
(2006) 08 P&H CK 0543

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 47-DB of 2004

Parminder Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Aug. 7, 2006

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18

Citation: (2006) 4 RCR(Criminal) 495

Hon'ble Judges: Mehtab S. Gill, J; Baldev Singh, J

Bench: Division Bench

Advocate: R.S. Cheema, with Ms. Tanu Bedi, for the Appellant; R.D. Sharma, D.A.G. Haryana, for the Respondent

Final Decision: Allowed

Judgement

Mehtab S. Gill, J.

This is an appeal against the judgment/order dated 20.11.2003 of the Additional Sessions Judge, Sirsa whereby he convicted Parminder Singh son of Malik Singh u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDSP Act) and sentenced him to undergo RI for 15 years and to pay a fine of Rs. 1,50,000/- and in default, to further undergo RI for 3 years.

2. Ruqa Ex. PG was sent by DSP Chander Singh on 12.7.2001 at 7.30 p.m. to M.H.C. Police Station Sadar, Dabwali to register an FIR. In the ruqa he stated that he along with his Gunman Rohtash Singh Constable, Constable Vinod Kumar, Driver Harpal Singh were present on the bridge of Raj Canal in connection with checking of vehicles. He received information on his mobile phone that a Maruti car No. GJW-1-AJ-3549 is parked towards Dabwali, one killa ahead from Dhruv Hotel and if it is checked, a large quantity of narcotic substance of heavy (sic) could be recovered. On getting the information, Chander Singh DSP informed Randhir Singh Inspector, CIA through Wireless, who was checking vehicles on Bhatinda Chowk, to reach

there. He along with Bhoop Singh Constable went to the spot on his vehicle No. HR-24-E-4747 which was being driven by Constable Jagdish. A person was standing near a Maruti car. That person on seeing the police vehicle, fled away, taking the benefit of darkness. Efforts were made to trace him, but in vain. SDM, Dabwali was also called to the spot through mobile phone. The car was searched thoroughly in the presence of the SDM. Proceedings u/s 42 of the NDPS Act were completed. During the search of the vehicle, an iron kit was found fitted with the help of screws in the back side of rear seat of the car. It was opened and checked. Five packets containing pure opium milk were recovered and the same were weighed. The weight of each packet was found to be 5 kgs. Samples of opium milk each weighing 100 grams were separated from the main opium milk, of which parcels were made. The remaining 5 packets of the opium milk were weighed and each packet was found to contain 4 kgs. 800 grams. The parcels of sample and the main packets were sealed by Chander Singh DSP with his own seal. The SDM also sealed the parcel samples as well as the five bags. DSP Chander Singh handed over his seal to Randhir Singh Inspector after its use and the SDM kept his own seal. The parcels of samples of the opium, parcels of the main bulk of opium along with Maruti car No. GJW-1-AJ-3549, bearing Chasis No. 1551824 Engine No. 2159461 along with sale letter and insurance receipt letter having signatures in Punjabi of Parminder Singh Kaka, of the purchase of car on 13.6.2001 were taken into possession. A memo was prepared which was signed by Randhir Singh CIA Inspector and the SDM. The cost of 25 kgs opium milk was Rs. 5,00,000/-. An offence u/s 17 of the NDPS Act was committed. The ruqa Ex. PG was sent through Constable Vinod Kumar. It was requested that after registering the case, its number be intimated. Special report was sent on 13.7.2001 at 2.45 a.m. to the JMJC, Sirsa. Copies of the FIR and other relevant documents were sent to the higher officers. On the basis of this ruqa FIR Ex. PG/1 was recorded on 12.7.2001 at 8.30 p.m.

3. The prosecution to prove its case, brought into the witness-box SI Rajbir Singh PW-1, S.K. Nagpal PW-2, MHC Ram Kumar PW-3, HC Balwant Singh PW-4, Vivek Padam Singh SDM PW-5, Chander Singh DSP PW-6, ASI Ranjit Singh PW-7, G.C. Parjapati PW-8, Randhir Singh SHO PW-9, Constable Bhanwar Singh PW-10 and HC Jaibir Singh PW-11.

4. Learned senior counsel for the appellant Shri R.S. Cheema assisted by Ms. Tanu Bedi, Advocate has argued that Maruti car No. GJW-1-AJ-3549 did not belong to the appellant. The car was fraudulently taken out on his name from Kataria Automobiles, Ahmedabad by Ashwani Kumar Bhardwaj and others. The Investigating Officer did not arrest the appellant till 10.1.2003, even though knowing the address of the appellant. The address was given in the papers which were recovered from the abandoned car.

