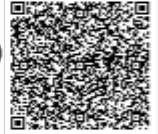


2024:PHHC:069029



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-68-DB-2012 (O&M)
Date of Decision:-16.5.2024

Amrik Singh ... Appellant

Versus

State of Punjab ... Respondent

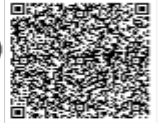
**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present:- Mr. Parminder Singh Sekhon, Advocate for the appellant.

Mr. Arjun Sheoran, DAG, Punjab.

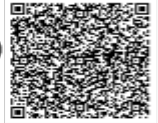
GURVINDER SINGH GILL, J.

1. Appellant – Amrik Singh assails judgment dated 23.12.2011 passed by learned Judge Special Court, Patiala vide which he has been held guilty of having committed offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*the Act*') and has been sentenced to undergo rigorous imprisonment for 11 years and also to pay a fine amounting to Rs.1 lakh.
2. The case of prosecution, in nutshell, is that on night intervening 04-05.06.2006, when a police party headed by Sub Inspector Rulda Singh was present at Dr. Ambedkar Chowk, Samana in connection with checking of vehicles, then Sukhchain Singh met SI Rulda Singh at about 12.05 A.M. and



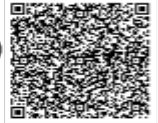
started conversing with him. At about 12:10 A.M., a secret informer furnished information to SI Rulda Singh to the effect that a consignment of '*poppy husk*' was to be unloaded near Peer Baba Chitty Mitti Dheri between Bakhra Canal and Bank of Canal Minor and that Amrik Singh (appellant), son-in-law of Barkha Sanssi alongwith his associate would be present at the said place. The information was further to the effect that after '*poppy husk*' is unloaded, the same was going to be loaded on the motorcycles of Amrik Singh and of his associate, who were to take away the same.

3. Pursuant to receipt of said information, the police swung into action and reached at the spot, where two motorcycles were seen parked and two persons were seen loading jute bags on a motorcycle. The said persons, upon noticing the police party, fled away from the spot on one motorcycle. It is further the case of prosecution that one of those persons was identified by Constable Surjit Singh as Amrik Singh, being earlier known to him. The motorcycle, which was left at the spot and 3 jute bags were taken into possession from the spot. The said bags were found to contain '*poppy husk*'. Two samples weighing 100 grams each were taken out from each of the 3 bags and the remaining '*poppy husk*' in two of the bags was found to be weighing 29.800 kilograms each while the remaining '*poppy husk*' in the 3rd bag was found to be weighing 19.800 kilograms. In other words, a total of 80 kilograms of '*poppy husk*' was recovered. The sample parcels and the bulk parcels of '*poppy husk*' were duly sealed with the seal of SI Rulda Singh. Sample seals were also prepared and were handed over to independent witness Sukhchain Singh. The samples were got analyzed and as per the chemical examination report, the same were found to be of '*poppy husk*'. The



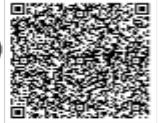
requisite investigation was conducted, during the course of which statements of witnesses were recorded. Upon conclusion of investigation, challan was presented in the Court of learned Judge Special Court, Patiala, who upon finding sufficient grounds to presume that the accused had committed offence punishable under Section 15 of the Act, framed charges accordingly against the accused on 13.6.2008. The prosecution, in order to establish its case, examined as many as 7 PWs.

4. PW-1 Constable Darshan Singh is a formal witness, who tendered his affidavit Ex.PA in evidence, wherein he deposed that on 12.6.2006 MHC Sukhdev Singh handed over the case property comprising of 3 samples parcels of '*poppy husk*', which were duly sealed with the seal bearing impression 'RS/HS', alongwith sample seal and directed him to deposit the same in the office of Chemical Examiner which he accordingly deposited in the said office on the same day. He further stated that as long as the case property remained in his possession neither he tampered with the same nor he permitted anybody else to tamper with the same.
5. PW-2 ASI Major Singh stated that on 5.6.2006 he was comprised in the police party headed by SI Rulda Singh and that when the police party was present at Dr. Ambedkar Chowk, Samana, SI Rulda Singh received a secret information to the effect that Amrik Singh would be getting a consignment of '*poppy husk*' near Peer Baba Chitty Mitti Dheri. He further stated that pursuant to receipt of said information, they proceeded to the spot where two persons were seen alongwith motorcycles who were loading bags of '*poppy husk*' on one motorcycle, but upon noticing the police party, they escaped on one motorcycle leaving the other one at the spot. He further stated that one of

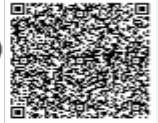


the said persons was identified by him to be Amrik Singh in the glowing headlight of gypsy.

