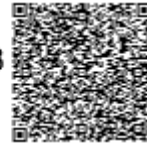


IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2025:PHHC:146097-DB



CRA-D-312-DBA-2004 (O&M)

Date of Decision: 27.10.2025.

State of Haryana

....Appellant.

Versus

Amarjeet Singh and another

...Respondents.

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Rajinder Kumar Banku, Sr. DAG, Haryana with
Mr. Rajiv Sidhu, Sr. DAG, Haryana for the appellant.

Mr. Gurmeet Sago, Advocate (Amicus Curiae)
for the respondents.

Sukhvinder Kaur, J.

1. The appellant-State has preferred the instant appeal against judgment dated 14.08.2003, passed by learned Additional Sessions Judge, Sirsa, vide which respondents-accused Amarjeet Singh and Parkash Chand have been acquitted.

2. Factual Scenario, as per prosecution version is that on 15.12.2002, police party headed by ASI Mahabir Singh received secret information that two youngsters, who indulge in the trade of selling opium, had gone towards Odhan for purchasing opium in car bearing registration No.DL-5C-5385 and they would return through the same route and if their search was conducted, a huge quantity of opium could be recovered. On the

basis of said information, Nakabandi was conducted and the said car was signalled to stop. The driver stopped the car and disclosed his name as Amarjeet Singh and the other person disclosed his name as Parkash Chand. The search of the car was conducted and an one dibba tin was recovered from the boot of the car, wherein some narcotic substance was suspected. The accused were served with notice under Section 50 of the NDPS Act, who did not repose faith in the police and opted to get the search conducted in the presence of Gazetted Officer. DSP Chander Singh (Gazetted Officer) was called at the spot and on his direction search of the aforesaid dibba tin was conducted, wherein opium wrapped in the polythene was found. Two samples of 100 grams each were taken and the remaining opium was found to be 2 Kgs 800 grams. The sample parcels and the dibba tin containing opium were sealed with the seal of MS and CS. Seal MS after use was handed over to HC Ram Singh while seal CS after use was retained by the DSP. The recovered substance and the vehicle were seized vide recovery memo in the presence of the witnesses. A ruqa was prepared and sent to the police station for registration of the case on the basis of which FIR was registered. Site plan of the place of recovery was prepared. Statement of witnesses under Section 161 Cr.P.C. were recorded. Accused were arrested. The case property and the sample parcels were deposited with the MHC with seals intact. The samples were sent to the FSL Madhuban for analysis. After completion of investigation challan against the accused persons was presented in the court, for judicial verdict.

4. After finding a prima facie case against the accused, they were charge-sheeted for the offences punishable under Section 15 of NDPS Act, to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution has examined PW1-ASI Mahabir Singh, PW2-ASI Hukam Chand (Investigating Officer), PW3-H.C. Mangal Singh, PW4-Constable Raghubir Singh, PW5-H.C. Ram Singh and PW6-Chander Singh, Dy. S.P. Dabwali.

7. Statements of accused under Section 313 Cr.P.C. were recorded in which, all incriminating evidence was put to them, which they denied and pleaded innocence and closed their defence evidence.

8. Learned trial Court concluded that prosecution failed to prove its case against the accused beyond reasonable doubt and acquitted the accused of the offences in the present case.

9. Aggrieved of the said decision, present appeal has been filed by the appellant-State challenging acquittal of the accused Amarjeet Singh and Parkash Chand.

10. Learned counsel for the appellant-State has vehemently contended that the trial Court did not rightly appreciate the evidence brought on record by the prosecution and undue weightage to non-joining of public witness has wrongly been given. The trial Court further gave undue weightage to non compliance of Section 42 of the NDPS Act as in cases of recovery of a contraband from a conveyance or public place, the provisions of Section 43 of the Act read with Section 49 of the Act would be applicable and not the provisions of Section 42 of the Act. The trial Court further erred in arriving at the conclusion that Sections 55 and 57 of the NDPS Act have not been complied with. The provisions of Sections 55 and 57 of the NDPS Act are procedural and mere violation of these provisions is not at all fatal to the prosecution case and cannot vitiate the whole trial. He further submitted that the trial Court has wrongly held that

the link evidence in this case is missing. The delay in sending the sample to the FSL cannot be said to be fatal to the prosecution case. From the FSL report, it is clear that seals were found intact and there was no tampering with the same. On account of the minor variation in the statements of the prosecution witnesses, the whole prosecution story cannot be doubted as the said discrepancies are bound to occur with passage of time and do not go to the roots of the case. He urged that huge quantity 3 kgs opium was recovered from the conscious possession of the accused could not have been planted by the police and has prayed that present appeal be allowed, impugned judgment dated 14.08.2003 be set aside and accused be convicted for the offences as charged with and be punished in accordance with law.

11. Learned counsel for respondent No.2 (Amicus Curiae) has vehemently argued that the alleged recovery of the contraband had been effected on the basis of a secret information and the Investigating Officer was under a legal obligation to comply with the provisions of Section 42 of the Act and in absence of noncompliance of the provisions of Section 42 of the Act, a prejudice has been caused to the accused and he is liable to be acquitted only on this ground .

12. We have considered the submissions made by learned counsel for the parties in the light of the evidence on record and the settled law and we do not feel inclined to agree with the contentions raised on behalf of State-appellant.

13. In the instant case, the alleged recovery of the opium had been effected on the basis of secret information from a private car, as such the Investigating Officer was under the legal obligation to comply with provision of Section 42 of the NDPS Act and non compliance of aforesaid

Section by the Investigating Officer has caused serious prejudice to the accused.

14. The Hon'ble Supreme Court considered the applicability of Section 42 of the NDPS Act in similar circumstances in the matter of **Boota Singh & others Vs. State of Haryana, 2021(2) RCR (Criminal) 892, 2021 AIR (Supreme Court) 1913** and held as follows:-

"10. In Karnail Singh, the Constitution Bench of this Court concluded:-

"35. In conclusion, what is to be noticed is that Abdul Rashid [(2000) 2 SCC 513 : 2000 SCC (Cri) 496] did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham [(2001) 6 SCC 692 : 2001 SCC (Cri) 1217] 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 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 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."

(Emphasis added)

15. In Jagraj Singh alias Hansa, the facts were more or less identical. In that case, the vehicle (as observed in para 5.3 of the decision)

was not a public transport vehicle. After considering the relevant provisions and some of the decisions of this Court including the decision in Karnail Singh, it was observed:-

"14. What Section 42(2) requires is that where an officer takes down an information in writing under sub-section (1) he shall send a copy thereof to his immediate officer senior. The communication Ext. P-15 which was sent to the Circle Officer, Nohar was not as per the information recorded in Ext. P-14 and Ext. P-21. Thus, no error was committed by the High Court in coming to the conclusion that there was breach of Section 42(2).

.....

16. In this context, it is relevant to note that before the Special Judge also the breach of Sections 42(1) and 42(2) was contended on behalf of the defence. In para 12 of the judgment the Special Judge noted the above arguments of defence. However, the arguments based on non-compliance with Section 42(2) were brushed aside by observing that discrepancy in Ext. P14 and Ext. P-15 is totally due to clerical mistake and there was compliance with Section 42(2). The Special Judge coming to compliance with the proviso to Section 42(1) held that the vehicle searched was being used to transport passengers as has been clearly stated by its owner Vira Ram, hence, as per the Explanation to Section 43 of the Act, the vehicle was a public transport vehicle and there was no need of any warrant or authority to search such a vehicle. The High Court has reversed the above findings of the Special Judge. We thus, proceed to examine as to whether Section 43 was attracted in the present case which obviated the requirement of Section 42(1) proviso.

.....

29. After referring to the earlier judgments, the Constitution Bench came to the conclusion that non-compliance with requirement of Sections 42 and 50 is impermissible whereas

delayed compliance with satisfactory explanation will be acceptable compliance with Section 42. The Constitution Bench noted the effect of the aforesaid two decisions in para 5. The present is not a case where insofar as compliance with Section 42(1) proviso even an argument based on substantial compliance is raised there is total noncompliance with Section 42(1) proviso. As observed above, Section 43 being not attracted, search was to be conducted after complying with the provisions of Section 42. We thus, conclude that the High Court has rightly held that noncompliance with Section 42(1) and Section 42(2) were proved on the record and the High Court has not committed any error in setting aside the conviction order."

16. Keeping in view the proposition of law laid down in the cases (supra), the secret information received by the Investigating Officer was neither reduced in the writing nor it was sent to immediate superior officers which led to non compliance of Section 42 of the NDPS Act, which is fatal for the prosecution case.

17. In this case Section 55 of the Act has also not been complied with, as accused and case property were not produced by the Investigating Officer before the SHO. Testimony of PW1 ASI Mahabir Singh, the Investigating Officer is completely silent in that aspect, which was mandatory and as such, it has adversely effected the case of the prosecution.

18. Seals on the case property produced before the trial Court were in broken condition and the monogram was not legible, which fact stood admitted by PW5 HC Ram Singh, a witness of recovery, during his cross-examination. So in that eventuality, the case property that was produced in the Court cannot be linked with the accused and possibility of tempering cannot ruled out.

sample to the FSL Madhuban, which is again fatal for the prosecution case.

20. Moreover, till the sending of the sample the seal remained with the police and thus, possibility of tempering with the sample also cannot be ruled out, which again caused dent in the prosecution case.

21. It is doubtful that whether section 57 of the NDPS Act had been complied with in the present case as statement of prosecution witnesses are contradictory regarding the same. PW1 stated that he prepared report under Section 57 of the NDPS Act Ex.PH at the spot and it was seen by DSP at the spot. PW6 DSP Chander Singh, stated in his cross-examination that report under Section 57 of the NDPS Act was presented before him at about 6.20 P.M. on 15.12.2002, when he was confronted with the said report then he admitted that it bore the date as 16.12.2002 under his signatures, which makes compliance of Section 57 of NDPS doubtful.

22. It has been held by the Hon'ble Apex Court in **Gurbax Singh Vs. State of Haryana, 2001(1) RCR (Criminal), 702 (SC)**, that non compliance of provisions of Sections 52, 55 and 57 which are no doubt, directory and violation thereof, would not ipso-facto vitiate the trial or conviction. However, the Investigating Officer cannot totally ignore these provisions as such failure will have bearing on the appreciation of evidence regarding search of the accused and seizure. So non compliance of the above said provisions is fatal to the case of the prosecution.

23. Besides that there are various contradictions and discrepancies in the statement of the prosecution witnesses regarding when they started from the CIA staff, when reached at the spot and the place where the secret information had been received. The prosecution witnesses also differ regarding when the seal was returned to PW1, they also differ regarding the

time which was taken in completing the written work. As per PW1, DSP had put two seals on each of the parcels, whereas PW6 stated that he had put his one seal on all the parcels. Thus, statements of the prosecution witnesses are discrepant on the material points and these discrepancies assume more significance, when case of the prosecution lacks any independent corroboration as no independent witness had been joined despite the ample opportunity.

24. In light of above, after analyzing the evidence on record it can safely be concluded that prosecution has failed to prove its case against the accused beyond the reasonable doubt. Evidence on record is indeed insufficient to convict the accused of the offences as charged with and they have been rightly acquitted by learned trial Court.

25. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court, which is not there in the present case. Reference in this regard can be made to judgment of Hon'ble Supreme Court in **'Mahamadkhan Nathekhan vs. State of Gujarat' 2014 (14) SCC 589.**

26. Learned counsel for the appellant State has not been able to point out any illegality, infirmity or perversity in the impugned decision dated 14.08.2003 calling for any interference.

27. In view of the above, the appeal being bereft of any merit is dismissed and impugned judgment dated 14.08.2003 passed by learned trial Court is upheld.

28. Pending applications, if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

27.10.2025

Komal

Whether speaking/reasoned?

:

Yes/ No

Whether reportable?

:

Yes/ No