

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-635-DB-2013 (O&M)

Reserved on: 18.11.2024

Date of Decision: 21.11.2024

Jagdeep Singh Parmar

.....Appellant

Versus

Intelligence Officer, Directorate of Revenue Intelligence

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. M.S. Virk, Advocate
for the appellant.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

Mr. Rajesh Sethi, Senior Standing Counsel and
Mr. Anshuman Sethi, Advocate for the respondent.

SURESHWAR THAKUR, J.

1. The appeal (supra) is directed against the impugned verdict, as made on 03.06.2013, upon Session Case No.65 of 2011, by the learned Special Court, Amritsar, wherethrough in respect of charges drawn against the accused for offences punishable under Sections 21, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”), the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

Offence under section	Sentence awarded	Amount of fine imposed	Sentence in default of payment of fine
21 of NDPS Act	R.I. for a period of Twenty years	Rs. 2,00,000/-	R.I for a period of two years.
23 of NDPS Act	R.I. for a period of Twenty years	Rs. 2,00,000/-	R.I for a period of two years.
29 of NDPS Act	R.I. for a period of Twenty years	Rs. 2,00,000/-	R.I for a period of two years.

2. The period of detention undergone by the convict, during the investigation, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment.

3. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeal.

Factual Background and Investigation proceedings

4. The genesis of the prosecution case, becomes embodied in the appeal complaint, to which Ex.P24 is assigned. The narrations carried in Ex.P24, are that on 19.10.2010, specific intelligence was received at about 1600 hours from a reliable source that a passenger named Jagdip Singh Parmar would be boarding the Air India flight No.AI187 for journey to Toronto on 20.10.2010 from Raja Sansi International Airport, Amritsar and would be carrying narcotic drugs concealed in two attachie cases and the same was reduced into writing and submitted before senior intelligence officer. On 20.10.2010 at about 12.30 a.m. we proceeded to Raja Sansi airport in govt vehicle and then we kept surveillance at Raja Sansi

international airport, Amritsar and intercepted Jagdip Singh Parmar at about

5.00 a.m. when he was collecting his documents from the Air India Authorities, Amritsar after handing over his baggage to them who affixed tags on the attache cases and issued boarding pass No.151. Two independent witnesses Gulshan Kumar and Raju were joined from the departure hall of the airport and in their presence, he was asked to reveal his identity which he revealed as Jagdip Singh Parmar son of Daljit Singh resident of Red Stone 7713, Antario and the DRI Officers revealed their identity to him. Jagdip Singh Parmar was asked whether he was carrying any contraband or narcotic in his person or in his luggage to which he reluctantly admitted that he was carrying narcotic in his luggage. Then, in the presence of above referred witnesses, he identified his luggage and escorted to Customs Office situated in the arrival hall of Raja Sansi international airport along with Jagdip Singh Parmar. Then, DRI officers gave notice under section 50 of NDPS Act and intimated his legal right to be searched before a gazetted officer or a Magistrate and further enquired whether he wanted to be searched before a gazetted officer or a Magistrate and also intimated that Sh. Ramesh Sharma who is also present was a gazetted officer and Senior Intelligence Officer of DRI office and the accused gave his consent in writing in his own hand on the notice under section 50 that his search as well as search of his luggage in the presence of Sh. Ramesh Sharma. During personal search of Jagdip Singh Parmar which was conducted in the presence of abovesaid witnesses, some documents/items were recovered as given in Annexure A to panchnama and the personal search contains electronic ticket containing two tags AI 478324 and AI 478325, boarding card, passport and another expiry passport, Nokia mobile phone, airtel sim card, permanent residence card and driving license. Both the bags recovered

from the possession of accused tallied with the tags of the two attachie cases. Thereafter, search of the hand bag of accused was conducted in the presence of said witnesses and Sh. Ramesh Sharma, Senior Intelligence Officer and nothing incriminating was recovered except wearing apparels and on examination of both the attachie cases which were found to contain clothes and after taking of clothes from both the attachie cases, it was found that the rear side of both the attachie cases was bulging towards inside and it was found that the cavities have been created in them by making a false side in each of attachie case with ply board and foam and carbon paper pasted on the inner side of cavities and after opening cavities, two attachie cases were found to contain two polythene packets each had been sealed with khakhi adhesive tape. These polythene packets contained off white light brown coloured granule/powder which gave a pungent smell on opening and the DRI officers torn open each of the four polythene packets and the contents were tested with drug testing kit which gave positive for heroin and then marked all the four polythene packets A, B, C, D and the contents were weighed one by one and the net weight of packets marked as A, B recovered from black attachie on each tag No. 478324 was affixed was ascertained to be 2.921 Kg and net weight of blue attachie from each packets marked as C,D on which tag No. 478325 was affixed was ascertained to be 2.879 kg and the total weight of four packets was 5.800 kg of heroin and were taken into possession under section 42 of NDPS Act. Packing material and two attachie cases polythene packets which were marked as A, B, C, D were also seized being used for concealment, packing and transportation of the seized heroin and the documents given in Annexure A to Panchnama were resumed for further investigation along with handbag and contents were taken into

custody for further investigation.