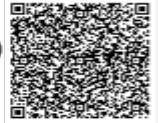
6. PW-3 Head Constable Sukhdev Singh is another formal witness, who tendered his affidavit Ex.PW3/A in evidence, wherein he deposed that he was posted as MHC at Police Station Samana and '*Malkhana*' was under his charge and on 5.6.2006, the case property was deposited in the '*Malkhana*' and that the same was taken out on 7.6.2006 and deposited in Judicial Malkhana, Patiala. He further stated that on 12.6.2006 three samples parcels were entrusted to Constable Darshan Singh for being deposited in the office of Chemical Examiner, which were accordingly deposited on the same day itself.
7. PW-4 SI Rulda Singh is the Investigating Officer, who had stated in detail in respect of the entire investigation conducted by him right from receipt of secret information upto the recovery of '*poppy husk*' and has proved various memos/documents prepared during the course of investigation conducted by him.
8. PW- 5 DSP Harpreet Singh stated that on 5.6.2006 he was posted as Inspector/SHO at Police Station Samana when SI Rulda Singh produced the case property before him in sealed condition and upon which he also fixed his seal bearing impression 'HS'. He further stated that on 5.6.2006, he had prepared inventory of the case property Ex.PG alongwith application for inspection of the case property Ex.PH and had handed over the said documents to Investigating Officer and had directed him to produce the same before Judicial Court at Samana on the same day.



9. PW 6 SI Bhagwan Dass stated about the formal arrest of accused Amrik Singh and has proved the arrest memo Ex.PW-5/1.
10. PW – 7 Head Constable Surjit Singh stated that on the night intervening 4-5.6.2006, he was comprised in the police party headed by SI Rulda Singh and that when the police party was present at Dr. Ambedkar Chowk, Samana in connection of checking of vehicles, then a secret information was received by SI Rulda Singh pertaining to unloading of '*poppy husk*' at a place near Peer Baba Chitty Mitti Dheri and that Amrik Singh and his associates would be uploading the '*poppy husk*' on their motorcycles. He further stated in detail as regards the proceedings, which had taken place on the said date, so as to corroborate the statement of SI Rulda Singh.
11. Upon conclusion of evidence, statement of accused was recorded in terms of provisions of Section 313 Cr.P.C., wherein he pleaded false implication.
12. The accused stated that a false case had been planted upon him at the instance of his in-laws as he was having a dispute with his wife during those days. The accused in his defence examined DW-1 – Mukhtiar Singh, who in his statement stated that Amrik Singh is his co-villager and that there used to remain a matrimonial discord between Amrik Singh and his wife Sukhwinder Kaur and that about 5 years back 2-3 police officials had come to the house of Amrik Singh and had told him that a complaint has been lodged against him by his wife and Amrik Singh had been taken away by the police officials and that as a matter of fact, the appellant has been falsely implicated by his in-laws.



13. Learned Trial Court upon marshalling the evidence on record held that the charges framed against the accused stood fully proved and accordingly convicted the appellant for having committed offence punishable under Section 15 of the Act.
14. Learned counsel for the appellant, while assailing the impugned judgment, has broadly made the following submissions:
- i) that the accused was neither arrested at the spot nor was ever found in possession of any contraband;
 - ii) that although the occurrence had taken place during night time, but the appellant is sought to be implicated on the premises that 2 members of the police party had identified him while he was running away from the spot, whereas there was no occasion for the said police officials to have known the appellant previously;
 - iii) that there is violation of provisions of Section 42 of the Act inasmuch as despite receipt of secret information, the same was not taken down in writing, nor was conveyed to the senior officers as mandated under law;
 - iv) that there is violation of provisions of Section 52-A of the Act inasmuch as neither any inventory of the case property was prepared nor the samples were drawn in the presence of Magistrate, whereas Hon'ble the Supreme Court in Union of India Versus Mohanlal, (2016) 3 SCC 379, has held that the samples are required to be drawn in the presence of a Magistrate.
15. Learned State counsel, on the other hand, has supported the judgment under appeal and submitted that the appellant had been involved earlier also in

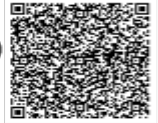


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(7)

cases registered under NDPS Act and Excise Act and, as such, having regard to the antecedents of appellant, his complicity is clearly evident particularly when not only was he was identified at the spot but the motorcycle recovered from the spot can safely be said to be belonging to the appellant inasmuch as the same was released to him on '*superdari*' pursuant to an application moved by him in this regard.

16. Learned State counsel further submits that inventory in terms of Section 52-A of the Act had been prepared in the present case as has been categorically stated by PW-5 DSP Harpreet Singh. Learned State counsel submitted that in the instant case '*ruqa*' had been sent immediately to the police station and, as such, Section 42 of the Act would also stand fully complied with. Learned State counsel thus submitted that the evidence led by prosecution fully establishes the charges framed against the appellant and, as such, his conviction needs to be upheld.
17. Learned State counsel submitted that the pleas of false implication of accused at the instance of his in-laws as is sought to be supported by the appellant on the basis of testimony of DW-1 Mukhtiar Singh is a cooked up story inasmuch as Mukhtiar Singh had come forward to depose in favour of the appellant being a co-villager and that there is no evidence on record to show that any litigation was pending between the appellant and his wife from which it could be inferred that there was any kind of matrimonial discord between them.
18. This Court has considered the aforesaid submissions and has also gone through the impugned judgment as well as record of the case.

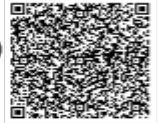


19. It is not in dispute that it is a case where the appellant was never ever apprehended at the spot and nor any recovery was ever effected from him. It is on the basis of secret information that the appellant came to be named in the FIR. However, two police officials from the police party claim to have identified him when he ran away from the spot upon noticing the police party. The said two witnesses are PW-2 – ASI Major Singh and PW- 7 – Head Constable Surjit Singh. It is apposite to refer to the cross-examination of the said witnesses. The relevant extract from cross-examination of PW-2 – ASI Major Singh is reproduced hereinunder:

“I have never visited the house of accused. Amrik Singh is resident of Dhuri. I have never conducted raid in the house of accused. I do not know father of Amrik Singh nor met him. I have never met Amrik Singh in any marriage, reception, Bhog or any other function. Name of Amrik Singh was not disclosed by informer to the I.O. I have never suffered any statement in this case before any higher officer that I knew the accused Amrik Singh till today. Amrik Singh was never got identified from me by the I.O. of this case to prove identification of the person who fled away from the spot..... I do not know if any other case is pending against Amrik Singh of P.S. Patran or not. I never appeared against Amrik Singh in any other case.”

20. The relevant extract from cross-examination of PW-7 – Head Constable Surjit Singh is reproduced hereinunder:

‘I am not summoned witness in this case. I have no relation with Amrik Singh. I did not conduct any inquiry against Amrik Singh nor appeared as a witness in any case of Amrik Singh. Amrik Singh did not file any application before me. My statement under Section 161 Cr.P.C. was not recorded by the IO. My signatures

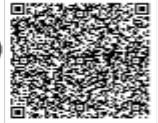


were obtained by the IO in any document in this case. I have not conduct any writing work in this case..... No writing work was done of this case in my presence.”

21. The aforesaid cross-examination of both the witnesses suggest that the said two police officials had no occasion to interact with appellant – Amrik Singh on an earlier occasion so as to be able to identify him and that too during night time.
22. Still further, this Court finds that in the instant case there is non-compliance of Section 42 of the Act inasmuch as it is a case lodged pursuant to receipt of secret information but no intimation in this regard was ever sent to the superior officers as prescribed under law. Section 42 of the Act for the sake of ready reference is reproduced hereinunder:

“42. Power of entry, search, seizure and arrest without warrant or authorisation.—

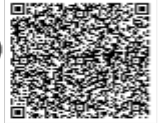
- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general 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.”

23. Though learned State counsel tried to justify the said omission by submitting that in the instant case ‘*ruqa*’ was sent to the police station without any delay, but it is well settled that a ‘*ruqa*’ sent for registration of FIR cannot be treated as an intimation in terms of provisions of Section 42 of the Act. In the present case, neither any information was taken down in writing nor did the Investigating Officer record any such reasons for dispensing with such requirements.
24. This Court does find that it is a case where neither the appellant was arrested at the spot nor is there any sterling kind of evidence to establish his identity so as to convince this Court regarding his involvement. Further, the said fact coupled with non-compliance of Section 42 of the Act surely leaves the case of prosecution bereft of substantial evidence to establish charges framed against the accused. It is well settled that stringent the punishment, higher the standard of proof that is required to hold a person guilty of grave offence.



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25. As a sequel to the discussion made above, we are of the opinion that the impugned judgment cannot sustain and deserves to be set aside. The instant appeal accordingly is accepted. The appellant is acquitted of all the charges framed against him. His bail bonds/surety bonds shall stand discharged.

(GURVINDER SINGH GILL)
JUDGE

16.5.2024

Pankaj

(N. S. SHEKHAWAT)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No