

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S-836-SB-2004
Decided on : 22.03.2023

Daljit Singh @ Jit
Versus
State of Punjab
... Appellant(s)
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Aman Sharma, Advocate as *Legal Aid Counsel*.
(appointed vide order dated 14.12.2022).
Mr. J.S. Arora, DAG, Punjab.

SANJAY VASHISTH, J.

1. Appellant – Daljit Singh @ Jit, then aged 44 years, has filed present appeal against the judgment of conviction and order of sentence dated 22.03.2004, passed by the Ld. Judge, Special Court, Patiala, in Sessions Case No. 97T of 24.04.2000/08.12.2003, arising out of FIR No.28, dated 29.01.2002, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, ‘NDPS Act’), registered at Police Station Samana. Accused-appellant was held guilty for commission of offence punishable under Section 15 of NDPS Act, and was ordered to undergo sentence(s), as detailed in the following table:

Name of Convict	Under Section	Sentence	Fine	In Default
Daljit Singh @ Jit	15 NDPS Act	10 years RI	Rs. 1,00,000/-	02 years RI

The period of sentence already undergone by the accused-appellant was ordered to be set off, according to the provisions of Section 428 Cr.P.C.

2. Prosecution version as detailed in the impugned judgment is that “on 29.01.2022, police party headed by SI Hans Raj, was present at Bhawanigarh Chowk, Samana, in connection with the Naka Bandi and patrolling duty. There, he received secret information that accused is in habit of Chura Poppy heads and if raid is conducted, he could be apprehended red handed. Believing this information to be correct, intimation Ex.PA (mentioned as ruqa in the impugned judgment) was sent to the police station through C. Sher Singh, and on its basis DDR No.17 was recorded and thereupon, formal FIR Ex.PA/1, was also recorded by SI Budh Ram. Thereafter, when the police party was going to conduct raid at the house of the accused, on the way of Majri Chowk, PW Labh Singh, Lambardar, met them and was joined in the police party. Thereafter, raid was conducted at the house of the accused, who was found present there. Accused was apprehended. From the personal search of the accused, a purse containing Rs.150/- and one wrist watch were recovered, and were taken into possession vide recovery memo Ex.PB, attested by witnesses. During interrogation of the accused, he suffered disclosure statement under Section 27 of the Indian Evidence Act Ex.PC, that he has kept concealed three bags containing poppy husk in the store of his house, about which only he had the knowledge and could get the same recovered. The Investigating Officer apprised the accused about his right to get the search conducted in presence of some Gazetted Officer or Magistrate, to which he replied that the search should be got conducted in presence of some Gazetted Officer. The dissent statement of accused Ex.PD, was recorded. Thereafter, on the basis of message already flashed to DSP Satvir Singh Atwal, Samana, he reached the spot and gave his introduction to the accused as DSP and Gazetted Officer. The accused reposed his confidence in him and agreed for

his search to be conducted by him. The consent statement of the accused Ex.PE was also got recorded by him. On the direction of the DSP, accused led the police party to the disclosed place and got recovered three bags containing poppy husk, lying under the cot kept concealed under a loi of black colour. Accused, however, could not produce any permit or licence for possession of the poppy husk. Two samples of 250 gms. each were taken out from the bags and the residue came to be 29 kg. 500 gm. Each bag.”

3. After preparation of the parcels of the samples and the residue case property, same were sealed with a seal of SI Hans Raj and SSA of DSP Satvir Singh Atwal. Case property was taken in possession vide recovery memo Ex.PG. Site plan of the place of recovery Ex.PG/1 was prepared. Accused was apprised about the grounds of his arrest vide memo Ex.PH. A special report Ex.PK, regarding arrest of accused in this case was also prepared.

4. After completing the proceedings of investigation, final report under Section 173 Cr.P.C. was produced before the Court. After framing of the charge by the trial Court vide order dated 23.05.2002, trial was proceeded.

