

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-5330-SB-2015

Date of Decision: 15.02.2024

SAURAV PARTAP @ SOURAV @ SUNNY & ANOTHER

... Appellants

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. P.S. Ahluwalia, Advocate
for the appellants.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been preferred against the impugned judgment/order dated 14.09.2015 passed by the Judge, Special Court, Amritsar.

2. The prosecution story in brief is that on 30.03.2011 a Police Party Headed by Inspector Sukhwinder Singh (now DSP Sukhwinder Singh and examined as PW1) along with other police officials were on patrolling duty and were present at the Bridge Drain Village Guntala. One person was seen coming from the opposite side on foot who on seeing the police became perplexed and tried to turn back. He was apprehended and disclosed his name as Sandeep Kumar @ Bhamari. In the meanwhile, he tried to throw away a polythene bag after taking it out from the right pocket of his Capri but was apprehended. 40 grams of smack was recovered from him. During investigation, Sandeep Kumar @ Bhamari made a disclosure statement that

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he had procured the smack from Saurav Partap @ Sourav @ Sunny (appellant No.1), Surjit Singh (appellant No.2) and Jagir Singh (deceased). Based on the aforementioned recovery, FIR No.35 dated 30.03.2011, under Section 22 of the NDPS Act, Police Station Cantonment, Amritsar came to be registered against Sandeep Kumar @ Bhamari, Saurav Partap @ Sourav @ Sunny, Surjit Singh and Jagir Singh.

Saurav Partap @ Sourav @ Sunny, Surjit Singh and Jagir Singh were arrested. They suffered their respective disclosure statements on the basis of which Saurav Partap @ Sourav @ Sunny got recovered 1 Kg of smack and 500 grams of opium. Surjit Singh got recovered 400 grams of smack and Jagir Singh also got recovered 400 grams of smack. The recoveries from Saurav Partap @ Sourav @ Sunny, Surjit Singh and Jagir Singh led to the registration of an another FIR No.38 dated 02.04.2011 under Sections 18, 22, 61-85 of the NDPS Act, Police Station Cantonment Amritsar.

3. In the Trial emanating out of FIR No.35 dated 30.0.2011, Sandeep Kumar @ Bhamari was convicted vide judgment dated 11.12.2014 by the Court of Judge Special Court, Amritsar. Saurav Partap @ Sourav @ Sunny was acquitted vide judgment dated 04.01.2016. Surjit Singh was declared a proclaimed offender. However, subsequently he came to be arrested and on presentation of the challan and conclusion of the Trial, he was acquitted vide judgment dated 14.09.2016. However, Jagir Singh had died and proceedings qua him stood abated.

4. Meanwhile, as has already been mentioned above, pursuant to the recoveries effected from Saurav Partap @ Sourav @ Sunny, Surjit Singh and Jagir Singh, FIR No.38 dated 02.04.2011 was registered. The report

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under Section 173(2) Cr.P.C. was presented and on conclusion of the Trial, Saurav Partap @ Sourav @ Sunny and Surjit Singh (appellants herein) came to be convicted vide judgment dated 14.09.2015 passed by the Judge Special Court, Amritsar. Proceedings qua Jagir Singh who had died were abated vide order dated 23.02.2012.

5. The aforementioned judgment of conviction is under challenge in the present appeal.

6. The learned counsel for the appellants contends that the registration of the present FIR No.38 dated 02.04.2011 under Sections 18, 22, 61-85 of the NDPS Act, Police Station Cantonment Amritsar itself is illegal. As per the prosecution case, Inspector Sukhwinder Singh had initially arrested Sandeep Kumar @ Bhamari with contraband. It was he who had named the present appellants along with Jagir Singh (deceased) as having supplied the contraband to him. Based on the said disclosure statement, the appellants and their co-accused came to be arrested in FIR No.35 dated 30.03.2011, under Section 22 of the NDPS Act, Police Station Cantonment, Amritsar. They suffered their disclosure statements leading to the recovery of contraband and a registration of subsequent FIR No.38 dated 02.04.2011. Once the appellants had already been arrested pursuant to the disclosure statement made in FIR No.35 dated 30.03.2011, the instant FIR No.38 dated 02.04.2011 which has led to the conviction of the appellants could never have been registered, the recovery from the appellants being in furtherance of a disclosure statement suffered during the course of investigation in FIR No.35 dated 30.03.2011. In fact, the disclosure statements made by the appellants and their co-accused were duly proved by Inspector Sukhwinder

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Singh during the course of the Trial in FIR No.35 dated 30.03.2011. Both the appellants already stood acquitted in the Trial pursuant to the said FIR and therefore even the clubbing of both cases and a joint Trial being held was not possible. Therefore, the appellants were liable to be acquitted. Reliance is placed on the judgments in the cases of *Mr. David Johnson Versus State of Goa, 2018 SCC OnLine Bom 948* and *Naresh Kakkar Versus The State of, 1994 SCC OnLine Del 554*.

He further contends that the prosecution story is improbable and unnatural. As per the prosecution version emanating out of FIR No.35 dated 30.03.2011, Sandeep Kumar @ Bhamari was apprehended at the Bridge Drain of Village Gumtala and came to be apprehended when he tried to run away. Strangely, when the appellants were apprehended the recovery from them is shown to have been effected from the same Nala of Village Gumtala as is evident from the site plan of the recovery memo. Moreover PW1-DSP Sukhwinder Singh has admitted that the place of recovery from where both the appellants allegedly got the contraband recovered was less than 10 meters apart. Therefore, the entire version of the recovery has become unnatural and improbable especially when no independent was associated and even the concerned police of P.P. Gumtala Bypass was not informed.

7. On the other hand, the learned State counsel contends that the offence stood established beyond reasonable doubt. The recovery of contraband had been effected from the appellants in accordance with law. All the mandatory provisions of the Act regarding search and seizure had been complied with. Merely because the accused had been acquitted in the Trial emanating out of FIR No.35 dated 30.03.2011 did not mean that they were to

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be acquitted in the present case as well. In fact, the subsequent FIR No.38 dated 02.04.2011 was maintainable as the recovery had been effected in the said FIR. He, therefore contends that the instant appeal was liable to be dismissed.

8. I have heard the learned counsel for the parties.

9. Before proceeding further in the matter, it would be apposite to refer to the provisions of Sections 220 Cr.P.C and 223 and the same read as under:-

220. Trial for more than one offence. (1) *If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.*

(2) *When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of Section 212 or in sub-section (1) of Section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.*

(3) *If the facts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.*

(4) *If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.*

(5) Nothing contained in this section shall affect Section 71 of the Indian Penal Code (45 of 1860).

223. What persons may be charged jointly.- *The following persons may be charged and tried together, namely:-*

- (a) persons accused of the same offence committed in the course of the same transaction;*
- (b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;*
- (c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;*
- (d) persons accused of different offences committed in the course of the same transaction;*
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;*
- (f) persons accused of offences under section 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;*
- (g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges;*

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of

the categories specified in this section, the [Magistrate or Court of Session] may, if such persons by an application in writing, so desire, and [if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

10. In the case of **Mr. David Johnson** (supra), an FIR was registered under the NDPS Act. The petitioner and other accused were arrested and recovery of contraband was effected from them. While in custody, the petitioner/accused disclosed the concealment of some other narcotic substance else where. Another raid was conducted and more contraband and certain other articles and cash came to be recovered. Therefore, the second FIR came to be registered. While quashing the second FIR, the Court ordered the clubbing of both chargesheet so that the accused face one single composite Trial. The relevant extract of the said judgment is as under:-

16. A perusal of the complaint lodged by the respondent no.2 on behalf of the State reveals that he registered the crime no.9/2017 under Sections 22(c) and 29 of the NDPS, Act, 1985 with the Anti Narcotic Cell Police Station against the petitioner and one more accused who were found in possession of contraband drugs. It further reveals that during the custodial interrogation qua the petitioner on 23.3.2017 at 16.30 hours, he disclosed that he had concealed narcotic drugs in a locker of his cupboard in his rented house owned by one Shri Victor D'Souza at Gavwadi, Anjuna, Bardez, Goa and that he had concealed the key to the lock of the house and cupboard locker under the stone on the left side of his house. The information was reduced into writing and subsequently the respondent no.2, after obtaining authorisation/permission from the DYSP Anti

Narcotic Cell, conducted a raid in the presence of panchas and found the contraband as stated herein above.

17. In view of the ratio laid down by the Supreme Court in case of Babubhai (supra) what is required to be found out as to whether both the FIRs' relates to the same occurrence or are in regard to incidents which are two or more parts of the same transaction. If answer is affirmative, the second FIR is liable to be quashed. However, where the version in second FIR is different and they are in respect of two different incidents/crimes then the second FIR is permissible and investigation in both FIRs has to be conducted. It is clear from the complaint as well as from the record that during the custodial interrogation in crime no.9/2017 the petitioner is alleged to have disclosed the concealment of narcotic drugs in his rented house which is owned by one Victor D'Souza at Gavwadi, Anjuna, Bardez Goa which necessarily means that the subsequent offence is nothing but the occurrence giving rise to more than one cognizable offence committed in the course of same transaction and therefore, the subsequent FIR is liable to be quashed.

18. It is not the case of the prosecution that pursuant to an information from a third source or from some independent person it had conducted subsequent raid. Moreover, contrabands in both cases were found from the possession of the petitioner as per Section 22 of the NDPS Act in the course of same transaction. It is neither the case of the prosecution that the petitioner was selling, purchasing, transporting, importing inter-State contrabands. As such, in view of the peculiar fact of this case the ratio in case of Babhubai (supra) will have to be made applicable.

19. After examining the facts and circumstances of the case giving rise to both the FIRs and after applying the test of sameness, it is clear that both the FIRs relating to the incidents which are two in numbers but arising out of same

transaction. By no stretch of imagination it can be said to be an altogether distinct and different offence committed at different point of time as what transpired is that the petitioner was already in possession of another set of contraband at his rented house which he alleged to have disclosed during custodial interrogation within a day or two of his arrest.

