



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3097-SB-2013
RESERVED ON: 01.07.2024
PRONOUNCED ON: 30.09.2024

RAJESH KUMAR AND ANR.
.....APPELLANTS

VERSUS

STATE OF HARYANA AND ANR.
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vaneet Soni, Advocate
for the appellants.

Mr. Chetan Sharma, DAG, Haryana.

Mr. Shalender Mohan, Advocate and
Dr. Purshotam, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J (ORAL)

1. The present appeal has been preferred for setting aside the order dated 19.10.2012 passed by Additional Sessions Judge, wherein the respondent no.2 has been acquitted of charges under section 18 NDPS Act.
2. Facts of the case succinctly stated are that on 29.03.2009, accused made a telephone call to Rajpal Singh SI/SHO, Police Station, Sadar Hansi that one Master Dalbir son of Ram Chander resident of Village Mehanda indulges in sale of Heroine and that some heroine is lying under the pillow at his house and on the basis of this secret information, search was conducted by Rajpal Singh at the house of Dalbir wherein 190gms Opium was recovered

and DDR NO. 44 dated 29.03.2009 was registered. On statement from Dalbir Singh, it was disclosed that the opium recovered has been kept by accused-respondent no.2 who had visited his house 20 minutes ago and on that statement, when verified it was found that the opium in the house of Dalbir had been kept by the accused-respondent and thereafter, FIR bearing no.124 dated 04.04.2009 was registered at Police Station Hansi Sadar.

3. Counsel for the appellant contends that the lower court has erred in acquitting the accused-respondent by ignoring the fact that DDR NO.44, dated 29.03.2009 Ex. P1 was duly registered only on the secret information by the accused-respondent and rather on inquiry by SI Rajpal Singh, it was found that the 190 gms opium recovered from the house of Dalbir was rather kept by the accused-respondent himself. He further contends that the lower court has failed to appreciate the fact that the mobile Nos. 98127-81018, 98121-18005, 94160-77313 belongs to accused-respondent, Dalbir Singh, SI Rajpal Singh respectively.

4. He vehemently argues that the appellant (brother of Dalbir) being prosecution witness has never received the summons as projected by the process server (Annexure A-9) so it was highly improbable for him to come present in the court as stated by the public prosecutor in his statement on 04.02.2010 (Annexure A-12). It is further argued that it is apparently a negligent approach of the state in conducting the investigation in free and impartial manner for which the investigating officer ASI Balbir Singh in the instant case has been charge sheeted on account of conducting the investigation in the instant FIR in negligent manner.

5. On the other hand, the learned state counsel at the very outset contends that the whole case rests upon the statement of Dalbir who has falsely implicated the accused-respondent wherein no other witness has been examined to prove that the accused-respondent had visited the house of Dalbir. No other witness has been produced to corroborate that the accused-respondent had visited the house of Dalbir however it was stated by Dalbir that his brother(appellant) saw the accused-respondent coming to his house but he has not been examined as a prosecution witness.

6. He further contends that the call details of the accused-respondent Ex. P9 and mobile numbers of Dalbir and Rajpal have not been duly proved wherein the appellant has failed to establish that the record has been duly obtained from a service provider/telecom operator.

7. He strenuously argues that no FSL form was prepared at the spot and there is considerable delay in sending the sample to FSL therefore tampering with the sample cannot be ruled out. Further, though accused-respondent and Dalbir were having inimical relations but ASI Rajpal Singh has failed to establish that accused-respondent and Dalbir were having inimical relations over some property which was purchased by Dalbir from the accused-respondent as it is highly improbable that Dalbir who had purchased house from accused-respondent is demanding money from him as by no stretch of imagination, it can be believed that seller owes money to a purchaser.

8. Heard learned counsel for the respective parties at length.

9. The instant appeal has been preferred by the appellant for setting aside the judgment of the lower court wherein the accused-respondent has been acquitted for the offence under section 18 of the NDPS Act.

10. After hearing the respective learned counsels at length and meticulously going through the record in hand, I am of the considered view that the appellant has failed to prove its case beyond reasonable doubt wherein PW8 SI Rajpal Singh, allegedly received a secret information from accused-respondent but no such secret information was reduced into writing in compliance to section 42(2) NDPS Act 1985 which is reproduced herein 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 para-military 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 personal 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.].

11. It is a settled proposition of law that provisions of section 42(2) of the NDPS Act 1985 are mandatory in nature and its non compliance is fatal to the prosecution case as has been held by the Apex Court in **“Rajinder Singh Vs State of Haryana 2011(3) RCR Criminal 856”**.

5. It is therefore clear that the total non-compliance with the provisions sub-section (1) and (2) of Section 42 is impermissible but delayed compliance with a satisfactory explanation for the delay can, however, be countenanced.. We have gone through the evidence of PW-6 Kuldip Singh. He clearly admitted in his cross-examination that he had not prepared any record about the secret information received by him in writing and had not sent any such information to the higher authorities. Likewise, PW-5 DSP Charanjit Singh did not utter a single word about the receipt of any written information from his junior officer Inspector Kuldip Singh. It is, therefore, clear that there has been complete non-compliance with the provisions of Section 42(2) of the Act which vitiates the conviction.

12. Moreover, a perusal of call details of accused-respondent Ex.P9 makes it crystal clear that it is only a printed copy and not an authenticated copy by the concerned telecom operator and has not been certified to be true copy of the original. Even PW7 ASI Balbir Singh has no record as to from where this record has been obtained. Merely stating it to be receiving via e-mail without disclosing the genuineness of the document raises a doubt on the appellant story.

13. As far as inimical relations between appellant and accused-respondent is concerned, it is well settled that enmity is a double sword edged weapon and it is a motive for the crime as well as a cause for false implication

therefore the sole testimony of Dalbir Singh is not sufficient to warrant conviction particularly when other witnesses were available but have not been examined for the reasons best known to him which certainly gives the accused-respondent a benefit of doubt.

14. It is a settled proposition of law that an accused is presumed to be innocent till his guilt is proved beyond reasonable doubt. The same has been discussed by the Apex court in ***“Raghunatha and another Vs The State of Karnataka arising out of SLP(CRIMINAL) NO. 6122 OF 2022”*** wherein it has been held that :-

“8. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court held that it is a primary principle that the accused ‘must be’ and not merely ‘may be’ proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

9. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of

suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.”

15. Keeping in view the afore stated discussion and the settled proposition of law in Raghunatha’s case (supra), this court is of the considered opinion that appellant has failed to prove the guilt of the accused-respondent beyond shadow of reasonable doubt therefore the instant appeal stands dismissed being devoid of merits.

30.09.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>