

(2010) 04 P&H CK 0138

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Gursharan Singh alias Sarna

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 23, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 25

Hon'ble Judges: Mohinder Pal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Mohinder Pal, J.

Gursharan Singh alias Sarna (appellant) has filed this appeal against the judgment of conviction and the sentence order dated 27.9.2004 passed by the Judge, Special Court, Sangrur, whereby he was convicted u/s 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and sentenced to undergo rigorous imprisonment for a period of ten years and to pay Rs. 1 lac, as fine, in default whereof to undergo further rigorous imprisonment for a period of one year.

2. As per allegations of the prosecution, on 19.5.2000, Sub Inspector/Station House Officer Balwinder Singh, along with other police officials was present on the Jorra Pul (bridge of canal minor) on a Government vehicle in connection with 'Nakabandi'. In the meantime, a Cantessa car bearing registration No. DNJ-2016 was noticed coming from the side of Village Chhapa. Sub Inspector Balwinder Singh stopped the car by giving signal. The said car was immediately stopped. Two unidentified persons came out of the car and ran away towards backside. Sub Inspector Balwinder Singh and other police official persons followed them. The said persons were successful in running away from the spot. The Sub Inspector conducted search

of the car. Two bags containing something were found on the back seat of the car. The bags were taken out. Poppy husk was found in the bags. Two samples of 250 grams each was separated from the bags. The samples and the remaining poppy husk contained in the bags were separately sealed and taken into possession by the police. The car, which was without documents, was also taken into possession. Ruqa was sent to the Police Station and on its basis formal First Information Report was registered. Rough site plan of the place of recovery was prepared.

3. During investigation of this case, Registration Certificate and Insurance of the above-said car were taken into possession from accused-appellant Gursharan Singh alias Sarna.

4. After completion of investigation and on receipt of the report of the Chemical Examiner, challan against the accused was presented in Court.

5. Charge was framed against the accused for the offence punishable u/s 25 of the Act. He did not plead guilty to the charge and claimed trial.

6. The trial Court, after recording evidence of the prosecution, statement of the accused u/s 313 of the Code of Criminal Procedure, in which he, inter alia, stated that he had no concern with the Car in question and scrutinizing the evidence held that the prosecution was able to prove its case beyond reasonable doubt and that the appellant had allowed his car to be used for commission of the offence in this case. The trial Court convicted and sentenced the appellant, as mentioned above.

7. I have heard the learned Counsel for the parties and have gone through the records of the case.

8. Learned Counsel for the appellant, inter alia, argued that in this case it cannot be said with certainty that the appellant was owner of the car in question. Further, the accused who were occupants of the car at the time of recovery of two bags of contraband poppy husk from the car having run away from the spot, the accused-appellant cannot be fastened with the liability u/s 25 of the Act. According to the learned Counsel, the charge u/s 25 of the Act against the accused-appellant is not proved by the prosecution and it entitles the accused to acquittal.

9. After giving my careful thought to the argument raised by learned Counsel for the appellant, I find sufficient force in the same. In this case, as has been noticed above, the occupants of the car, had succeeded in running away from the spot after stopping the car in front of the police officials. Obviously, the police officials, while on patrol duty, are armed with sophisticated weapons. It is not believable that the accused would be able to dodge the police when the police party is having arms and ammunition in its possession and was present at the spot on a Government vehicle. Had the accused persons allegedly carrying poppy husk in the car in question been apprehended at the spot and had named the accused-appellant as the person

having knowingly permitted the use of the car for the commission of the offence in question, the question would have been otherwise. It being not the case and the accused-persons who had allegedly used the car in question for carrying the contraband, as per evidence on record, having not been connected/related with the accused-appellant, it cannot be said that the accused-appellant is liable u/s 25 of the Act.

10. In view of the above, the charge u/s 25 of the Act against the appellant is not proved beyond every reasonable doubt. Resultantly, I accept this appeal and acquit the appellant of the charge framed against him by giving him the benefit of doubt by setting aside the impugned judgment of conviction and the sentencer order.