20. It is pertinent to note that the respondent no.2 himself is the first informant in FIR No.9/2017 and is the Investigating Officer in both the FIRs.

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22. Thus, it can be seen that the impugned FIR no.11/2017 registered with the Anti Narcotic Cell Police Station Goa relates to an incident which is a part of the same transaction and, therefore, it needs to be quashed and set aside.

23. In view of the aforesaid settled principles of law as well as the ratio laid down by the Supreme Court in the case of Babubhai (supra), the impugned FIR no.11/2017 is hereby quashed and set aside which is registered with the Anti Narcotic Cell Police Station, Panaji. However, it is made clear that in view of Section 220(1) of the Code, the learned Special Judge is directed to club both the charge-sheets together and the petitioner is directed to face a single composite trial. Needless to say that we have not gone into the merits of the case.

(emphasis supplied)

11. In **Naresh Kumar Kakkar** (supra), on the basis of recovery of contraband, an FIR was registered. On the arrest of the accused, he suffered a disclosure statement leading to additional recovery and a subsequent FIR. The Court ordered the clubbing of charges and a single composite Trial. The relevant extract of the said judgment is as under:-

2. Sub Inspector Prithvipal Singh of Police Station, Chandni Mahal received a secret information that a person named Bhajan Singh was distributing Heroin through his agents. The information was passed on to the concerned S.H.O. by Prithvipal Singh, Sub Inspector. A raiding party was formed joining Police Officials and two persons from the public. The police vehicles were left at police post Turkman Gate and the raiding party was left to Chowk Ghaday Wailan near DDA Park. At about 1:15 P.M. the said Sub Inspector and Head Constable Ram Diya apprehended the petitioner who was allegedly carrying a green coloured attachi case was going on foot towards bazar Chitli Kabar. From that attachi case 10 packets of polythene bags wrapped in a white towel containing Heroin were recovered.

3. The police arrested the petitioner and thereafter the petitioner made a disclosure statement to the effect that he had kept 2 Kgs. of Heroin out of total quantity of 12 Kgs. in his house which was given to him by co-accused Pinki Gulzar at 9:30 A.M. on 15.3.1988 and he further mentioned in his statement that he could get that packet recovered from his house. The petitioner opened the lock of his house with the keys which he allegedly took from underneath a flower-pot in front of his house and then from a store inside the bed-room of the house he allegedly produced a packet of polythene paper which contained the 2 Kgs. of Heroin. S.H.O. S. K. Ahuja of Police station Rajinder Nagar also reached there alongwith his police staff. A separate case was registered against the petitioner for this alleged recovery at Police Station Rajinder Nagar vide F.I.R. 37/88 and separate challan was filed at Police Station, Rajinder Nagar, Delhi.

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13. When the law declared in various judgment is applied to the facts and circumstances of this case, the conclusion

becomes irresistible. The second recovery of Heroin from Rajinder Nagar was part of the same transaction. The second recovery was effective on the basis of the disclosure statement of the accused, therefore, in the facts and circumstances of this case and in the interest of justice, I direct that both the charges be clubbed together and consequently the petitioner is directed to face a single composite trial before the Court of learned Additional Sessions Judge.

(emphasis supplied)

12. In the instant case, apparently, FIR No.35 dated 30.03.2011 was registered when Sandeep Kumar @ Bhamari came to be arrested with 40 grams of smack. He suffered his disclosure statement naming the appellants and their co-accused. The three were arrested, suffered their disclosure statements and got recovered contraband leading to the registration of the FIR No.38 dated 02.04.2011. The registration of the subsequent FIR is completely contrary to the settled proposition of law. Quite clearly, the disclosure statements suffered by the appellants and their co-accused were in FIR No.35 dated 30.03.2011. The series of acts beginning with the recovery from Sandeep Kumar @ Bhamari and ending with the recoveries from the appellants and their co-accused formed a part of the same transaction. In fact, the disclosure statements made by the appellants and their co-accused were exhibited in the Trial emanating out of FIR No.35 dated 30.03.2011. In the said Trial, the appellants stand acquitted. Therefore, a joint/composite Trial of FIR No.35 dated 30.03.2011 and FIR No.38 dated 02.04.2011 is also not possible at this stage. Further, the prosecution version is inherently improbable. The arrest and the subsequent recovery from Sandeep Kumar @

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Bhamari took place near the drain of Village Guntala. He named the appellants who were arrested and the recoveries from them are also from near the drain of Village Guntala. This makes the prosecution case doubtful, unnatural and improbable to say the least more so when no independent witness was associated with the recovery and the local police was not informed.

13. In view of the aforementioned discussion, I find considerable merit in the arguments of the learned counsel for the appellants and therefore, the judgment of conviction and order of sentence dated 14.09.2015 passed by the Judge, Special Court, Amritsar is set aside and the appellants are acquitted of the charges framed against them.

(JASJIT SINGH BEDI)
JUDGE

15.02.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No