
Lakhwinder Singh Vs State of Punjab

CRA No. S-1434-SB of 2003

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 28, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 313#Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 â€” Section 15, 35

Hon'ble Judges: Paramjeet Singh, J

Bench: Single Bench

Advocate: Baljinder Singh, for the Appellant; Jaspreet Kaur, AAG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Paramjeet Singh, J.

This criminal appeal is directed against the judgment of conviction and order of sentence dated 28.05.2003 passed by

the learned Judge, Special Court, Patiala, whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment for ten years

and to pay a fine of Rs. one lac for the offence punishable u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter

referred to as the ""NDPS Act""). In default, to further undergo rigorous imprisonment for six months. Brief facts of the case are that on 19.07.2000,

SI Manjit Singh, SHO, Police Station Samana along with HC Bhupinder Singh and some other police officials were present on the turning of

Waraichan street Samana in connection with patrolling. SI Manjit Singh received secret information that accused Lakhwinder Singh and Channa

Master Depot Wala along with their driver are in the habit of selling poppy husk in the area of Samana while carrying the same on Canter No.

HYS-9132 and on that day, they were in the area of Samana for the purpose and if naka is held in the area of Village Danipur, heavy quantity of

poppy husk can be recovered from their possession. Believing the information reliable, SI Manjit Singh sent ruqa to the Police Station for the

registration of case against the accused, on the basis of which, formal FIR was registered. Thereafter, he requested the DSP to reach at the spot.

Then SI Manjit Singh along with the police party and PW Iqbal Singh and Kanwarjit Singh reached in the area of Village Danipur and held

nakabandi at the turning of road. After some time, DSP Ashwani Kumar also reached there. In the meantime, one canter bearing No. HYS-9132

came from the side of Village Danipur and the police party signaled the same to stop. The driver of the vehicle after stopping it at a distance of

about 50 paces escaped from the spot along with a person, namely, Channa, who was also sitting in the vehicle. However, accused Lakhwinder

Singh was apprehended at the spot. DSP Ashwani Kumar disclosed his identity to the accused being a Gazetted Officer and he told the accused

that they wanted to conduct the search of the bags and if he so desired, the search of the vehicle can be conducted in the presence of a Magistrate,

but the accused reposed confidence in the DSP. Consent statement of the accused was recorded. Thereafter, on the directions of the DSP, SI

Manjit Singh conducted the search of the Canter. There was one bunker made of wooden logs inside the canter, which was found to contain 22

bags containing poppy husk. Two samples of 250 grams from each bag were separated and made into parcels. On weighing each bag was

found to contain 15.500 kgs of poppy husk, which were put in the same bags and made into separate parcels. All the parcels were sealed with the

seal bearing impression "MS" of SI Manjit Singh and "AK" of DSP Ashwani Kumar. Seal after use was handed over to PW Iqbal Singh. Entire

case property was taken into possession. SI Manjit Singh prepared visual site plan. On return to the Police Station, SI Manjit Singh deposited the

case property with MHC. On the next day i.e. 20.07.2000, SI Dalbir Singh produced the accused along with case property before Sub Divisional

Judicial Magistrate, Samana. On receipt of the report of Forensic Science Laboratory and after completion of investigation, challan was presented

against the accused in the Court. On 03.05.2002 co-accused Brij Lal was arrested by SI Manjit Singh and supplementary challan was presented

by Inspector Harbhajan Singh. Finding a *prima facie* case against the accused, they were charge-sheeted to which they pleaded not guilty and

claimed trial.

2. The prosecution, in order to prove its case, examined PW1 Constable Kuldip Singh, PW2 SI Dalbir Singh, PW3 DSP Ashwani Kumar and

PW4 MHC Jagga Ram and PW5 Inspector Manjit Singh and closed its evidence.

3. Thereafter, statements of accused were recorded u/s 313 Cr.P.C. All the incriminating circumstances were put to them. They denied the same

and pleaded false implications. However, in their defence, they have examined DW1 Bhanwar Singh and DW2 Gurcharan Singh.

4. The learned Trial Court, after trial, acquitted of the charges framed against Brij Pal-accused and convicted and sentenced the accused-appellant

as aforesaid. Hence, this criminal appeal.