5. Appellant at the very outset had told the Investigating Officer that Maruti car No. GJW-1-AJ-3549 though in his name and on his address, but he was not the owner of

the same. FIR No. 2/2003 under Sections 411/420/468/120-B IPC was registered against Ashwani Kumar Bhardwaj and others. Appellant complained to the Police Commissioner, Ahmedabad vide letter mark DA that he was not the owner of the Maruti car and a case be registered against the person who played a fraud with him. Applications were also made to the Home Minister, Ahmedabad. Arrest warrants to this effect were issued by the Metropolitan Magistrate, Ahmedabad which are mark DE. It is strange that appellant all along was pleading with the Investigating Officer that he is not the owner of the car, though his name appears in the papers, but the Investigating Officer or any other police official was never sent to Kataria Automobile Agency, Ahmedabad, to enquire as to whether the appellant had purchased the car. No papers of the delivery of the vehicle, sale of the vehicle, or any other document signed by him were taken into possession by the Investigating Officer, so that the signatures of the appellant could be compared to show that appellant is the one who bought the car and he is the one who was transporting the contraband.

6. The recovery was effected on 12.7.2001. It has been recorded in the FIR Ex. PG/1, that the person standing next to the Maruti car could not be apprehended, as he ran away, taking the cover of darkness. In his testimony before the Court, Chander Singh DSP PW-6 has stated, that he reached the spot at 6.30 p.m. His statement does not corroborate the FIR Ex. PG/1. At 6.30 p.m. in the month of July, the Sun is usually in the process of setting. Darkness does not fall before 8 p.m. In fact, there was no one standing next to the Maruti car. It had been abandoned. The police party had no less than six police officials. They could have easily overpowered or chased the person standing next to the Maruti car, if any one was present there.

7. Learned counsel for the appellant has drawn our attention to the remarks made by the Forensic Science Laboratory, where the samples had been sent. S.K. Nagpal, Retired Senior Scientific Officer, FSL, Madhuban Karnal while appearing as PW-2, stated that 5 sealed parcels of the case property were received on 7.9.2001 in the Laboratory, but they were returned due to the reason that the FIR in this case was registered on 12.7.2001. An objection was raised regarding the delayed deposit of the sample parcels.

8. Learned counsel for the State has argued, that appellant could not be arrested while he was standing near the car on 12.7.2001, as on seeing the police party, the appellant ran away. He could not be caught due to darkness. The Investigating Officer had identified the appellant, as the insurance cover of the car was in the name of the appellant. Appellant started complaining to the higher authorities, regarding he being innocent, after a gap of more than 1-1/2 years after the occurrence had taken place. The contraband could not have been planted, it being a heavy recovery of 25 kgs. of opium milk. The testimony of the officials witnesses can be relied upon, as they are consistent and a ring of truth is there in their testimony.

9. We have heard the learned counsel for the parties and perused the record with their assistance.

10. Chander Singh DSP PW-6 received secret information on 12.7.2001 when he was present in the area of Village Asha Khera. The information being that near Dhruv Hotel there was a Maruti car No. GJW-1-AJ-3549 and if searched, a large quantity of contraband could be seized. This information was received at 6 p.m. and ruqa Ex. PG was sent for registration of the FIR Ex. PG/1. This was sent at 7.30 p.m. Chander Singh DSP PW-6 sent a wireless message to Randhir Singh, Inspector CIA Staff PW-1 to reach the spot. On reaching the spot, the police party saw a person standing next to the Maruti car, but the man on seeing the police party, fled away, taking the cover of darkness. In his statement before the Court, Chander Singh DSP PW-6 has stated that he reached the spot at 6.30 p.m. It is thereafter he made a telephone call to the SDM Vivek Padam PW-5 to reach the spot, who reached at 6.45 p.m. From the statement of Chander Singh DWP PW-6 it comes out that the time of recovery of the contraband and the search of the Maruti car was done at 6.30/6.45 p.m. On that day i.e. 12.7.2001, the Sun set at 7.31 p.m. (In the month of July, the Sun sets not before 7/7.30 p.m.) Darkness falls not before 8.30 p.m. (A suggestion has been put to this witness that on that day the Sun set at 7.23 p.m.). The police party if it had reached at 6.30 p.m., could have easily apprehended the appellant, as there was enough light to chase the appellant and to catch him, as there were no less than 5 police officials present. It in fact seems, that when the police reached there was no one standing next to the Maruti car. Appellant has taken a categorical stand right from the beginning that he is not the owner of Maruti car No. GJW-1-AJ-3549, but it was Ashwani Kumar Bhardwaj and others, who had got it delivered from Kataria Automobiles, Ahmedabad. The Investigating Officer has not investigated the case from this angle. All that ASI Ranjit Singh PW-7 has stated is that the investigation of the case was handed over to him on 9.1.2003. He arrested the appellant from Punjab Palace Hotel, Jaipur on the same day at 3 p.m. On interrogating him, appellant confessed that about 1-1/2 years back, he was present near a Maruti car near Dhruv Hotel which contained 25 kgs. of opium milk. The learned trial Court has wrongly relied upon the confession made by the appellant to ASI Ranjit Singh PW-7.

11. ASI Ranjit Singh PW-7 who took over investigation of the case on 9.1.2003, has stated in Court after going through the Case Diary, that it is correct that no investigation was made regarding the ownership of car No. GJW-1-AJ-3549 from Kataria Automobiles, Ahmedabad, nor was any enquiry made through the United Insurance Company as to who had got the vehicle insured. He had gone to Ahmedabad and made enquiries from Kataria Automobiles, Ahmedabad regarding the key of the Maruti car, which had been recovered from the appellant when he was searched at the time of his arrest. While going to Kataria Automobile for verification of the key, he did not join any of the officials of the local police, nor did he enter or record the proceedings conducted by him at Ahmedabad. He did not enquire about the letter/complaint given to the Police Commissioner, Ahmedabad,

which is mark DA. He did not know from the insurance cover, invoice and other documents that FIR No. 2/2003 was registered at Police Station Madhopur under Sections 411/420/468/120-B IPC against Ashwani Kumar Bhardwaj and others. He also did not enquire that FIR No. 2/2003 or orders of the Magistrate, on whose directions FIR No. 2/2003 was registered after a Complaint was filed before him u/s 156(3) Cr.P.C. A copy of FIR No. 2/2003 and that of the order of the Magistrate, Ahmedabad are mark DB and DC respectively. He did not know that a petition had been filed in the Punjab and Haryana High Court at Chandigarh u/s 482 Cr.P.C. for quashing of the FIR i.e. FIR No. 154 dated 12.7.2001 registered at Police Station Sadar, Dabwali under Sections 17/18 of the NDPS Act. He did not know that bail application had been filed by the appellant in the High Court on 6.5.2003. He did not know that arrest warrants of Ashwani Kumar Bhardwaj were issued by the Court of Metropolitan Magistrate, Ahmedabad in FIR No. 2/2003 u/s 420 etc. IPC, which is mark DE. He also did not know that arrest warrants were issued against Hari alias Hardeep Singh which are mark DG. He did know that Ramesh Thakkar had been arrested in this very FIR i.e. FIR No. 2/2003, which are mark DH to mark DN. He further stated that he left for Ahmedabad on 9.2.2003. On reaching Ahmedabad, he did not make any entry in the Police Station at Ahmedabad. He stated that at the time of taking the key into possession of the Maruti car, he did not make any recovery memo.

12. From the statement of ASI Ranjit Singh PW-7 and the documents on record, it comes out that FIR No. 2/2003, under Sections 420 etc. of the IPC was registered on 22.1.2003. ASI Ranjit Singh left for Ahmedabad on 9.2.2003. It is clear that the Investigating Officer was just groping in the dark, as to the ownership of the Maruti car. Though the appellant was in his custody and the appellant had categorically stated that he is not the owner of the car, but ASI Ranjit Singh PW-7 did not even try to verify the truthfulness of the ownership of the car. He did not take the relevant documents of sale of the car etc. into his custody. Before taking delivery of a new vehicle from any Agency, some formalities have to be gone through where the owner has to append his signatures on certain documents. The signatures of the appellant could have been compared with the signatures on the documents in possession of Kataria Motors, after taking permission from the Court, to come to a definite conclusion whether appellant had taken the delivery of Maruti car No. JGW-1-AJ-3549, and not some other person impersonating himself to be Parminder Singh, as it had been done by Ashwani Kumar Bhardwaj.

13. No explanation has come forward from the side of the prosecution as to why the samples were sent after a gap of 25 days for analysis. S.K. Nagpal, Retired Senior Scientific Officer, FSL, Madhuban PW-2 has stated that on 7.8.2001 five sealed parcels were received in the Laboratory, but the same were returned back due to the reason that the FIR in that case was registered on 12.7.2001, with the objection regarding the delayed deposit of sample parcels. As per this witness, according to the Narcotic Control Bureau Instructions, the sealed parcels should be deposited

within 72 hours with the Chemical Examiner. He has further stated that two samples were to be taken of the seized contraband as per instructions. The explanation given by DSP Chander Singh PW-6 to this witness was that samples could not be sent earlier due to VVIP duties. Ram Kumar MHC PW-3 brought Rapat Roznamcha from 12.7.2001 to 16.7.2001. During this period, it has been shown that the Police Force was not sent for VVIP duty at any time. The cross-examination of Ram Kumar MHC PW-3 was deferred by the trial Court to enable the witness to produce the Roznamcha from 16.7.2001 to 13.8.2001. This witness was not brought into the witness-box by the prosecution thereafter for further cross-examination. We can safely infer that Ram Kumar PW-3 was not brought again into the witness- box, as the period from 16.7.2001 to 13.8.2001 did not show any VVIP duty. It is clear that the Investigating Officer Chander Singh DSP PW-6 has only made an excuse, which is not convincing, that the samples could not be sent because of VVIP duty.

14. A doubt is created in our minds about the truthfulness of the prosecution case, benefit of which is given to the appellant.

Appeal is allowed. Appellant is acquitted of the charges framed against him. Conviction and sentence of the appellant is set aside. If in custody, he be set free forthwith.