

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-614-DB-2010 (O&M)
Reserved on: 1.9.2022
Date of Decision: 06.9.2022

Gurmail Singh @ MelaAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. L.S.Sidhu, Advocate
for the appellant.

Ms. Ishma Randhawa, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 27.4.2010, by the learned Special Court, Barnala upon Sessions Case No. 20 of 28.2.2008, wherethrough, it proceeded, to in respect of charges drawn qua offences punishable under Sections 279, 471, 474 of the IPC, and, in respect of a charge drawn qua an offence punishable under Section 15 of the NDPS Act, hence make a verdict of conviction, upon the accused. Moreover, vide a separate sentencing order, drawn on 27.4.2010, the learned trial Court, proceeded to impose, the hereinafter exteracted sentence(s) of imprisonment, and, of fine, upon the convict.

1.	U/s 15 of the NDPS Act, 1985	To undergo R.I. for 12 years and to pay fine of Rs. 1 lac and in default of payment of fine to undergo further R.I. for 2 years.
2.	U/s 279 IPC	To undergo R.I. for six months

3.	U/s 471 IPC	To undergo R.I. for 3 years and to pay fine of Rs. 1000/- and in default of payment of fine to undergo further R.I. for two months.
4.	U/s 474 IPC	To undergo R.I. for 3 years and to pay fine of Rs. 1000/- and in default of payment of fine to undergo further R.I. for two months.

2. The convict becomes aggrieved from the above recorded verdict of conviction, and, also, from the consequent therewith sentence(s) of imprisonment, and, of fine, as became imposed, upon him, and, hence becomes led to constitute thereagainst the instant appeal before this Court.

Factual Background

3. The genesis of the prosecution case, becomes embodied in FIR, to which Ex. PG/1 is assigned, which became registered in pursuance to a ruqa Ex. PG, which became sent from the crime site, to the police station concerned. The crime site is embodied in Ex. PH, and, the accused became arrested through memo, as comprised in Ex. PI.

4. The contents of the FIR are ad verbatim, reproduced hereinafter.

“Today, I the Inspector along with ASI Kamaljit Singh, HC Gursewak Singh No. 413/BNL, HC Jaswinder Singh, HC Baldev Singh 449/BNL, SPO Harmesh Singh No. 1319/BNL in State Vehicle Bolero No. PB-13G-5903 driven by C. Fathepal Singh 98/BNL was present at bus stop of village Sukhpura Maur in connection with patrolling and checking of suspicious persons. The vehicles coming and going were being checked. It was about 4. A.M. when a Bolero vehicle came at a high speed from the side of Tapa. ASI Kamaljit Singh gave a signal with a torch light to stop. Instead of stopping the vehicle, the driver speed it away towards the side of Pakho crossing. On suspicion, I the Inspector/SHO along with my companions in a state vehicle followed the said vehicle and tried to stop it. When it reached Pakhoke crossing its right rear tyre was punctured. Despite that the driver of the vehicle continued to drive the same at a high speed out the tyre, tube and its rim were broken and it got out of control and struck with a bridge of a drain in the area of village Bhotna. The vehicle was substantially damaged and it stopped as it struck against the

pulli. I, the Inspector got my vehicle stopped and then with the help of my companions over powered the driver of the vehicle. The person sitting on the conductor side of the vehicle slipped away under the cover of darkness whereabouts of the apprehended driver of the vehicle were enquired and he told his name as Gurmail Singh @ Gela son of Dalip Singh Jat resident of village Dalia Wali P.S. Jorkian, District mansa. His body description is – aged about 37 years, height 5'-8", fair colour, beard and keshas cut, stout body, wearing pent shirt, right ear cut, whereabouts of the person sitting with him were also asked. He told his name is Dr. Jagsir Singh resident of Rahurian Wali (Haryana). Then I, the Inspector told him that I suspect some illegal substance in his vehicle Bolero HR-24G-2311 of silver colour. That I wanted to search it but he had a legal right if he wanted to get the vehicle searched by a Gazetted Officer or a Magistrate. He could be called at the spot. He told that he will get his person and the vehicle searched in the presence of Gazetted Officer. Then I contacted Sh. Baljit Singh P.P.S. DSP(D), Barnala on a mobile phone who after some time reached in a vehicle with his gunman, driver at a drain bridge in the area of Bhotna. His identity was disclosed to Gurmail Singh. His consent statement was also recorded which was signed by him and the witnesses. Then I the Inspector under the direction of the DSP Barnala opened the window of the vehicle and checked it. Five bags with mouths duly sewn were recovered from the rear seat. After opening the said bags, on checking, poppy husk was found in them. Two samples weighing 250 gram each were taken from each bag and made into parcels after putting into thellas. Remaining poppy husk in the bags were weighed with spring scale and each bag has found to contain 31½ kgs of poppy husk. Then all the sample parcels and bags containing remaining poppy husk were numbered as 1, 2, 3, 4 and 5. Then all the ten sample parcels and five bags containing poppy husk were sealed with my seal having imprint HS. Specimen of seal was separately taken and seal after use was handed over to ASI Kamaljit Singh. I, the Inspector took into police possession 10 samples parcels and five bags containing poppy husk by means of a separate memo which has been attested by the witnesses. On person search of accused one purse of brown colour was recovered from the back pocket of his pant. Currency notes of Rs. 340/- were recovered from it. One Noka mobile blue coloured bearing No. 9872491080 was recovered from pocket of the jacket. These were taken into police possession by means of a separate memo signed by the accused and by the witnesses. All the sample parcels weighing 250 grams each total 10 parcels and 5 bags each containing 31½ kgs poppy husk sealed with seal bearing imprint HS were produced before Shri Baljit Singh DSP Barnala who after satisfying himself he also affixed his seal bearing imprint BS and specimen of his seal was also kept. Said Gurmail Singh

and Dr. Jagsir Singh by keeping in their possession 5 kgs of poppy husk and by driving the vehicle rashly and negligently and striking it against the drain bridge, have committed an offence u/s 15, 61, 85 ND & PS Act and 279 IPC hence a ruqa having been drafted by the said officer is being sent to the police station through HC Baldev Singh 449/BNL.”

Proceedings at the crime site

5. As apparent, on a reading of the above extracted, ad verbatim reproduction of the appeal FIR, at the crime site, to which Ex. PG/1 is assigned, a consent memo, as comprised in Ex. PD became prepared. A reading of Ex. PD reveals, that the convict, after disclosing his identity as Gurmail Singh @ Mela son of Dalip Singh, Jat, resident of Dalia Wali, P.S. Jorkian, District Mansa, had rather conveyed his consent to the DSP(D) Baljit Singh, to make search of his person as well as of his Bolero vehicle, bearing No. HR-24G-2311.

Memo of recovery

6. In pursuance to the drawing of Ex. PD, the Bolero vehicle (supra) was opened, and, on its becoming checked, 5 bags were found lying on the rear seat, and, the said bags were sewn with *seba*. The above bags were checked, and, poppy husk was recovered therefrom. Two samples each weighing 250 grams were taken from all the five bags, and, they became inserted into small thellas, and, were converted into parcels. The remaining bulk in the five bags, was also weighed, and, each bag was found to contain 31½ kgs of poppy husk. The above sample parcels, and, also the remaining five bags of poppy husk, were respectively numbered as 1, 2, 3, 4, and, 5, and, all the cloth parcels were sealed with seal impression HS. The seal after its use was handed over to ASI Kamaljit Singh. All the parcels, and, bags were taken into possession vide memo, to which Ex. PE is assigned.

which Ex. PK is assigned, and, through a memo, to which Ex. PL is assigned, RC of the said vehicle was also taken into possession.

Preparation of inventory

8. The inventory report, to which Ex. PN is assigned, became prepared by the SHO of the police station concerned, and, therein unfoldings occur qua 10 sample parcels of poppy husk weighing 250 grams each, becoming sealed with seal impression HS/BS, and, the above becoming assigned Sr. Nos. 1, 2, 3, 4, and, 5. Moreover, a further unfoldment occurs therein qua 5 bags containing poppy husk, with each weighing 31½ kilograms becoming sealed with seal impression HS/BS, and, to which Sr. No. 1, 2, 3, 4, and, 5, became assigned.

