

2025:PHHC:147200-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. NO.105

CRA-D-614-DBA-2004 (O&M)
RESERVED ON:16.10.2025
DATE OF DECISION:28.10.2025

STATE OF HARYANA

...APPELLANT

VERSUS

KASHMIR SINGH AND OTHERS

...RESPONDENT(S)

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

Present: Mr. Pramod Kumar, AAG, Haryana.

Mr. Jagdeep Singh, Advocate
for the respondents.

N.S. SHEKHAWAT, J.

1. By way of the present appeal, the State of Haryana has challenged the legality and validity of the impugned judgment dated 05.02.1997 passed by Sessions Judge, Kurukshetra, whereby the respondents were ordered to be acquitted of the charge.
2. The FIR (Exhibit PC/1) in the present case was registered on the basis of the statement made by SI Amar Nath and the same has been reproduced below:-

"It is submitted that today, I, the Sub-Inspector, along with Assistant Sub-Inspector Paras Kumar, H.C. Niranjana Singh no.26, Head Constable Jagan Nath 115, Head Constable Maya Ram no.605, Head Constable Ram Udit no. 99,

Constable Shiv Charan no.268, Constable Balbir Singh 381, in a private car was present in Ismailabad town in connection with detection of crimes. I had received a secret information through an informer, that one truck bearing registration no UHN-299 make TATA, whose driver is Hari Sharan son of Shyam Lal caste Bairagi resident of Shamli, uses to bring the poppy husk from Uttar Pradesh and uses to deliver the same to his customers. Today, in this truck, Kashmir Singh son of Kessar Singh caste Jat Sikh resident of Thaska, Krishan Lal son of Ganga Ram caste Khatri resident of Mohalla Meeranbi Shahabad and Shingara Singh son of Mangal Singh Rai Sikh resident of Rohar Police station Safidon District Jind, will be coming alongwith their respective poppy husk for bringing the same to village Thaska from the side of Jhansa. The above all smugglers alongwith the truck could be apprehended. Because the information is true and believable, so, a prima-facie case under Section 15-61-85 of N.D.P.S. Act is found to be made out. Hence, a writing is being sent to the police station Ismailabad for registration of case through Constable Shiv Charan 268. Since the right of search under N.D.P.S. Act are available with the Gazetted Officer, so, Addl. Superintendent of Police Kurukshetra through wireless message, be intimated to reach on the spot. I, alongwith co-officials, am proceeding to village Thaska for holding a nakabandi. Sd/- in English Amar Nath, S.I., Incharge of branch of C.I.A. Staff Pehowa dated 4.4.1993 at 2.45 P.M.. Today, in Ismailabad Town.”

3. After the recovery was effected, the investigation was further conducted by Inspector Amar Nath. Inspector Amar Nath waited for the arrival of Mohd. Akil, Assistant Superintendent of Police, Kurukshetra, who reached at the spot at about 4.00 p.m. and the facts were narrated to him. The Assistant S.P. conducted the search of the cabin and it was found to be

containing 37 bags, each weighing 40 kgs of poppy straw. One hundred

grams of poppy straw was separated from each gunny bag as a sample. The sample as well as the remaining poppy straw were separately sealed with the seal of “AL” and were taken into possession by the police vide recovery memo Exhibit PD. The seal after its use was retained by the Asstt. S.P., and the truck, ropes, etc., along with the contraband were taken into possession by the police vide separate recovery memos. The accused were formally arrested in the present case and the rough site plan (Exhibit PJ) was prepared. The statements of various witnesses were also recorded and the samples were sent to FSL, Madhuban for analysis by the chemical examiner.

4. During the course of investigation, it was discovered that Parbhu Dayal and Asha Ram were the registered owners of the truck in question. The FSL report (Exhibit PA) was received to the effect that the samples contained poppy straw. After completion of the necessary investigation, a final report under Section 173 Cr.P.C. was submitted by S.I. Ram Charn, S.H.O., Police Station Ismailabad.

5. After hearing both the sides, the trial court had found a *prima facie* case under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the NDPS Act”) against the accused and they were charge-sheeted accordingly. A separate charge for the offence under Section 25 of the NPDS Act was also framed against Parbhu Dayal, the accused. All the accused claimed that they had been falsely implicated in the present case and prayed for holding a trial by the trial Court.

6. During the course of trial, the prosecution had examined nine witnesses, namely, S.K. Nagpal as PW-1, Constable Shiv Charan as PW-2,

SI Ram Charan as PW-3, SI Naranjan Singh as PW-4, Mohd Akil as PW-5, Inspector Amar Nath as PW-6, SI Jaswant Singh as PW-7, Visesh Chand as PW-8 and Rajinder Kumar as PW-9.

7. After completion of the prosecution evidence, the same was put to the accused in the form of statements under Section 313 Cr.P.C. and all the accused pleaded false implication. Even though, the respondents claimed that they would lead defence evidence, however, no such evidence was led by them.

