



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.201
(1)

CRA-D-331-DB-2012 (O&M)
Date of decision:29.05.2024

Rajinder Singh @ Bittu

...Appellant

Versus

State of Punjab

...Respondent

(2)

CRA-D-515-DB-2012 (O&M)

Baljit Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE GURVINDER SIGH GILL
HON’BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr.Rishav Jain, Advocate with
Mr. Kanish Jindal, Advocate for the appellant(s).
Mr. I.P.S. Sabharwal, DAG, Punjab.

N.S. SHEKHAWAT, J.

1. This judgment shall dispose of above-mentioned two appeals arising out of the common impugned judgment of conviction and order of sentence dated 02.03.2012 passed by the Special Court, Amritsar, whereby both the appellants have been convicted and sentenced as under:-

Rajinder Singh @ Bittu and Baljit Singh

Offence under Sections	Sentence	Fine	In Default
21 of the Narcotic Drugs and Psychotropic Substances Act, 1985	RI for Twenty years	Rs.2 lakhs	S.I. for Two years

411 IPC	RI for Three years	Rs. 3,000/-	SI for Three months
467 IPC	RI for Seven years	Rs.5,000/-	SI for Six months
468 IPC	RI for Seven years	Rs.5,000/-	SI for Six months
471 IPC	RI for Seven years	Rs.5,000/-	SI for Six months

Rajinder Singh

Offence under Sections	Sentence	Fine	In Default
21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 under head No.2 of the charge sheet	RI for Twelve years	Rs. One lakh	SI for One year

All the substantive sentences were ordered to run concurrently.

2. The FIR in the present case was registered on the basis of statement made by Harwinder Pal Singh, Inspector and the same has been reproduced below:-

“Today, I Insp. was present in my office State Special Operations Cell, Pb.Amritsar. That a special informer came there and gave information that defamed/notorious smuggler of heroin of Indo-Pak Border Ranjinder Singh @ Bittu s/o Pal Singh, Jat, resident of Chogawan, P.S. Lopoke, now Sunder Nagar, Kot Khalsa, Amritsar and Baljit Singh s/o Baldev Singh, caste Mehra, resident of Hari Nagar, New Delhi, are very much actively indulging/famous in the business of

smuggling of heroin now-a-days, and they have a close relation with notorious Indian and Pakistani smugglers of heroin and Indian fake currency and both were trafficking heroin from Indo-Pak Border area for supplying the same to the parties of Chandigarh, Delhi, Mumbai and other cities. Today both of them got heroin from their associates and have concealed a huge consignment of heroin in a Car Tavera white colour bearing no.PB06-F-9932 and are waiting for a party to hand over the said consignment of heroin alongwith car Tavera to another party in the area of Amritsar-Jalandhar G.T.Road, Opposite Highway Junction Restaurant situated near Welcome (Swagati) Gate Amritsar. If raided now, without any loss of time, they can be apprehended with huge consignment of heroin. After giving a deep thought on it, being correct information, I, immediately brought the same into the notice of Shri P.K.Rai, IPS, S.P. Anti Smuggling, Amritsar and after getting his order and on his directions, three separate police parties were constituted. I, Inspector alongwith police party consisting of Inspector Balbir Singh, Inspector Sukhdev Singh, SI Harjinder Singh 448/PAP, SI Kuljinder Singh, ASI Sukhbir Singh, ASI Mangat Singh, ASI Jaswinder Singh, HC Kuldip Kumar No.300/TT. HC Inderdeep Singh 27/3,HC Jagjit Singh 900/SGR, HC Richard Masih 574/LDH,HC Sukhanbir Singh 9/39,HC Sarabjit Singh 3C/52,HC Baljit Singh 5/15,HC Joginder Singh 470/INT. HC Kabal Singh 843/ASR,HC Surinder Pal 418/GSP.HC Barinder Singh 244/PTL,C-II Sukhwinder Singh 9/525, Ct. Sukhwinder Singh8 2/388,HC Sarabiit Singh 100/ Majitha, Ct. Gurmit Singh 1499/LDH, Ct. Yadwinder Singh 4/617,C:. Dilbagh Singh 9/650, Ct. Swaran Singh 9/710,Ct. Sukhwinder Singh 9/721,Ct. Amandav Singh 5/246,Ct. Satnam Singh 7/525,Ct. Jagwinder Singh 9/385, Ct. Iqbal Singh 5/331,Ct. Bhagwan Singh 5/364,Ct. Rakesh Kumar 9/451,Ct. Palwinder Singh 1574/Kpt. Constable Paramjit Singh 1811/Asr, Ct. Lakhbir Singh 75/317 Ct.

