

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

SR. No.316

(1)

CRA-S-1700-SB-2002 (O&M)

Reserved on:11.11.2022

Pronounced on:31.01.2023

Rajbir

...Appellant

Versus

The State of Haryana

...Respondent

(2)

CRA-S-1719-SB-2002 (O&M)

Roshan Lal

...Appellant

Versus

The State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. Rahul Vats, Advocate,  
for the appellant (in CRA-S-1700-SB-2002)

Mr. K.P.S. Virk, Advocate,  
for the appellant (in CRA-S-1719-SB-2002).

Ms. Sheenu Sura, DAG, Haryana.

**N.S. SHEKHAWAT, J.**

This judgment shall dispose of aforementioned two appeals, as the same have arisen out of the common impugned judgment of conviction and order of sentence dated 08.10.2002 passed by the learned Special Court, Karnal, whereby the accused/appellants have been convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic

Substances Act, 1985 (for short 'the Act') and sentenced to undergo rigorous imprisonment for a period of 10 years each and to pay a fine of Rs.1,00,000/- each with default stipulation.

Brief facts of the case are that on 05.08.2000, when ASI Balbir Singh along with police officials was present on Jalmana Kurlan Road in connection with patrolling, a canter was seen coming at a distance of about one kilometer from the T-point. On seeing the police party, the driver of the canter bearing Registration No. HR-45-0606 turned the vehicle back and was stopped by the police officials. However, a person sitting inside the vehicle managed to escape, whereas the driver of the said canter was caught at the spot, who disclosed his name as Roshan Lal and the name of another person, who had escaped, was disclosed as Rajbir son of Raghbir Singh. The said vehicle was found loaded with 15 small sacks and one full size sack. The police party raised the suspicion that the accused might be carrying the contraband and a notice under Section 50 of the Act was served upon the driver of the said canter. However, the accused driver opted to get his search conducted by some gazetted officer. Consequently, the said canter along with the accused driver was produced before the DSP Assandh. On the directions of the DSP Assandh, bags were checked and those were found containing *chura post* (poppy husk). 250 grams was separated out of each bag and on weighment, the weight of other remainder quantity was found to be 09 kg 750 grams in each sack, while in the bigger sack, it weight to be 39 kg 750 grams. The samples as well as the remainder quantity were sealed separately and during the course of investigation, another accused Rajbir was also arrested. Even Rajbir confessed his crime. After

necessary investigation, the challan was presented in the competent court by the police.

Finding a prima facie case, charge under Section 15 of the Act was ordered to be framed against both the accused-appellants, to which they pleaded not guilty and claimed trial.

In support of the case of the prosecution, seven witnesses were examined. The prosecution examined PW-1 HC Sukhbir Singh, who tendered his affidavit Ex.PA in his evidence. He admitted in his cross-examination that the specimen seal was not given to him. HC Dharambir Singh, who was posted as MHC in Police Station, Assandh was examined as PW-2, who tendered his affidavit as Ex.PB and the same was taken on record. The prosecution examined HC Prem Singh as PW-3, who was part of the police team and supported the case of the prosecution. After completing the investigation at the spot, the accused, witnesses and the case property were ordered to be produced before the SHO, who after verifying the facts, had put his seal on all the samples as well as the remainder quantity. DSP Rattan Singh was examined as PW-4, before whom the case property was produced. Apart from that, ASI Chandervir Singh was examined as PW-5. PW-6 SI Balbir Singh was the head of the police team. He also supported the case of the prosecution in all material particulars. DSP Rohtash Singh was examined as PW-7, who was posted as Inspector/SHO at that time in Police Station, Assandh, before whom the accused/appellants were produced. He prepared the final report under Section 173 Cr.P.C.

After the closure of the prosecution evidence, the statements of

accused-appellants under Section 313 Cr.P.C. were recorded and they pleaded false implication in the present case.

No defence evidence was led by the accused/appellants and vide impugned judgment of conviction and order of sentence dated 08.10.2002, both the accused were convicted and sentenced as noted above. Hence the present appeals.

Learned counsel appearing for the appellants submitted that in compliance of the provisions of Section 52A of the Act, the case property was never produced before the Area Magistrate for the certification of the inventory. Neither the inventory was placed on record nor any witness stated that the case property was taken out for producing the same before the Magistrate. Even no order was placed on record to show that the case property was ever produced before the learned Magistrate and since there was breach of the mandatory provisions of Section 52A of the Act, the accused/appellants were liable to be acquitted by this Court.

The above-said submissions made by the learned counsel for the appellants have been vehemently opposed by the learned State counsel by stating that the case property was produced during the course of trial and no prejudice had been caused to the present appellants.

