

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1339-2023 (O&M)
Reserved on: 09.04.2024
Pronounced on: 16.04.2024
2024:PHHC:051939

GURWINDER SINGH ALIAS GURI

.... APPELLANT

Vs.

STATE OF PUNJAB

.... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Jashandeep Singh Sandhu, Advocate, for the appellant.

Mr. Baljinder Singh, DAG, Punjab.

DEEPAK GUPTA, J.

In Sessions Trial No.32 of 2023 (*CNR No.PBFZ01-004011-2019*) arising out of FIR No.21 dated 14.04.2019 registered at Police Station Arif Ke, District Ferozepur, accused namely, Gurwinder Singh alias Guri (*appellant herein*) was put to trial by the Ld. Special Judge, Fast Track Court, Ferozepur and has been convicted under Sections 21 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and Sections 411 & 473 of the Indian Penal Code, 1860 (for short 'the IPC') vide judgement dated 25.04.2023. Vide a separate order of the even date, he was sentenced as under: -

Offence/Under Section	Imprisonment	Fine	In default of fine imprisonment
21 NDPS Act	Rigorous imprisonment for a period of 10 years.	₹1,00,000/-	Imprisonment for one year
411 IPC	Rigorous imprisonment for a period of one year.	₹5,000/-	Imprisonment for one months
473 IPC	Rigorous imprisonment for a period of five year.	₹10,000/-	Imprisonment for six months

2. All the sentences were directed to run concurrently. However, fine was not paid and the period of sentence undergone during trial was directed to be set off.

3. Against the aforesaid judgment of conviction and order of sentence, the present appeal is filed.

4.1 As per prosecution case, on 14.04.2019, Inspector Paramjit Singh (PW6), In charge of the police party alongwith ASI Jasvir Singh (PW5 and other police officials, were on patrolling duty in the area of Police Station City, Ferozepur. When they were present at Bus stop of Village Katora, Ferozepur-Mallanwala Road, Inspector Paramjit Singh received secret information that Gurwinder Singh alias Guri son of Lakha Singh, resident of Village Rukan Shah Wala, was habitual of selling huge quantity of drugs and supply the same on the stolen vehicles and on that day, he was coming in an Alto car from Village Daulatpura side to Arif Ke and that if siege is laid at T-Point of Village Daulat Pura, he could be apprehended alongwith the stolen car and Heroin. Believing secret information to be reliable, *ruqqa* Ex.P24 was sent to the police station through Constable Vijay Kumar for registration of case. Special reports were also sent.

4.2 Sub Inspector Gurcharan Singh (PW2) reached the spot i.e. at the Naka held at T-Point of Village Daulat Pura. After some time, one 'Alto car', coming from the side of Village Daulatpura was intercepted. On inquiry, driver of the same disclosed his name as Gurwinder Singh alias Guri [*accused – appellant herein*] son of Lakha Singh, resident of Village Rukan Shaha Wala. He was apprised of the suspicion of some intoxicating substance in his possession as well as in the car make 'Alto'. Sub Inspector

Gurcharan Singh, the Investigating Officer (hereinafter referred to as 'IO') after disclosing his identity, apprised the accused about his legal right to get his search as well as of Alto car conducted in presence of Illaqa Magistrate or from some Gazetted Officer, who can be called at the spot. Accused told that he intended to get his search as well as his car to be conducted in the presence of some Gazetted Officer. Dissent memo was prepared duly signed by the accused and other officials put their signatures as attesting witness. 4.3 After some time, DSP Sukhwinderpal Singh (PW4), along-with his officials, reached at the spot, who introduced himself to the accused and also apprised him that as the police party was having suspicion that he was possessing some intoxicating substance, his search is to be conducted. Accused reposed confidence and offered himself to get his search conducted from DSP Sukhwinderpal Singh. Consent memo was separately signed by the accused and attested by police officials. Effort was made to join independent witness but none was available. On directions of Sukhwinderpal Singh, DSP, SI Gurcharan Singh (IO) conducted search of the accused and from the left side of the pocket of the lower worn, one black coloured polythene envelope containing Heroin was recovered. On weighing the said Heroin, it came to be 270 grams, which was put into plastic container, converted into parcel and sealed with seal bearing impression 'GS'. Sample seal was prepared separately. After using seal, it was handed over to ASI Jasvir Singh. The parcel was also sealed by Sukhwinderpal Singh DSP with his seal bearing impression 'SPS'. Seal was retained by him. Further, on search of Alto Car bearing No. PB-03- AZ-0267, no document regarding its ownership was recovered. The parcel containing Heroin

alongwith car make Alto bearing No.PB-03-AZ-0267 were taken into possession vide separate recovery memo. Other formalities were completed on the spot and statements of the witnesses under Section 161 Cr.PC were recorded.

