

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S No.2273-SB of 2004 (O&M)

Reserved on: 03.11.2025

Date of Decision :15.12.2025

Jodh Raj and another

.....Appellants

Versus

State of Punjab

..... Respondents

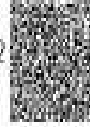
CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present : Ms. Monika Jalota, Advocate-amicus curiae
for the appellants

Mr. Eklavya Darshi, DAG, Punjab.

SURYA PARTAP SINGH, J. (Oral):

A trial conducted by the Court of Sessions, i.e. the learned Special Judge (Narcotic Drugs & Psychotropic Substances Act, 1985), Kapurthala, for the commission of offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter being referred to as "the NDPS Act" culminated into conviction of all the two accused and as a consequence thereof, by virtue of order of the same date, both the accused/convicts were sentenced to undergo rigorous imprisonment for ten years and to pay fine of ₹1,00,000/-each. In default of payment of fine the convicts were sentenced to further undergo rigorous imprisonment for two years each. It was further ordered that the period of detention already undergone by the accused, during the course of investigation or trial, be set-off against the sentence awarded to them.



2. Succinctly, the facts emerging from record are that the FIR No. 169 dated 27.11.2002 was lodged in Police Station Bholath, District Kapurthala, Punjab for the commission of above mentioned offence at the instance of SI/SHO 'Gurwinder Singh'. It was reported by the abovesaid officer that on 27.11.2002 when he was heading a police party deputed for patrolling duty, an informant gave him a tip-off that 'Surjit Kumar', 'Jodh Raj' and 'Raj Kumar', all residents of village Jallowal used to trade in poppy husk, and that they were sitting on bags containing poppy husk near the unmetalled road leading to village Bullowal from village Boparal, and that they were waiting for the vehicle. The above named SI further reported that in view of the above mentioned information, he along with the police party proceeded towards the above mentioned place and on way an independent witness, namely 'Kundan Singh', resident of village Tandi Aulakh was also joined as a witness.

3. As per above named SI, when they reached the place disclosed by the informant, all the above named accused persons were found sitting on four gunny bags near unmetalled road leading to village Bullowal. As per above named police officer, when the abovesaid person spotted the police party, one of them managed to flee from the spot and two persons, namely 'Jodh Raj' son of 'Mohan Lal' and 'Raj Kumar' son of 'Jodh Raj' were apprehended. As per the case set-out by the prosecution, thereafter requisite formalities for the search and seizure were undertaken by the above named SI, who called a gazetted officer on the spot and searched the above named accused, and when the contents of above mentioned four gunny bags were checked, it was found



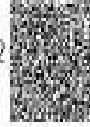
that the bags were full of poppy husk. According to prosecution, on measurement the weight of above mentioned contraband was found to be 160 Kgs.

4. It was further alleged by the prosecution that once the formalities with regard to search, seizure, lodging of FIR and arrest were completed, the investigation of this case was undertaken. As per prosecution, during the course of investigation, usual formalities of investigation, i.e. spot inspection, recording of statements of witnesses, preparing of site plan etc. were undertaken and thereafter, the final report was submitted before the learned trial Court.

5. It shall not be out of place to mention here that during the course of investigation, accused, namely ‘Surjit Kumar’ was declared proclaimed offender, but subsequently he was arrested and supplementary challan against him, which was presented in the Court. The present appellants were charge-sheeted for the commission of offence punishable under Section 15 of the NDPS Act to which they pleaded not guilty and claimed trial.