5. I have heard learned counsel for the appellant, as well as, the learned State counsel.

6. Learned counsel for the appellant vehemently contended that there is no compliance of the provisions of Section 50 of the NDPS Act. The

appellant was not taken to the Magistrate, rather, he was searched by the DSP. The compliance of Section 50 of the NDPS Act is mandatory

before effecting recovery. Learned counsel for the appellant further contended that the seal was handed over to an independent witness Iqbal

Singh who has not been examined as a witness. Failure to examine an independent witness clearly indicates that no independent witness was

present at the spot as he has not been subjected to cross-examination to elicit truth from him. Learned counsel for the appellant further submitted

that the prosecution has failed to prove the conscious possession of the appellant and submitted that the link evidence is missing.

7. Learned State counsel has opposed the contentions raised by the learned counsel for the appellant and submitted that recovery has been

effected from a Canter and not from the person. Huge quantity has been recovered from the Canter which has turned out to be a poppy husk

weighing 16 kgs. which was contained in 22 bags each. Such a huge quantity cannot be planted on the accused. The appellant was apprehended at

the spot. As such, the possession of the appellant is conscious and he was fully aware of this fact. Learned State counsel further contended that

non-examination of independent witness cannot be a ground for acquittal. The evidence of the police officials specifically when the recovery is so

heavy can not be discarded merely on the ground that they are police officials. The prosecution has categorically proved the case by leading a

cogent evidence, the recovery of articles of the contraband has been affected from the canter which was in conscious possession of the appellant

and the other accused.

8. I have considered the rival contention of the learned counsel for the parties and perused the evidence on record.

9. Perusal of the record shows that when the appellant was apprehended then an option was given to him whether he wanted to be searched by a

Gazetted Officer or by a Magistrate and the consent memo was prepared and the appellant had opted that he reposed confidence in DSP, who is

a Gazetted Officer. As such, at the spot, on the instructions of DSP, the search was carried out. Recovery of contraband is from canter. So,

provisions of Section 50 of the NDPS Act are not applicable.

10. The Apex Court in the judgment of State of Punjab Vs. Baldev Singh, etc. etc., has clearly held as under:-

12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc.

However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of

person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the

NDPS Act is also recovered, the requirement of Section 50 of the Act are not attracted.

11. When the recovery is effected from the person only then Section 50 of the NDPS Act is mandatory. If the recovery is effected from the

premises, automobile, etc. then there is no requirement of complying with the provisions of Section 50 of the NDPS Act. The said view has been

further affirmed by the Apex Court in the case of Ajmer Singh versus State of Haryana, 2010(2) RCR (Criminal) 132 wherein it has been held that

Section 50 of the NDPS Act applies only in case the personal search of the person is carried out and not otherwise. Articles like bag, brief case,

container, etc. cannot even remotely be treated as part of the body of a human being. The same view has been affirmed in a recent Constitutional

Bench judgment of the Hon^{ble} Apex Court in the case of Vijaysinh Chandubha Jadeja versus State of Gujarat, 2010(4) RCR (Criminal) 911.

12. In view of the above, the contention of the learned counsel for the appellant in regard to non-compliance of Section 50 of the NDPS Act fails.

13. Further, the non-examination of the independent witness does not affect the merit of the case. Police Officials are responsible persons and their

evidence cannot be discarded merely on the ground that the same is not corroborated by the independent witness. If the appellant wanted to

derive any benefit for non-examination of Iqbal Singh the alleged independent witness, the same could have been taken by calling the said witness

by the appellant in his defence. As such, the said contention of the learned counsel for the appellant that the evidence of the official witnesses has

not been corroborated by independent witness becomes insignificant specially when the recovery is huge. The question of implanting such a heavy

quantity does not arise. Hence, this contention is also rejected.

14. The next contention is of the conscious possession. The recovery of the huge quantity of bags from a Canter at the spot is indicative of the

conscious possession of the appellant. The appellant was apprehending at the spot. The presumption of existence of such mental state will be

presumed against the appellant especially in view of Section 35 of the N.D.P.S. Act read with the explanation of Section 35 of the NDPS Act. A

person in possession of huge quantity of contrabands must be deemed to be in the knowledge of the fact of such articles, unless it is rebutted by

cogent evidence. Recovery itself indicates the motive and intention of retaining such contraband and is indicative of the fact of conscious

possession. The learned counsel for the appellant has failed to show, it stands rebutted, specifically when the appellant has been apprehended at

the spot.

15. Learned counsel for the appellant failed to point out any other material discrepancies which may go to the root of the case. In view of this, the

present appeal fails and is dismissed. Since appellant is on bail, the authorities may take appropriate measures for arrest of the appellant to serve

the remaining part of the sentence.