

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-49-DBA-2005
Reserved on: 18.09.2024
Date of decision: 26.09.2024

STATE OF PUNJAB

...Appellant

Versus

KARNAIL SINGH (SINCE DECEASED) & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

Ms. Ekta Thakur, Advocate
for respondents No.2 and 3.

Proceedings *qua* respondent No.1 stands abated.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict of acquittal made on 19.08.2004, upon Sessions Case No.53 of 2003, by the learned Addl. Sessions Judge, Jalandhar.
2. The State of Punjab became aggrieved from the above drawn verdict of acquittal. Resultantly, the State of Punjab instituted thereagainst the instant appeal against the respondents.
3. Since respondent No.1 namely Karnail Singh has thus died, during the pendency of the appeal, therefore, the proceedings *qua* him stands declared to become abated through an order made by this Court, on 07.03.2017.

FACTUAL BACKGROUND AND INVESTIGATION

4. The genesis of the prosecution case, is that, on 23.01.1999, SI/SHO Sucha Singh received a message from S.P (D) Balkar Singh that he should report

to Shri Opinderjit Singh DSP, Phillaur. Then he along with other police officials reached Phillaur on his Gypsy being driven by C. Karamjit Singh. DSP Opinderjit Singh was present at T-Point, G.T. Road, Phillaur along with Inspector Maninder Bedi of P.S. Sarabha Nagar, Ludhiana accompanied by other police officials. Then they held Naka at T-Point, Phillaur. At about 11:00 p.m. one Maruti Car of blue colour bearing No.HR-07-3939 came from Phillaur side and Maninder Singh Bedi gave signal to stop the car with his torch. In the car there were three persons in all, out of them one was driving the car and the other two were sitting on the rear seat. Maninder Singh, Inspector had apprehended Kulwinder Singh, who was wearing black colour jacket and was having assault rifle AK-56, which was taken into possession by Maninder Bedi, which was loaded with one Magazine and one Magazine was recovered from his pocket. Heroin was also recovered from Kulwinder Singh, which was wrapped in a Parna (Piece of Cloth). Regarding the recovery effected from Kulwinder Singh, separate investigation was done by Maninder Bedi. SI Sucha Singh apprehended the driver of car, who disclosed his name as Jagjit Singh present in the Court today. On the rear seat of the car Karnail Singh accused present in the Court was sitting. He also conducted the search of the car under the supervision of DSP Opinderjit Singh. From the rear seat of the car one bag Dabidar fitted with Zip was recovered, Zip of the bag was opened, which carries 20 packets of RDX, one packet of P.T.N. powder, one ABCD Trigger, ten mechanical detonators, two electric cells, two time pencils, one meter Cardix wire, one meter fuse wire and one small battery were recovered. From all the recovered 20 packets of RDX 10 Gms. each was taken out as sample and the remaining RDX in packets remained 490 Gms. on weighing 10 Gms. 20 samples was also taken out from P.T.N. powder and the remaining powder when weighed came to 1490 Gms. 20 samples of RDX were put into the plastic boxes and the remaining RDX powder was also

put into 20 plastic boxes. The sample of P.T.N. powder weighing 1490 Gms. was also put remaining P.T.N. powder weighing 1490 Gms. was also put in a plastic Dabba. The samples and the Dabbas containing remaining powders were sealed at the spot by his own seal SS. The remaining articles were also prepared into parcel and sealed with his seal bearing impression SS and the whole case property including the bag and car bearing No.HR-07-3939 were taken into police possession vide recovery memo Ex.PB, duly witnessed by HC Mohan Lal and C. Avtar Singh and the seal after use was handed over to HC Mohan Lal. The personal search memos of the accused Jagjit Singh and Karnail Singh were prepared. He prepared rough site plan of the place of recovery with correct marginal notes, arrested the accused in this case and recorded the statements of witnesses. Inspector Gian Singh of Police Station Phillaur had also reached at the spot. The file of this case along with the police file, and case property were handed over to Inspector Gian Singh. After completion of investigations the accused were challaned by Sarabjit Rai, the then SHO, P.S. Phillaur.

Trial Court Proceedings

5. On completion of investigations, challan was filed in the learned trial Court against the accused. On their appearance before the learned trial Court, they were charge-sheeted for the commission of offences punishable under Section 4/5 of the Explosive Act, to which they pleaded not guilty and claimed trial. Subsequently after the recordings of depositions of 6 witnesses, the learned public prosecutor closed the prosecution 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.

Submissions of learned counsel for the appellant-State

6. Learned State counsel has argued before this Court, that the impugned verdict of acquittal, thus requires an interference. He supports the above submission on the ground, that it is based on a gross mis-appreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned counsel for the respondents

7. Learned counsel for the respondents has argued that the impugned verdict of acquittal, is meritworthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of acquittal be maintained, and, affirmed by this Court.

8. While acquitting all the accused in the present case, the learned trial Judge concerned, has taken into consideration the following facts:

i) Previous sanction to launch the proceedings *qua* the charge under the Explosive Substances Act, though is required from the Central Government or from the State Government, but in the instant case the required sanction rather has been obtained from District Magistrate, who is but not the competent authority to grant such sanction.

ii) FIR No.10 was recorded by SP Balkar Singh, on the basis of secret information, but the said FIR has not been proved by the prosecution, besides SP Balkar Singh, who recorded FIR, became not cited as a prosecution witness. Consequently, since the FIR (*supra*) remained unproven, besides when the DSP Opinderjit Singh, in whose supervision the entire exercise became carried out also remained not cited as a prosecution witness. Moreover, Inspector Gian Singh, to whom the investigating officer thus handed over the

case property along with the accused but has also not been examined as a prosecution witness, thereby the learned trial Judge concerned, concluded that the said existing infirmities in the prosecution case rendered the charge to be not proven.

iii) There is material contradiction *inter se* the deposition of the prosecution witnesses, and, as such the link evidence is missing.

a) One PW-2 (C. Ashok Kumar), in his cross-examination stated that he does not remember whether letter dated 18.02.1999, was also given to him by MHC or not. He further stated that the samples which were entrusted to him bore one seal each and the said number was rightly mentioned in the docket, whereas, HC Mohan Lal PW-3, who when appearing in the witness box, rather deposed that nothing was recovered from accused Jagjit Singh, who was driving the car.

b) During his cross-examination, he has deposed that S.P. Balkar Singh on the day of occurrence did not come to the spot at any stage, whereas, as per the prosecution version S.P. Balkar Singh rather had registered the FIR.

c) In addition, he also stated that the recovered articles were entrusted to Inspector Gian Singh, whereas, no writing was made in connection with the handing over the articles of the case.

iv) Despite availability of independent witnesses surrounding the place of recovery, especially when the picketing was held on the G.T. road, when evidently there were number of shops, dhabas, hotels and workshops for repair of vehicles, besides when a petrol pump was also there near the place of recovery, yet the investigating

officer failing to join any independent witness to the crime.

Resultantly, the entire proceedings were declared to be tainted and aroused a suspicion, whereupon, the learned trial Judge concerned, recorded a verdict of acquittal.

9. All the above reasons as became formed by the learned trial Judge concerned, for recording a verdict of acquittal, thus are meritorious.

10. Importantly so, as unless sanction by the competent authority became accorded for prosecuting the accused, thereupon no valid cognizance could be assumed over the report filed under Section 173 Cr.P.C., by the investigating officer concerned, nor any assumption of valid jurisdiction could be made thereovers by the learned trial Judge concerned.

11. The sanction for prosecution was required to be granted either by the Central Officer or by the competent officer declared by the State Government. However, the sanction for prosecuting the accused became obtained from the District Magistrate concerned, who however not been demonstrated to become empowered by an appositely made notification, to make an order for prosecuting the accused. Consequently, for want of valid sanction becoming granted by the designated competent authority, thus for launching prosecution against the accused. Reiteratedly, in sequel, post the filing of a report under Section 173 Cr.P.C., before the learned trial Judge concerned, no assumption of cognizance was required to be made thereovers nor any assumption of jurisdiction was required to be made thereovers. Since the said was yet did not done. Consequently, the said ill makings, do vitiate the trial, as become entered into against the accused.

12. Be that as it may, the genesis of the prosecution case becomes embodied in the appeal FIR. The appeal FIR was recorded by S.P. Balkar Singh,

but the said never become cited as prosecution witness for proving the genesis of the prosecution case nor also DSP Opinderjit Singh, in whose supervision the entire exercise was carried out became cited as a prosecution witness, besides Inspector Gian Singh to whom the investigating officer handed over the case party, also did not become cited as a prosecution witness.

13. Consequently, the ill effects of the (supra), are that neither the FIR became proven nor the search exercise as became launched rather by the police team, became proven. Consequently, thereby the charge drawn against the accused, as aptly concluded, thus became not cogently established to the hilt by the prosecution.

Final Order

14. In aftermath, there is no merit in the instant appeal, and the same is dismissed. The verdict of acquittal, as become rendered by the learned trial Judge concerned, is upheld and maintained.

15. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

16. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

26.09.2024

Ithlesh

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

(SUDEEPTI SHARMA)
JUDGE