

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

CRA-S-168-SB-2006(O&M)

Date of decision:-2.8.2022

Inderjit and another

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Gaurav Mohunta, Advocate
for the appellants.

Mr.Brijesh Sharma, AAG, Haryana.

H.S. MADAAN, J.

1. Appellants/accused Inderjit and Surinder Pal were tried by learned Sessions Judge, Fatehabad in case FIR No.513 dated 10.11.2003 for an offence under Section 15/27-A of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Sadar, Fatehabad and in terms of judgment dated 20.12.2005, they were convicted in that case for the offence under Section 15 of the Act and vide order dated 22.12.2005, they were sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- each and in default thereof to further undergo simple imprisonment for a period of 3

months.

2. Briefly stated, the facts of the case as per prosecution version are that on 10.11.2003, a police party headed by SI Khayali Ram was patrolling in a TATA Sumo vehicle bearing registration No.HR-22B-0707 and while it was present at T- point Ayalki-Rajabad on Ratia Road, a Maruti car bearing registration No.DDB-2910 was spotted coming from the side of Fatehabad; SI Khayali Ram signalled that car to stop, however, driver of that car instead turned it towards Rajabad and tried to speed away; that car was chased by the police party and it was got stopped at a distance of 1 ½ kms.; the car was being driven by Surinder Pal accused, whereas Inderjit accused was sitting on the front seat; it was found to contain three bags; SI Khayali Ram suspected those bags to be containing contraband so he brought the car to the T-point and served notices Ex.PD and Ex.PE, respectively upon Surinder Pal and Inderjit, occupants of the car, informing them regarding their right of being searched in the presence of some Gazetted Officer or a Magistrate; both the accused opted to get the search conducted in presence of some gazetted officer; their response was reduced into writing vide memos Ex.PF and Ex.PG, respectively; those were signed by the respective accused and attested by the witnesses.

3. Thereafter SI Khayali Ram sent a VT message to Sh.Balbir Singh, DSP, Headquarter, Fatehabad requesting him to come to the spot and accordingly Sh.Balbir Singh, DSP reached at the spot; he verified the facts from the accused and police officials and thereafter got the bags in the car searched from SI Khayali Ram; the bags were found to contain poppy straw; SI Khayali Ram took out two samples of poppy straw of

100 gms. each from all the three bags putting those in separate containers, preparing parcels and thereafter on being weighed, the remaining poppy straw in each bag was found to be 39 kgs. 800 gms.; those were also converted into parcels; all the parcels were sealed with the seal bearing impression 'KR' of SI Khayali Ram and seal of Balbir Singh, DSP having inscription 'BS'. The parcels along with the Maruti car were taken into police possession vide a memo Ex.PH. The ruqa was sent to the police station, on the basis of which formal FIR Ex.PJ was recorded. Rough site plan of the place of recovery was prepared. Statements of witnesses were recorded. Accused were arrested in this case.

4. On return to the police station, the accused along with the case property were produced before Inspector/SHO Ram Narain, who verified the facts from the accused and witnesses, thereafter he affixed his own seal having impression 'RN' on all the parcels. Under directions of Inspector/SHO Ram Narain, SI Khayali Ram deposited the case property with MHC and put the accused in the lock up. During the course of investigation, the sample parcels were sent to the office of Chemical Examiner, Haryana and on receipt of report therefrom to the effect that the samples were those of poppy straw and on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of JMIC, Fatehabad, who vide order dated 11.12.2003 committed the case to the Court of Sessions and then it was assigned to the Court of Additional Sessions Judge, Fatehabad.

5. On receipt of the case in the Court, observing that prima facie charge for an offence under Section 15 of the Act was disclosed

against the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

6. During the course of its evidence, the prosecution examined the following witnesses:

PW1 Inspector Ram Narain deposed that on 10.11.2003 while he was posted as SHO at Police Station Sadar, Fatehabad, on that day SI Khayali Ram of that very police station produced both the accused along with witnesses and the case property before him and further submitted his report Ex.PA and after going through the said report, he verified the facts from the accused as well as witnesses and put his seal bearing impression 'RN' on all the parcels. He further stated that as per his directions, the case property was deposited by SI Khayali Ram with MHC and accused were put up in the lock up. Going further, the witness stated that on 25.11.2003, after completion of investigation, he had prepared the final report under Section 173 Cr.P.C. for the purpose of filing it in the Court.

PW2 HC Kuldeep Singh and PW7 EHC Randhir Singh, formal witnesses tendered in evidence their affidavits Ex.PC and Ex.PU, respectively.