5. The items and documents given in annexure A to Panchnama which were resumed for further investigation are electronic ticket containing two baggage tags 478324, 478325, boarding card, passport, expiry passport, Nokia mobile phone and sim card, permanent residence card, driving license. Hand bag along with its contents were taken in custody for further investigation. Two representative samples of 5 grams each were drawn from the four packets containing off white powder/granules in all 8 representative samples were taken out from four packets and were packed and sealed with seal of Directorate of Revenue Intelligence, Amritsar over the slip. All the four packets containing heroin were put in polythene bags which were arranged from airport and the original polythene bags from which the heroin was recovered was secured with the tape and were marked as A, B, C, D and each of the four polythene bags after taking out samples were further placed in the white cloth bags which were stitched and sealed separately with the same seal in the same manner bearing signatures on the paper slip as aforesaid. The four polythene bags and original packing material was placed in the small trunk which was then locked and further wrapped in white cloth and were sealed with the same seal in the same manner over the paper slip bearing signatures as aforesaid. The clothes found in the attachie case were put again in the same attachie and tied with string and sealed with same seal in the same manner over the paper slip as aforesaid and the hand bag was also sealed with the same seal in the same manner as aforesaid. All the recovered goods were taken into possession vide panchnama cum recovery memo dated 20.10.2010 and the same was read over who signed the same after admitting contents to be correct and it also bears my signatures, Sh.

Ramesh Sharma, SIO and signed by aforesaid panchas and accused also signed in token of having received the copy of panchnama dated 20.10.2010. Statement of accused Jagdip Singh Parmar was recorded under section 67 of the Act admitting the mode of recovery, factum of recovery and before recording his statement caution was given to him that his statement so recorded can be used against him in any Court of law and he made statement without any coercion, duress, influence or promise before me, written by accused in his own hands and accused further admitted that he was a truck driver in Canada and he was short of money as he was getting very less tours and he met Gurwinder Singh in Canada and Gurwinder Singh suggested that he can earn more money by bringing heroin from India and further suggested that there are no chances of being caught as the heroin will be well concealed and further admitted that he was ready and would pay him 15000 Canadian dollars along with return ticket and expenses incurred in India and he was paid 14000 Canadian dollars for the return tickets and he reached Amritsar Airport in the morning of 7.10.2010 and a person named Sony contacted him at Airport who had arranged and booked a hotel Teramount at Jalandhar where room No.208 was already booked for him and he checked in on 7.10.2010 in the said hotel and the same person Sony handed over two attachie cases to him on 19.10.2010 and Gurwinder Singh has told him on telephone given by Sony to him contains heroin in the false cavity of the attachie cases. All the 12 pages were scribed by the accused in his owns hand. Arrest memo of the accused was prepared. Grounds of arrest and seizure were given to the accused.

6. Accordingly the samples were deposited in the Central Revenue Control Laboratory, New Delhi, on 26.10.2010 by Swaran Singh Hawaldar.

On receipt of the reports from Chemical Examiner, Central Revenue Control Laboratory, New Delhi, and on completion of all other investigations and necessary formalities, the department filed the complaint.

7. On presentation of the complaint, copies of the documents relied upon by the prosecution were supplied to the accused. After being *prima facie* satisfied of the allegations, the learned Judge, Special Court Judge, Amritsar, framed the charges against the accused under Sections 21 and 29 of the Act, on 20.5.2011, to which the accused pleaded not guilty and claimed trial. Thereafter, charge was amended and fresh charge against the accused was framed, on 16.1.2013 under Sections 21, 23 and 29 of the Act.

Trial Proceedings

8. The learned trial Judge concerned, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for offences punishable under Sections 21, 23 and 29 of the Act. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined five witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. However, the accused lead himself as DW-1 in defence evidence.

10. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

11. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

s12. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Analysis of the case

13. Through recovery memo Ex.P8, the recovery of the contraband became allegedly recovered from the attache concerned. In proof of the prosecution case, R.K. Saini, Intelligence Officer, stepped into the witness box as PW-3, and, in his examination-in-chief, he made speakings therein, which concur with the contents of the appeal complaint, to which Ex.P24 is assigned. However, only the unexamined bulk became produced. The production of the unexamined bulk does not prove the charge as only upon the examination of the stuff inside the said produced parcel, thus the charge would become proven.

