Sunil & Anr.*, (2001) 1 SCC 652: 2001(1) R.C.R. (Criminal) 56, it was held as under:-

“It is an archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Courts cannot start with the presumption that the police records are untrustworthy. As a presumption of law, the presumption would be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature”.

[12] It has been contended by learned counsel for the accused that the recovery has been effected from the 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.

[13] In this regard, it may be mentioned here that the accused were present in two trucks on a public path and in such circumstances, 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 (Supreme Court)**, 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.”*

[14] The aforesaid decision has also been followed in a subsequent decision reported as **2007 (3) RCR (Criminal), titled as State, NCT of Delhi versus Malvinder Singh.**

[15] With regard to the delay in sending the samples in the office of the Chemical Examiner, it may be mentioned here that the delay in sending the sample parcels to the office of Chemical Examiner will render the case of the prosecution to be doubtful in the event the material on record

indicates that the case property was tempered with or any prejudice has been caused to the appellant. In this regard, reference can be made to a decision of the Supreme Court of India in Hardip Singh versus State of Punjab, 2008(4) R.C.R. (Criminal) 97, wherein it has been held that the delay of 40 days in sending the sample parcels was inconsequential as it had not caused any prejudice to the accused. Moreover, in a case reported as Jarnail Singh v. State of Punjab, (2011) 3 SCC 521, there was 12 days delay in sending the samples of narcotic substance for chemical examination, it was held that mere delay in sending the sample parcels for chemical examination would not be a sufficient ground to conclude that the sample was tempered with.

[16] All the official witnesses who had handled the case property have deposed to the effect that the same was not tampered with during the period it remained in their custody. Moreover, as per the report of Forensic Science Laboratory, the seals on the sample parcels were intact and agreed with the specimen seal. There is nothing to suggest that sample parcels were tampered with at any point of time or any prejudice has occurred to the accused on account of delay of seven days in sending the sample parcels to the Forensic Science Laboratory

[17] The defence version put forth by Nasib Singh and Darshan Singh is to the effect that Darshan Singh was employed as driver by Tehal Singh and Nasib Singh who is son of Darshan Singh accused was employed as cleaner on the Truck bearing registration no HNU 9589 by Tehal Singh. On 02.03.2001 the truck became out of order in Sugar Mill Shahabad and it was toed with another truck to Surrender Motor Workshop, Shahbad for repair. They came to know that truck has been detained by the police officials as it had jammed the traffic on GT road. The police officials lifted

them from the house and falsely implicated them. The defence version of Gurpreet Singh accused is to the effect that Sarabjeet Singh was the owner and driver of the Truck bearing registration No.PB-10-H-9774. On 4.4.2001 Sarabjeet Singh was coming with his truck from Delhi and it was loaded with bags containing Grams. The police had stopped the truck at Nakka and brought it to police station Shahabad. Sarabjeet Singh gave telephonic message at the residence of Gurpreet Singh accused, asking him to bring some money and driving licence. When Gurpreet Singh accused reached the police station, he was falsely implicated by the police in collusion with Sarabjeet Singh. His father Laxman Singh has made representation to the higher authorities in this regard. Balwinder Singh accused has stated that he was employed at Surrender Motor Workshop at Shahabad. The truck bearing registration number HNU 9589 became out of order and resulted in a traffic jam on GT road. The Police zypsy arrived at the spot as the Governor of the State was to pass at that point of time. All the persons who were helping to start the truck ran away on seeing the police officials. Balwinder Singh accused was taken into custody, beaten up by the police, brought to the police station Shahbad alongwith the truck and falsely implicated. The accused has examined Sukhit Singh DW1 and Iqbal singh DW2 who are residing near the place from where recovery was effected and have deposed to the effect that no such occurrence took place. Sukhjit Singh DW1 and Iqbal Singh DW2 have stated themselves to be the Sarpanch and Numbardar respectively of village Sarifgarh.

[18] It is significant to note that the recovery has been effected during the night hours. It becomes improbable that Sukhjit Singh DW1 and Iqbal Singh DW2 would have noticed the activity being carried out at a little

distance from their house during the night hours. There is nothing to suggest that they had made any representation at any forum with regard to the false implication of the accused. Moreover the accused have not produced any reliable evidence to support the defence version. Laxman Singh, the father of Gurpreet Singh who had allegedly submitted representation has not been examined. The bald defence version as emerging in the statements of the accused recorded under Section 313 Cr.P..C., is not supported with any reliable evidence. Consequently the defence version cannot be termed to be probable.

[19] In the instance case the recovery has been effected by PW9 Paras Kumar in the presence of PW7 Balak Ram and PW6 Anil Kumar Dhawan, DSP, Kurukshetra. All these witnesses have given a detailed and satisfactory count with regard to recovery and sequence of events leading to the recovery of incriminating articles from the possession of the accused. No ill-will, bias or animosity is made out against the accused by the police officials and no reason is made out for their false implication. All witnesses to the recovery have deposed in a fairly satisfactory manner with regard to all the material aspects of the case. Their deposition inspires confidence and forms valid ground for founding the conviction of the accused. No reason is made out for false implication of the accused. The trial Court has recorded the findings of conviction on the basis of reliable and satisfactory evidence establishing the guilt of the accused beyond the shadow of any reasonable doubt. The judgment of conviction, as recorded by the learned trial Court is on the basis of satisfactory and reliable evidence and the same does not suffer from any illegality, irregularity or infirmity which may call for any interference by this Court. Even the adequate sentence

commensurate with the gravity of offence and as per the provisions of the Act has been imposed by the learned trial Court. As such, the findings of conviction and sentence, as recorded by the trial Court, are affirmed.

[20] With regard to the appeal filed by the Tehal Singh, it may be mentioned here that he is the owner of the truck bearing registration number HNU 9589. Significantly, he was not present at the time of recovery. There is lack of material on record to indicate that he was having knowledge that the contraband was being carried in his vehicle. Moreover he has not been sought to be prosecuted under Section 25 of the Act. Further, the confiscation can only be ordered after affording reasonable opportunity of being heard to the person who claims ownership rights over the vehicle liable to be confiscated. There is nothing to indicate that any such opportunity of hearing was afforded to the owners of the trucks. Consequently the order with regard to the confiscation of the trucks cannot be sustained in the eyes of law.

[21] For the aforesaid reasons, the Criminal Appeal-S-1899-SB of 2004 is dismissed and Criminal Appeal-S-2303-SB of 2004 is accepted. The judgment with regard to the conviction and sentence imposed upon the accused is upheld and the order with regard to confiscation of the vehicles is set aside.

[22] The accused Nasib Singh, Darshan Singh and Balwinder Singh are on bail and necessary steps be initiated for effecting their re-arrest so that they may undergo the sentence imposed upon them.

March 18, 2020

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(VIVEK PURI)
JUDGE