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2024.PHHC.078895-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-656-DBA of 2003
Date of Decision: 30.05.2024

State of Haryana ...Appellant
Vs.
Darbara Singh and others ...Respondents

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

Present: Ms. Sheenu Sura, DAG, Haryana.

Mr. J.S. Virk, Advocate, for respondent No. 1.

Appeal qua respondent No. 2 stood abated.

Mr. Lal Singh Sandhu, Advocate, for respondent No. 3.

N.S.SHEKHAWAT, J.(Oral)

1. The present appeal questions the impugned judgment of acquittal dated 18.11.2002 passed by the Judge, Special Court, Karnal, whereby, the respondents No. 1 to 3 have been acquitted of the charge under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the '**NDPS Act**').
2. As per the case of the prosecution, on receipt of *Rukka* Ex.PB, the FIR Ex.PC was registered in the present case under Section 15 of the NDPS Act. The FIR has been reproduced below:-

"The MHC, Police Station City, Karnal. Today, I the S.I,

Police Station City, Karnal, along with Ram Sarup HC No.59, Braham Sarup HC No.1072, Ramesh Chand Constable No.386, Taib Hussain Constable No.409 and Kulwant Singh Constable No.630 was going towards Namastey Chowk from Meera Ghati in a Government Jypsy bearing registration No. HR-05A/8141 being driven by Krishan Kumar C. No. 826 in connection with patrolling. When I reached Namastey Chowk, then a secret informer got the Jypsy stopped by giving a signal and gave a secret information to the effect that Mehal Singh, Chhattar Singh sons of Sadha Singh, Manjit Singh son of Sukha Singh, Caste Jat Sikh, residents of Amupura, P.S. Nissing and Darbara Singh son of Jaswant Singh and Jaswant Singh Numberdar, Jat Sikh, resident of Rawar deal in together with poppy husk and today also they have unloaded the large quantity of poppy husk in bags from the truck in the morning behind the big sewerage pipe lying in a open plot of Sector-5, Karnal. In the event of conducting immediate raid, then all the five persons can be over powered along with the poppy husk. On receipt of this secret information, I, the SI along with associates was going towards Sector-5 and when we reached near the Petrol Pump situated near Ganda Nala, one Chabbeg Singh son of Hazoor Singh Caste Jat Sikh resident of Dera Nissing met me by chance, he was joined in the raiding party after apprising him all the facts of the case and reached in Sector 5, Karnal. A Maruti car bearing registration No.DL-2CE/8397 was parked in the vacant plot near the sewerage pipes in Sector-5. Two young persons after opening its windows were loading bags in the car while

three others were sitting on the bags lying near the maruti car behind the sewerage pipes. On suspicion, I apprehended the two persons, who were loading bags in the car and one person sitting on the bags with the help of other associates, whereas two persons were succeeded in escaping from the spot. I, the SI, interrogated the two persons, who were loading the bags in the car who on interrogation disclosed their names as Darbara Singh son of Jaswant Singh, Jat Sikh, resident of Rawar and Manjeet Singh son of Sukha Singh, Jat Sikh resident of Amupur, P.S.Nissing and the person, who was over powered sitting on the bags, disclosed his name as Mehal Singh son of Sadha Singh Jat Sikh, resident of Amupur, P.S.Nissing. They all the three also disclosed the names of other two persons, who were succeeded in escaping, from the spot as Jaswant Singh Numberdar resident of Rawar and Chhattar Singh son of Sadha Singh, resident of Amupur, P.S.Nissing. I asked Manjeet Singh and Darbara Singh the loader of the bags in the car that I have suspicion that there is some contraband lying in your car and also asked Mehal Singh, who was apprehended while sitting on the bag that you have also some contraband in your possession, as to whether you want to get the search of the car and the heaps of bags before the Magistrate or any Gazetted Officer. In this respect offers memo were prepared separately and delivered to them. In reply to the offer memo, each of them opted to be searched before a Gazetted Officer. Separate memo was prepared for each person and read over to them, who after hearing the memo put their signatures. Witness Chhabeg Singh also