8. Learned State Counsel vehemently argued that the trial Court wrongly held that the compliance of Sections 50 and 55 of the NDPS Act had not been made in the present case. In fact, on receipt of the secret information, a wireless transmission message was sent to the Assistant S.P., Kurukshetra for reaching at the place of recovery. The Assistant S.P. reached at the spot and the truck was searched by him. During his search, he found a special cabin in the truck in which 37 bags of poppy husk were kept and the compliance of Section 50 of the NDPS Act was made. Learned State counsel next submitted that the prosecution had examined Amar Nath, Inspector/In-charge of the CIA staff as PW6, Pehowa, who clearly stated that he was the in-charge of the CIA staff, Pehowa and the case property and sample parcels were kept by him in a room at CIA Staff, Kurukshetra under his lock and key and the truck was also parked in the premises meant for CIA staff. Since he himself was the in-charge of CIA staff, Pehowa, there was no further necessity to produce the case property before any superior officer. Thus, the respondents have been wrongly acquitted by the trial court.

9. On the other hand, learned counsel appearing on behalf of the respondents argued that not only the mandatory provisions of Sections 50 and 55 of the NDPS Act were not complied with by the prosecution, but the mandatory provisions of Section 42 of the NDPS Act were also not complied with by the prosecution. Learned counsel further argued that in the present case, the case was registered on the basis of the receipt of a secret information and the alleged recovery had taken place from a truck, which was admittedly registered in the name of Parbhu Dayal, accused. Consequently, as per the mandatory provisions of Section 42 of the NDPS Act, the recovery officer, who had taken down the information in writing, should have sent a copy of the same to his immediate superior officer forthwith and since no such report was sent under Section 42 of the NDPS Act, the respondents were liable to be acquitted by this Court.

10. After hearing learned counsel for the parties and perusing the record of the case, I find sufficient force in the arguments raised by the learned counsel for the respondents.

11. A careful examination of the facts of the present case would clearly show that the raid was conducted in the present case on receipt of a secret information and in view of the requirement of Section 42 of the NDPS Act, it was imperative that the police officer should have taken down the information in writing and forthwith sent a copy thereof to his immediate superior officer. However, in the present case, the police officials had acted without recording the information in writing and no information was immediately sent to their superior officer. Thus, the omission to record in

Act. While considering the scope of the mandatory provisions of Section 42 of the NDPS Act, Hon'ble the Supreme Court held in the matter of **Boota Singh v. State of Haryana 2021 (2) RCR (Criminal) 892**, as follows:-
(page 50 of compilation A-2):-

“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.”

11. 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)

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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. P-14 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.

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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 non-compliance 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 non-compliance 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 .”

12. The evidence in the present case clearly shows that the vehicle was not a public conveyance but was a vehicle belonging to accused Gurdeep Singh. The Registration Certificate of the vehicle, which has been placed on record also does not indicate it to be a Public Transport Vehicle. The explanation to Section 43 shows that a private vehicle would not come within the expression "public place" as explained in Section 43 of the NDPS Act. On the strength of the decision of this Court in Jagraj Singh alias Hansa, the relevant provision would not be Section 43 of the NDPS Act but the case would come under Section 42 of the NDPS Act.

13. It is an admitted position that there was total non-compliance of the requirements of Section 42 of the NDPS Act.

14. The decision of this Court in Karnail Singh as followed in Jagraj Singh alias Hansa, is absolutely clear. Total non-compliance of Section 42 is impermissible. The rigor of Section 42 may get lessened in situations dealt with in the conclusion

drawn by this Court in Karnail Singh but in no case, total non-compliance of Section 42 can be accepted.”

12. In the present case also, from the perusal of the prosecution evidence, an admitted position emerges that there was total non-compliance of requirements of Section 42 of the NDPS Act and such non-compliance of Section 42 of the NDPS Act is impermissible in law. Still further, even though the recovery had taken place from the truck and the compliance of the provisions contained in Section 50 of the NDPS Act was not required, as no recovery was effected from the personal search of the accused. However, the prosecution chose to comply with the provisions of Section 50 of the NDPS Act. However, it is also clear that even the prosecution could not strictly comply with the provisions of Section 50 of the NDPS Act. Before effecting the recovery, it is imperative on the part of the officer to inform the accused of his right to be searched either before a Gazetted Officer or a Magistrate and the prosecution was under a legal duty to produce cogent evidence to show that the accused was made aware of such right. In the present case, no such procedure was followed by the Investigating Officer. Apart from that, even PW-6 Amar Nath, Inspector clearly admitted that he did not produce the case property and the sample parcels before the S.H.O., Police Station Ismailabad, where the case was registered. Thus, the provisions contained in Section 55 of the NDPS Act were blatantly violated by the police officials. Still further, PW-4 S.I. Naranjan Singh clearly admitted that Ismailabad was having a Mandi and many government offices. However, neither any independent witness was joined from the government office nor from the market committee nor from the town. Even the recovery was made on a busy road and no efforts were made to associate any

independent witnesses, which could lend credence to the recovery effected by the police officials. However, no sincere efforts were made in that direction and the prosecution case is rendered doubtful on this count also.

13. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

*“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach

made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867**, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

14. Keeping in view the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment by the learned trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the impugned

judgment. Accordingly, the present appeal is ordered to be dismissed, being

devoid of any merits. Pending application(s), if any, shall also stand disposed off, accordingly.

(N.S. SHEKHAWAT)
JUDGE

(SUKHVINDER KAUR
JUDGE

28.10.2025
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Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO