



In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-160-2019 (O&M)
Reserved on: 26.04.2024
Date of Decision: 27.5.2024

Sabh DeenAppellant

Versus

Intelligence Officer, Narcotics Control Bureau,Respondent
Amritsar

2. CRA-D-179-2019 (O&M)

Abhilash KumarAppellant

Versus

Intelligence Officer, Narcotics Control Bureau,Respondent
Amritsar

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by: Mr. R.P.Dhir, Advocate and
Ms. Simsi Dhir Malhotra, Advocate
for the appellants (in both appeals).

Ms. Gurmeet Kaur Gill, Senior Panel Counsel
for the respondent-NCB (in CRA-D-160-2019).

Mr. Rajiv Sharma, Advocate
for the respondent-NCB (in CRA-D-179-2019)

SURESHWAR THAKUR, J.

1. Since both the appeals (supra) arise from a common verdict, made by the learned trial Judge concerned, hence both are amenable for a common verdict being made thereons.

2. Both the appeals (supra) are directed against the verdict made on 11.1.2019, upon case bearing filing No. 3594 dated 3.5.2017, by the learned Judge, Special Court, Amritsar, wherethrough he convicted both the accused-appellants for the charges drawn *qua* an offences punishable under

Sections 20(c), 27-A and 29 of the Narcotic Drugs and Psychotropic



Substances Act (hereinafter referred to as “the Act”). Moreover, through a sentencing order of even date, the learned trial Judge concerned, sentenced the convicts-appellants to undergo rigorous imprisonment for a period of fourteen years under Section 20(c) of the Act, and, also imposed, upon the accused-appellants, the sentence of fine, as comprised in a sum of Rs. One lac each, besides in default of payment of fine amount, he sentenced the accused-appellants to undergo rigorous imprisonment for a period of one year. Moreover, the learned convicting Court also sentenced the accused-appellants to undergo rigorous imprisonment for a period of ten years under Section 27-A of the Act, and, also imposed, upon the accused-appellants, the sentence of fine, as comprised in a sum of Rs. One lac each, besides in default of payment of fine amount, he sentenced the accused-appellants to undergo rigorous imprisonment for a period of one year. In addition, the learned trial Court also sentenced the convicts-appellants to undergo rigorous imprisonment for a period of fourteen years under Section 29 of the Act, and, also imposed, upon the accused-appellants, the sentence of fine, as comprised in a sum of Rs. One lac each, besides in default of payment of fine amount, he sentenced the accused-appellants to undergo rigorous imprisonment for a period of one year.

3. All the above imposed sentences of imprisonment, were ordered to run concurrently. However, the period of detention undergone by the convicts-appellants, during the investigations, 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. The drug money of Rs. 1,98,000/- was ordered to be forfeited to the State of Punjab.



4. Both the convicts-appellants become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeals, before this Court.

Factual Background

5. The genesis of the prosecution case are that, on 11.11.2016, at 20.00 hours, an information was received by Intelligence Officer Sujit Kumar from a reliable source that one person namely Sabh Deen, aged about 35 years will be delivering a huge consignment of Charas to one elderly person, aged about 60 years, near FCI Godown, Vallah Mandi, Amritsar. The transaction will take place between 7:00-9:00 hours on 12.11.2016 inside a white Maruti Alto 800 Car bearing registration No. HP-01-C-1212. The information was reduced into writing, and, submitted before Sachin Gularya, Superintendent, NCB, Amritsar, who contacted Zonal Director on phone, who directed to constitute a team to apprehend the culprits and seize the contraband. Accordingly, Superintendent Sachin Gularya constituted a team consisting of Intelligence Officer Sujit Kumar, Intelligence Officer Raj Kumar, Intelligence Officer Vinay Singh, Intelligence Officer Arnab Chakaraborty, Driver Mohan Singh and Sepoy Narsingh Ram and led by Superintendent Sachin Gularya for taking necessary action as per law. Superintendent Kuldeep Sharma, NCB Chandigarh, Intelligence Officer Avdesh Kumar, Surveillance Assistant Gurpreet, Surveillance Assistant Rajan Kumar, from NCB Chandigarh and Superintendent Sushil Kumar