Transmission of the sample parcels to the FSL

9. The sample parcels (supra), as revealed by page No. 86 of the record of the trial Court, became sent through Constable Sukhwinder Singh No. 196, Barnala, to the chemical analyst, working at the chemical laboratory concerned. The apt descriptions of the seals made on the sample parcels, does reveal, that there is inter se congruity inter se the descriptions, and, numbers of seals impressions, as made thereons, with/at the phase when the sample parcels became received in the chemical laboratory. A reading of the report of the chemical analyst, and, to which Ex. PO, is assigned, and, which becomes reproduced hereinafter, reveals that the descriptions of the seals, as occurring thereons were similar to the seals, as became reflected in Form No. 29, at page No. 86 of the records.

“Report of the analysis of the sample of Poppyhead, forwarded by SSP Barnala referred to his endst. No. 363/BNL dated 26.11.07.

The exhibits of the samples marked here 1556-P-07 to

1560-P-07 were received on (17.11.07) with the particulars overleaf. The seal of the exhibits was intact on arrival and agreed with the specimen seal sent. The exhibits remained in my safe custody after its receipt till the time its analysis was started.

The analysis of the samples marked 1556-P-07 to 1560-P-07 are as under:-

1556-P-07 to 1560-P-07

Analytical data attached herewith.

Opinion- The analysis indicates that the contents of the samples marked here 1556-P-07 to 1560-P-07 are of Poppyhead.”

Relevance of Sections 41, and, 42 of the NDPS Act

10. Since the search of the crime vehicle evidently occurred in the interregnum inter se sunset, and, sunrise, but the above statutory provisions are attracted only when the relevant prior information, is available to the investigating officer concerned, but become inapplicable in respect of a chance recovery. However, a reading of the appeal FIR reveals, that though the search of the crime vehicle, and, the consequent therewith seizure though occurred in the interregnum inter se sunset, and, sunrise, but yet it was not in pursuance to a prior information, rather was a chance recovery. Resultantly, neither the provisions of Sections 41, and, 42 are attracted thereons, nor any breach thereof can invalidate the search of the crime vehicle nor can invalidate the recoveries therefrom of the poppy husk, as made through recovery memo Ex. PE.

11. Be that as it may, even if assumingly there is an iota of evidence in respect of the relevant search, and, seizure from the crime vehicle, being sequel to a prior information, yet the above would not also acquire any exculpatory effect, as the gazetted officer of the police, had

made the search of the crime vehicle, after a relevant consent being meted to him, to make search of the crime vehicle, by the convict, consent whereof becomes embodied in Ex. PD. Though the consent for search of the crime vehicle was not required in terms of Section 50 of the NDPS Act, as the said provisions are applicable only to search of the pockets of the pants, or of the trousers, worn at the relevant time, and, of the over clothes, worn at the relevant time, by the convict, besides apply to search of the body of the convict, for discovering whether he has tethered onto himself, the incriminatory substance. However, with the seizure of the contraband not evidently emerging from the above personal searches of the convict, being made, rather the emergence of the contraband making it surfacing only, upon makings of search of the crime vehicle. Therefore, there was no statutory necessity ever cast, upon the investigating officer concerned, to prior thereto seek the consent of the convict to make any search of the crime vehicle.

Relevance of the report of the chemical analyst

12. Though the above extracted report of the chemical analyst reveals, that the samples became received at the laboratory concerned, in an untampered, and, intact condition, but there is no further revelation therein, that subsequent to the retrieval from the sample cloth parcels concerned, of the stuff inside each, and, whereafter the apposite stuff, upon, becoming examined, it becoming opined qua its containing the prohibited substance. However, significantly, thereafter the chemical analyst concerned, did not yet proceed to re-enclose the examined stuff into the cloth parcel. The result of the above omission, does cause the inevitable effect, that the prosecution has been unable to link the opinion of the laboratory concerned, as carried

in Ex. PO, with the bulk parcels, which however never became sent for analysis to the laboratory concerned. The further consequence thereof, is obviously that the bulk parcels concerned, cannot be concluded to be also containing the prohibited substance.

13. The above infirmity was curable through the Public Prosecutor concerned, casting an appropriate motion before the learned Special Judge concerned, that yet samples being drawn from the bulk preserved in the police malkhana concerned, and, theirs through a validly drawn certificate, rather being sent, to the laboratory concerned. However, the Public Prosecutor concerned, never cast the above motion before the learned Special Judge concerned, and, the above omission, begets a sequel, that the prosecution for proving the charge against the accused rather depended, only upon Ex. PO, which however for reasons (supra), does not link the opinion made therein rather with the bulk parcel(s).

Necessity of production of sample parcels in Court

14. An additional fortification to the above inference, becomes garnered from the factum that, not only the bulk parcels were required to be produced in Court, but also the sample cloth parcels, as sent to the laboratory concerned, under a validly drawn road certificate, were also necessarily required to be produced in Court, to ensure that, not only upto the transmission of the sample cloth parcels to the laboratory concerned, the thereons made seals impression, remained untampered with or remained intact, but also necessarily required that, after examination of the stuff inside the cloth parcels, the Chemical Analyst concerned, not only re-enclosing the stuff examined inside the cloth parcels, but also embossing thereons', the seal impressions of the laboratory concerned. However, as

above stated, the above did not happen, and, nor did the Public Prosecutor concerned, despite the above infirmity, cast any motion for the requisite purpose before the learned Special Judge concerned, with the resultant ill-sequel, that the infirmity (supra), hence percolating the report of the laboratory rather remaining alive.

15. The above narrated necessities are not merely perfunctory nor are mechanical, rather work towards unflinchingly proving the charge drawn against the accused. The charge would become efficaciously proven, only when the stuff inside the cloth parcels, is opined to be the apposite prohibited substance, which though however, is revealed in Ex. PO, but yet the laboratory concerned, was to re-enclose the stuff examined inside the cloth parcels concerned, and, was to also emboss thereons, the seals of the laboratory, as, then the cloth parcels would become retrieved to the police malkhana concerned, for thereafter theirs becoming produced before the learned Special Judge concerned, which again never happened.

Examined sample parcels are case property

16. The sample cloth parcels whereons an adverse opinion, becomes drawn against the convict, by the laboratory concerned, can never become the property of the laboratory concerned, “but is case property” and, is obviously required to be returned, by the laboratory concerned, to the police malkhana concerned, for thereafter its becoming produced in Court, as, only upon its production in Court the factum of its provenly becoming linked with the road certificate, besides also its apposite link, with the report of the laboratory, would become established, only when after examination of the stuff inside cloth parcels, the same, became re-enclosed in them, and, thereafter the seals' of the laboratory became also embossed, hence, on each

of the sample cloth parcels. Reiteratedly the above has not happened, and, as above stated despite the sample cloth parcels comprising the case property, they rather became unlawfully retained, at the laboratory concerned. Even otherwise, the incriminatory opinion of the laboratory concerned, is required to be corroborated, by the production of the apposite sample cloth parcels, as, sent to it, rather before the learned trial Judge concerned, as the primary evidence for relying, upon the report of the laboratory concerned, is the stuff inside the sample cloth parcels concerned. The reason being that alike, the report of a Handwriting Expert concerned, which becomes bedrocked, upon the apposite documents sent to it for comparison, and, as such, the writings concerned, becoming necessarily to become appended with the report, as they are rather the best primary evidence for supporting the report of the FSL concerned, also rather, the stuff inside the sample cloth parcels, is the apposite primary evidence to not only prove the charge, but also for corroborating the incriminatory opinion, as made thereons, by the Chemical Analyst concerned, therefore, the primary evidence (supra), is required to be produced in Court, and, also is required to be proven to be then in an untampered condition.

17. Even otherwise, the above necessity of the above legally enjoined acts, becoming performed by the Chemical Analyst working, at the laboratory concerned, does apart from reasons (supra), also facilitate the convict, to ask for apposite re-examinations from the laboratory concerned, but that would happen only when the sample cloth parcels are produced in Court. The facilitation to the accused to ask for re-examination of the stuff inside sample cloth parcels, rather by the laboratory concerned, whereons an adverse opinion is earlier made by the Chemical Analyst concerned, does

necessarily ensue to the accused, as the report of the laboratory concerned, has only a presumption of truth, and, obviously its opinion, does not enjoy any conclusivity in law. Therefore, for facilitating the accused, to rebut the opinion of the laboratory concerned, rather the production of the sample cloth parcels, in Court after their retrieval from the police malkhana concerned, is, of utmost significance. However, neither the above defence has been purveyed to the accused nor obviously any opportunity has been given to the accused, to rebut the presumption of truth, enjoyed by the report of the laboratory concerned, to which Ex. PO is assigned, and, all the above hindrances to the accused hence for his efficaciously propagating his defence, have made their emergence, only because the laboratory concerned, has not returned the sample cloth parcels to the laboratory concerned, and, nor obviously the sample cloth parcels, as, became sent to it, never became produced in Court. Resultantly, on the above ground also, the adverse opinion, as made on the stuff inside the sample cloth parcels concerned, cannot become the plank for concluding that, the presumption of truth, if any, as attached to it, being linked either to the bulk, and/or, it carrying any legal efficacy, given apparently the stuff inside, the sample cloth parcels concerned, becoming probably destroyed, and/or, not being preserved.

Oral Evidence

18. Be that as it may, though, during the course of the examination-in-chief of PW-4, the bulk parcels became shown to him, and, though he identified them to be the ones in respect whereof, an inventory became prepared, by the learned Judicial Magistrate concerned, and, though also he did make echoings, in his examination-in-chief, that the bulk parcels remained untampered with, but the above made deposition of PW-4, does

not yet link the opinion of the laboratory concerned, to the bulk parcels, as became produced in Court. The reason being that the bulk parcels remained in the malkhana concerned, and, even despite the above infirmity existing in the report of the laboratory concerned, and, even despite the sample cloth parcels becoming never returned to the laboratory concerned, conspicuously the Public Prosecutor never asking the leave of the Court qua the bulk cloth parcels, being sent to the laboratory concerned, rather for the stuff inside them becoming examined. Therefore, for want of the above, no conclusion can be formed, that the stuff inside the bulk cloth parcels also contained the prohibited substance(s).

Summarization of Principals

From the above, the following principles emerge:

- a) The bulk as well as the sample cloth parcels concerned, are case property, and, both are amenable for orders with respect to their destruction or confiscation to the State, as the case may be, being rendered only by the jurisdictionally empowered Court, and, that too upon the completest termination of the trial, as becomes entered into by the jurisdictionally empowered Court(s). Dominion over the bulk parcels, and, or over the sample cloth parcels can neither be assumed by the SHO of the police station concerned, and, nor can be assumed by the Chemical Analyst working at the FSL concerned.
- b) The production in Court of the bulk as well as of the sample cloth parcels, as, sent to the laboratory concerned, is of utmost importance, as the opinion made by the laboratory

concerned, on the stuff inside the cloth parcels concerned, would link it with the bulk parcels, yet only upon production of the sample cloth parcels, before the learned trial Judge concerned, as the examined stuff inside the sample cloth parcels, is the primary evidence to prove the charge, and, to also corroborate the opinion of the laboratory.

c) The report of the laboratory concerned, has a rebuttable presumption of truth, and, the accused for availing the right to rebut the presumption of truth attached to the opinion of the laboratory concerned, can ask for re-examination by the laboratory concerned, of the stuff inside the cloth sample parcels concerned, and, that would occur only when the sample cloth parcels are produced in Court, otherwise not.

d) The stuff inside the cloth sample parcels, is the primary evidence, and, report of the laboratory concerned, as made in respect thereof is secondary evidence, and, unless primary evidence is adduced before the Court, the secondary evidence does not acquire any probative vigor or any evidentiary worth.

Conclusion

19. The impugned verdict insofar as it records a verdict of conviction, qua the convict, in respect of a charge drawn against him for an offence punishable under Section 15 of the NDPS Act, is quashed, and, set aside, but yet for the reasons, to be assigned hereinafter, the verdict of conviction, as made, upon the convict, in respect of charges drawn against him for offences punishable under Sections 279, 471, 474 of the IPC, is affirmed, and, maintained.

20. The reason for affirming the verdict of conviction, in respect of charges drawn qua offences punishable under Sections 279, 471, 474 of the IPC, is that, in proving the commission of an offence constituted under Section 279 of the IPC, PW-4 has made an unshattered deposition, that the crime vehicle was driven at a high speed, and, that despite its becoming signalled to stop, rather the convict, at a brazen speed, speeding away with the crime vehicle, and, besides when, upon the vehicle arriving at Pakho Kanchian, and, despite the rear tyre of the crime vehicle bursting, yet the convict driving the crime vehicle, at a high speed, and, only upon its arriving at village Bhotna, that the crime vehicle went out of control, and, its rim became broken, resulting, in its striking the pulli over the drain, which ultimately caused substantial damage to the crime vehicle. The above brazen manner of driving of the crime vehicle, by the convict, and, also his omitting to adhere to the standards of due care and caution, in driving it, besides also when he did not own it, rather through his negligent driving, his causing substantial damage to it, resultantly, the convict becomes amenable for a verdict of conviction, being made, upon him, in respect of a charge drawn against him for an offence punishable under Section 279 of the IPC.

21. Moreover, also in respect of a charge drawn against the convict, for an offence punishable under Section 471 of the IPC, the prosecution has examined PW-5 Mohinder Singh, who is working as a Motor Registration Clerk, in the office of Sub Divisional Magistrate, Sirsa. PW5 has proven that the number plate, as was occurring on the crime vehicle, at the relevant time, rather became assigned to a Hero Honda CD-100, and, that the said vehicle was registered in the name of Hukam Chand son of Raj Kumar.

Moreover, PW-5 further deposed, that the RC of the crime vehicle, to which Ex. P-12 is assigned, and, which became recovered from the possession of the convict, through memo Ex. PD/1, rather belonged to Bikkar Singh son of Gurdev Singh resident of Ward No. 9, Bego Road, Sirsa, who obviously is the registered owner of the crime vehicle. He further submitted that Ex. P-12 is fake. The above made testification of PW-5 has remained unshattered, as such, the completest reliance is to be placed thereons. Consequently, the convict through plying the crime vehicle with a fake number plate, which was rather assigned to Hero Honda CD-100 motorcycle, and, also through his faking the RC Ex. P-12, in his name, whereas, Bikkar Singh was its owner, also committed an offence under Section 471 of the IPC, besides the one under Section 474 of the IPC, as he with a dishonest, and, fraudulent *mens rea*, hence used Ex. P-12, as genuine.

Final order

22. Consequently, the appeal filed by the convict is partly allowed, inasmuch as the verdict of conviction, and, the consequent therewith sentence, as made, upon him, in respect of an offence punishable under Section 15 of the NDPS Act, is quashed, and, set aside. In sequel, appellant Gurmail Singh @ Mela is acquitted of the charge framed against him qua an offence punishable under Section 15 of the NDPS Act. The personal, and, surety bonds of the accused (*supra*) shall stand forthwith cancelled, and, discharged.

23. However, the verdict of conviction, and, consequent therewith sentence, as made upon the convict-appellant, by the learned convicting Court, for offence(s) punishable under Sections 279, 471, 474 of the IPC, are maintained, and, affirmed. The fine amount, if any, deposited by the

convict-appellant, in respect of an offence punishable under Section 15 of the NDPS Act, be, in accordance with law, forthwith refunded to him. The case property, in respect of an offence punishable under Section 15 of the NDPS Act, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

24. Records be sent down forthwith.

25. The Registry of this Court is directed to ensure that the verdict of this Court, is forthwith transmitted to the Secretary Home, State of Punjab, besides also to the Director of Prosecution, State of Punjab, so that appropriate actions, in accordance with law, are drawn, upon the chemical examiner concerned, and, with a further direction to each to ensure that, hereafter the above infirmities do not ever occur in the report of the chemical analyst concerned. The above be ensured through forthwith trainings becoming imparted to the chemical analysts concerned.

26. An intimation qua the above compliance, be meted, within a fortnight, to the Registry of this Court.

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

September 6th, 2022
Gurpreet

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