4.4 During interrogation, accused suffered disclosure statement resulting in the recovery of car make Alto bearing No.HR-24-T- 5956 and Car make I-20 without number, which were taken into possession.

4.5 On return to the police station, SI Gurcharan Singh produced the accused alongwith case property i.e. parcel containing 270 grams of Heroin alongwith Car make Alto bearing No.PB-03-AZ-0267 as well as other cars recovered on the basis of disclosure statement i.e. car make Alto bearing No.HR-24-T-5956 and Car make I-20 without number, before SI Jaspal Singh. Accused was interrogated by SI Jaspal Singh. Thereafter, accused was sent to police lock up. Seals on the case property alongwith sample seals were tallied, found to be correct and intact. Thereafter, SI Jaspal Singh sealed the parcel with his seal bearing impression 'JS'. Sample seal was separately prepared. The case property was kept by SI Jaspal Singh in his possession in police malkhana. Statement of SI Gurcharan Singh recorded.

4.6 On 15.04.2019, case property alongwith accused was produced by SI Jaspal Singh before Learned JMIC, Ferozepur. On the basis of request, inventory proceedings were carried out by the learned Judicial Magistrate. The seals on the parcels were checked by Ld. Magistrate and after breaking open the same, two representative samples of 10/10 grams of heroin each were drawn separately, converted into parcels and sealed with

seal impression 'RSR'. Remaining 250 grams of heroin was converted into parcel sealed with seal impression 'RSR'.

4.7 On 22.04.2019, SI Jaspal Singh, SHO, vide road certificate dated 22.04.2019 sent Lady Constable Rajni Thind (PW3) to deposit the sample parcel in the office of Director Regional Testing Forensic Science Laboratory, Bathinda. Upon receipt of report of the Chemical Analyst and, after completion of investigation, accused was challaned to face trial under section 21/61/85 of the NDPS Act and, Section 379 & 411 of Indian Penal Code.

4.8 After hearing learned Addl. P.P for the State, learned defence counsel and perusing the documents attached with the report under Section 173 Cr.P.C, a prima facie case for commission of offence punishable under Section 21 of the Narcotic Drugs & Psychotropic Substances Act and Section 411, 473 of Indian Penal Code, having been made out against the accused, he was charge- sheeted accordingly. Accused denied his guilt, pleaded innocence and false implication.

5.1 In order to prove its case, prosecution examined as many as 12 witnesses.

5.2 PW-6 Inspector Paramjit Singh deposed about receipt of the secret information. He proved ruqa Ex.P-24 sent to the police station resulting into registration of formal FIR Ex.P-5 by PW-8 SI Jaspal Singh.

5.3 PW-2 SI Gurcharan Singh proved that on getting information from Insp. Paramjit Singh, he reached the spot. He proved memo Ex.P1, whereby option was given to the accused apprising him about his legal rights to get his search as well as search of his car conducted in the presence

of Gazetted Officer or Magistrate. He further proved the consent as given by the accused and then arrival of DSP Sukhwinderpal Singh (PW-4), in whose presence and on whose direction, the search was conducted and recovery was effected.

5.4 PW-5 ASI Jaspal Singh is the recovery witness, who supported PW2 in all material particulars.

5.5 PW-4 DSP Sukhwinderpal Singh also corroborated PW2 to the effect that on getting information from him (SI Gurcharan Singh), he had reached the spot and he had also apprised the accused about his legal right to get himself searched in presence of some Gazetted officer or magistrate and after the accused opted to be searched in his presence, memo Ex.P2 was prepared and at his instance, the search was conducted, resulting into recovery of 270 grams of Heroin from the left pocket of his lower. He also proved further proceedings conducted in his presence.

5.6 PW-8 SI Jaspal Singh not only proved FIR Ex.P25 recorded by him on receipt of *ruqqa* Ex.P24 and his endorsement Ex.P-26, he further proved that said SI Gurcharan produced before him the accused along with entire case property i.e. one parcel containing 270 grams of heroin duly sealed with the seals bearing impression 'GS' and 'SPS' and sample seal and other case property i.e. cars and that he had put his seal bearing impression 'JS' on the parcel. He further proved the proceedings conducted before the Court on 15.04.2019, where samples of 10 grams each were drawn from the bulk parcel, which was sealed with 'RSR' and that sample seal etc. were prepared. All the proceedings conducted in the Court have been duly proved by him.

