

CRA-D-173-DB-2015 (O & M)

2025:PHHC:025021-DB



::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(301-a)

CRA-D-173-DB-2015 (O & M)

Reserved on: 18.02.2025

Date of Pronouncement:20.02.2025

Ramesh @ Suresh

.... Appellant

V/s

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Aditya Sanghi, Advocate,
Mr. Himanshu Garg, Advocate and
Ms. Shaveta Sanghi, Advocate,
for the appellant.

Mr. Munish Sharma, DAG, Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 17/21.05.2014 passed by the Additional Sessions Judge, Jind.

2. The instant FIR came to be registered on 04.05.2006. The accused-appellant came to be convicted vide judgment of conviction and order of sentence dated 17/21.05.2014. The present appeal against the judgment of conviction and order of sentence was filed on 07.01.2015. The matter has come up for final hearing now after more than 18 years of the registration of the FIR.



3. The brief facts of the prosecution case are that on 04.05.2006 Balbir Singh ASI along with HC Phul Kumar, HC Kuldeep Singh, EHC Hoshiar Singh and C. Dalbir Singh while on patrolling duty in a private jeep was present at the bridge of minor Dhamtan on the main road Kharal to Pipaltha. In the meantime, one Esteem car was seen coming from the direction of village Kharal. He gave a signal to the driver of the car to stop on which the driver stopped the Esteem Car at the distance of about 20/25 paces. On seeing the police party, the person, who was sitting on the rear seat of the car alighted from the car and fled away. They tried to catch him, but he could not be apprehended whereas the driver was apprehended. On checking in the rear seat of the car one jute bag and one plastic bag were found. On asking, the driver of the car disclosed his name as Hari Om son of Hari Kishan, r/o Ramesh Park, Street No.R/225, New Delhi now Dhani Peerawali, P.S. Sadar Hansi and he disclosed the name of the person, who had fled away from the spot, as Suresh @ Ramesh son of Nainu Ram r/o Mandi Adampur. The registration number of the car was DL-2CF-3917. On checking the jute bag and the plastic bag, poppy husk was found. Two samples of 100 grams each were separated from both the bags and thereafter, the remaining poppy husk on being weighed was found to be 37 kgs and 800 grams in jute bag and 13 kgs. 800 grams in the plastic bag. Poppy straw was again put into the bags and converted into parcels. Separate bundles of sample poppy husk and residue poppy husk were prepared and they were

CRA-D-173-DB-2015 (O & M)

2025:PHHC:025021-DB



::3::

sealed with seal BS. The Esteem car was also taken into police possession vide separate recovery memo. The seal after use was handed over to Kuldeep Singh HC.

4. Rukka was sent to police station, whereupon the present case was registered. During investigation, rough site plan was prepared and statements of witnesses were recorded. Samples were sent to FSL, Madhuban. Accused Hari Om was arrested in this case.

5. After completion of the investigation, the challan was presented in the court against accused Hari Om whereas accused Suresh @ Ramesh was declared as proclaimed offender on 16.11.2006. It is pertinent to mention here that accused Hari Om was convicted by the Special Judge, Jind vide judgment dated 15.05.2007 and sentenced vide order dated 16.05.2007. He filed a criminal appeal bearing No.CRA-S-2320-SB-2007 and the same was dismissed by this Court vide a judgment dated 20.02.2025.

6. Meanwhile, on 12.05.2012, production warrants against accused Ramesh @ Suresh were got issued by the police and on 16.05.2012 accused Ramesh @ Suresh was joined into investigation after taking the permission of the court and was thereafter, arrested in this case. The supplementary challan against the accused was presented in the court of the Illaqa Magistrate, who after supplying the copies of challan committed the case to the Court of Sessions vide order dated 25.07.2012. On 04.08.2012, charge for the commission of an offence under Section 15 of the NDPS Act



against the accused was framed, to which, he pleaded not guilty and claimed trial.

7. In order to prove its case, the prosecution examined Rajinder Singh ASI as PW1, Raj Kumar ASI as PW2, Ram Kumar EHC as PW3, Giani Ram Kanungo Tehsil Office as PW4, Dalbir Singh SI (retired) as PW5, Sultan Singh ASI as PW6, C.Manoj Kumar as PW7, Kuldeep Singh ASI as PW8, Satpal Saini Record-Keeper as PW9 and Balbir Singh SI (retired) as PW10. The prosecution relied upon the documents Ex.PA to Ex.PJ and thereafter, the Public Prosecutor closed the prosecution evidence.

8. The statement of the accused under Section 313 Cr.P.C. was recorded, to which he pleaded innocence and claimed false implications. However, he did not lead any defence evidence.

9. Based on the evidence led, the accused-appellant Ramesh @ Suresh came to be convicted and sentenced by the Court of the Additional Sessions Judge, Jind vide judgment of conviction and order of sentence dated 17/21.05.2014 as under:-

Offence U/S	Sentence RI	Fine	RI in default of payment of fine
15 of the NDPS Act	15 years	Rs.1,50,000/-	RI 06 months

10. The aforementioned judgment of conviction and order of sentence dated 17/21.05.2014 passed by the Additional Sessions Judge, Jind is under challenge before this Court.



11. During the pendency of this appeal, the sentence of the accused-appellant, namely, Ramesh @ Suresh was suspended by this Court vide order dated 04.03.2022.

12. The learned counsel for the appellant contends that the appellant has been named only in the disclosure statement of the arrested accused, namely, Hari Om. Pursuant to his arrest, no recovery whatsoever has been effected from him. The said disclosure statement has no evidentiary value it having been made before the police officials. He, therefore, prays that this ground was sufficient to set aside the judgment of conviction. Reliance is placed on the judgment in '*Tofan Singh versus State of Tamil Nadu 2021(1) RCR(Criminal) 1*',

13. He next contends that the occurrence took place on 04.05.2006 and the appellant was arrested in May, 2012. No Test Identification Parade was ever conducted. He was identified in the Court for the first time by PW-10/Balbir Singh SI (retd.) on 16.09.2013. This identification in the Court for the first time and that too after more than 07 years of the occurrence was not sufficient to inculcate the accused and he is entitled to acquittal on this ground as well. Reliance is placed on '*Venkatesha and others versus State of Karnataka (Ciminal Appeal No.176 of 2014 decided on 09.01.2025)*'.

14. The learned counsel for the State, on the other hand, contends that as per the case of the prosecution while the police party was on patrolling duty, a car was seen coming and was signalled to stop. The driver



subsequently known to be Hari Om, stopped the vehicle wherein one person, subsequently, known to be Ramesh @ Suresh (the present appellant) fled away. He was duly identified by the arrested accused. Subsequently, PW-10/Balbir Singh SI (retd.), during the course of the Trial, identified him in the Court. This identification was sufficient to establish the culpability of the appellant alongwith that of his co-accused/Hari Om from whom commercial quantity of contraband was recovered. He, therefore, contends that there was no merit in the present appeal and the same was liable to be dismissed.

15. We have heard the learned counsel for the parties.

16. In ‘*Tofan Singh versus State of Tamil Nadu 2021(1) RCR(Criminal) 1*’, the Hon’ble Supreme Court held as under:-

“3. Shri Sushil Kumar Jain, learned Senior Advocate appearing for the Appellants in Criminal Appeal Nos. 152 of 2013; 836 of 2011; 433 of 2014; 77 of 2015 and 1202 of 2017, outlined six issues before us, which really boil down to two issues, namely:

"1. Whether an officer "empowered under Section 42 of the NDPS Act" and/or "the officer empowered under Section 53 of the NDPS Act" are "Police Officers" and therefore statements recorded by such officers would be hit by Section 25 of the Evidence Act; and

2. What is the extent, nature, purpose and scope of the power conferred under Section 67 of the NDPS Act available to and exercisable by an officer under section 42 thereof, and whether power under Section 67 is a power to record confession capable of being used as substantive evidence to convict an accused?"

XXXX XXXX XXXX

155. We answer the reference by stating:



(i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers" within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

17. A perusal of the aforementioned judgment would establish beyond doubt that a statement made to the police while in custody has no evidentiary value in the absence of any recovery being effected in pursuance to the said statement. In the instant case, one Hari Om was arrested, he named the appellant. The appellant was arrested on the basis of his disclosure statement and no recovery whatsoever has been effected from him. Therefore, this statement of the co-accused/Hari Om inculcating the accused-appellant has no evidentiary value.

18. In '***Venkatesha and others versus State of Karnataka (Criminal Appeal No.176 of 2014 decided on 09.01.2025)***', the Hon'ble Supreme Court held as under:-

15. Furthermore, no identification parade has been conducted in the present matter. While identification by a witness in a given case for the first time in witness box would be permissible, the substantial gap of approximately eight years raises serious concern regarding identification. If no identification parade of the



unknown accused persons took place, their identification in the Trial Court, for the first time, would cast a serious doubt on the veracity of the prosecution's case.

19. A perusal of the aforementioned judgment would show that where the identification of an accused is in the Court for the first time after a number of years and no Test Identification Parade has been held, then this identification is insufficient in the eyes of law to affix the guilt of an accused.

20. In the instant case, the occurrence took place on 04.05.2006 whereas the appellant was identified in the Court for the first time on 16.09.2013 i.e. after more than 07 years of the occurrence. It is highly unlikely that PW-10/Balbir Singh SI (retd.) was able to identify the appellant after so many years. Therefore, this identification is not sufficient to establish the culpability of the appellant as regards his presence at the time of the occurrence on 04.05.2006 in the vehicle in question from which the contraband came to be recovered.

21. A perusal of the order dated 04.08.2012 whereby charges were framed under Section 15 of the NDPS Act shows that the charge was framed for the recovery of 37 kgs. 800 gms. of poppy straw/husk alone and not for the total recovery of 52 kgs. Therefore, the order framing charges is also defective.

22. A cumulative effect of the aforementioned discussion is that

there is absolutely no evidence inculcating the appellant and therefore, we



deem it appropriate to set aside the judgment of conviction and order of sentence dated 17/21.05.2014 passed by the Additional Sessions Judge, Jind and acquit the appellant of the charges framed against him.

23. The pending applications, if any, stands disposed of accordingly.

(GURVINDER SINGH GILL)
JUDGE

20.02.2025
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

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