Balwinder Singh 434/INT ,Ct. Rajinder Kumar 5/633 riding on a Govt. Vehicle Qualis bearing no.PB12-F-6061- driven by Ct. Sawander 1292/HPR, Govt. Vehicle Tavera bearing GJW-17-8094 driven by Ct. Lakhwinder Singh 426/INT and Govt. Mini Bus bearing no.PB02-AA- 9825 driven by HC Harbhej Singh 7/120, respectively. Separate three police parties were prepared and briefed them all the proceeding conducted at the spot and to contact with each other through walkie talkie sets, reached at the spot. A Car Tavera white coloured was seen parked, on the side of the road towards Jalandhar side opposite to restaurant Highway junction situated near the welcome gate Amritsar-Jalandar G.T. Road. One man noticed sitting in the Tavera car, on the seat adjoining the driver seat while the other was standing near driver door. On seeing the police party, the man standing outside the car on the driver side acted haphazardly and immediately sat on the driver seat and tried to drive away. On watching his suspicious movement .I, Inspector directed the police party on walkie talkie wireless sets to take immediate action and on my direction Inspector Balbir Singh alongwith police party got parked his Tavera Govt. Vehicle ahead of the suspected vehicle, while on my direction Inspector Sukhdev Singh alongwith police party got the Govt. Mini Bus parked behind the said suspected vehicle whereas I,Inspector got the govt vehicle Qualis parked on the driver side of the suspected car leaving no room for the driver to escape and on my direction, the police party apprehended both the suspects in the car Tavera who on asking disclosed his name as Ranjider Singh @ Bittu s/o Pal Singh, Caste Jat resident of Chogawan, P.S. Lopoke District Amritsar now resident of H. No. 973, Gali No.3, Sunder Nagar Kot Khalsa P.S.Islamabad, Amritsar and the person sitting on the conductor seat disclosed his name as Baljit Singh s/o Baldev Singh caste Mehra, resident of M-105 Hari Nagar, Ghanta Ghar, P.S. Hari Nagar, New Delhi. whom I, Inspector disclosed

my identity as I am Inspector Harwinder Pal Singh P.S. State Special Operation Cell. Pb. posted at Amritsar and I am wearing uniform and name plate is affixed thereon. I have secret information regarding keeping of some narcotics substance in your possession and in your vehicle car marka Tavera, white colour bearing No.PB06-F-9932 and for its recovery, I want to get the search of both of you and your vehicle(car). But you both have legal right to get yourself or your vehicle searched in the presence of Gazetted officer or a Magistrate of your choice whom you trust for which I can arrange. On this abovenoted apprehended persons spoke separately that they have no faith in me. We want to be get our search and our car Mark Tavera conducted in the presence of some gazetted officer. On this non-consent memo of accused was prepared separately. Apprehended person signed the consent memo. Then I, Insp, requested Sh. Rajpal Singh, PPS, DSP, State Special Operation Cell, Pb. Amritsar on mobile phone to reach at the spot while making him aware of the situation/circumstance of the case apprising him regarding the development on the spot and during that efforts were made by me to join the public witnesses who were passing nearby, but none was ready to join the police party. Everyone showed helplessness. Ultimately, after strenuous efforts, one person Avtar Singh s/o late Ajit Singh resident of Gali No.5 Sant Avenue, Amritsar became ready to join the police party after understanding his moral duty and he was joined in the police party. In the meantime Sh. RajPal Singh PPS, DSP, SSOC, Pb. Amritsar reached at the spot along with his personnel, riding on a Govt. Vehicle, who after making casual enquiry of the circumstances/after inspecting the spot said to the apprehended person while introducing himself said that I am Rajpal Singh PPS, DSP. State Special Operation Cell, Pb. Amritsar, I am in uniform, and name plate is affixed thereon. I have been called on the spot on your consent, for the purpose