signed the same. Then the SI informed DSP (AEC) Shri Raj Singh through wireless from the Government Jypsy and requested him to come present at the spot. After some time, Shri Raj Singh, DSP(AEC) came on the spot along with his staff. On the direction of DSP (AEC), I the SI then conducted the search of Maruti Car No.DL.-2CE/8397, two jute bags from the rear seat of the car and three jute bags from the dicky of the car were recovered. All the bags were opened, checked and found containing poppy husk. On the direction of DSP, bags in the shape of heap were counted and came to be 21 bags. Each of the bag was opened, checked and found containing poppy husk. Krishan Kumar Constable, driver of the Jypsy, was sent to arrange the weights and scale from the City. After some time, driver Krishan Kumar reached at the spot after arranging the weights and scale. The bags were weighed and 35 kgs. of Choora Post was found containing in each bag. 500 gms. of Choora Post was separated as sample from each bag and converted into parcels. Sample parcels and the bags after shutting its mouth, were sealed with the seal of "RS" by taking the same from DSP and sample of the seal was taken separately. The seal after use was handed over to witness Chhabeg Singh. I, the S.I. then sealed recovered contraband and samples of the same with my seal of "OP". The sample of the seal was taken separately. The aforesaid recovered contraband along with car No.DL-2CE/8397 were taken into police possession vide memos as token of proof and the seal after use was handed over to the witness Chhabeg Singh. Memo was signed by the witnesses. Since Darbara

Singh, Mehal Singh, Manjit Singh, Jaswant Singh and Chhattar Singh have committed an offence under section 15 of NDPS Act by keeping 26 bags of Chooria Post in their possession. So the writing is being sent to police station through Kulwant Singh C.No.630 for registration of the case. After registration of the case, its number may be intimated. The special report of this case may be sent to Higher Officer. I, the SI am busy in the investigation. Sd/- Om Parkash, SI. P.S.City, Karnal, dated 26.12.2000 at 2.45 pm, from Sector 5 Karnal”.

3. After the completion of the investigation, the final report under Section 173 Cr.P.C. was presented in the present case against the respondents. Finding a *prima facie* case against the respondents, charge under Section 15 of the NDPS Act was framed against them, to which, they pleaded not guilty and claimed trial.

4. During the course of the trial, the prosecution examined PW1 Constable Lakhwant Singh, who was posted as assistant to MHC on 26.12.2000 and 03.01.2001. He tendered affidavit Ex.PA in evidence. He had brought register No. 19 and there was an entry at Serial No. 2365 regarding the deposit of the case property. The sample was also taken to FSL by him. The prosecution further examined PW2 Constable Ashok Kumar, whose testimony was formal in nature. Umed Singh, retired SI was examined as PW3, who had recorded the formal FIR Ex.PC on receipt of the rukka Ex.PB. The prosecution further examined Raj Singh, DSP, as PW4 who had reached the place of recovery as a gazetted officer and had issued

notice under Section 50 of the NDPS Act to the respondents. He had supported the case of the prosecution in all material particulars. The prosecution further examined PW5 Om Parkash, DSP, who was posted as SHO, Police Station City Karnal on 26.12.2000. He had reiterated the averments made in the FIR in the present case. In his cross-examination, he had admitted that when he received a secret information, many public persons were present but out of them none was joined by them. The secret information was not reduced into writing by him nor the same was sent to the police station. Where he received information and the place where Chhabeg Singh met him were at a distance of 04 furlongs and many other persons present at that place. He admitted that he was SHO of Police Station Nissing in the year 1996 for 2/3 months. He admitted that he knew Chhabeg Singh since then. He feigned ignorance as to whether Chhabeg Singh was a stock witness as he had appeared in 25 cases pertaining to Police Station Nissing. He further stated that he did not produce the accused, case property and witnesses before the officiating SHO. He further stated that he had deposited the case property alongwith samples with MMHC Randhir Singh. He admitted that he did not send the written report under Section 57 of the NDPS Act to his senior police officers during the whole proceedings. He further admitted that he was arrested and challaned in a corruption case and Chhabeg Singh was cited as a witness in the said case and he resiled

in the Court.