Amritsar were also requested on telephone to join the operation, and, they also accompanied the above mentioned team for this operation. At about 06:00 hours on 12.11.2016, above mentioned team reached near FCI Godown, Vallah Mandi, Amritsar and Intelligence Officer Sujit Kumar requested some persons, who were passing by from that place to witness the further operation proceedings but nobody got ready to act as a witness. Then the above mentioned team mounted surveillance in that area. After some time NCB team noticed that a white Alto Car bearing registration No.HP-01-C-1212 stopped near FCI Godown. After waiting for some time, an elderly person was spotted, who entered into the said Car which was parked nearby FCI Godown. The person sitting on the driver seat on the said Car, and, the elderly person started discussing. The elderly person got into Car, and, gave some money to the person sitting on the driver seat, and the said person came out of the Car, and, pulled out a bag from the dicky of the Car and handed it over to elderly person. The team immediately cordoned the said Car, and, on enquiry it was found that elderly person is named Abhilash Kumar son of Harbans Lal, resident of Katra Dulu, Lambi Gali, House No.2573/9, Lohgarh, Amritsar, and, the person sitting on the driver seat is Sabh Deen son of Ramjan, resident of Village Tatrog, Post Office Khushnagi, Tehsil Churah, Chamba HP. After that Intelligence Officer Sujit Kumar introduced himself by showing his official identity card, and, told them that he has information regarding their involvement in Charas smuggling. After persistent questioning Sabh Deen having admitted that he had more Charas concealed in the bag in the dicky of the Car, which he brought from Chamba, Himachal Pradesh in the said Car for delivering the same to Abhilash Kumar. Then Intelligence Officer Sujit Kumar informed



them about provisions of Section 50 of the Act, and, both were informed about their legal right to be searched before Magistrate or Gazetted Officer. He also informed that Superintendent Sachin Gularya is also a Gazetted Officer present in the team. Sabh Deen and Abhilash Kumar agreed to gave their personal search before Superintendent Sachin Gularya. During personal search of Sabh Deen Rs.1,98,000/- were recovered from his pocket. Abhilash Kumar was carrying one green colour plastic bag, on which ANKUR SEED NO.1 IN PEAS SEED was written. One bag was also recovered from the dicky of white Alto Car No.HP-01-C-1212, which was opened and found to be containing cylindrical, disc and circular shaped black resinous substance in plastic polythene. A small quantity of above mentioned black resinous substances was taken out from the bags and tested with the help of Drug Detection Kit, substance was tested positive for Charas. In the same way another bag, which was carried by Abhilash Kumar was opened and was found to be containing cylindrical, disc and circular shaped black resinous substance in plastic polythene. Small quantity of black resinous substances was taken out from this bag and tested with the help of Drug Detection Kit, substance from this bag was also tested positive for charas. Both bags containing charas, Rs.1,98,000/- and white Alto Car No. HP-01C- 1212 were seized by NCB team. Charas from both bags were weighed separately and found to be 05-05 kg, respectively. Both the said bags were heat sealed in separate polythenes and were kept in separate markin cloth bags, which were tied with thread and Intelligence Officer Sujit Kumar sealed both cloth bags with one each seal of "NARCOTICS CONTROL BUREAU CHANDIGARH (2)" and the same were marked as Lot-A and Lot-B, respectively. Rs.1,98,000/- recovered from Sabh Deen