5.7 To prove the link evidence, prosecution relied upon statement of PW3 LC Rajni Thind, who had taken one sample parcel of 10 grams of Heroin sealed with impression 'RCR', handed over to him by SI Jaspal Singh, besides CFSL form, which she deposited at RTFSL, Bathinda.

5.8 The rest of the witnesses examined by the prosecution pertain to ownership of all the three cars, which were recovered from the possession of the accused and which were found to be stolen property and on which fake number plates had been affixed.

6. All the incriminating circumstances appearing in the evidence produced by prosecution were confronted to the accused in his statement recorded under Section 313 Cr.P.C, in which he pleaded innocence and controverted the incriminating evidence appearing against him. He examined two witnesses in is defence.

7. After hearing both the sides, judgment of conviction and order of sentence were passed, as per the details given earlier.

8. Before this Court, learned counsel for the appellant has not assailed the conviction recorded under Sections 411 & 473 of the IPC. He assailed the conviction recorded under Section 21 of the NDPS Act only, by contending that secret information as allegedly received by SI Paramjit was not reduced into writing and so, there is non-compliance of Section 42 of NDPS Act. He further argues that option given to the accused was to get himself searched before Illaqa Magistrate or the Gazetted Officer, which is not in strict compliance of Section 50 of NDPS Act and it was not proper. It is also argued that presence of DSP Sukhwinderpal Singh at the spot is doubtful, as he did not prepare any documents. Apart from this, the

contention of learned counsel for the appellant is that no independent witness was joined and thus, the entire prosecution case is based upon the statements of official witnesses, who were interested in success of the case. With these submissions, prayer is made for setting aside the conviction of the appellant- accused recorded under Section 21 of the NDPS Act.

9. On the other hand, learned State counsel has contended that the entire evidence has been properly appreciated by the trial Court and after considering all the contentions as raised by the accused, conviction has been rightly recorded. Prayer is made for dismissal of the appeal.

10. Having considered submissions of both the sides and after appraising the record, this Court does not find any merit in this appeal.

11. The testimony of PW2 Inspector Paramjit Singh, the initial investigating officer of the case to be read with that of PW2 SI Gurcharan, the later IO prove that on the basis of secret information, accused was nabbed after laying a siege and that contraband was recovered from him after completing all statutory requirements. All the necessary details in this regard, as proved by him, have been duly corroborated by the testimonies of PW5 ASI Jasbir Singh and PW4 DSP Sukhwinderpal Singh. After completing the formalities, case property along with witnesses and the accused were produced before PW8 SI Jaspal Singh, SHO in the Police Station, who also verified the facts, inspected the case property and found the same to be correct and made his endorsement on the notice under Section 55 of the NDPS Act. All these witnesses have been grilled at great length during their respective cross-examinations but nothing material could be elicited so as to make them unreliable.

12. As far as non-examination of independent witness is concerned, it has been categorically testified by SI Gurcharan Singh, the Investigating Officer of the case that he had tried to join some independent witnesses but none of them agreed. The testimony of all the recovery witnesses as referred above is found to be quite credit worthy, as nothing could be elicited to disbelieve them. Their statements regarding the recovery are quite consistent with no material contradiction. Examination of an independent witness is not a sine qua non to believe the testimony of official witnesses, as it has been observed by Hon'ble Supreme Court in ***State Govt. of NCT of Delhi Vs. Sunil 2001(1) RCR (Crl) 56*** that "court cannot start with the presumption that police records were untrustworthy and rather, as a proposition of law, presumption should be other way around and that official acts of the police are regularly performed is a wise principle of presumption and recognized even by the legislature.

13. In ***Ravinder Vs. State of Maharashtra 2002(3) RCR (Crl) 598***, the case was based on official witnesses. No independent witness was examined. It was held by Hon'ble Supreme Court that official (police) witnesses cannot be discarded merely on the ground that they belonged to the police force and are either interested in the investigating or the prosecuting agency. It was further held that prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought. The desire of such witnesses to see the success of the case based on their investigation requires greater care to appreciate their testimony.

14. In yet another case titled **Sumit Tomar vs State of Punjab**

2013(1) SCC 395, Hon'ble Supreme Court has observed as follows:

“In view of the above discussion, though it is desirable to examine independent witness, however, in the absence of any such witness, if the statements of police officers are reliable and when there is no animosity established against them by the accused, conviction based on their statement cannot be faulted with. On the other hand, the procedure adopted by the prosecution is acceptable and permissible, particularly, in respect of the offences under the Narcotic Drugs and Psychotropic Substances Act.”