5. After the conclusion of the prosecution evidence, the statements of the respondents were recorded under Section 313 Cr.P.C. and they pleaded their false implication in the present case and stated that the recoveries were planted on them.

6. The respondents opted not to lead any evidence in the present case.

7. Learned State counsel vehemently argued that the impugned judgment was based on misappreciation of evidence of the prosecution. Learned State counsel further submitted that the trial Court had taken into consideration minor contradictions, which were there in the depositions of the prosecution witnesses. In fact, the witnesses had appeared after a long period, before the trial Court and such minor contradictions should have been ignored by the trial Court. Learned State counsel further submitted that PW5 Om Parkash had clearly stated that the case property was handed over to MMHC of the police station concerned and such heavy recovery of poppy husk could not have been planted in the broad day light as the offence had taken place in the afternoon and even independent witness was joined in the investigation. Learned State counsel further submitted that in the present case, all the prosecution witnesses were cross-examined and they had withstood the test of cross-examination. Thus, the impugned judgment is legally unsustainable.

8. On the other hand, learned counsel appearing on behalf of the respondents No. 1 and 3 had vehemently opposed the submissions made by learned State counsel. Learned counsel for respondents No. 1 and 3 submitted that the trial Court had correctly appreciated the evidence in the present case. They further submitted that in the present case, the mandatory provisions of Sections 42 and 57 of the NDPS Act were admittedly not complied with and the impugned judgment is liable to be upheld by this Court.

9. We have heard the learned counsel for the parties and perused the record carefully.

10. While interpreting the provisions of Section 42 of the NDPS Act, the Hon'ble Supreme Court of India has held in the matter of **Rajender Singh Vs. State of Haryana, 2011 (3) SCC (Crl.) 366** as under:-

3. We have heard the learned counsel for the parties and gone through the judgment impugned. To our mind, the entire controversy hinges on Section 42 which is reproduced below :

"42. Power of entry, search, seizure and arrest without warrant or authorization. - (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 or of the Border Security Force 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, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence 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 Chapter IV relating to such drug or substance; 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 Chapter IV relating to such drug or substance.

Provided 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 forthwith send a copy thereof to his immediate official superior.

42(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."

4. A reading of the above said provision pre-supposes that if an authorised officer has reason to believe from personal knowledge or information received by him that some person is dealing in a narcotic drug or a psychotropic substance, he should ordinarily take down the information in writing except in cases of urgency which are set out in the Section itself. Section 42(2), however, which calls for interpretation in the matter before us, is however categorical that the information if taken down in writing shall be sent to the superior officer forthwith. In Karnail Singh's case, this Court has held that the provisions of Section 42(2) are mandatory and the essence of the provisions has been set out in the following terms :

"In conclusion, what is to be noticed is that Abdul Rashid did not require literal compliance with the

requirements of Sections 42(1) and 42(2) nor did Sajjan Abraham hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The Officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior of officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the of official superior may get postponed by a reasonable period, that is, after the

search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of subsections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

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 noncompliance with the provisions of Section 42(2) of the Act which vitiates the conviction”.

11. Now adverting to the present case, in the present case also, the prosecution has placed heavy reliance on the testimony of PW5 Om Parkash, complainant, who was posted as SHO at Police Station City Karnal at the relevant time and had headed the raiding team. In his cross-examination, he clearly admitted that he had received the secret information, however, the secret information was not reduced in writing by him nor the same was sent to the police station. Thus, it is apparent that there was no compliance of Section 42 of the NDPS Act and which was mandatory in law. Still further, in the present case, PW5 Om Parkash, who was the star witness, clearly stated that he had not prepared a report under Section 57 of the NDPS Act nor it was sent to the superior police officers. Even, the prosecution has failed to place on record any report, which showed that there was compliance of Section 57 of the NDPS Act. Thus, it is apparent that while conducting the search and seizure in the present case, there was a total and definite non-compliance of statutory

provisions of NDPS Act. Further, such non-compliance will per se amount to prejudice to the accused in the present case. The law is well settled that where the duty is absolute, the element of prejudice would be of least relevancy.