were also heat sealed in plastic polythene and kept in markin cloth bag, which was stitched with thread, and, the Intelligence Officer Sujit Kumar put two seals of "NARCOTICS CONTROL BUREAU CHANDIGARH (2)" on the said bag, which was marked as Lot-C. Recovery cum seizure memo and Panchnama were prepared on the spot. Then Sabh Deen, Abhilash Kumar, Intelligence Officer Sujit Kumar, Superintendent Sachin Gularya and Inspector Anoop Gairola, CBN, Amritsar put their signatures on Panchnama, recovery cum seizure memo, Lot-A, Lot-B and Lot-C. Both the accused alongwith seized items were taken to NCB, Amritsar office after serving them notices under Section 67 of NDPS Act. Seal, after use, was handed over to competent authority. Sabh Deen tendered his voluntary statement under Section 67 of NDPS Act, 1985 on 12.11.2016 before Intelligence Officer Sujit Kumar, who informed him that statement could be used against him or any other person in any Court of law. Sabh Deen made his statement voluntary, without any duress, coercion, influence or promise, in which he admitted that he brought above mentioned 10 kg Charas from Chamba, Himachal Pradesh for delivering the same to Abhilash Kumar for Rs.1,98,000/-. He admitted the manner, and, factum of recovery of 10 kg Charas and Rs.1,98,000/- from him and Abhilash Kumar. Sabh Deen was placed under arrest on 12.11.2016 at 18:00 hours after recording above statement and he was informed about ground of his arrest and information of his arrest was given telephonically to their relatives. Abhilash Kumar tendered his voluntarily statement under Section 67 of the Act on 12.11.2016 before Intelligence Officer Sujit Kumar, who informed him that statement could be used against him or any other person in any Court of law and he has right to remain silent. Abhilash Kumar made his statement



voluntarily, without any duress, coercion, influence or promise in which he admitted that he used to buy Charas from Sabh Deen and 10 kg charas which was brought by Sabh Deen from Chamba on 12.11.2016 was ordered by him. He also admitted that Rs.1,98,000/- which were recovered from the pocket of Sabh Deen were given by him for purchasing Charas. He admitted the manner and factum of recovery of 10 kg Charas and Rs.1,98,000/- from him and Sabh Deen. Abhilash Kumar was placed under arrest on 12.11.2016 at 17.30 hours after recording his above statement and he was informed about ground of his arrest and information of his arrest was given telephonically to their relatives. Both the accused alongwith case property and case file were produced in the Court concerned.

Trial Court Proceedings

6. On the appearance of the accused-appellants before the learned trial Court concerned, they were charge-sheeted for the commission of offences punishable under Sections 20(c), 23, 29 and 27-A of the said Act, to which they pleaded not guilty and claimed trial. Subsequently after the recordings of the depositions of five witnesses, the learned Special Public Prosecutor closed the complainant's evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, they led two witnesses in their defence evidence.

Reasons for dismissing the instant appeal

7. As unfolded by Ex.P-1 and translation of Ex. P-2, Sujit Kumar, IO, NCB, Amritsar intimated the Superintendent, Narcotics Control Bureau, Amritsar Sub Zonal Unit, Amritsar, that he had learnt from a reliable source



that on 12.11.2016, one person namely Sabh Deen, aged about 35 years of wheatish complexion will be delivering a large consignment of charas to one person, aged about 60 years near FCI Godown, Vallah Mandi, Amritsar. He also detailed therein, that the said transaction will take place between 7.00-9.00 hrs., inside a white Maruti Alto 800 car bearing registration No. HP-01C-1212. Consequently, he thereby requested, that a team be constituted for mounting surveillance in the said area, and, for making seizure of the contraband, if it so becomes recovered.

8. In pursuance to the making of the said correspondence to Sh. Sachin Guleria, Superintendent, NCB, Amritsar, the latter proceeded to constitute an investigating team for the purpose of drawing both search and seizure proceedings. The team, as became so constituted, became comprised of the hereunders (Ex. P-6):

- | | | |
|----|---------------------------------------|----------------------|
| 1. | <i>Sachin Guleria, Superintendent</i> | <i>NCB, Amritsar</i> |
| 2. | <i>Sujit Kumar, Inspector</i> | <i>-do-</i> |
| 3. | <i>Arnav Chakarvarty, Inspector</i> | <i>-do-</i> |
| 4. | <i>Vinay Singh, Inspector</i> | <i>-do-</i> |
| 5. | <i>Raj Kumar, Inspector</i> | <i>-do-</i> |
| 6. | <i>Mohan Singh, Driver</i> | <i>-do-</i> |
| 7. | <i>Nar Singh Ram, Constable</i> | <i>-do-</i> |

9. Furthermore, it is also unfolded by Ex.P-6, that other than the team (supra), the team of Chandigarh Zonal Unit was also present there, members thereof were hereunders:

- | | | |
|----|--------------------------------------|------------------------|
| 1. | <i>Kuldeep Singh, Superintendent</i> | <i>NCB, Chandigarh</i> |
| 2. | <i>Avdesh Kumar, Inspector</i> | <i>NCB, Chandigarh</i> |
| 3. | <i>Gurpreet Singh, S.A.</i> | <i>NCB, Chandigarh</i> |
| 4. | <i>Rajan Kumar Bist, S.A.</i> | <i>NCB, Chandigarh</i> |



10. However, as further disclosed in Ex. P-6, the hereunders also joined the investigating team (supra).

1. *Sushil Kumar Verma, Superintendent, CBN, Amritsar*
2. *Anoop Gairola, Inspector, CBN, Amritsar*

11. The said team arrived at the FSL godown on 12.11.2016, at 6.00 A.M., and, at the relevant crime site, as detailed in the Ex.P-6, the search proceedings became carried.

12. Be that as it may, the recovery as became made, was from the bags, which were kept in the car, bearing registration No. HP-01-C-1212, which was at the relevant time driven by co-accused Sabhdeen, and, became occupied by co-accused Abhilash Kumar. Therefore, the recovery, as became made from the said car, which became occupied by the co-accused, was in pursuance to a prior information, as detailed in Ex. P-1 and in Ex. P-2. The author of the prior information, thus in terms of Section 42 of the Act, provisions whereof become extracted hereinafter, rather made an intimation to his superior officer, whereupons, thus no breach becomes caused to the hereafter extracted provisions. Conspicuously also when the said prior information became reduced into writing.

“[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.] ”

13. The recovery, as became made from the makings of search of the crime bags kept inside the crime car, was so made on 12.11.2016 approximately at 6.00 A.M. Therefore, though the said recovery was made through recovery memo Ex. P-5, from the car bearing registration No. HP-01-C-1212, but for assigning validity to the makings of search of the crime car, therebys evidence was required to surgeforth, thus for proving that (i) at the stated time, it was yet dark, and, also becoming proven that (ii) when the said search was made thus purportedly in the interregnum inter se sunset and sunrise, thereupon, the supervisor of the search team, thus possessing the relevant search warrants/authorization, as became obtained from the competent authority concerned.

14. However, if evidence emerged that despite evidently the search of the crime vehicle becoming made in the interregnum inter se sunset and sunrise, and, that too without search warrants becoming obtained, from the competent authority concerned, thereupon, the search proceedings as well as the consequent thereto recoveries would become legally ineffective. Nonetheless, if within the zone of the ingredients borne in the second proviso to Section 42 of the Act of 1985, the Supervisor of the search



operation recorded valid reasons, that the said authorization or search warrants rather could not be obtained without affording an opportunity for the concealment of evidence, and, for facilitating the escape of the offender. Resultantly, thereupon the Supervisor of the operations becomes empowered to even in the interregnum inter se sunrise and sunset enter into a building, and, enclosed place, but necessarily de hors his possessing the relevant search warrants or authorizations.

15. Be that as it may, at the outset it can be forthrightly stated, that there exists no evidence on record suggestive, that the search, as became conducted of the crime vehicle, and, which resulted in the apposite seizure, becoming effected therefrom, in the manner, as detailed in Annexure P-6, thus became evidently made in the interregnum inter se sunset and sunrise. Consequently, it can thereby be firmly stated, that as such the defence concedes that the relevant search, became not conducted in the interregnum inter se sunset and sunrise, thereby there was no necessity for the Supervisor of the search team to at the relevant time, thus possess either the search warrants or the apposite authorization, as became respectively issued by the competent authority/Court.

16. Conspicuously, the searches were not made from the making of personal searches of each of the accused, therebys there was no requirement for compliance being made to the provisions of Section 50 of the Act, provisions whereof become extracted hereinafter, and, which mandates that in case recovery, is to be effected from the makings of personal searches of the accused, inasmuch as, upon, the accused being suspected to be carrying in the pockets of his/their trousers, and/or in the pockets of his/their pants, or



his/theirs body, the relevant incriminatory contraband, thereby thus necessitating searches thereof being made. Resultantly, thereupon alone there is a dire necessity of a consent memo, thus drawn strictly in terms of Section 50 of the Act becoming served, upon the accused, whereafter upon his validly consenting to the consequent thereto but consented recovery, as becomes ultimately effected on his personal search, thus would become construed to be an effectively made recovery from his personal search in the manner (supra).

