

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-388-SB-2004 (O&M)
Date of decision : 18.02.2020

Ranjit Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Himanshu Chhabra, Advocate
for the appellant.

Mr. Vikrant Pamboo, DAG, Haryana.

JITENDRA CHAUHAN, J.

The instant appeal is directed against the judgment and order dated 13.11.2003 passed by Judge, Special Court, Faridabad (hereinafter referred to as 'the trial Court') whereby, the appellant was convicted under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and sentenced to undergo rigorous imprisonment for ten years with fine of ₹100,000/- with default stipulation.

Brief facts of the present case as noticed in para No.2 of the impugned judgment are as under:-

“On 28.2.2003 a police party headed by PW6 Siri Bhagwan S.I. Was present in the area of Sabzi Mandi Dabua

turn Faridabad in connection with patrolling and crime detection when a secret information was received against the accused regarding indulging in selling narcotic substances and his likelihood to be coming with the same. Believing that information to be true, a Nakabandi was held at Air Force road within the area of Dabua vegetable market. After half an hour the accused alighted from an Auto-rickshaw alongwith a plastic bag in his right hand. On seeing the police party he started walking at fast speed and which arose suspicion. He was apprehended. After inquiring about his identity he was given a notice Ex.PF under Section 50 of the Act and vide which he opted to be searched in the presence of some Gazetted Officer. After that PW4 Raj Singh D.S.P. Was called and in whose presence the plastic bag in possession of the accused was searched and which was found containing 1 ¼ Kg. of Charas wrapped in a Newspaper. The same was taken into possession vide recovery memo Ex.PD after separating two samples of 25 grams each. A ruqa Ex.PG was sent to the police station and on the basis of which formal FIR Ex.PG/1 was recorded against the accused. A rough site plan of the place of recovery Ex.PH was prepared. Statements of witnesses were recorded. The case property alongwith samples was produced before Banwari Lal Inspector/SHO N.I.T. Faridabad.

After receipt of report of F.S.L. Ex.PE and getting prepared scaled site plan of the place of recovery Ex.PC present case was launched against the accused to face trial. ”

The accused was charged with offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution has examined HC Nand Kishore as PW-1, Constable Ombir as PW-2, Anoj Kumar, Draftsman as PW-3, Raj Singh D.S.P. as PW-4, HC Shiv Kumar as PW-5 and SI Siri Bhagwan as PW-6.

Thereafter, statement of the accused under Section 313 Cr.P.C was recorded and entire incriminating circumstances appearing in the prosecution evidence were put to the accused to which he denied and pleaded false implication. He examined Laxmi Narain as DW-1 and Vidhi Chand as DW2, in his defence.

After appraisal of the evidence, learned trial Court convicted and sentenced the accused-appellant as narrated above.

Feeling aggrieved against the judgement and conviction and the order of sentence passed by learned trial Court, the instant appeal has been filed by the accused/appellant.

Learned counsel contends that the appellant is a person with clean antecedents and has been falsely implicated in the instant case for the reasons best known to the respondents. The provisions of Section 50 of the

NDPS Act have not been complied with as no independent witness was joined. He further refers to the statements of PW-5, Head Constable Shiv Kumar and PW-6, SI Siri Bhagwan who had stated that three seals of P.S. were put on each of the sample. However, PW-1 HC Anand Kishor and PW-2 Constable Ombir have testified that the sample passed was bearing two seals of P.S. On the other hand, the learned State counsel supports the judgement of conviction and order of sentence passed by the trial Court and submits that the accused-appellant has been rightly convicted the sentenced. It is submitted that the petitioner was apprehended from the spot. No previous enmity or motive has been alleged or proved by the appellant. The provisions of Section 50 of the NDPS Act were adhered to as the appellant was made aware of his legal right before conducting his search.

I have heard the arguments of the learned counsel for the parties and have carefully gone through the record of the case.

As per the prosecution version, SI Siri Bhagwan, PW6, was heading a patrolling party when he received a secret information against the accused that he was indulging in selling of narcotic substances and there was a likelihood of his coming with the same. Thereafter, a *naka* was set up and the appellant was apprehended while carrying 1 ¼ Kg. of charas in a plastic bag in the area of Sabzi Mandi Dabua Colony Faridabad. Therefore, there was ample opportunity with the police party to join an independent witness at the place of nakabandi. A perusal of ruqa Ex.PG sent by PW-6 after receipt of secret information reveals that an effort was made to join some public witness but nobody come forward. However, he has neither come up

with the details of any such person who was asked to join the proceedings nor indicated about any action that was taken against such person(s). Similarly, no independent witness was joined at the time of effecting recovery. It has come in the testimony of this witness that some persons had gathered on the spot but no effort was made to join some public witness. Therefore, it is crystal clear that in the instant case, no genuine effort was made by the police party to join any independent witness.

It is further to be noticed that search and seizure proceedings were a result of the secret information received by PW-6, SI Siri Bhagwan. However, there is nothing on record to show that such secret information was reduced into writing and sent to the senior police officials as per the mandate of Section 42 of the NDPS Act. Hon'ble the Supreme Court while interpreting the provisions of Section 42 of the NDPS Act crystallized the law on the point in ***Sukhdev Singh vs. State of Haryana, (2013) 2 Supreme Court Cases 212***. The law laid down in Sukhdev Singh's case (supra) has been cited by a Division Bench of this Court in ***Harbhajan Singh @ Bhajan Singh vs State Of Punjab, 2019 (2) RCR (Criminal) 939***. Para 26 of the judgment passed by the Division Bench of this Court reads thus:-

26. Their Lordships of the Hon'ble Supreme Court in Sukhdev Singh vs. State of Haryana, (2013) 2 Supreme Court Cases 212 have underlined the objects and purpose of ensuring strict compliance of Section 42. Their Lordships have held that Section 42 is mandatory which ought to be construed and complied with strictly. The compliance of furnishing 18 of 42 information to the superior officer should be forthwith or within a very short time thereafter and preferably prior to recovery. Their Lordships have

held as under:-

"15. Section 42 can be divided into two different parts: first is the power of entry, search seizure and arrest without warrant or authorisation as contemplated under sub-section (1) of the said section; second is reporting of the information reduced to writing to a higher officer in consonance with sub-section (2) of that section. Subsection (2) of Section 42 had been a matter of judicial interpretation as well as of legislative concern in the past. Sub-section (2) was amended by the Parliament vide Act 9 of 2001 with effect from 2nd October, 2001. After amendment of this sub-section, the words 'forthwith' stood amended by the words 'within seventy two hours'. In other words, whatever ambiguity or leverage was provided for under the unamended provision, was clarified and resultantly, absolute certainty was brought in by binding the officer concerned to send the intimation to the superior officers within seventy two hours from the time of receipt of information. The amendment is suggestive of the legislative intent that information must reach the superior officer not only expeditiously or forthwith but definitely within the time

contemplated under the amended subsection (2) of Section 42. This, in our opinion, provides a greater certainty to the time in which the action should be taken as well as renders the safeguards provided to an accused more meaningful. In the present case, the information was received by the empowered officer on 4th February, 1994 when the unamended provision was in force. The law as it existed at the time of commission of the offence would be the law which will govern the rights and obligations of the 19 of 42 parties under the NDPS Act.

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18. No law can be interpreted so as to frustrate the very basic rule of law. It is a settled principle of interpretation of criminal jurisprudence that the provisions have to be strictly construed and cannot be given a retrospective effect unless legislative intent and expression is clear beyond ambiguity. The amendments to criminal law would not intend that there should be undue delay in disposal of criminal trials or there should be retrial just because the law has changed. Such an approach would be contrary to the doctrine of

finality as well as avoidance of delay in conclusion of criminal trial.

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21. In the present case, the occurrence was of 4th February, 1994. The Trial of the accused concluded by judgment of conviction dated 4th July, 1998. Thus, it will be the unamended Section 42(2) of the NDPS Act that would govern the present case. The provisions of Section 42 are intended to provide protection as well as lay down a procedure which is mandatory and should be followed positively by the Investigating Officer. He is obliged to furnish the information to his superior officer. That obviously means without any delay. But there could be cases where the Investigating Officer instantaneously, for special reasons to be explained in writing, is not able to reduce the information into writing and send the said information to his superior officers but could do it later and preferably prior to recovery. Compliance of Section 42 is mandatory and there cannot be an escape from its strict compliance.

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28. Before we part with this file, we

consider it the 20 of 42 duty of the Court to direct the Directors General of Police concerned of all the States to issue appropriate instructions directing the investigating officers to duly comply with the provisions of Section 42 of NDPS Act at the appropriate stage to avoid such acquittals. Compliance to the provisions of Section 42 being mandatory, it is the incumbent duty of every investigating officer to comply with the same in true substance and spirit in consonance with the law stated by this Court in the case of Karnail Singh."

Another serious infirmity in the prosecution version is with regard to the number of seals affixed on the sample. As per the version given by PW-5, HC Shiv Kumar, three seals of RS were put on each of the samples. A similar version was given by PW-6 SI Siri Bhagwan who stated that PW-4 DSP Raj Singh, had put three seals on the sample. Such a stand is contradicted by the statements of PW-1 Head Constable Anand Kishore and PW-2 Constable Ombir, who have stated that the parcel was having two seals of R.S. To the similar effect is the FSL report, Ex.PE which shows that the sample was having two seals of RS. Such a discrepancy casts serious aspersions on the prosecution version. It is settled position of law that minor discrepancies in the statements of the witnesses are bound to occur with the passage of time. However, material contradictions like the

present one cannot be ignored and the benefit thereof ought to be given to the appellant.

The appellant was a person of clean antecedents till the registration of the FIR in question on 28.02.2003, as is evident from the custody certificate dated 23.01.2020, issued by Deputy Superintendent, District Prison (Rohtak). He has not been involved in any other FIR thereafter as well.

In view of the above discussion, this Court has no hesitation to hold that the recovery proceedings in the instant case stand vitiated for the reasons enumerated above. Consequently, the instant appeal is allowed; the impugned judgment and order passed by the trial Court are set aside; and the accused is acquitted of the charges framed by giving the benefit of doubt.

Allowed.

(JITENDRA CHAUHAN)
JUDGE

18.02.2020

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Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No