of search of both of you and your vehicle Tavera bearing no.PB06-F-9932 white colour, for the purpose of recovery of suspected narcotic substance in your possession and in the car, they were travelling. So I want to conduct search of both of you and your vehicle Tavera. But you have the legal right that you can get yourself searched in the presence of any other gazetted officer or Magistrate whom you have trust which I can arrange. On this, both above noted apprehended person spoke one by one. We have faith in you. You can conduct our search and our vehicle Tavera. On this, DSP dictated me a separate consent memo of abovenoted accused. Accused and witnesses put their signatures on the consent memos. Then in the presence of witnesses and on the direction of DSP Sahib, I, Inspector conducted the search of Tavera Vehicle white colour bearing No.PB06-F-9932 of apprehended person as per rules. Then on opening the window covers/cardboards of four windows four/four packets of heroin were recovered from each window and then after opening the cover/card board of dicky window(back door)(door of the dicky) nine packets of heroin were recovered and (total twenty five packets of heroin) were recovered which were packed in a glazed envelopes. No mark has been affixed on it and recovered 25 packed were given marked as mark I to XXV. Arrangement was made to weight at the spot and on weighing each packet came out to be one Kilogram. After that two samples of heroin 5 gram each were extracted from each packet respectively and were packed in different plastic containers and converted into a separate cloth parcel. Sample parcels of heroin were marked as mark S-IA, S-IB to SXXVA, S-XXVB whereas remaining bulk parcel of heroin weighing 990/990 gram each were packed in same packing in different plastic containers and converted into cloth parcels and were again given marked I to XXV. Then I, Insp. above mentioned recovered bulk parcel and sample parcel of heroin sealed with my seal HS and DSP sealed with his seal

RS. Sample seals were prepared separately. Proceeding of Form M-29 were initiated at the spot. Then I, Inspector remaining recovered heroin weighing 990/990 gram Mark I to XXV and sample parcel of heroin weighing 5 gram each mark S-IA, S-IB, to S-XXVA, S-XXVB sealed with seal HS/RS along with sample seal were taken into police possession vide separate recovery memo. Witnesses signed the memo and DSP attested the same. Then on the direction of DSP Sahib and in the presence of witnesses personal search of Ranjinder Singh @ Bittu and Baljit Singh was conducted as per rules. However nothing incriminating was recovered from their personal search. During the course of search whatsoever articles were recovered from the search both of them were taken into police possession vide separate memo of personal search. Accused and witnesses put their signatures on the memo of personal search and DSP attested the same. Then, on the direction of the DSP Sahib on further minutely checking of Tavera Vehicle of accused bearing no.PB06-F-9932 white colour was conducted as per rules. Nothing incriminating articles were recovered from the search of the car. Therefore, recovered vehicle Tavera. along with documents were taken into police possession vide separate recovery memo. Witnesses signed the memo and verified by DSP. I handed over my seal after use to Inspector Balbir Singh and DSP retained his seal with himself. Accused Ranjinder Singh @ Bittu s/o Pal Singh and Baljit Singh s/o Baldev Singh above noted could not produce any valid license, permit or document for keeping abovenoted recovered 25 kilogram heroin in their possession. Accused Ranjinder Singh @Bittu and Baljit Singh abovenoted have committed an offence punishable under section 21,25,29,61,85 NDPS Act for keeping 25 kilogram heroin in their possession and tried to supply the same onward. Therefore, Ruqa was drafted and is being sent to the police station for registration of the case through HC Richard Masih No.574/LDH. After registration of