“50. Conditions under which search of persons shall be conducted.—

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).

(3) The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under



section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

17. Contrarily, when the recovery of the contraband rather became effected in the manner detailed in the recovery memo Ex. P-5, and, when the said recovery was not effected on the makings of personal searches of both the accused. In sequel, there was no necessity at all, for the investigating officer concerned, to adhere to the statutory mandate enclosed in Section 50 of the Act, nor also the departures, if any, as became made therefrom, rather would invalidate the recovery of the contraband, as became effected from the crime bags kept inside the crime car bearing registration No. HP-01-C-1212.

18. Though, for the reasons (supra), there was no necessity for the compliance being made to the mandate of Section 50 of the Act, but as revealed by Annexure P-3, and, by Annexure P-4, contents whereof are extracted hereinafter, and, annexures whereof became separately addressed to both the accused, thus an intimation as ordained by Section 50 of the Act, but yet became purveyed to both the accused, besides when the said intimation carried in annexures (supra), also becoming signed respectively in English, by accused Sabh Deen, and, by accused Abhilash Verma in Hindi. Resultantly, thereby it appears, that both the accused had even consented to their respective personal searches becoming made by the investigating officer concerned, even though in sequel thereof, no recovery became effected. Therefore, the said made personal searches of both the accused are untainted.



“Annexure P-3

x x x x

Whereas I have a reasonable belief that certain Narcotics Drugs/Psychotropic Substances are in your possession or these have been concealed by you in your baggage/person/residential premises. Therefore, your personal search as well as that of your baggage/residential premises is to be conducted. You have legal right to get the search conducted in the presence of any Magistrate or Gazetted Officer as per Section 50 of NDPS Act.

You are requested to state whether you require the presence of any Magistrate or Gazetted Officer during the above search.

(Sd/ in English)

Date: 12.11.16

Intelligence Officer

Place : Amritsar

*Narcotics Control Bureau,
Amritsar Sub Zone.*

One copy has been received and about this I have been told in Hindi.

(Sd/- in English)

12/11/16

Search conducted before me.

(Sd/- in English)

12/11/16”

“Annexure P-4

x x x x

Whereas I have a reasonable belief that certain Narcotics Drugs/Psychotropic Substances are in your possession or these have been concealed by you in your baggage/person/residential premises. Therefore, your personal search as well as that of your baggage/residential premises is to be conducted. You have legal right to get the search conducted in the presence of any Magistrate or Gazetted Officer as per Section 50 of NDPS Act.



You are requested to state whether you require the presence of any Magistrate or Gazetted Officer during the above search.

(Sd/ in English)

Date: 12.11.16

Intelligence Officer

Place : Amritsar

Narcotics Control Bureau,

Amritsar Sub Zone.

One copy has been received and about this I have been told in Hindi.

(Sd/- in Hindi)

12/11/16

Search conducted before me.

(Sd/- in English)

12/11/16”

19. Consequently, no argument can be raised by the learned counsel for the appellants, that there is infirmity, if any, in the search, as became made of the crime vehicle, wherefrom, as detailed in Annexure P-6, the apposite recovery was effected from the bags kept inside the same.

20. Consequent to the making of the said recoveries, NCB forms (Ex. P-8 and Ex.P-9) were drawn. Moreover, both the accused-appellants Sabhdeen, and, Abhilash Kumar, respectively made their signed statements on the relevant memos, to which respectively Ex. P-10, and, Ex. P-13 are assigned, wherein they confessed their guilt in committing the charged offences. Conspicuously, at the end of both the exhibits, both the accused stated that they recorded their inculpatory statements, as carried in the exhibits (supra), thus without any duress or compulsion becoming exercised upon them. Thereafter, both the accused-appellants Sabhdeen, and, Abhilash Kumar were arrested through arrest memos, to which respectively



said made statements, or may be when even prior thereto the recovery of the contraband became effected through Ex. P-5, but since both the recording of the inculpatory statements, as carried in Ex. P-3 and Ex. P-4, and, also the recording of the statements as carried in Ex. P-10 and Ex. P-13, thus took place simultaneously at the crime site, thereby the effected recoveries, can be stated to be the discovery of the crime fact, from the crime vehicle, which became evidently occupied by both the accused, but in pursuance to their respective signed inculpatory statements. Significantly when no evidence to the contrary has been adduced, rather when the signed confessions of guilt, as made by both the accused, in their respective inculpatory statements, as carried respectively in Ex. P-3 and Ex. P-4, thus for want of any efficacious rebuttal thereto becoming adduced, rather are to be construed to be their respectively made inculpatory disclosure statements, especially when they led to the recovery of the contraband, from the crime vehicle, which became occupied by each of them.