12. Still further, in the present case, Chhabeg Singh was associated as an independent witness during the course of the recovery of the contraband from the respondents. In the cross-examination, PW5 Om Parkash clearly stated that he remained SHO of Police Station Nissing in the year 1996 for about 2/3 months and he knew Chhabeg Singh since then. He also further admitted that he was arrested and challaned in a corruption case and Chhabeg Singh was cited as a witness in the said case. However, Chhabeg Singh had resiled in the Court in the said case. Thus, it is apparent that Chhabeg Singh was intentionally introduced as an independent witness in the present case and the possibility of false implication cannot be ruled out. Moreover, PW5 Om Parkash had clearly admitted that at the time when he received secret information, many persons from the public were present but he had not joined anyone. Thus, it is apparent that Chhabeg Singh was introduced by PW5 Om Parkash being an old acquaintance and the prosecution story rendered doubtful in the absence of an independent corroboration in the present case.

13. We further find sufficient force in the findings recorded

by the trial Court that Investigating Officer had categorically stated that he had obtained thumb impression/signatures of the accused on the other memos, but the memos did not bear any such signatures or thumb impressions. Still further, even the place of recovery was also doubtful in the present case and there was a dispute relating to the identity of the accused in the present case. Even otherwise, we have carefully gone through the findings recorded by the trial Court and we find that the view taken by the trial Court is a reasonable and probable view of events.

14. The Supreme Court of India in the matter of ***Shyamal Saha and another Vs. State of West Bengal, 2014 AIR (Supreme Court) 3701*** has laid down principles, which must be kept in mind by the appellate Court while dealing with a judgment of acquittal:-

“20. The entire case law on the subject was discussed in Chandrappa v. State of Karnataka, 2007(2) RCR (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: 2007(4) SCC 415 beginning with perhaps the first case decided by this Court on the subject being Prandas v. State, AIR 1954 Supreme Court 36, it was held in Chandrappa as follows:

“(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded. (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own

conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

*21. The principles laid down in Chandrappa were generally reiterated but mainly reformulated in **Ganpat v. State of Haryana, 2011(1) RCR (Criminal) 539: 2011(1) Recent Apex Judgements (R.A.J.) 262: (2010) 12 SCC 59** though without reference to Chandrappa and by referring to decisions not considered therein. The*

reformulation of the principles in Ganpat is as follows:

“(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

(ii) The appellate court can also review the trial court’s conclusion with respect to both facts and law.

(iii) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.

(iv) An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.

*(v) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed. (Vide **Madan Lal v. State of J&K, 1997(4) RCR (Criminal) 89: (1997) 7 SCC 677, Ghurey Lal v. State of U.P., (2008) 10 SCC 450, Chandra Mohan Tiwari v. State of M.P., 1992(3) RCR (Criminal) 98: (1992) 2 SCC 105 and Jaswant Singh v. State of Haryana, (2000) 4 SCC 484**)”*

15. In view of the above discussion and the law laid down by the Hon’ble Supreme Court, we are of the considered opinion that there is no error of law or significant enough to necessitate the overturning the verdict of the trial Court. The trial Court has taken

into consideration the evidence led by the prosecution and we also agree with the findings recorded by the trial Court.

17. Sequally, the impugned judgment of acquittal dated 18.11.2002 passed by the Judge, Special Court, Karnal, is upheld and the appeal is dismissed.

18. All pending applications, if any, are disposed off, accordingly.

19. Trial Court record be sent back to the trial Court.

20. All concerned may be intimated.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

30.05.2024
amit rana

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