14. The prosecution though has been able to lead cogent evidence, in proof of the recovery of the seizure, thus being effected from the attache which was in possession of the present appellant, and, the same thus being

sealed with the relevant seal impressions. Moreover, though the prosecution has also been able to cogently establish, that the sealed cloth parcels, became deposited in the malkhana concerned. In addition, though the prosecution has been able to establish, that the case property travelled in an untampered condition to the FSL concerned.

15. A reading of the report (Ex.P23), as made by the FSL concerned, whereto the relevant seizure became sent for an examination being made of the stuff inside the sealed cloth parcels, though reveals, that the examined stuff inside the sealed cloth parcels, as became sent to it for examination, thus being heroin. The said report is *ad verbatim* extracted hereinafter.

“x x x x

REPORT: (Report is admission under section 293 Cr.P.C. 1973)

Each of the four samples is in the form of cream coloured soft lumps. On the basis of chemical and chromatographic examinations, it is concluded that each of the four sample under reference answers positive test for Diacetylmorphine (Heroin). The contents of Diacetylmorphine (Heroin) & Gross weights of remnant samples, returned herewith are as under:-

CLD No.	Marked as	% Diacetylmorphine (Heroin)	Gross weight of remnant sample with plastic pouch
282(N)	A-1	40.7	4.1gm
283(N)	B-1	43.7	4.1gm
284(N)	C-1	58.7	4.0gm
285(N)	D-1	47.7	4.1gm

Facsimile of seal “CENTRAL REVENUES CONTROL LABORATORY GOVT OF INDIA 2” affixed on sealed remnant samples is as under- ”

16. Be that as it may, though a reading of the report (supra) of the

FSL also discloses, that the sealed cloth parcels, became received there,

hence with the seal impressions thereons being intact. However, the chemical examiner at the FSL concerned, after making examinations of the stuff inside the sealed cloth parcels, and, thereafter his drawing the report (supra), though mentions in the report Ex.P23, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

17. The above was required to be mandatorily done and though was done, as, thereupon the imperatively required to be proven, thus unbroken links (supra) in the chain of incriminatory evidence, commencing from the seizure being made from the offending attache, through recovery memo Ex.P8, and, lasting upto the production of the examined case property in Court, but becomes convincingly proven, thus to remain unsnapped or unbroken. Moreover, *prima facie* in the above event alone the charge drawn against the accused may be concluded to become cogently established. However, as above stated, though the chemical examiner concerned, after making examination(s) of the stuff inside, the sealed cloth parcels, thus re-enclosed the examined stuff inside the cloth parcels, and, also though he further embossed thereons, rather the seals of the FSL concerned.

18. Be that as it may, subsequently the examined stuff was required to be returned to the office wherefrom it travelled to the FSL concerned, whereafter it was required to be both produced in Court, and, also was also required to be then shown to the prosecution witnesses concerned.

19. Since this Court while answering the substantial question of law sent to the larger Bench of this Court, in case No. **CRA-S-5190-SB-2015** **titled as “Deepak Kumar V. State of Punjab”**, thus has therein expostulated that; a) There being an imperative necessity of testings being

made of the stuff inside the sample parcels. b) The inventory as becomes prepared in the presence of Magistrate concerned, in terms of Section 52A of the Act, but without testings of the stuff enclosed in the sample parcels, thus being made at the laboratory concerned, rather *per se* not acquiring the utmost evidentiary vigor.

20. *Conspicuously, the hereinabove extracted respective standing order and notification become declared by a judgment rendered by the Hon'ble Apex Court in case titled as **"Noor Aga V. State of Punjab and another" Criminal Appeal No.1034 of 2008, decided on 09.07.2008**, to be holding a mandatory character and also become ordained therein to be requiring completest adherence. Contrarily on breach thereof becoming made, therebys may be the accused would become entitled to an acquittal.*

21. *Furthermore, in case the entire bulk is homogeneously mixed and derivative samples are derived therefroms, resultantly the effect thereof would be that, the incriminatory finding as become recorded on the stuff inside the sample parcels as sent to the laboratory concerned, thus would acquire a presumption of truth, irrespective of the fact that the entire bulk wherefrom the derivative samples are borrowed, but after the entire seizure becoming homogeneously mixed, rather not becoming sent for analyses thereovers, being made at the laboratory concerned. Contrarily, in case the entire bulk seizure remains not homogeneously mixed, thereupon the charge drawn against the accused appertaining to the weight of the entire weight of the seizure, de hors affirmative results being made in respect of the stuff inside the residue sample parcels, as, sent to the laboratory concerned, rather would come under a cloud of doubt, whereupon benefit thereof would accrue to the accused.*

22. *As an illustration, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as*

per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity, but proper procedure has to be followed, without which the results would be negative.

23. *Reiteratedly, in case, the derivative samples from the bulk are drawn but without the entire bulk seizure becoming homogeneously mixed, thereupon the laboratory examination of the stuff inside the sample cloth parcels rather would not prove the charge relating to the weight of the entire bulk seizure taking place, at the crime site, thus from the alleged conscious and exclusive possession of the accused.*

24. *Contrarily, in case the entire bulk seizure is not homogeneously mixed or when the narcotic drug(s) or psychotropic substance, does become carried in different vials or in different packets, besides upon the said mode(s) of carryings of (supra), becomes not homogeneously mixed, thereupons, even if a fragment or a portion thereof becomes extracted from one vial or only from one packet, thus for creating a residue parcel, it would beget the ill consequence of the accused becoming entitled to an acquittal. Resultantly, when despite the evident absence of apposite homogeneous mixings of the entire bulk, taking place be it borne in packets, containers or be it being carried in different vials, besides when only a part or the fragment or portion of the seizure or only one or two of the vials, becoming extracted from the bulk, yet the said extracted fragment when becomes sent for examination to the laboratory concerned, but the apposite affirmative laboratory examination as becomes made vis-a-vis the stuff inside the sample parcels, rather would not make the charge drawn against the accused, thus for his allegedly exclusively and consciously possessing, the entire seizure, thus also becoming efficaciously proven.*

25. *Conspicuously when for the drawing of an effective conclusion, that the charge drawn against the accused qua his allegedly consciously and exclusively possessing, the entire bulk, but requires that only after homogeneous mixing of the bulk seizure, taking place, be it of psychotropic substance, in vials or in any other mode or be it with respect of narcotic drugs carried in whatsoever mode, rather residues therefroms becoming drawn, whereafter an affirmative finding on the stuff inside the residues, is required to be*

made by the Chemical Examiner concerned.”

20. Moreover, when evidently in the instant case, there is no mentioning of takings place of homogeneous mixing of the entire bulk seized from the offending bulk, before taking sample parcels therefrom, hence the charge drawn against the accused appertaining to the weight of the entire seizure, *de hors* affirmative results being made in respect of the stuff inside the residue sample parcels, as, sent to the laboratory concerned, thus is not cogently proved.

21. Moreover, in paragraph 35 of the judgment rendered by the Hon'ble Apex Court in **“Noor Aga V. State of Punjab and another” Criminal Appeal No.1034 of 2008, decided on 09.07.2008**, paragraph whereof becomes extracted hereinafter, thus become spelt the imperative *sine qua non*, rather requiring to become cogently proven hence for therebys the charge drawn against the accused becoming declared to become unflinchingly proven. However, since after the examination(s) being made of the stuff inside the sample parcels, thus by the FSL concerned, rather the latter though did re-enclose them in the sealed cloth parcels, besides also embossed thereons the seal of the FSL concerned. However, when the examined sample parcel(s) never became returned to the office wherefrom they generated nor when they became produced in Court rather for the examined samples being then shown to the prosecution witnesses concerned.

“35. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. Even for the said purpose the retracted confession on the part of the accused could not have been taken recourse to.”

Consequently, the expostulation of law carried in verdict

(supra), remains unsatiated thereby the accused become entitled to an acquittal.

23. Moreover, reiteratedly in terms of the expostulations of law made in “Noor Aga V. State of Punjab and another” Criminal Appeal No.1034 of 2008, decided on 09.07.2008, there was also a further requirement that the examined stuff which was re-enclosed in the cloth parcel(s) by the Chemical Analyst and whereons become affixed the seals of the FSL concerned, thus becoming initially returned to the Malkhana concerned, and thereafter becoming produced in Court, for the same becoming then shown to the prosecution witnesses concerned, rather for therebys the charge becoming efficaciously proven. However, in the instant case there is no such evidence.

24. The said view is also supported by a judgment rendered in case titled as “Gaunter Edwin Kircher V. State of Goa, Secretariat Panji, Goa”, Criminal Appeal No.642 of 1991, decided on 16.03.1993, relevant paragraph whereof becomes extracted hereinafter.

“J. Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 52A and 53 – Customs Act, 1962, Section 110(IB) – Physical evidence – Case Property – Recovery of heroin from accused – Case property destroyed and not produced – Physical evidence relating to three samples taken from the bulk amount of heroin were also not produced – Bulk quantity was destroyed the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52A of the Act.”

Final order

25. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow the same. Consequently, both the appeal is allowed. The impugned judgment convicting, and, sentencing

the appellant, and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellant is acquitted of the charge framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

26. Records be sent down forthwith.
27. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)

JUDGE

21.11.2024

Ithlesh

(SUDEEPTI SHARMA)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No