6. In order to discharge its burden, with regard to proving the charge, the prosecution had examined following witnesses:-

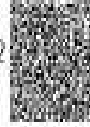
Sr. No.	Witness Number	Name of the Witness
1	PW-1	DSP Lakhwinder Pal Singh
2	PW-2	SI/SHO Gurwinder Singh
3	PW-3	C. Narang Singh
4	PW-4	HC Manjit Singh



7. Heard.

8. While assailing the impugned judgment of conviction and order of sentence it has been contended by learned counsel for the appellants that the impugned judgment of conviction is an outcome of total non-application of judicial mind and that without looking into the fact that evidence adduced by the prosecution was deficient, discrepant and contradictory, rendering the above mentioned evidence to be unreliable, the finding of conviction has been returned by the learned trial Court. As per learned counsel for the appellants, the findings of conviction have been recorded by the learned trial Court, merely on the basis of conjectures and surmises and that the unreliable testimonies of PW-1 to PW-4 have been believed. The learned counsel for the appellants has further contended that merely on the basis of presumption and assumption, it has been observed that the prosecution was successful in proving its case beyond the shadow of all reasonable doubts. According to learned counsel for the appellants, it is established principle of law that it is the duty of the prosecution to prove its case beyond the shadow of all reasonable doubts, but in the instant case the prosecution has miserably failed in discharging its above mentioned duty, but the learned trial Court passed the judgment of conviction against the appellants.

9. In addition to above, it has also been contended by learned counsel for the appellants that the necessary compliance prescribed under the NDPS Act were not made by the Investigating Officer, such as information to Senior Police Officer as prescribed under Section 42(2) of NDPS Act. As per learned counsel for the appellants even the special report of the case was not

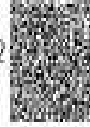


forwarded to the Senior Police Officer. The learned counsel for the appellants has also pointed out that in the present case link evidence is missing, and the testimonies of PW1, PW-2 and PW-4 are unreliable being inconsistent with the record and contradictory to each other.

10. It has also been highlighted by learned counsel for the appellants that in the present case one independent witness was joined by the Investigating Officer but he had not been examined, and that even the evidence with regard to production of case property and samples before the learned Illaqua Magistrate is missing in this case. In view of above mentioned arguments it has been contended by learned counsel for the appellants that by accepting the instant appeal, the impugned judgment deserves to be set aside.

11. The learned State counsel has controverted the above mentioned arguments. While defending the impugned judgment it has been contended by learned State counsel that the testimonies of official witnesses are thoroughly consistent, and that there was no deficiency in the prosecution evidence, as contended by learned counsel for the appellants, which could be termed serious enough to discredit the prosecution version. While claiming that the evidence adduced by the prosecution was comprehensively consistent. It has also been argued by learned State counsel that all the necessary formalities prescribed under the statute were followed by the police officials.

12. In addition to above, the learned State counsel has also argued that the independent witness was not examined as he was won over by the accused and that Head Constable 'Ranjit Singh' was not examined as before examination he had passed away. As per learned State counsel each and every

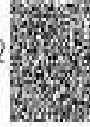


component required for proving a charge for the commission of offence punishable under Section 15 of the NDPS Act was proved before the learned trial Court, and that the above mentioned findings recorded by the learned trial Court is perfectly in accordance with the statutory provisions and the judicial precedents. It has been claimed by learned State counsel there is no scope for indulgence or interference in the findings of conviction recorded by the learned trial Court.

13. The record has been perused carefully.

14. In the present case four witnesses were examined by the prosecution. The first witnesses was PW-1 'DSP Lakhwinder Pal Singh Khara'. The PW-1 had duly supported the prosecution case qua the fact that on 27.11.2002 when he received a wireless message from SI/SHO 'Gurwinder Singh', he had visited the spot and introduced himself to the accused also obtained their consent for search of the bags, and thereafter, the requisite seizure of contraband had taken place.

15. To provide support and corroboration to the testimony of PW-1, the SI/SHO 'Gurwinder Singh' Police Station Bholath, District Kapurthala, was examined by the prosecution as PW-2. The PW-2 in his testimony had duly supported the prosecution case with regard to the story set-up by the prosecution. As per PW-2 he had received a secret information with regard to the fact that the appellants and their third accomplice were in possession of the contraband. According to PW-2 he had informed the PW-1, who had arrived on the spot and thereafter, necessary formalities with regard to search, seizure and sampling etc. were undertaken on the spot in the presence of PW-1.



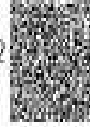
16. The next witness examined by the prosecution as PW-3, was only a formal witness, who had deposed that on 05.12.2002 he had carried the samples from police station to the laboratory for chemical examination.

17. The last witness PW-4 'Manjit Singh', too, was an official witness. The PW-4 had deposed that on 27.11.2002 he was posted as MHC in the police station and on that day he had lodged the formal FIR of this case Ex.PF/1. The PW-4 had also deposed that on 04.12.2002 he had handed over a docket to PW-3 for depositing a sample to the Chemical Examination. However, in further examination the PW-4 had tried to change the stand and deposed that sample was given by him to the PW-3 on 05.12.2002, but the docket was prepared on 04.12.2002.

18. As far as, the above mentioned evidence adduced by the prosecution is concerned, at the very outset, it is pertinent to mention here that in the entire prosecution evidence there is not even a single whisper that any report with regard to recovery of contraband pursuant to a tip-off was submitted before the Senior Police Officer. In the present case, the PW-4 who had deposed that formal FIR of this case was lodged by him, had not deposed even a single word that even after registration of FIR information to Senior Police Officer was given.

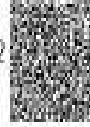
19. With regard to above mentioned situation Section-42 of NDPS Act (applicable at that time) provides that:-

“(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



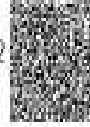
confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter 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 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.”

20. Since in the present case any of the prosecution witnesses had not deposed that after seizure or even after filing of FIR, in compliance of Section-42 of the NDPS Act any information to the Senior Police Officer was given, in my opinion this argument of learned counsel for the appellants holds good that



there was violation of Section-42 of NDPS Act.

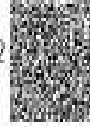
21. With regard to importance of compliance of the instructions enshrined under Section-42 of NDPS Act, the relevant law has been laid down by the Hon'ble Supreme Court of India in this case of 'Sukhdev Singh Vs. State of Haryana 2013(2) SCC 212'. In the above mentioned case the Hon'ble Supreme Court of India set aside the conviction of appellant on the ground that no effort was made by the Investigating Officer to reduce the information in writing and inform his higher authorities instantaneously, or even after reasonable delay, which is mandatory under Section-42 of NDPS Act.

22. In the above mentioned case it was also observed that the failure of prosecution to produce any evidence showing the reason which prevented the Investigating Officer from recording information, and sending it to superior amounted to total non-compliance with the provision of Section-42 of NDPS Act.

23. Similarly, in the case of 'State of Rajasthan Vs. Jagraj 2016(1) SC 687' it has been observed by the Hon'ble Supreme Court of India that non-compliance of Section-42 of NDPS Act may not vitiate the trial, but would render the recovery of illicit articles suspicious and vitiate the conviction.

24. Both the abovementioned principles of law squarely covers the factual matrix of the present case.

25. Although, the learned trial Court has tried to deal with the above mentioned deficiency by observing that substantial part of the compliance had been made but in my opinion the reasoning given by the learned trial Court is not convincing at all. In fact, the failure of Investigating Officer to comply



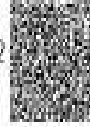
with the above mentioned provision was a factor responsible for making a doubt in the prosecution story.

26. In the present case, it is also relevant to mention here that the evidence adduced by the prosecution reveals that one of the most important and crucial witness to be examined by the prosecution was 'Kundan Lal', who was the only independent eye-witness of the recovery. But the above named witness was not examined by the prosecution and the explanation given in that regard was that he was won over by the accused. In my opinion, the failure of prosecution to examine the above mentioned witness, who was the most crucial witness was a very serious and severe blow to the story set-out by the prosecution. Rather, in my opinion the above mentioned lapse in itself was sufficient to impeach the creditability of prosecution evidence, as the remaining witness were police officials only.

27. In the present case it is also relevant to mention here that the prosecution had claimed that compliance of Section-52(A) of the NDPS Act was duly made. In this regard the PW-4 had deposed that on 28.11.2002 the duly sealed case property was handed over by him to 'ASI Ranjit Singh', who had produced the same along with accused before the learned trial Court.