5. To prove its case, prosecution examined as many as total 06 witnesses (PW1 to PW6), which are as under:-

PW1 - SI Hans Raj, CIA Staff, Sirhind, who appeared as PW1 being the Investigating Officer.

PW2 - C. Rajbir Singh, who appeared as PW2 to prove the taking of contraband to FSL for its examination.

PW3 - Inspector Sewa Singh, who appeared as PW3, proved the producing of the case property and the accused before him, and verified the proceedings.

PW4 - DSP Satvir Singh Atwal, who appeared as Gazetted Officer.

PW5 - ASI Daulat Ram, who appeared for proving the recovery of contraband from the accused being the raiding team member.

PW6 - HC Udham Singh, who appeared as a formal witness and proved of FSL report.

Other prosecution witnesses i.e. C. Sher Singh, SI Budh Ram, Inspector Harbhajan Singh and SI Barinder Singh, were given up as unnecessary. Even, independent witness i.e. Labh Singh, Lambardar, who was associated by the police party as independent witness, when they were on the way to the house of appellant (accused) for conducting raid, was not examined.

Evidence of prosecution was closed on the statement of Addl. Public Prosecutor on 17.12.2003

6. In the statement recorded under Section 313 Cr.P.C., appellant took the stand that *"I am innocent. SI Hans Raj has foisted a false case upon him. In fact, Shisha Singh and Bhima were apprehended by the police and the poppy husk was recovered from them and the same has been planted upon him. I got an inquiry conducted, in which those persons were named as culprits."*

7. In defense one witness namely Jagdish Singh was examined as DW1, who deposed that about two years back, at about 06:00 A.M., police of CIA Staff Samana, picked up the appellant Daljit Singh from his house. One inquiry was got conducted from the SSP office, which was marked to DSP Samana, and in the said inquiry report, it was found that contraband had been recovered from Bhima and Shisha.

8. Learned Trial Court has found that the appellant has committed the offence and thus convicted and sentenced him under Section 15 of the NDPS Act, as detailed herein-above.

9. Ld. Legal Aid Counsel for the appellant submits that a false case has been planted against the appellant, and there is no force in the evidence led by the prosecution. First of all, he submitted that there is total violation of Section 42 of the NDPS Act, because as per second proviso, information in writing about receiving of secret information was required to be addressed to the immediate superior or to send a copy in writing to his immediate official Superior. Although there is an information, which is Ex.PA on record sent by SI Hans Raj, but same appears to be prepared *ante-timed*. In other words, no such intimation was sent as projected by the prosecution on 29.01.2002, upon which, it has been shown that FIR No.28, dated 29.01.2002, under Section 15/61/85 of the NDPS Act, was registered at Police Station Samana, which is available on record as Ex.PA/1.

Ld. Legal Aid Counsel further submits that upon receipt of the said intimation i.e. receiving of secret information in the Police Station, DDR No. 17, dated 29.01.2002, is projected to be registered at 3:40 P.M., and without there being conducting of raid and then effecting of recovery, police has projected that the said FIR has been registered at about 4:10 P.M. on 29.01.2022 itself. He further submits that the duty of the police was to prepare a writing, as has been prepared and projected as Ex.PA for sending it to the police station and the substance of the secret information sent through intimation in writing was required to be entered into Daily Diary Report (DDR), and only after conducting of raid and the recovery of the contraband, First Information Report (FIR) was to be registered. But what the prosecution has projected is that merely on the intimation Ex.PA, firstly, DDR No.17 is registered, and thereupon, the FIR is registered at 4:10 P.M.

To substantiate this argument, Ld. Legal Aid Counsel submits that had it been registered on 29.01.2022 at 4:10 P.M., there and then

without any delay special report should have been dispatched, and then received by the Ld. Magistrate within few minutes or hours thereafter. But, FIR denotes that special report was received by the Ld. Sub Divisional Judicial Magistrate, Samana at 12:50 P.M. on 30.01.2002 i.e. after more than 20 hours. Therefore, the intimation Ex.PA, is supposed to have been prepared on 30.01.2002, few hours before the receipt of special report by Ld. Magistrate, and during the intervening period, FIR No.28, dated 29.01.2002, is shown to have been prepared. Thus, police has conducted *ante-timed* proceedings.

10. For convenience, version of the first intimation (Ex.PA) for compliance of provision of Section 42(2) of the NDPS Act, the translated version of the vernacular, which is available on record of FIR No.28, dated 29.01.2002, under Section 15 of the NDPS Act, registered at Police Station Samana, is reproduced herein:-

“At this time one ruqa from Hans Raj I/c CIA Staff for registration of case against Daljit Singh @ Jeet S/o Balkar Singh Jat r/o Talwandi Manik now Malkana Patti Majri through C. Sher Singh 1881 received which the subject matter as under:- “SHO Sahib, P.S. Samana, Fateh, Today I the SI along with ASI Daulat Ram, HC Ranjit Singh 1972, CI Gurbachan Singh 2621, CI Devinder Singh 2121, CII Tejinderpal Singh 2291, C. Sher Singh 1551, PHC Balwinder Singh 3018, in connection with search of bad elements on a private jeep were present at Chowk Bhawani Garh Samana. One informer has come to me separately and gave me information that Daljit Singh @ Jeet S/o Balkar Singh Jat r/o Talwandi Malik now r/o Malkana Patti Majri Samana who is running business of churra poppy husk at his house, if raid is conducted at once at his house, a big quantity of churra poppy husk can be recovered from the possession of Daljit Singh @ Jeet. Above said, Information is correct and reliable. By keeping chura poppy husk in possession, without permit abovesaid Daljit

Singh @ Jeet has committed an offence U/s 15/61/85 NDPS Act, So that I the SI had sent a ruqa to the police station for registration of a case against the above-said accused, through C. Sher Singh 1551. After registering the case number of file, same be intimated and Sh. Satbir Singh Atwal DSP(D) Patiala be informed to reach at the spot through wireless message. I the SI along with companion officials is proceeding for recovery and raid. Sd/- Hans Raj SI I/c CIA Staff dt. 29-1-2002. Received, a case has been registered under above said offence against above said accused. Compliance was completed. Copies of FIRs are being sent to the Illaqa Magistrate and higher officers. Control room was informed through W/M. Case file along with original ruqa is being sent to SI Hans Raj through incoming constable.

DDR 18 at 11-10 PM

*Sd/- Budh Ram SI SHO
P.S. Samana 29-1-2002”*

11. On the other hand, Ld. State Counsel has countered and argued that there is nothing wrong in the compliance of the said provision i.e. Section 42(2) of the NDPS Act, even registration of FIR immediately on 29.01.2002, after making entry of the intimation vide DDR No.17, dated 29.01.2002, shows that immediate steps were taken for registration of FIR without any delay, as the intimation was more believable. However, there is no explanation to the question that why the special report reached to Ld. SDJM, Samana, next day in the afternoon period i.e. at 12:50 P.M., if FIR had actually been registered on 29.01.2002 by 4:10 P.M.

12. Ld. Legal Aid Counsel also relied upon the judgments of Hon’ble Apex Court rendered in Sukhdev Singh vs. State of Haryana, 2013 AIR (SC) 953, and in Darshan Singh vs. State of Haryana, 2016(14) SCC 358, which deals with the similar proposition, holding therein that compliance of Section 42(2) of the NDPS Act, is a mandatory condition.

Therefore, story framed up by the police, regarding receiving of secret information, and then effecting recovery, was not believable.

13. I have considered the arguments addressed by both the sides thoroughly and gone through the intimation (Ex.PA), FIR (Ex.PA/1), and the endorsement of receiving of special report by Ld. SDJM, Samana on 30.01.2002, at 12:50 P.M. I have also gone through the record and found that prosecution did not produce any witness in the witness-box, who took the intimation (Ex.PA) to the police station, or who after receiving it i.e. SI Budh Ram made a DD entry and then converted it into FIR, or any other material or formal witness from the Police Station. Even no one from police station, who after receiving of the intimation in writing regarding secret information, which was sent by SI Hans Raj (PW1) through C. Sher Singh, has appeared in the witness-box to prove any of the proceeding, conducted at Police Station Samana.

14. Even with the help of Ld. Legal Aid Counsel or the Ld. State Counsel, this Court is unable to find out the name of the police official, who took the special report for its delivery to the Ld. SDJM, Samana on 30.01.2002 in the second half of day, and perhaps therefore, prosecution failed to examine the said witness. To the view point of this Court, such witness was a material witness to explain that why the special report could not be delivered to Ld. SDJM for more than 20 hours, once FIR had been lodged at 4:10 P.M. on 29.01.2022. Even, SI Budh Ram, who lodged the FIR after receiving of ruqa/intimation in regard to the secret information, has been left un-examined by the prosecution being unnecessary.

Thus, this Court feels satisfied with the submissions addressed by Ld. Legal Aid Counsel that lodging of FIR upon DDR No.17, projecting it to be registered on 29.01.2002, is *ante-timed* or *ante-dated*, and thus, there

is total non-compliance of Section 42(2) of the NDPS Act.

15. Even otherwise, from the bare reading of intimation/ruqa (Ex.PA), it appears that same might have been prepared after affecting recovery from the accused. The procedure of making compliance under Section 42(2) of NDPS Act, could be that on receiving of information in writing at Police Station, the real intimation of receiving of secret information and proceedings for conducting raid is required to be entered into DDR, vide a particular entry number. Thereafter, on affecting of recovery from the accused by Investigating Officer, another intimation/ruqa will be sent for registration of FIR, and entry of said intimation/ruqa regarding recovery of the contraband would also be affected in the DDR by mentioning a different serial number, and said DDR entry only could be the basis of registration of FIR under Section 154 Cr.P.C. Had said practice been applied by prosecution, one could understand that version of receiving of secret information, sending its intimation/ruqa to Police Station and making its entry in the DDR, reaching to the raiding place, and then after affecting recovery, another intimation/ruqa is sent for firstly, being entered into DDR, and thereafter, lodging of formal FIR under Section 154 Cr.P.C. In the absence of said proceedings, story put-forth by the prosecution in the present case is highly doubtful.

16. There is another angle involved in the case i.e. recovery of contraband is based upon the disclosure statement (Ex.PC) having been recorded under Section 27 of the Indian Evident Act, 1872 (in short 'IE Act') (Ex.PC). Section 27 of IE Act reads as under:-

“27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of

any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

Meaning thereby, for recording of the disclosure statement, person giving statement has to be an accused, and then such accused must be in the custody of the police officer. Thereupon, recovery effected as factually stated would be admissible evidence to that extent only. As already discussed, proceedings of registration of FIR appeared to be *ante-timed*, having been conducted on 30.01.2002, special report of which is reaching, after much belated time on the next day. To justify the recovery, same has been projected to have been recovered on 29.01.2002 itself, as by that time FIR had been recorded and thus, police officer SI Hans Raj considered the appellant (accused) within his custody. Thus, it appears that the recovery, based solely upon Section 27 of the IE Act, is a projected story, because no evidence has been led by the prosecution, regarding receiving of the intimation Ex.PA in the police station and the proceedings conducted thereafter in the police station.

17. Ld. Legal Aid Counsel also argues that the malicious prosecution is very much clear from the fact that in the intimation (Ex.PA), which was converted into FIR (Ex.PA/1), it is clearly mentioned by SI Hans Raj (PW1) that DSP Satvir Singh Atwal (D-Patiala) be informed to reach at the spot through wireless message. Ld. Legal Aid Counsel submits that such a direction is beyond the reach of common understanding, rather, same is against the spirit of the fair proceedings required to be conducted under the NDPS Act. While referring to the statement of star witness i.e. SI Hans Raj (PW1), Ld. Legal Aid Counsel refers to the admission made by said witness regarding availability of Gazetted Officer within the area of Samana.

Relevant deposition of SI Hans Raj (PW1), in his cross-examination is reproduced here under:-

“xxx xx xxx xx

DSP arrived at the spot at about 4:30 P.M. I do not know from where he had come. I did not call any Tehsildar, SDM or any other Gazetted Officer from Samana. The house of accused is at a distance of about 1 Kms from Tehsil Complex, Samana. It is correct that office of DSP, SDM, Tehsildar, Naib Tehsildar, Judicial Magistrate, Treazury Officer are in the same complex, Samana and I did not call them at the spot, except DSP. It is correct that during those days DSP Satvir Singh Atwal was posted as DSP(D), Patiala.”

From the said deposition, a strong doubt is raised by this Court, as to why the name of a specific police officer as Gazetted Officer was required and mentioned even before registration of the F.I.R. Obvious answer would be that it was pre-decided by the Investigating Officer to not to call on spot any other Gazetted Officer. In other words, Gazetted Officer, who was distantly posted beyond the jurisdiction of Gazetted Officer of Samana, was pre-fixed/chosen by the Investigating Officer for completing the investigation proceedings of the case. Thus, in this view of situation, joining of a particular Gazetted Officer i.e. DSP Satvir Singh Atwal, posted as DSP(D), Patiala, is not justified by the prosecution, for the reasons explained herein-above.

18. Ld. Legal Aid Counsel further argues that one of the independent witness i.e. Labh Singh, Lamberdar, who was joined by the police party at the time of conducting of raid, has not been examined by the

prosecution.

However, in regard to the independent witness Labh Singh, Lamberdar, Inspector Sewa Singh, SHO, who appeared as PW3 for proving of the proceedings under Section 57 of the NDPS Act, has deposed in his cross-examination as under:-

“xxx xx xxxx by Achhar Kumar, Advocate.

The case property was produced before me at about 8:00 P.M. I did not reopen the sealed parcels. I did not weight the same. Independent witness was present at that time. I did not record any entry of independent witness in any register. It is wrong to suggest that the case property was not produced before me. It is wrong that I am deposing falsely.”

19. This Court noticed that verification of proceedings of arrest and seizure were allegedly made in the presence of independent witness Labh Singh, Lamberdar, then what stopped Inspector Sewa Singh, while conducting the proceedings under Section 57 of the NDPS Act, to not to make any entry in any register regarding such an important witness. On this score also, there is a strong doubt over the proceedings of the prosecution. Thus, the prosecution has tried to prove its case without support of any independent witness, which is again a lacuna in the prosecution case, more for the reason that the punishment under the Act for the quantity shown to have been recovered, is very harsh. Thus, this Court feels that no one should be convicted and sentenced for a minimum period of 10 years, until or unless there is unbreakable quality of evidence available on record.

20. In totality of the circumstances, discussed here-above, defense version taken by the appellant creates a dent in the case of prosecution story.

Undoubtedly, as per law, appellant has also failed in proving his defense version, but settled law in the criminal prosecution, demands the proving of charges beyond doubt, failing which, such accused is to be considered, as innocent.

21. In view of the submissions addressed and then the findings recorded by this Court after scanning the complete set of evidence available on record, I am of the considered view that prosecution has failed to prove its charge beyond doubt, and thus, appeal is worth to be allowed by setting aside the judgment of conviction and order of sentence dated 22.03.2002, passed by Ld. Judge, Special Court, Patiala. Accordingly, same are hereby *set aside*. Consequently, **appeal is allowed** by acquitting the appellant from all the charges levelled against him.

Appeal stands disposed of.

(SANJAY VASHISTH)
JUDGE

March 22, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*