After hearing the learned counsel for the parties and going through the record of the case, I find substance in the arguments raised by the learned counsel for the appellants. During the course of trial, no order passed by the learned Magistrate was exhibited to show that the case property was taken out of the Malkhana immediately after its seizure and

was ever produced before the Magistrate. Even the prosecution utterly failed to exhibit any order passed by the learned Magistrate to show that the same was produced before the Area Magistrate for the purpose of certifying the correctness of the inventory and for taking the photograph of the drugs, substances or conveyances in the presence of the Magistrate and for certifying such photographs as true, as well as to allow the drawing of representative samples of such drugs in the presence of Magistrate and to certify the correctness of any list of the samples so drawn. Still further, the prosecution examined PW-2 MHC Dharambir Singh, who did not state a word in his affidavit Ex.PB that the case property was ever taken out of the malkhana and was ever produced before the learned Magistrate. Apart from that, the samples, which were sent to the FSL, had only the seal impressions of the police officials and the seales remained with the police officials throughout the investigation. Consequently, serious prejudice has been caused to the accused/appellants by not producing the samples before the Magistrate in compliance of the procedure, as enshrined in Section 52A of the Act. It is relevant to reproduce the Section 52A of the Act, which reads as under:-

***“52A. Disposal of seized narcotic drugs and psychotropic substances.-****(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic*

*substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.*

*(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—*

*(a) certifying the correctness of the inventory so prepared; or*

*(b) taking, in the presence of such magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or*

*(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.*

*(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.*

*(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence*

*under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”*

Hon’ble the Supreme Court in the matter of **Union of India Vs Mohanlal, 2016(1) RCR (Criminal) 858** has held as under:-

*“It is manifest from Section 52A (2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to*

*Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure. Be that as it may, a conflict between the statutory provision governing taking of samples and the standing order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to re-examine the matter and take suitable steps in the above direction.”*

Learned counsel appearing on behalf of the appellants further submitted that there were no compliance of Sections 52, 52A and 57 of the Act. No arrest memo was placed on record and even the investigating officer did not state anything with regard to supplying/informing the appellant about the grounds of his arrest, which is mandatory requirement of law. Apart from that, neither the report under Section 57 of the Act was prepared nor the same was produced before the learned trial Court. The submissions made by the learned counsel for the appellants have been opposed by the learned counsel for the State on the ground that the accused cannot be permitted to take advantage of the faulty investigation conducted by the police and recovery of the contraband from the present appellants

stood proved beyond doubt.

I find that the arguments raised by the learned counsel for the appellants carry weight and are liable to be accepted. As per Section 52A of the Act, any officer arresting a person under Sections 41, 42, 43 or 44 of the Act shall, as soon as, may be informed him of the grounds of such arrest and he shall be forwarded without unnecessary delay to the nearest Magistrate, by whom the warrants were issued. In the instant case, the investigating officer SI Balbir Singh was examined as PW-6. Nowhere in his testimony, he had deposed that he had informed the appellants about the grounds of their arrest, which is the requirement of law. Still further, none of the witnesses had mentioned about the report under Section 57 of the Act and no explanation has been offered for non-compliance of such provisions of law. Thus, it is apparent that serious prejudice had been caused to the appellants due to the breach of said provisions of law.

Apart from that, it is apparent from the testimony of PW-6 SI Balbir Singh that only one sample was taken out from each bag, which is in clear violation of the standing order No.1/89 dated 13.06.89 issued by the Government of India, which has made it mandatory that two samples should be drawn from the recovered substance, failing which, the whole recovery procedure will be vitiated. Even in the matter of **Mohanlal** (supra), the Hon'ble Supreme Court had laid down certain guidelines in this regard and the relevant extract has been reproduced below:-

*“(1) No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of*

*the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub-Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order.*

*(2) The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1/89 to ensure proper security against theft, pilferage or replacement of the seized drugs.*

*(3) The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.*

*(4) Disposal of the seized drugs currently lying in the police maalkhans and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading 'disposal of drugs'."*

Still further, the recovery was admittedly effected from the

appellants on 05.08.2000, whereas the sample of contraband was sent to the

FSL only on 25.09.2000. The prosecution completely failed to explain the inordinate delay in sending the samples to the FSL. Moreover, this delay assumes significance in the light of the fact that throughout the investigation of the case, the sample seals remained with the police officials and the prosecution miserably failed to prove that the case property remained intact throughout.

Apart from that, the learned counsel for the appellants have pointed out certain minor contradictions, however, the same are liable to be ignored. In fact when the witnesses had the occasion to depose before the learned trial Court, after several months, they are bound to contradict each other and the appellants could not be permitted to take advantage of the same.

In view of the discussion, it is established that there was violation of the procedure, as laid down in Sections 52A, 52 and 57 of the Act, which vitiated the recovery and the consequent proceedings.

In view of the facts and circumstances of the case noted above, it would be highly unsafe to sustain the conviction of the appellants and they are entitled to benefit of doubt. As a consequence thereof, both the appeals succeed and are hereby allowed. The judgment of conviction and order of sentence dated 08.10.2002 passed by the learned Special Court, Karnal are set aside. The bail bonds of both the appellants stand discharged and they may be released from custody, if not on bail and if not required in any other case.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and, destroyed after the

expiry of period of limitation. The trial Court record be sent back.

31.01.2023  
mks

(N.S. SHEKHAWAT)  
JUDGE

Whether Speaking/Reasoned: YES / NO  
Whether Reportable: YES / NO