PW5 Shiv Raj Singh stated that he was earlier owner of car bearing registration No.DDB-2910, which he had sold to Surinder Singh, accused vide affidavit Ex.PS in the month of September, 2003. He further proved photocopy of the affidavit of the dealer of the car, who had sold the same to Surinder Singh as Ex.PT.

PW3 SI Khayali Ram, a witness of recovery and

Investigating Officer, PW4 Raghbir Singh ASI and PW6 Balbir Singh, DSP, all of them supported the prosecution story on material aspects particularly with regard to recovery proving various documents.

7. With that the prosecution evidence got concluded.

8. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

9. In their defence evidence, the accused examined the following witnesses.

HC Balraj Singh was examined as DW1, who had brought the log book relating to Gypsy bearing registration No.HR-22C/2997 from 18.9.2002 to 31.12.2003.

DW2 Dalbir Singh stated that on 10.11.2003, no police party met him at T-point and he was not joined with the investigation. He further stated that nothing was recovered from the possession of any of the accused in his presence and his signatures were obtained on blank papers in the police station.

DW3 Pirthi Singh stated that accused were picked up from village Rajabad from the house of Gurbaj Singh about two years earlier and it was so done by the police at the asking of Lakhwinder Singh with whom the relations of accused were strained.

10. After hearing arguments, learned trial Court convicted and sentenced both the accused as mentioned above, which left them aggrieved and they have filed the present appeal, which was taken up on

27.1.2006 when it was admitted for regular hearing and recovery of fine was stayed during the pendency of the appeal. On an application under Section 389 Cr.P.C. having been filed by the appellants/accused for suspension of their sentence of imprisonment during the pendency of appeal, the same was allowed vide order dated 28.2.2008.

11. Now the case has come up for regular hearing.

12. I have heard learned counsel for the appellants – accused – convict, learned AAG for the State of Haryana besides going through the record.

13. The first ground of attack of learned counsel for the appellants was that there was non-compliance of Section 42 of the NDPS Act inasmuch as the information was not reduced into writing and no copy was sent to immediate superior officer, therefore great prejudice was caused to the accused.

14. However, I do not find much force in this argument. It is to be taken note of that it was a chance recovery and the police party did not have any prior information of the car coming to the spot carrying contraband. As a matter of fact, the car had been intercepted at a public place on the basis of suspicion only, therefore, there could not be any question of information being reduced into writing and copy sent to immediate superior before effecting recovery. Furthermore, when the accused had opted to get their search conducted by a Gazetted officer, a VT message had been sent to Sh.Balbir Singh, DSP Headquarter, Fatehabad, who had arrived at the spot, therefore, there could not be any question of any non-compliance of Section 42 of the Act. The judgment

referred to by learned counsel for the appellants i.e. **Boota Singh & Others Versus State of Haryana, 2021(2) RCR(Criminal) 892** is distinguishable and not applicable to the facts of the present case since as per the facts of that case, the recovery had been effected from a private vehicle parked on public road and there was non recording of secret information in writing. Here as already observed, it was a chance recovery and the police party did not have any prior information in that regard. Under the circumstances, the police was required to take immediate action. Furthermore, as per the facts of the authority, the vehicle was parked on the road side, whereas in the instant case, the accused sitting in the vehicle had tried to speed it away where immediate action was called for and police vehicle had chased the car and brought it to halt. Therefore, this judgment is not applicable to the facts of the present case. Here I find that in this case provisions of Section 42 and 50 were not applicable whereas provisions of Section 43 were duly complied with.

15. The second argument advanced by learned counsel for the appellant was that question with regard to conscious possession was not put to the accused under Section 313 Cr.P.C., which is violation of Section 35 and 54 of the Act.

16. Again, there is no merit in this argument. Section 35 of the Act deals with presumption of culpable mental state of the accused. However, the accused can take the defence that he has no such mental state. Whereas Section 54 of the Act deals with presumption of possession of illicit articles. It provides that in trials under this Act, it may

be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of:

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.]

17. While examining the accused under Section 313 Cr.P.C., the Court is required to put all the incriminating circumstances appearing against the accused in prosecution evidence to him. Necessary ingredients of the offence are not to be put to the accused. It is for the Court to arrive at a conclusion as to whether the accused was in conscious possession of the contraband or otherwise and putting a question to accused specifically with regard to his conscious possession of contraband is not necessary. Rather Sections 35 and 54 of the Act are very clear in that regard and the trial Court can certainly draw the presumption with regard to existence of culpable mental state of the accused. The burden is on the accused to prove that he has not such mental state, which in the instant case the accused have miserably failed to do. Therefore, it stands established on the record that the accused were in conscious possession of the

contraband. Both the accused travelling in the car from which the contraband was recovered are to account for the same, which they have failed to do. Three bags of poppy heads each containing 40 kgs. of poppy heads were recovered from the car. Such bags are quite bulky. The accused were to explain as to how such bags come to be there in the car in which they were travelling. It is certainly not their case that some other person had placed those bags in the car and they were not aware of those being there. From the evidence adduced by the prosecution it comes out that the car stand in the name of Surinder Pal accused, whereas Inderjit accused was sitting on the front seat. In view of Section 35 and Section 54 of the Act the accused are to be taken to be in conscious possession of the contraband. Their possession comes out to be joint. Both of them were knowingly and consciously transporting contraband in the form of 120 kgs. of poppy heads.

18. With regard to the judgment referred to by learned counsel for the appellant i.e. **Amrik Singh and others Versus State of Punjab, 2014(3) RCR(Criminal) 615**, by a Single Judge of this Court, accused has been acquitted for various reasons one of which was that no question was framed or put to the accused regarding their conscious possession. That was not the sole reason resulting in acquittal of the accused, nevertheless due to detailed reasoning mentioned above, this contention of learned counsel for the appellants is rejected.

19. Another argument put forward by learned counsel for the appellants was that Section 52-A of the Act was not complied with in this case inasmuch as no inventory was prepared of the seized contraband,

therefore, question of any proceedings having been taken by Magistrate certifying the correctness of the inventory did not arise.

20. This argument advanced by learned counsel for the appellants is also devoid of any merit. The prosecution has successfully proved that both the accused were in conscious possession of huge quantity of the contraband and that the case property remained in safe custody. Further no tampering with the sample parcels had taken place during the period those remains deposited in MALKHANA and taken to the office of Chemical Examiner, Haryana. This objection is totally misconceived. The judgment relied upon by learned counsel for the appellants i.e. **Jaswinder Singh and another Versus State of Punjab, 2013(1) RCR(Criminal) 257** is not helpful to the appellants in any manner. The accused are not shown to have suffered any prejudice in any manner.

21. One more argument put forward by learned counsel for the appellants was that there is delay of 4 days in sending the sample to FSL. Again that does not make out any favourable circumstance for the accused. Poppy straw is not such a substance, which undergoes any change in position with passage of time, so a little delay of a few days in sending the samples to the office of Chemical Examiner does not make any difference more particularly when the prosecution has successfully proved that no tampering with the parcels had taken place during the intervening period.

22. With regard to the non-examination of the independent witness Dalbir Singh by the prosecution, again it has to be taken into view that independent corroboration is a rule of prudence and not requirement

of law. No provision of law provides that in absence of independent corroboration, the version given by the official witnesses is to be discarded. Here no cogent and convincing reasons could be explained by the accused prompting the official witnesses to depose against them with regard to the present case. The prosecution has not examined the independent witness and he rather appeared as a witness for the accused, which goes to show that accused had won over Dalbir Singh and possibly for that reason, he was not examined by the prosecution. While appearing as DW2, Dalbir Singh has stated that no recovery had been effected in his presence and his signatures were obtained on blank papers. His testimony does not inspire any confidence. No prudent man would sign blank papers aware of the fact that those could be converted into valuable documents affecting his interest adversely. Merely because the accused was able to win over this witness does not create any dent in the prosecution story.

23. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt by producing enough cogent, convincing and reliable evidence. The trial Court has rightly come to the conclusion that charge against the accused stood proved. The recovery involved in this case is on very side ruling out the possibility of any plantation on accused that too without any rhyme or reason. No violation of any mandatory provision of law could be pointed out by learned counsel for the appellants. As per the report received from the office of Chemical Examiner, the samples were found to be those of poppy heads. The accused were rightly convicted by the trial Court.

24. As regards the sentence part, the accused were sentenced to

undergo rigorous imprisonment for ten years each, which is the minimum conviction for possession of commercial quantity of the contraband. There is no scope for reduction in sentence.

25. The impugned judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas the appeal is found to be without any merit and the same is dismissed accordingly.

26. Appellants Inderjit and Surinder Pal are stated to be on bail granted to them by this Court. Their bail is cancelled. Chief Judicial Magistrate, Fatehabad is directed to issue arrest warrants to get them arrested so as to make them undergo the remaining sentence.

2.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes