

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

CRA-S-2193-SB-2013 (O&M)

Date of Decision: 03.03.2020.

Rana Singh @ Gola	...	Appellant
Versus		
State of Punjab	...	Respondent

(2) CRA-S-1943-SB-2013 (O&M)

Kulwant Singh	...	Appellant
Versus		
State of Punjab	...	Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. S.S. Rana, Advocate,
for the appellant(s) in both the appeals.

Mr. Sunil Kumar, Advocate for
Mr. RP Dhir, Advocate,
for the appellant in CRA-S-1943-SB-2013.

Ms. Harsimrat Rai, DAG, Punjab.

JITENDRA CHAUHAN.J.

The captioned appeals are directed against the common judgment and order dated 23.05.2013 passed by Judge, Special Court, Ludhiana, vide which the accused/appellants were convicted under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and sentenced to undergo RI for ten years and to pay fine of Rs.1 lakh each and in default of payment of fine to further undergo RI for one year and six months.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. The prosecution story, in brief, is that on 28.04.2007 Inspector

Davinder Singh, Incharge Anti Narcotic CIA Staff, Ludhiana along with SI Rajesh Kumar, SI Baljinder Singh and other police officials in Government Bularo bearing registration No. PB-10-BU-8022 driven by Harmesh Lal and one private vehicle were present at bus stand Nandpur in connection with checking of bad elements, where he received secret information that Kulwant Singh alias Kanta son of Piara Ram, caste Sensi resident of village Allowal, Rana Singh son of Faqir Chand resident of village Kuptalon well poppy husk at a large scale and they are coming with TATA 407 HR-67-1360. There is a special cavity in which poppy husk has been stored and if a naka be laid at G.T. Road, then they can be caught red handed and poppy husk could be got recovered. Information reliable, ruqa was sent to the police station and nakabandi was purposed at T-point Kanech. In the meantime one person Harbhajan Singh resident of village Kaddon came there and he was joined with the police party. During naka from Khanna side one TATA 407 HR 67-1360 came loading a Messy Ferguson tractor. It was stopped by signal. On inquiry driver told his name as Rana son of Faqir Chand resident of village Kutpalon, Police Station Phillaur and the person sitting by the side of driver told his name as Kulwant Singh @ Kanta son of Piara Ram r/o village Allowal. They both were apprehended. Investigating Officer gave his identity to them and told them that he want to conduct the search of vehicle as he suspected some contraband in it. Investigating officer also told them that they have legal right to get their search conducted in the presence of some Gazetted Officer or Magistrate, then they can be called at the spot. Then they stated that they want to get their search conducted from Gazetted Officer and their non-consent statements/memos were prepared. DSP Balraj Singh of Sahnewal was called who came there and he told the accused that he is a Gazetted Officer from Police Department and if they wanted to get their search conducted in the presence of some other Gazetted Officer or Magistrate, arrangement can be made but accused reposed their confidence in DSP regarding which their consent memos were recorded which were signed by the accused and attested by the witnesses. Under the supervision of the DSP search of the vehicle was conducted after unloading the tractor. There was

only cavity. Its nuts were opened and 9 bags were found in it and on checking of bags, poppy husk was found in the same. It was put on a turmoil and it was made homogeneously. Two samples of 250 grams were separated out of the same and the remaining poppy husk was came to 35 kg each in 8 bags and 9th bag came to 34k-500gms after weight. Two sample parcels and 9th bag of poppy husk were sealed with seals bearing impression DS and BS. Sample of seal was prepared separately. The sample parcels, bulk parcels, were taken into police possession. Then TATA 407 HR 67-1360 and tractor bearing No. HR-60-A-2956 along with turmoil were taken into police possession vide separate recovery memo. Personal search of accused were conducted and their arrest memos were prepared, statement of witnesses were recorded, site plan of place of recovery was prepared.....”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court.

Charge under Section 15 of the NDPS Act was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 Rishi Paul, PW-2 Inspector Davinder Singh, PW-3 DSP Balraj Singh, PW-4 SI Rajesh Kumar, PW-5 Inspector Gurjit Singh, PW-6 HC Niranjana Singh, PW-7 HC Kulwinder Singh, PW-8 Narinder Mohan, PW-9 Shatin Goel and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

In defence evidence, the accused had examined DW-1 ASI Tirath Singh, DW-2 HC Maninder Pal, DW-3 HC Lakhbir Singh and closed the evidence.

After appraisal of evidence, the learned trial court vide impugned judgment and order dated 23.05.2013, convicted and sentenced the accused, as narrated in the first paragraph of the judgment.

Feeling dissatisfied with the impugned judgment, CRA-S-2193-SB-2013 has been filed by accused/appellant Rana Singh @ Gola whereas, CRA-S-1943-SB-2013 has been filed by accused/appellant Kulwant Singh.

It is contended by the learned counsel for the accused/appellant that although, there was secret information with the police, the same was neither reduced into writing nor the same was sent to the immediate superior officer and therefore, there has been non-compliance of Section 42 of the NDPS Act. Learned counsel has placed reliance upon **(i) Gurnam Kaur and others vs. State of Punjab, 2006(3) RCR (Criminal) 984; (ii) Karnail Singh vs. State of Haryana, 2009(5) RCR (Criminal) 515 and Nachhattar Singh vs. State of Haryana 2014 (1) RCR (Criminal) 490.**

It is further contended that PW-3 DSP Balraj Singh Gill has admitted in his cross-examination that CFSL form was not prepared on the spot. Further, PW-5 SHO Gurjit Singh has also admitted that CFSL form was not deposited in the Malkhana with the case property.

It is further contended that though independent witness was joined at the time of recovery proceedings but he has not been examined by the prosecution. The seal after use was handed over to the police official and not to the independent witness. It is further contended that there was violation of Section 52-A of the NDPS Act as the representative samples drawn before the learned Magistrate were not sent for FSL report whereas, as per PW-6 MHC Niranjana Singh, sample drawn at the spot were sent for FSL. The recovery was effected on 28.04.2007 whereas, the samples were sent for FSL report on 08.05.2007.

On the other hand, learned State counsel, contends that the accused/appellants are named in the secret information which was immediately sent to the officer immediate superior to him. All the mandatory provisions of the NDPS Act were complied with. The accused have been rightly convicted and sentenced.

I have heard the learned State counsel and have gone through the case file very carefully.

In the present case, PW-2 Devinder Singh, the investigating officer of the case has admitted that the secret information was neither reduced into writing nor the same was sent to the Senior Officers. Thus, there is non-compliance of the provisions of Section 42(2) of the NDPS Act which specifically prescribes that where an officer takes down an information in writing under Section 42(1) of the NDPS Act, he shall within 72 hours send a copy thereof to his immediate officer

superior. It has also come in the evidence of PW-3 DSP Balraj Singh Gill that the CFSL form was not prepared on the spot and that the same was not deposited in the Malkhana with the case property. Thus, the Court is of the opinion that the recovery proceedings have not been conducted as per the procedure laid down and in a fair and free manner.

In *Didar Singh @ Dara vs. State of Punjab 2010(3) RCR (Criminal) 337 (DB)*, it was held as under:-

“26. The second flaw in this case is that SI Vishwa Mitter (PW1) handed over his seal after use to ASI Gurcharan Singh, who was one of the member of the police party. He did not hand over the seal to Gurmej Singh, independent witness, who was present at the spot, on the pretext that he had refused to accept the seal on account of chances of loss. ASI Gurcharan Singh has not been examined to prove that he did not hand over the seal to the Seizing Officer and the same was not misused by any person. But the fact remains that the seal of SI Vishwa Mitter (PW1) remained with the police and the chance of changing the sample by tampering the seal or refixing it, cannot be ruled out.

27. In *Bhola Singh v. State of Punjab*, 2005(2) RCR (Crl.) 520, this Court has held that CFSL Form No. 29 should be prepared by the Investigating Officer at the spot and be deposited in the Malkhana along with sealed contrabands. It has been further held that after sealing the sample parcel of the contraband as well as remaining contraband, the seal should be handed over to the independent person so that till the case property had been deposited to the Forensic Science Laboratory, the same should not be available to the prosecuting agency. This is necessary to safeguard the possibility of the sealed contraband and the sample being tampered with by the police official. It was further held that CFSL Form should not only be prepared and sealed by the officer making seizure at the place where the case property is seized from the accused, it should also be sealed by the SHO, to whom the sample and the case property is handed over and deposited in the Malkhana along with the sample parcel. It should accompany the sample to Chemical Examiner. In another case, titled as *Gurcharan Singh v. State of Punjab*, 2005(4) RCR (Crl.) 681, the accused was

acquitted on the grounds that the seal affixed on seized opium was given to the Head Constable and not an independent witness. The Seizing Officer failed to prepare CFSL Form on the spot, which creates a further doubt about the credibility of the entire prosecution exercise.

28. Similarly, in *Gurjant Singh v. State of Punjab*, 2007(4) RCR (CrL.) 226, it was held by this Court that where the seal remained with the police official after use and the CFSL Form was not prepared at the spot, it creates a serious doubt in the prosecution case as filing of such Form is a very valuable safeguard to ensure that the sealed sample is not tampered with till the contraband is analyzed by the Forensic Science Laboratory. It was further held that the seal not given to the independent witness but kept with the Investigating Officer or with the raiding party, is also fatal to the prosecution case as in that situation, the possibility of the sealed contraband and the sample being tampered with, cannot be ruled out. On the similar lines, in *Dayal Singh and another v. State of Punjab*, 2007(2) RCR (CrL.) 596, the benefit of non-filing of Form No. 29 at the spot while effecting recovery was given to the accused. But in the present case not only CFSL Form No. 29 was not prepared at the spot and it was deposited in Malkhana, but this Form was also tampered with by affixing the seals on a separate paper and then pasted on the same. In such situation, the changing of the samples of the contraband taken from the accused cannot be ruled out. In the present case, it has not been established by the prosecution that the same samples, which were taken at the time of recovery, were sent to the Chemical Examiner and the report (Ex.PK) of the Chemical Examiner pertains to those samples.”

The alleged independent witness Harbhajan Singh has not been examined by the prosecution. The seal after use was retained by the DSP. The representative samples drawn before the Magistrate were not sent for FSL report whereas, the sample which were drawn on the spot were sent for FSL report. Thus, there is non-compliance of Section 52-A(c) of the NDPS Act. The recovery was made on 28.04.2007 and there is no evidence on record that the property was produced before the Magistrate on 29.04.2007. As the seal after use was handed over to

PW-4, ASI Rajesh Kumar, there is every possibility of tampering with the sample therefore, the appellants deserve to be acquitted.

In view of above, the present appeals are allowed. The judgment of conviction and order of sentence passed by the trial Court are set aside. The appellants are acquitted of the charges framed against them. The bail-bonds and surety bonds stand discharged.

Photocopy of this order be placed on the file(s) of other connected case(s).

03.03.2020.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No