15. Coming to the contention of learned counsel regarding the non-compliance of Section 42 of NDPS Act, it is revealed that on getting secret information, PW-6 SI Paramjit reduced the same into writing in the shape of *ruqqa* Ex.P24 and sent the same through Constable Vijay Kumar to the police station resulting into the registration of FIR Ex.P25. SI Gurcharan Singh PW-2 has also deposed that on getting the receipt of the ruqa, he went to the spot. Not only this, *ruqqa* Ex.P24 reveals that SI. Paramjeet Singh had directed the concerned police official who was going to get the FIR registered, to send special reports to the senior police officers. All this was done before arrival of the regular Investigation Officer at the spot. Even if it be taken that a written information was not sent to the senior police officers, the same cannot be considered to be violation of Section 42 of the NDPS Act. Learned trial Court has rightly referred to “***Sajan Abraham v. State of Kerala***” 2001(6) Supreme Court Cases 692, wherein it has been held by Hon'ble Supreme Court that:

“it was not always mandatory that information received should be reduced into writing and then sent to immediately superior official. In that case, the officer concerned was on patrol duty and on receiving the information that the accused was selling the contraband drugs at a particular place, he immediately rushed

there and apprehended him”

It was held by the Apex Court that compliance of sub sections (1) and (2) of Section 42 of the Act would have delayed the trapping of the accused, which might have led to jus escape. Hence on fact, there was no violation of Section 42 of the Act. It was further observed that strict compliance of the mandatory provisions of the Act need not be insisted upon and the whole matter should be considered pragmatically.

16. In similar circumstances, the Division Bench of this Court did not give benefit of non- compliance of Section 42 of the Act to the accused in ***Labh Singh Vs. The State of Punjab***, Criminal Appeal No: 722 -DB of 2003 decided on 24.7.2006 on the basis of legal position explained by the Hon'ble Apex Court in Sajan Abraham's case (supra).

17. Thus, strict non-compliance of Section 42 of the NDPS Act, in the facts and circumstances of the case, is found to be not fatal to the prosecution case as *ruqqa* Ex.P24 was immediately transmitted to the Senior Officers.

18. The next contention of learned counsel to the effect that proper offer was not given to the accused to make compliance of Section 50 of NDPS Act, is also devoid of any merit. Accused was given option not only by SI Gurcharan Singh apprising him of his legal right to get himself searched before Illaqa Magistrate or Gazetted Officer but as the accused opted to be searched before the Gazetted Officer, DSP Sukhwinderpal Singh was called, who on arrival after disclosing his identity to the accused, informed him that he was a Gazetted Officer and further apprised the accused that his search was to be conducted on account of suspicion that he

was possessing intoxicating substance and it is only after exercise of the option by the accused vide consent memo that the search of the accused was conducted as per the direction of DSP Sukhwinderpal Singh, after the accused had reposed faith in him. Simply because SI Gurcharan had initially apprised the accused to get himself searched before Illaqa Magistrate or Gazetted Officer and did not use the word 'Magistrate only' cannot be taken as a breach of Section 50 of the NDPS Act.

19. The contention of counsel Ld. for the appellant, doubting the presence of DSP Sukhwinderpal Singh at the spot, is absolutely without any substance. Simply because DSP Sukhwinderpal Singh did not himself prepare the recovery memo or the consent memo in his own handwriting, cannot mean that he was not present at the spot or that search was not conducted in his presence or that recovery was not effected in his presence. Learned trial Court has noticed that recovery memo Ex.P4 has been duly attested by DSP Sukhwinderpal Singh, and that in itself proves his presence. Besides this, Ex.P2 i.e. the consent memo is also duly signed by him.

20. No other point was urged before this Court, qua the conviction of the accused under Sections 21/61/85 of NDPS Act.

21. Although learned counsel for the appellant has not challenged the conviction of the accused – appellant recorded under Sections 411 & 473 IPC, but this Court has gone through the evidence on record and finds that accused was found in possession of Alto Car bearing No.PB-03-AZ0267 (original number UP16C-8916) belonging to Yogesh Kumar; one car make I-20 bearing No.PB-05-AJ-7884 belonging to Neeraj Kumar and

one Alto Car bearing No.HR-24-T-5945 (Original number PB11AF-7980) belonging to Sukhchain Singh knowing and having reasons to believe the same to be stolen property, retained by him dishonestly and further, by counterfeiting their plates with fake numbers. All the relevant witnesses in this regard have been examined by the prosecution and their testimonies are duly discussed by trial court

22. As such, it is held that conviction of the accused- appellant under Sections 411 & 473of the IPC has been rightly recorded.
23. No other point is urged.
24. Consequent to the above discussion, it is held that the appeal is devoid of any merit. As such, the same is hereby dismissed.
- All the connected applications stand disposed of.

16.04.2024
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes