

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-381-DB-2013
Reserved on: 21.10.2024
Date of decision: 23.10.2024

DARBARA SINGH AND ANOTHER

...Appellants

Versus

STATE OF PUNJAB

...Respondent

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

Present: Mr. Nandan Jindal, Advocate
for the appellants.

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

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 08.04.2013, upon Sessions Case No.06 of 15.02.2011, by the learned Judge, Special Court, Sangrur, wherethrough he convicted the accused for a charge drawn *qua* an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the Act”), besides for an offence punishable under Section 483 of the IPC. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convicts both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

SN	Name of accused	Offence	Sentence
1	Darbara Singh	15 NDPS Act	To undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs.1,00,000/- and in default thereof to undergo further RI for one year.

2	Banka Singh	15 NDPS Act	To undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs.1,00,000/- and in default thereof to undergo further RI for one year.
3	Darbara Singh	Us 483 IPC	To undergo rigorous imprisonment for a period of one year.
4	Banka Singh	Us 483 IPC	To undergo rigorous imprisonment for a period of one year.

2. The accused-convicts become aggrieved from the above drawn verdict of conviction, and, also from the consequent therewith sentence(s) (supra), as became imposed upon them. Resultantly, they instituted thereagainst the instant appeal.

FACTUAL BACKGROUND

3. The genesis of the prosecution case are that, on 23.10.2010, ASI Dev Raj of CIA Staff Bahadur Singh Wala along with other police officials was present at drain bridge within the revenue estate of village, Badrukhan on Sangrur-Barnala road, there he received a tip off to the effect that Darbara Singh son of Sohan Singh and Banka Singh son of Mohinder Singh were bringing poppy husk from Rajasthan in a white coloured Ford Ikon Car bearing registration No.HR26A-0332, with the aim of supplying the same in the area of District Sangrur and Barnala and could be apprehended with heavy haul of poppy husk in the same Car, in the area of Barnala District. Considering the information as reliable and trustworthy, a ruqa was sent to the police station for registration of case under Section 15 of the NDPS Act. ASI Dev Raj then alerted ASI Bhupinder Singh, Officer-in-charge of Police Post, Badrukhan and he laid a picket at T Point Duggan and continued frisking the vehicles. At about 8:00 p.m., the above said Car reached there and he gesticulated to stop the Car with the aid of torch, but the Car, upon which, bags were laden, passed by at a high speed. A chase was given to the Car and then he alerted ASI Bhupinder Singh about it. He

continued chasing the Car. ASI Bhupinder Singh signaled the Car to stop with the help of Torch at Naka point. However, the Car driver, in stead of stopping the Car, with an intention to kill SPO Manjit Singh, who was tightening the Naka, hit SPO Manjit Singh, as a result of which, SPO Manjit Singh fell on the bank of road in kacha place and the Car due to striking against the Nakabandi Drums stopped at a distance. Then ASI Dev Raj with the aid of police officials and ASI Bhupinder Singh apprehended the occupants of Car and on the rear seat of Car, gunny bags were lying and blood was oozing from the forehead of both the occupants of Car due to breakage of front glasses of Car. The whereabouts of both the persons were recorded as Darbara Singh son of Sohan Singh and Banka Singh son of Mohinder Singh. ASI Dev Raj introduced himself and disclosed to the said persons that he is having suspicion of having some contraband intoxicant in the gunny bags lying in the rear seat of Car and he intends to search them as well as their Car, but they (accused) have the right to be searched in the presence of a Magistrate or Gazetted officer, but the accused after pondering over the matter gave their non-consent by stating that they wanted to get the search of theirs and their Car conducted from the gazetted officer. Their non-consent statements were recorded. Thereafter, ASI Dev Raj requested DSP Sunam Shri Jaskiranjit Singh through wireless to reach the spot and the DSP reached the spot. DSP Jaskiranjit Singh after disclosing his identity to the accused persons, stated that the accused are having a right to get themselves searched in the presence of another gazetted officer or a Magistrate. However, both the accused reposed faith in DSP and in this respect, consent statements of accused were recorded separately.

4. Thereafter, on the directions of DSP Satnam Singh, ASI Dev Raj in the presence of witnesses conducted search of the Car and found that four gunny

bags were lying on the rear seat and two gunny bags were found kept in dickey of Car. All the six bags were put down and on their checking, poppy husk was recovered. Two sample parcels of 250 gram each were taken out from each gunny bag. The separate parcels were prepared and parcels were given serial number as 1A, 1B to 6A, 6B and on weighing of remaining gunny bags, each gunny was found to be containing 29½ kgs poppy husk. The poppy husk was put in the same gunny bags and parcels were prepared. All the above said parcels were sealed by ASI with his seal impression DR and a sample seal was also prepared separately. DSP Jaskiranjit Singh also sealed the above said parcels with his seal impression JKS. The aforesaid entire case property including Ikon Car were taken into possession, vide a recovery memo. As both the accused received minor injuries, both were sent to civil Hospital, Sangrur on the directions of DSP Jaskiranjit Singh. The necessary formalities were completed at the spot and on return to the police station, parcels so prepared were presented before the SHO along with the accused, who verified the same and sealed the parcels with his counter seal. On 26.10.2010, accused were discharged from the hospital and their personal search memo was prepared and they were arrested. During investigation, offences under Sections 307/353/332/186 IPC were added. The accused were produced before the Court thereafter and the case property was also produced. After receipt of report of Chemical Examiner and on completion of all other necessary formalities and investigation, challan was presented against the accused in the Court for trial.

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 an offence punishable

under Section 15 of the said Act, besides for offences punishable under Section 307/353/332/186 and 483 of the IPC, to which they pleaded not guilty and claimed trial. Subsequently after the recordings of depositions of 14 witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the FSL, to which Ex.PG is assigned. 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 one witness in their defence evidence.

Submissions of learned counsel for the convict-appellants

6. Learned counsel for the convict-appellants submits, before this Court that since the recovery, as became made from the offending vehicle, and, as carried in Ex.PB, thus was made in the interregnum inter se sunset and sunrise. In sequel, he submits that in terms of the provisions of Section 42 of the Act, unless the investigating officer concerned, possessed the search warrant or the authorizations rather to make ingress into the conveyance and/or recorded the reasons in writing in terms of the proviso to Section 42 of the Act, to the effect, that since time would be consumed in the obtaining of the said authorization or warrant of search, thereby it would facilitate the accused to flee from the crime site, thereupon the ingress made into the conveyance by the investigating officer concerned, was flawed, besides was made in blatant breach to the mandatory statutory provisions as embodied in Section 42 of the Act. Therefore, it is argued that the charge drawn against the appellants rather remains not cogently established.

Submissions of the learned State counsel

7. Learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon

the convicts by the learned trial Judge concerned, is meritorious, 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 conviction be maintained, and, affirmed by this Court.

Analysis of the submissions of learned counsel for the convict-appellant and the reasons for accepting the same

8. Through Ex.PB recovery of contraband was made from the offending vehicle, which was being driven by the accused. Therefore, thereby there was no requirement for the investigating officer concerned, to beget compliance with the mandatory statutory provisions, as embodied in Section 50 of the Act.

9. A reading of the deposition of the investigating officer concerned, reveals that after recovery of the said contraband being made, thus thereons becoming embossed seal impressions, carrying thereons English alphabets 'DR'. The said seals along with the seal impressions 'JKS' of the DSP, thus became made on the seized contraband, rather at the crime site.

10. However, as further revealed by the deposition of the investigating officer concerned, the SHO after receiving the seized contraband, at the police station concerned, thus proceeded to emboss thereons' seal impression 'BS'.

11. Furthermore, as revealed from a reading of the in-charge of the Malkhana concerned, who stepped into the witness box as PW-3, the said seizure became deposited in the Malkhana concerned. He has also categorically spelt in his affidavit, that so long as it remained in his custody, thereupto the case property remained untampered. Subsequently, as deposed by him, vide RC No.197 dated 25.10.2010 the case property became sent through (Constable Kulwant Singh No.374) to the FSL concerned. Though during the course of his

carrying the case property to the FSL concerned, no material emerges, thus exemplifying *qua* thereons any tampering being made.

12. A reading of the report of the FSL concerned, as becomes enclosed in Ex.PG, contents whereof are extracted hereinafter, thus vividly reveals, that though the sealed cloth parcels became received there. However, the result vis-a-vis the stuff enclosed in the cloth parcels, but cannot be related to the sealed cloth parcels as became sent through RC No.197 dated 25.10.2010 to the FSL concerned. The reason for the said conclusion becomes sparked from the factum, that though in the RC there are detailings *qua* on the sealed cloth parcels, thus existing seal impressions ‘DR’, of the IO, ‘JKS’ of the DSP, and ‘BS’ of the SHO. However, the said detailings yet do not find mention or any reference in the report of the FSL. Consequently, the results of the examinations but cannot be said to be related to the stuff, as become sent to the FSL concerned, vide RC (*supra*).

CHEMICAL LABORATORY (Kharar)												
SAMPLE of Chura Poppy Head												
Excise Report No.	Dated	Analysis of sample	Received by lab on dated	Forwarded by SSP (District)	Analysis completed on dated	F.I.R No./ Date	P.S.	Results Marked Here (Sample Code)	Macros copic	Morphine	Meconic Acid	Final Report contents of the sample are
7189	19/11/10	Bhuki	26/10/10	Sangrur	8/11/10	109/23/10/10	Longo wal	2660-P/10	Chura PH	Present	Present	All Chura Poppy Heads
								2661-P/10	Chura PH	Present	Present	
								2662-P/10	Chura PH	Present	Present	
								2663-P/10	Chura PH	Present	Present	
								2664-P/10	Chura PH	Present	Present	
								2665-P/10	Chura PH	Present	Present	

13. The learned counsel for the convict-appellants has further submitted, that since it was a prior information recovery, and, thereby the investigating officer concerned, was required to, obtain the search warrant or the

authorization to ingress the conveyance and/or recorded the reasons in writing in terms of the proviso to Section 42 of the Act, to the effect that in case the said authorization or warrant of search are obtained, thereby it could facilitate the accused to flee from the crime site, thereupon the ingress made into the conveyance by the investigating officer concerned, was flawed besides was made in blatant breach to the mandatory statutory provisions of Section 42 of the Act. However, there is no evidence brought on record by the prosecution that despite evidently the entry becoming made into the conveyance by the investigating officer concerned, that too, in the interregnum sunset and sunrise, rather the investigating officer concerned, at the stage (supra) possessing the validly issued search warrant or authorization(s) nor also any evidence becomes adduced by the prosecution, to the effect, that within the ambit of the proviso to Section 42 of the Act, reasons becoming recorded in writing by the investigating officer concerned, to the effect, that in case time is consumed in obtaining the (supra), thereupon it would facilitate the accused to flee from the crime site or cause disappearance of evidence. Consequently, for breach being made to the statutory provisions (supra), thereby the search of the conveyance made by the raiding party is completely vitiated, besides with thereby the mandatory statutory provisions as contained in Section 42 of the Act, provisions whereof becomes extracted hereinafter, thus remaining evidently not complied with, as such, the appellants are entitled to a verdict of acquittal.

“[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.]”

Further reasons for accepting the said argument

14. Be that as it may, since the rigor of the said statutory provision would become relaxed only when in terms of the second proviso to Section 42 of the Act, the police officer has recorded reasons to believe, that given the evident consumption of time rather for obtaining the search warrant or authorizations, thereby but affording an opportunity for the concealment of evidence or facility for the escape of an offender. However, when evidently no document, in terms of the exception to the statutory proviso, thus exists on record. Contrarily, when in the presence of the DSP, the search of the conveyance was carried out. However, even the fact that the search of the conveyance was carried out in the presence of the DSP, but cannot relieve the statutory necessity (*supra*), thus ordaining that the search warrant or authorization is but required to be obtained, thus obviously from the jurisdictional Magistrate concerned. The reason being that the issuance of a search warrant or authorization, rather is an empowerment which is vested in the jurisdictional Magistrate concerned, as the provisions embodied in Section 100 of the Cr.P.C., provisions whereof becomes extracted hereinafter, do vest the said apposite empowerment rather only in the jurisdictional Magistrate and not in the DSP concerned.

“100. Persons in charge of closed place to allow search.—(1)
Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code”

15. Since it has been proved that the accused were driving Ford Ikon vehicle with registration No.HR-26A-0332, whereas, the actual number of the said vehicle was PB-37A-8179, hence, the accused but evidently counterfeited a property mark, through affixing fictitious number plate onto the vehicle (supra). Fortifying vigor to the above conclusion, arises from the factum, that through a recovery memo Ex.PB, the recovery of the fake number plate became effected. Since the said recovery has remained undisputed through adduction of cogent rebuttable evidence, therebys evidentiary sanctity is to be assigned thereto.

Resultantly, the verdict conviction and the consequent thereto sentence of imprisonment as awarded to the accused for a charge drawn under Section 483 of the IPC is upheld.

Final Order

18. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to partly allow it. Consequently, the appeal is partly allowed. Resultantly, the impugned judgment convicting, and, sentencing the appellants, and, as become recorded by the learned trial Judge concerned, is partly allowed to the extend that an offence punishable under Section 15 of the Act, thus is quashed and set aside. The appellants are acquitted of the charge framed against them under Section 15 of the Act. However, the finding of conviction and the consequent thereto sentence awarded to the convicts for a charge drawn under Section 483 of the IPC is upheld. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. The appellants, if in custody, and, if not required in any other case, be forthwith set at liberty but only if they have already undergone the sentence qua an offence punishable under Section 483 of the IPC.

19. 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.

20. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

23.10.2024

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No