the case its number be intimated. Higher officer be informed through special reports and wireless and telephone. I remained busy at the spot for investigation. Sd/- Harwinder Pal Singh, P.S. State Special Operation, Cell, Punjab, Amritsar, Dated 20.01.2010. In the area of Amritsar to Jalandhar Road Opposite Highway junction restaurant, near Welcome gate Area P.S.Sultanwind, Amritsar at 4.15 PM AT POLICE STATION: At this time on receipt of the above said writing at the Police station a case under above said section be got registered against the above at the spot for investigation through the same coming HC Special reports are being noted accused. Original writing along with copy of FIR is being sent to the Inspector issued and sent to the Duty Magistrate and Higher officers through HC Bakhtawar Singh 2222/LDH. Control room has been informed through telephone Closed vide rapat No.15 at 7.30 PM dated 20.1.2010.”

3. After registration of the FIR, the site plans were prepared and usual investigation was conducted at the spot. A Tavera vehicle was also taken into possession and the accused were arrested. On completion of the investigation, the challan was presented against the accused. After taking into consideration the material collected during the course of investigation, the accused/appellants were charged for commission of the offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the ‘NDPS Act’) and Sections 467/468/471/ 411 IPC, to which, they pleaded not guilty and claimed trial.

4. During the course of trial, the prosecution examined 7 witnesses. Inspector Balbir Singh was examined as PW-1. He was part of the raiding team, which had apprehended the accused at the spot and the recoveries were made. He had supported the version of the complainant, as

mentioned in the FIR in the present case. In his cross-examination, he stated that a secret information was received by Harvinderpal Singh. The secret information was conveyed to Harvinderpal Singh in his presence and he had also listened the contents of secret information supplied, however, it was not conveyed to any senior officer in writing. The secret information was received at about 08:15 AM. At that time, the DSP and SSP of Special Operation Cell were not present in their respective offices, which is in the same building. When the secret information was received, Inspector Sukhdev Singh and Nirmal Singh were not present at the place, where secret information was received. The raiding party consisting of 30 members had left the office at 09:00 AM to conduct the raid and no senior officer was requested to join the raiding party and to reach at the spot at any stage prior to apprehending the arrest. He further stated that no document pertaining to ownership of the Tavera vehicle bearing No.PB-06F-9932 was seized by the police, as there was no document in the vehicle. It was only the IO, who could tell that the number PB-06F-9932 belonged to accused or someone else.

5. The prosecution further examined Inspector Harvinderpal Singh, Special State Operation Cell, Punjab, Amritsar as PW-2. He was the first informant in the present case and supported the averments made in the FIR Ex.P15. In his deposition, he stated that on getting the secret information, he immediately brought the same in the notice of Mr. P.K. Rai, IPS, SP, Anti Smuggling, Amritsar and on his directions, he along with the police party comprising of Inspector Balbir Singh, Inspector Sukhdev Singh, SI Harjinder Singh, SI Kuljinder Singh and other officials started

towards the disclosed place on three vehicles. As the police party reached near the disclosed place, a car Tavera was seen parked opposite a restaurant “Highway Junction” near the Welcome Gate at Amritsar bypass and the accused were apprehended after following the due process of law. He also explained in details the facts with regard to search and seizure in the present case. In his cross-examination, he admitted that he had seen MO2, on which the particulars were written in punjabi and were not scribed by him. During the course of investigation, it was revealed that the vehicle involved in this case did not belong to the accused. During investigation, it was revealed that the number affixed on the vehicle was originally of Tempo and not of car and the engine number and chassis number revealed the original number to be DL-1VB-5007, which belonged to Sandeep Singh son of Balbir Singh resident of Delhi, who had got the FIR registered regarding the theft of his vehicle. He further stated that the secret information was not reduced into writing and was not conveyed to any senior officer in writing. He further stated that the DDR was made and verbally communicated to the then SSP Mr. P.K. Rai, IPS. No order in writing was received from the Office of Sh. P.K. Rai, IPS. However, there was nothing on record to suggest in writing that the secret information was conveyed or received by Mr. P.K. Rai. He further stated that the place of recovery was a thoroughfare and was a National Highway. The prosecution further examined PW-3 HC Sukhanbir Singh, who tendered his affidavit Ex.PW3/A in the criminal case. The prosecution further examined PW-4 Rajpal Singh, DSP, who being a gazetted officer, was associated during the search and seizure of the contraband from the appellants. He had also supported the case of the