20. Paramountly, reiteratedly thereby when both the accused omitted to lead any evidence whereby the existence of their respective signatures on memos Ex. P-3 and P-4, besides on memos Ex. P-10 and Ex. P-13, became attempted to become efficaciously repelled. Resultantly, thereby the accused are deemed to be proving the contents of the consent memos (supra), besides are deemed to be proving the inculpatory disclosure statements Ex. P-10 and Ex. P-13, irrespective of the fact, that assumingly the said disclosure statements were prepared but subsequent to recovery through Ex. P5, being made from the crime vehicle, especially when during the same transaction or at the crime site, memo Ex. P-3 and Ex. P-4, and,

also the respective inculpatory signed disclosure statements Ex. P-10 and



P-13 became also drawn.

21. After recovery of the contraband being made, the Intelligence Officer concerned, made an application (Ex.P-21) before the JMIC, Amritsar, contents whereof are extracted hereinafter.

“1. That, the officers of Narcotics Control Bureau, Amritsar have seized 10.000 Kg suspected Charas and INR 1,98,000/- (One lakh night eight thousand rupees) on 12.11.2016 from the possession of Sabh Deen, S/o:-Ramjan, R/o:-Vill:-Tatrog, P.O:-Khusnagi, Teh- Churah, Chamba, Himachal Pradesh-176316 and Abhilash Kumar, S/o:- Harbanshlal, R/o:- Katra Dulu, Lambi Gali, H. No. 2573/9, Lohgarh, Amritsar along with a White Alto 800 Car bearing reg. no. HP 01C 1212 near FCI godown, Vallah Mandi, Amritsar.

2. That, the seized contraband is marked as Lot-A (5.000 Kg. suspected charas along packing material), Lot-B (5.000 Kg. suspected charas alongwith packing material) and Lot-C (INR 1,98,000/-) and the White Alto 800 Car bearing registration no. HP 01C 1212. The bulk case properties were sealed with the seal of NARCOTICS CONTROL BUREAU CHANDIGARH (2).

3. That, both the accused has tendered their voluntary statements where they have admitted the manner and factum of the said recovery.

4. That, the accused persons have committed a crime by way of illegal possession of charas and both have been put under arrest on 12.11.2016 and a case has been registered vide NCB crime case no. 48/2016 dated 12.11.2016 u/s 8, 20, 27A, 29 & 60 of NDPS ACT, 1985.

5. That, both the accused along with case property Lot-A, Lot-B, Lot-C duly sealed with aforesaid seal and the car along with relevant documents are being produced for authentication please.



6. *That, the source of origin, collecting of intelligence regarding the supplier and the final destination of the drug is yet to be ascertained.*

It is therefore, prayed that the case property may kindly be seen, signed and samples may be drawn out before the Ld. Court for the purpose of sending it to CRCL, Delhi for chemical is and result thereof. Permission may also be granted to deposit the case property i.e. Lot- A, Lot- B, the duplicate samples and the car in NCB Malkhana, Chandigarh, while the cash (marked as Lot-C) may be permitted to deposit in bank account in the name of Zonal Director. Narcotics Control Bureau, Chandigarh. The permission may please be granted for 01 day remand/custody of the above mentioned accused persons to NCB, Amritsar.”

22. On the said application, the JMIC concerned, made the hereinafter extracted order, which becomes embodied in Ex. P-22.

“Case property produced before me being Duty Magistrate. Comprising of lot A containing 5 kg suspected Charas, Lot B containing 5 kg suspected charas and lot C containing INR Rs.1,98000/- and white Alto 800 car bearing registration No. HP 01C 1212. The Lot A, B and C are sealed with the seal of NARCOTICS CONTROL BUREAU CHANDIGARH. The seals are intact.

Seals of lot A and lot B have been broken in the presence of undersigned. From lot A and lot B, two samples each containing 25 grams of charas have been taken and sealed with seals bearing impression "SK" and NARCOTICS CONTROL BUREAU CHANDIGARH -II. Thereafter both the lot i.e lot A and lot B have been resealed with the seals bearing impression "SK" (seal of undersigned). Out of these one sample each and bulk is ordered to be deposited in NCB Malkhana Chandigarh and one sample each is ordered to be sent to CRCL Delhi for chemical analysis and results thereof. Aforesaid car is also ordered to be deposited with Incharge Malkhana (illegible)



Chandigarh for safe custody. Photographs of the proceedings also taken in the court. Test Memo prepared showing the facsimile of seals bearing impression "SK" and NARCOTICS CONTROL BUREAU CHANDIGARH.

Lot C which is allegedly containing Rs.1,98000/- is permitted to be deposited in the bank account in the name of Zonal director NCB, Chandigarh.

As per further request, both the accused are remanded for one day to NCB, Amritsar. Subject to medical examination under rules. Papers be sent back to the court concerned."

23. In pursuance to the order (supra) becoming made by the JMIC concerned, the seized contraband became deposited in the godown concerned, thus through godown receipt Ex. P-28, besides in pursuance to the order of the JMIC concerned, the godown receipt (Ex. P-29), detailing the factum of the seized crime vehicle, becoming detained in the police premises concerned, but obviously exists on record. Consequently, therebys the said godown receipts do reflect, that the godowns maintained for the relevant purpose at the NCB Police Station, were as such maintained, thus for storing there the seized contraband. The said godown receipts are signed by the officer incharge of the said godowns, namely Kuldeep Sharma, who stepped into the witness box as PW-5, to prove the making of the said godown receipts. Since no efficacious cross-examination became made upon him, thus to bely the makings of Ex. P-28 and Ex. P-29. Resultantly, therebys at this stage, no argument can be raised, that in the making of the said godown receipts, there was any inter se discrepancy inter se the said godown receipts, thus with the order (Ex. P-22) passed by the JMIC concerned, wherebys he directed that the bulk as well as the sample parcels, be deposited in the malkhana of the NCB, Chandigarh, and, also directed



that one sample each enclosing therein 25 grams of charas be sent to the CRCL Delhi for chemical analysis being made thereons.

24. As revealed by Ex. P-27, through forwarding letter No. 1NCB/CZU/Cr.No. 48/2016/1864, drawn on 14.11.2016, two sealed sample packets, became sent, through Narsingh Ram, Sepoy to the CRCL, New Delhi. On receiving the said sample packets, the chemical examiner concerned, after making examinations upon the items enclosed therein, made her report, to which Ex. Ex. P-31 becomes assigned. The contents of P-31 are extracted hereinafter.

“x x x x x

Packing Details

Received two sample packets marked as A-1 and B-1 in sealed and intact condition. Each of the two sample packets were found sealed with four lac seals (two of NCB and two of S.K.). Impression of each seal affixed on each sample packets tallied with the facsimile of seal as given on test memo.

At the time of taking out samples from strong room for analysis, the sample packets marked as A-1 and B-1 was in sealed and intact condition. Impression of each seal affixed on each sample packets tallied with the facsimile of seal as given on test memo.

Report: (Report is admissible under Section 293 Cr.P.C. 1973)

Each of the two samples is in the form of greenish brown colored lumps. On the basis of microscopic, chemical and chromatographic examinations, it is concluded that each of the two samples under reference answers positive test for Charas.

Note: Gas Chromatograph is out of order at present the purity could not be determined in the sample.

Facsimile of seal “CENTRAL REVENUES CONTROL



LABORATORY GOVT. OF INDIA 2” affixed on sealed remnant sample is as under.

Sd/-

Meenakshi Gupta

Chemical Examiner Grade I”

25. A reading of the results of the examination, as made on the items enclosed in the sealed cloth parcels, reveals, that the said items were tested positive for the relevant contraband i.e. charas. The said report Ex. P-31, as revealed by Ex. P-33, was directed to be served to both the accused, who were lodged in the Central Jail, Amritsar. However, neither any protest to the detailing therein was made by the accused, nor the accused asked the learned trial Judge concerned, to after separating some quantum from the bulk sample, as kept in the godowns of the NCB concerned, thereby send the said separated quantum for re-analysis to the FSL concerned. Consequently, the omission (supra) besides when upon the report of the chemical examiner concerned, becoming produced before the learned trial Judge concerned, thereupon, thereto Ex. P-37 became embossed. Resultantly, and, when also even at the said stage, rather the defence counsel did not choose to seek the makings of any cross-examination, upon the chemical examiner serving at the laboratory concerned, for thereby his attributing falsity to his report. Resultantly thereby, there is a deemed waiver, and, also acquiescence by the accused to the results of the examinations, as became made on the stuff inside the sealed cloth parcels, which are detailed in Ex. P-32, to become received at the FSL concerned, in a sealed condition, and, with also an echoing therein, that the seals as became made thereon, were in terms of the order of the learned Magistrate



recovered, and, whereons a positive report was made, are to be concluded to travel upto the FSL concerned, in an unspoiled, and, untampered condition. Therefore, the natural corollary thereof, is that, the imperative incriminatory relevant links, thus commencing from the recovery being made at the crime site, whereafters the sample cloth parcels enclosing therein the stuff recovered, thus travelling in an untampered condition to the laboratory concerned, leading to the making thereons of Ex. P-31, and, ending in the said exhibit becoming irrefutably tendered into evidence before the learned trial Judge concerned, but all rather becoming completely established.

26. Though, there is reduction in weight of the stuff inside the parcels, inasmuch as, as unfolded by Ex. P-31, the weight of the stuff inside the parcels was respectively 7.5 g and 7.8 g, whereas, as detailed in the order of the Magistrate concerned, the weight of the said parcels was 25 grams each. However, the said reduction in weight when became not protested by each of the accused, thus subsequently to theirs receiving the copy of the report of the FSL concerned, nor when on tendering into evidence of the said report by the Public Prosecutor, the learned defence counsel did not make a protest, that there is a reduction in weight of the stuff inside the sealed cloth parcels, from the weight as became declared in the order (supra) of the Magistrate concerned. Conspicuously, when rather the defence could raise an exculpatory plea, that therebys there were active tampering(s) with the sealed cloth parcels, and, as such the incriminatory report, as made against the accused vis-a-vis the stuff inside the sealed parcels, rather was of no inculpatory value. In sequel, the said waiver, and, also acquiescence, are deemed to be tantamounting to a further admission of the defence, that the said reduction in weight, is not a sequel of any active tamperings being made



with the sealed cloth parcels, at the time when they became received for the examination of the stuff inside them, thus in the laboratory concerned. Contrarily, rather the said reduction in weight can be construed to be a sequel of desiccation taking place, thus on account of high temperature existing inside the godown concerned, especially, when to negate the above possibility, the defence was to adduce the apposite evidence. Significantly, since the above evidence also did not become adduced, thus to negate the said possibility, thereupon it can be concluded, that the reduction in weight of the stuff inside the sealed cloth parcels at the time when they became received, and, also became examined at the laboratory concerned, was only on account of desiccation taking place in the godown concerned. Resultantly, the said reduction in weight, thus was not a sequel of any active tampering being made with the sealed cloth parcels, nor therebys the accused are entitled to an acquittal, as but naturally, in the face of the above discussion, there is but complete firmly established inter se connectivity inter se the drawings of the cloth parcels at the site concerned, thus with the adduced into evidence of the results of examinations, as made qua the stuff inside the sealed cloth parcels, especially with the sealed cloth parcels evidently traveling in an untampered, and, intact condition to the laboratory concerned.

Final order

27. The result of the above discussion, is that, this Court does not find any merit in both the appeals, and, is constrained to dismiss them. Consequently, both the appeals are dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. Moreover, the



consequent thereto order of sentence is also affirmed. If the convicts are on bail, thereupon, the sentence(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. 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.

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

(SURESHWAR THAKUR)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

May 27, 2024
Gurpreet

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