28. To prove the above mentioned fact 'ASI Ranjit Singh' was not examined by the prosecution, as he had already passed away. The testimony of late 'ASI Ranjit Singh' would have been very crucial and important to establish the fact that the case property in compliance of Section-52(A) of NDPS Act was produced before the Court of learned Judicial Magistrate.

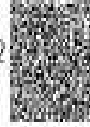
29. 'ASI Ranjit Singh' was no more at the time of prosecution



evidence, did not mean that all the doors for the prosecution were not closed for proving the above mentioned fact. With regard to above, the copy of order passed by the learned Magistrate with regard to production of case property should have been proved by the prosecution. In addition to above, the other police officials, who were accompanying 'ASI Ranjit Singh' for producing the accused before the Court could have been examined. So much so, even the Daily Diary Reports showing the exit and entry of case property from store room of the police station were not proved by the prosecution. Although with regard to above, PW-4 had specifically deposed that he had recorded entry in Daily Diary Report with regard to dispatch of case property for producing before the Court and also the inward entry on its receipt back in the evening, but the above mentioned entries were not proved by the prosecution. Thus in my opinion, in the present case the requisite link evidence was also missing.

30. In the present case another deficiency in the investigation was that the DSP who was allegedly present on the spot at the time of seizure and sealing of contraband, had not handed over the seal to a third person but retained the same in his own custody. This lapse on the part of 'DSP Lakhwinder Pal Singh' creates a doubt with regard to creditability of prosecution story. Rather, in the instant case, the possibility of tampering of sealed contraband existed in the present case.

31. One more factor which although not strong enough, was the fact that the paper work was not conducted by the Investigating Officer himself. Rather it was SI/SHO 'Gurwinder Singh'. This deficiency in discharge of duty on the part of Investigating Officer, raises a finger of suspicion with regard to



stand of the prosecution that the Investigating Officer was present on the spot at the time of investigation.

32. In the present case, it is also relevant to note that both the PW-1 and PW-2 had admitted that few persons had passed through the above mentioned spot during the course of investigation , and that none of them was joined as a witness. Qua above mentioned aspect, no convincing explanation was given either by PW-1 or PW-2. In my opinion, the abovesaid lapse/deficiency on the part of Investigating Officer, too, was fatal for the prosecution.

33. One more aspect to be looked into, in the present case, was the question as to whether the testimony of PW-1 and PW-2 in the presence of above mentioned deficiencies could have been relied upon or not. With regard to above, there is a factor which required to be taken into consideration. The abovesaid factor is the contradiction in the testimonies of official witnesses, such as:-

- as per PW-2 when he received information he was present in the police station but as per PW-2, the PW-1 was in his jurisdictional area.
- as per PW-1 he stayed on the spot for 2 ½ hours but as per PW-2 for 4 hours.

34. If the impact of all the above mentioned factors is co-jointly considered, it leads to a conclusion that the evidence adduced by the prosecution was deficient for arriving at a conclusion that the allegations with regard to recovery of contraband from the possession of appellants had been proved beyond the shadow of all reasonable doubts. In my opinion, the



learned trial Court while believing the above mentioned evidence, which was full of numerous factors raising a finger of suspicion, committed an error of judgment while holding that the above mentioned evidence was sufficient and good enough to prove guilt of the appellants. In my considered opinion, in the given fact-situation the only finding which should have been returned by the learned trial Court should have been acquittal of the appellants. Hence, it is hereby held that the verdict of learned trial Court with regard to conviction of appellants needs indulgence and interference of appellate jurisdiction vested in this Court.

35. As a sequel to above mentioned observations, it is hereby held that the present appeal deserves to be allowed and the impugned judgment of conviction and order of sentence deserves to be set aside. Hence, the present appeal is hereby allowed and the impugned judgment of conviction and order of sentence are hereby set aside. The appellants stand acquitted, accordingly. Their bail bonds shall stand discharged.

(SURYA PARTAP SINGH)
JUDGE

15.12.2025
Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No