prosecution in all material particulars. The prosecution further examined PW-5 Dalip Kumar, Junior Assistant, DTO office, Hoshiarpur. He had brought the office record pertaining to vehicle No.PB-06F-9932 Piaggio Auto bearing Engine No.R61F0260882 and Chassis No.BHF380250 Model 2006 registered in the name of Aman Kumar son of Santosh Raj. He produced the RC as per the office record. He further stated that in case the number plate of aforesaid auto was affixed on a Tavera vehicle, the same would be illegal. The prosecution further examined PW-6 Aman Kumar, who was the owner of Tempo Piaggio, bearing registration No.PB-06F-9932, which was registered in the office of DTO Gurdaspur. The prosecution further examined PW-7 Sandeep Singh, who was the owner of the Tavera vehicle, which was recovered in the present case. He stated that the said vehicle was registered with registration No.DL-1VB-5007 and the vehicle was stolen by some person on 19.03.2009 and he had lodged a report of theft vide FIR No.98 dated 28.03.2009 in Police Station Uttam Nagar. He produced the copy of the FIR, copy of the RC and the Transfer Certificate.

6. After conclusion of the prosecution evidence, the statements of the accused were separately recorded under Section 313 Cr.P.C and the entire incriminating evidence was put to them. Rajinder Singh, appellant stated that he was arrested by the police 4/5 days prior to alleged date of recovery and was given beatings and his signatures were obtained on blank papers and he was involved in the present case. Similarly Baljit Singh, appellant stated that he had no concern with the Tavera Car. Nothing was recovered from his possession and he was connected with Tavera Car

falsely in order to save the companions of the real culprits and he was made a scapegoat in the present case. The recovery was planted on him and narcotic substance was not recovered from his possession.

7. Learned counsel for the appellants vehemently argued that in the present case, the FIR was registered pursuant to receipt of a secret information, pertaining to the possession of contraband in a Tavera vehicle. As per the mandatory provisions of Section 42 of the NDPS Act, the secret information was immediately required to be reduced into writing and was further required to be sent to the superior officers of the police. In the present case, PW-2 Harvinderpal Singh, Inspector had received a secret information. However admittedly, neither he had reduced the secret information in writing nor it was conveyed to his senior officers and the same has resulted in violation of the mandatory provision of Section 42 of the NDPS Act and the entire recovery stood vitiated.

8. On the other hand, learned State counsel vehemently opposed the submissions made by learned counsel for the appellants on the ground that in the present case, first of all, the recovery had taken place from a vehicle in transit, which was parked on a national highway. Still further, the recovery had taken place from a vehicle in public place, which was accessible to the public, the provisions of Section 43 of the NDPS Act would apply and there was no need to comply with the provisions of Section 42 of the NDPS Act. Apart from that, PW-2 Havinder Pal Singh had clearly stated that he had immediately informed the secret information to Sh.P.K. Rai, SP, Anti Smuggling, Amritsar and the police raiding party was constituted on his directions only. Thus, the case was covered under the

provision of Section 43 of the NDPS Act and moreover, the compliance of Section 42 of the NDPS Act was also made.

9. We have heard elaborate arguments made by learned counsel for the parties and have carefully scrutinised the evidence in the present case.

10. Section 42 of the Act pertains to power of entry, search, seizure and arrest without warrant or authorization, whereas Section 43 of the Act pertains to the powers of seizure and arrest in a public place and both the provisions have been reproduced below:-

“42. Power of entry, search, seizure and arrest without warrant or authorisation.—[\(1\)](#)Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building,

conveyance or enclosed place, may between sunrise and sunset,--

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

“43. Power of seizure and arrest in public place.—Any officer of any of the departments mentioned in section 42 may —(a)seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b)detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.”

11. Now, adverting to the facts of the instant case, we have to examine the question as to whether the procedure mandated under Section 42 of the NDPS Act would apply or whether Section 43 of the NDPS Act would apply in such cases of recovery from a vehicle in transit, which was in a public place. A Constitution Bench of the Hon’ble Supreme Court in the matter of **State of Punjab v. Baldev Singh, 1994(3) SCC 299** made a distinction between the provisions of Sections 42 and 43 of the NDPS Act and held as follows:-

“9.The material difference between the provisions of Section 43 and Section 42 is that whereas Section 42 requires recording of reasons for belief and for taking down of

information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any Narcotic Drug or Psychotropic Substances in a public place where such possession appears to him to be unlawful"

12. In *State of Haryana v. Jarnail Singh and others, 2004(5) SCC 188*, the Hon'ble Supreme Court held as follows:-

"Section 42 and 43, therefore, contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit. If seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is no such proviso in Section 43 of the Act and, therefore, it is obvious that if a public conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the Narcotic Drugs and Psychotropic Substances Act for searching the vehicle between sunset and the sunrise."

13. Consequently, keeping in view the ratio laid down by the Hon'ble Supreme Court of India, it can be safely held that it was a case of recovery of contraband from a public place and the seizure of the contraband and the arrest of accused was made in a public place, the provisions of Section 43 of the NDPS Act would be attracted.

14. Still further, learned counsel for the appellants vehemently argued that in the present case, Avtar Singh son of late Ajit Singh resident of Sant Avenue, Amritsar was associated as an independent witness.

However, during the course of trial, the said witness was given up by the prosecution. Thus, the entire prosecution case was based on the testimonies of official witnesses.

15. On the other hand, learned State counsel stated that in the present case, no doubt Avtar Singh son of late Ajit Singh was joined as an independent witness, but he was given up, as he had joined hands with the accused in the present case. Consequently, he was given up by the prosecution.

16. We have considered the rival submissions made by learned counsel for the parties in the present case. In fact, to maintain the sanctity of the entire search and seizure of the contraband, the police had initially associated Avtar Singh son of Ajit Singh as an independent witness. However, it appears that, during the course of trial, the public prosecutor realised that he had colluded with the appellants/accused in the present case and the public prosecutor had exercised his discretion in not examining him as a witness, as he could unnecessarily help the accused in the present case. Even otherwise, the statements of the official witnesses could not be kept aside only on the ground of their official status. Even in the present case, huge recovery of heroin had taken place from the appellants, who were international smugglers and it was impossible for the police officers to plant such a huge recovery on them.

17. Still further, learned counsel for the appellants vehemently argued that in the present case, the police had also not complied with the provision of Section 50 of the NDPS Act in the true letter and spirit. The consent memos Ex.P3 and Ex.P4, which were stated to have been signed by the accused, had not been written by the accused themselves and the memos seem to have been prepared by the police while sitting in the police station

and apparently the signatures of the accused were obtained on a blank papers.

18. On the other hand, learned State counsel vehemently argued that the recovery of heroin had taken place from a Tavera vehicle and no recovery had taken place from the personal search of the accused. Thus, there was no need to comply with the provision of Section 50 of the NDPS Act. Learned State counsel further submits that otherwise also, from the evidence of the prosecution, it stood established that the police had strictly complied with the provisions of Section 50 of the NDPS Act.

19. Before proceeding any further and discussing the relevance of the said argument, we will reproduce the observations made by the Hon'ble Supreme Court in **Ajmer Singh Vs State of Haryana, 2010 (3) SCC 746**, wherein the Hon'ble Supreme Court held as follows:-

*12. The object, purpose and scope of Section 50 of the Act was the subject matter of discussion in number of decisions of this Court. The Constitution Bench of five Judges of this Court in the case of **State of Punjab v. Baldev Singh, [1999(3) RCR (Criminal) 533 : (1999) 6 SCC 172]**, after exhaustive consideration of the decision of this court in the case of **Ali Mustaffa Abdul Rahman Moosa v. State of Kerala, [1994(3) RCR (Criminal) 595 : (1994) 6 SCC 569]** and **Pooran Mal v. Director of Inspection (Investigating), New Delhi & Ors., [(1974) 1 SCC 345]**, have concluded in para 57 :*

I) When search and seizure is to be conducted under the provision of the Act, it is imperative for him to inform the person concerned of his right of being taken to the nearest gazetted officer or the nearest Magistrate for making search.

II) Failure to inform the accused of such right would cause prejudice to an accused.

III) That a search made by an empowered officer, on prior information, without informing the accused of such a right may not vitiate trial, but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction is solely based on the possession of the illicit article, recovered from his person, during such search.

IV) investigation agency must follow the procedure as envisaged by the statute scrupulously and failure to do so would lead to unfair trial contrary to the concept of justice.

V) That the question as to whether the safeguards provided in Section 50 of the Act have been duly observed would have to be determined by the court on the basis of the evidence at the trial and without giving an opportunity to the prosecution to establish the compliance of Section 50 of the Act would not be permissible as it would cut short a criminal trial.

VI) That the non compliance of the procedure i.e. informing the accused of the right under sub-Section (1) of Section 50 may render the recovery of contraband suspect and conviction and sentence of an accused bad and unsustainable in law.

VII) The illicit article seized from the person of an accused during search conducted without complying the procedure under Section 50, cannot be relied upon as evidence for proving the unlawful possession of the contraband.

13. The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply, while searching the bag, brief case etc., carried by the person and its non compliance would be fatal to the proceedings initiated

*under the Act. We find no merit in the contention of the learned counsel. It requires to be noticed that the question of compliance or non compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act is relevant only where search of a person is involved and the said Section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, brief case, container, etc., does not come within the ambit of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the Section speaks of taking of the person to be searched by the Gazetted Officer or Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more res-integra in view of the observations made by this court in the case of **Madan Lal v. State of Himachal Pradesh 2003(4) RCR (Criminal) 100 : 2004(1) Apex Criminal 426 : 2003 CrL.L.J. 3868**. The Court has observed:*

*"A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (See **Kalema Tumba v. State of Maharashtra and Anr. (1999(4) RCR (Criminal) 575 : JT 1999 (8) SC 293**), **State of Punjab v. Baldev Singh (JT 1994 (4) SC 595**), **Gurbax Singh v. State of Haryana 2001(1) RCR (Criminal) 702 : (2001 (3) SCC 28**). The language of section is implicitly clear that the search has to be in relation to a person as contrast to search of premises, vehicles, or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case (supra). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance."*

14. *In State of Himachal Pradesh v. Pawan Kumar, [2005(2) RCR (Criminal) 622 : 2005(2) Apex Criminal 1 : 2005 4 SCC 350], this Court has stated :*

"A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body or a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act."

After discussion on the interpretation of the word 'person', this Court concluded :

"that the provisions of section 50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container, etc. which (the accused) may be carrying"

The court further observed :

"In view of the discussion made, Section 50 of the Act can have no application on the facts and circumstances of the present case as opium was allegedly recovered from the bag, which was being carried by the accused."

20. Now, advertent to the facts of the instant case, it is apparent that the recovery of heroin had taken place from a Tavera vehicle and from other places and no recovery was effected from the personal search of the appellants. The provisions of Section 50 of the NDPS Act will be applicable only in cases of personal search of the accused and we find no substance in the argument raised by learned counsel for the appellants in this regard. Moreover, in the present case, immediately after arrest of the appellants, vide memos Ex.P1 and Ex.P2, both the appellants were apprised of their legal right to get their search conducted in the presence of some gazetted officer or a Magistrate. On this, they offered to get themselves searched in the presence of a gazetted officer. Consequently, the raiding party had summoned Raj Pal Singh, DSP, a gazetted officer to come at the spot and to conduct the search. PW-4 Raj Pal Singh, DSP also reached at the spot and again gave them the offer that they could get the search conducted from him or from any other gazetted officer or a Magistrate. However, vide memos Ex.P3 and Ex.P4, both the accused stated that they had faith in Raj Pal Singh, DSP and he could conduct their personal search and the search of their Tavera vehicle. Consequently, the entire search and seizure was conducted in the presence of PW-4 Raj Pal Singh, DSP and the procedure prescribed under Section 50 of the NDPS Act was strictly followed in the present case.

21. Still further, learned counsel for the appellants submitted that the prosecution had not proved the ownership of the car in question and the recovery of the car as well as the contraband was planted on the present appellants.

22. On the other hand, learned State counsel submitted that the appellants had used the stolen vehicle in commission of the crime in the present case. The prosecution examined PW-7 Sandeep Singh, who got FIR No.98 dated 28.03.2009 registered in Police Station Uttam Nagar with regard to theft of his Tavera vehicle. Even the actual number allotted to the said car was DL-1VB-5007. However the accused had put a fictitious number PB-06-F-9932 on the Tavera vehicle. Consequently, the trial Court had rightly convicted the appellants under Sections 467, 468, 471 and 411 IPC. Still further, both the appellants were drug peddlers, having international connections and were in exclusive possession of the car at the time when 25 kgs. of heroin was recovered from four doors and the dicky of the car. Even the prosecution had examined PW-1 Balbir Singh, Inspector, PW-2 Havinderpal Singh, Inspector and PW-4 Raj Pal Singh, DSP to prove the factum of the recovery of the contraband from a Tavera car, which was in exclusive possession of both the appellants. Still further, the defence counsel had cross-examined all the above three witnesses, but their testimonies could not be shattered by him in any manner.

23. Even otherwise, we have carefully perused the findings recorded by the trial Court. We find that the trial Court had correctly held that even if CFSL form was not on judicial file, it would not be fatal for the case of the prosecution. In the present case, the recovery of the contraband was too heavy and it was impossible to plant such a recovery on both the appellants. Even otherwise in their statements under Section 313 Cr.P.C., the appellants had offered no explanation, as to why they had been falsely involved by the police in such a heinous crime. Still further, the appellants

could not lead any evidence to show that there was any tampering with the samples, which were sent to the laboratory and the delay of 09 days in sending the samples to the office of FSL, Punjab, Chandigarh was insignificant. Rather the FSL report Ex.PX categorically stated that the seals on parcels S-I-A to S-XXVIII-A were found intact and tallied with the specimen seal impressions. Even as per the FSL report Ex.PX, heroin was found in the samples and thus the evidence of the prosecution conclusively proved that 25 kgs. of heroin was recovered from the appellants by the police of State Special Operation Cell, Punjab, Amritsar. Apart from that, 3 kgs. of heroin was also recovered from Rajinder Singh @ Bittu without any permit or licence.

24. In view of above discussion, this Court is of the considered opinion that there is no illegality in the impugned judgment and order and thus, both the appeals are hereby dismissed, being devoid of any merits. Consequently, the impugned judgment and order dated 02.03.2012 passed by the Special Court, Amritsar are upheld. Pending application(s), if any, shall also stand disposed of.

(GURVINDER SIGH GILL)

JUDGE

29.05.2024

mks

(N.S. SHEKHAWAT)

JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable: Yes/No