

(2006) 07 P&H CK 0252

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 157-DB of 2004

Gurnam Kaur and others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 17, 2006

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18, 20

Citation: (2006) 3 RCR(Criminal) 984

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

Bench: Division Bench

Advocate: S.P.S. Sidhu, for the Appellant; S.S. Randhawa, D.A.G. Punjab, for the Respondent

Final Decision: Allowed

Judgement

Mehtab S. Gill, J.

This is an appeal against the judgment/order dated 23.12.2003 of the Additional Sessions Judge-cum-Special Judge, Amritsar, whereby the trial Court convicted Gurnam Kaur (63 years) wife of Pargat Singh, Ranjit Kaur (33 years) wife of Heera Singh and Gurjot Kaur (39 years) wife of Paramjit Singh under Sections 18 and 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") and sentenced them to undergo twelve years rigorous imprisonment and to pay fine of Rs. one lac each u/s 18 of the NDPS Act, in default of payment of fine, further to undergo rigorous imprisonment for six months. Both the sentences under Sections 18 and 20 of the NDPS Act were to run concurrently.

2. Shri S.S. Mand, DSP (D), Kapurthala in compliance with the directions of the S.S.P., Kapurthala and on receipt of secret information was present on 16.6.2000 at the turning of Dhilwan Road, Dhussi Bundh in connection with nakabandi along with Inspector Gurmukh Singh, SI Nirmal Singh, ASI Jaswinder Pal Singh, ASI Paramjit Singh, Head Constable Manohar Singh, Head Constable Surinder Kumar, Head

Constable Gurmail Singh, Head Constable Swaran Singh, Constable Harjit Singh, Constable Malkiat Singh, Constable Raj Kumar, Constable Swaran Singh, Constable Surinder Pal Singh, Constable Lakhwinder Singh, Constable Baljinder Singh along with U.P. Bhatt, Intelligence Officer, NCB. At about 7.30 a.m., one Maruti car of white colour bearing registration No. HR03A-2642 came from Amritsar side. On seeing the police party, the driver of the car stopped the car at a distance of about 50 yards from them and tried to turn the car backwards. He was not successful in turning the car, but three persons came out and ran away towards the fields. The police party were successful in taking the Maruti car and the driver into custody. On interrogation, the driver disclosed his name as Gurlal Singh @ Lalli and disclosed the names of the other three persons who had fled away as Paramjit Singh @ Pamma, Amolak Singh and Hira Singh sons of Pargat Singh. Before conducting search of the car, Gurlal Singh @ Lalli was told that he was having narcotics in his car and they (police) wanted to search it. He was further asked whether he wanted to get searched by a Gazetted Officer or a Magistrate, whereupon Gurlal Singh stated that he had no objection, if any officer conducted the search. His consent memo was prepared. Search was conducted as per procedure. Five packets of heroin mark '333' were recovered from a gunny bag lying underneath the front seat of the car. Each packet weighed one kg. All the five packets were having the same mark. Two samples each weighing 5 grams were taken after putting the heroin into a polythene bag. 5 kgs. packet was marked 'A' and the samples taken were marked 'A1' and 'A2'. Chit bearing the signatures of the Investigating Officer, Gurlal Singh and witness was affixed on the samples. The recovered quantity and the samples were sealed by the Investigating Officer by subscribing "SS". The polythene envelope marked as "A" was also converted into a parcel wrapped with cloth and seals of subscription "SS" were put. 10 packets of heroin were recovered from the gunny bag lying in front of the seat adjacent to the seat of the driver, which on weighing was 1 kg. each. These packets were also bearing a marking of '333'. Samples were taken and they were marked 'B1' and 'B2'. Two more samples of 5 grams each were taken, which was marked 'C1' and 'C2'. Thereafter, 20 packets of heroin were recovered from one gunny bag lying in front of rear left seat, out of which 10 packets were bearing mark '848' and 10 packets had marking of '777'. On weighing, each packet weighed 1 kg. Samples were taken and the remaining heroin was sealed. Two more samples bearing 'G1' and 'G2' marking were taken. 20 packets of heroin was recovered mark of '777', samples were taken with the marking H-I, J and K. Opium weighing 22 kgs. was recovered, samples were taken and the marking V, W, X, Y and Z was made. The recovered quantity, samples, car and packing material were taken into police custody vide separate memo. The total quantity recovered from Gurlal Singh and his accomplices Paramjit Singh, Hira Singh and Amolak Singh was 55 kgs. of heroin and 22 kgs. of opium.
3. Ruqa was sent to the Police Station and FIR No. 46 of 2000, Police Station Dhillian, District Kapurthala was registered on 16.6.2000 at 11.00 a.m., under Sections 20 and

18 of the NDPS Act. During the course of investigation of FIR No. 46 of 2000, Gurlal Singh made a statement to DSP Surinderpal Singh Mand that if the houses of Hira Singh and Pargat Singh in Village Thatha are raided, a large quantity of contraband could be recovered.

4. The prosecution to prove its case brought into the witness box Head Constable Satnam Singh as PW-1, Constable Nirmal Singh as PW-2, DSP Baldev Singh as PW-3, Inspector Nirmal Singh as PW-4, Head Constable Dilbagh Singh as PW-5, Head Constable Sarabjit Singh as PW-6, DSP Malkiat Singh as PW-7 and DSP Ashutosh as PW-8.

5. Learned counsel for the appellants has argued that it is on the statement of Gurlal Singh @ Lalli, who had been arrested in FIR No. 46, Police Station Dhillwan, District Kapurthala on 16.6.2000 at 7.00 a.m. under Sections 20 and 18 of the NDPS Act, raid was conducted on the houses of the appellants. Statement given to DSP Baldev Singh PW-3 was that if the houses of Hira Singh and Pargat Singh are raided in Village Thatha (District Amritsar), a large quantity of contraband could be recovered. DSP Baldev Singh PW-3, along with other police officials proceeded towards Village Thatha. DSP Ashutosh, PW-8 met DSP Baldev Singh PW-3 in Village Thatha and he was joined in the raiding party. Thereafter, Baldev Singh PW-3 went to the house of Pargat Singh. Appellants Gurnam Singh wife of Pargat Singh, Ranjit Kaur wife of Heera Singh and Gurjot Kaur wife of Paramjit Singh were found sitting in the house of Pargat Singh on a bed in one of the rooms of that house. DSP Baldev Singh PW-3 made his intentions clear that he wanted to search the house and asked the appellants whether they wanted to be searched by a Gazetted Officer or a Magistrate. The appellants reposed confidence in him. Consent memos Ex. PA, PB and PC were prepared. Thereafter, search of the house was made. From the box in the back of the bed in the room (where) the appellants were sitting, opium wrapped in a glazed paper and two packets of heroin were recovered. Two samples of 25 grams each were taken out from the opium. Two samples of 5 grams each were taken from the packets of heroin. The opium recovered was 3 kgs. and the heroin recovered was 2 kgs. The samples, rest of the opium and heroin were sealed with the impressions "BS" and "AT". Personal searches of the appellants were also done. Learned counsel for the appellants has vehemently argued that the police party headed by DSP Baldev Singh PW-3, had ample time to send a ruqa either to Police Station, Dhillwan or to Police Station Harike, to ask them to register an FIR. No ruqa or information was sent. This, in fact, was a deliberate and intentional lapse on the part of the Investigating Officer. Ruqa Ex. PJ was sent at 4 p.m. on 16.6.2000 through Head Constable Balbir Singh to Police Station, Harike and thereafter, FIR Ex. PK was recorded at 5.15 p.m. The raiding party all this time was deliberating as to whether the seized contraband belonged to Paramjit Singh or the ladies. It has come in evidence that Paramjit Singh was in their custody at the time of recovery.

6. Appellants did not have any knowledge of the contraband. They were present in the room of their own house. It was natural for them to be there. Appellant Gurnam Kaur is a 70 years old lady. She was sitting in the room along with her daughter-in-law appellant Ranjit Kaur and with her brother-in-law's (Jeth) daughter-in-law-Gurjot Kaur. It has come in evidence that the room from where the contraband was recovered, was a part of a big haveli whose owner was Paramjit Singh, the alleged accomplice of Gurlal Singh @ Lalli. Appellant Gurnam Kaur is the wife of Pargat Singh, Ranjit Kaur is the wife of Heera Singh and Gurjot Kaur is the wife of Paramjit Singh. All three i.e. Pargat Singh, Heera Singh and Paramjit Singh allegedly had escaped at Dhilwan, are the accomplices of Gurlal Singh @ Lalli. The information provided by Gurlal Singh @ Lalli was neither reduced into writing nor conveyed to any senior officer. This was a clear violation of Section 42 of the NDPS Act. The possession of contraband cannot be construed that of the appellants.

7. The disclosure statements of the appellants were not recorded. This was for the sole reason that the police knew that the appellants did not know where the contraband was lying. The alleged contraband was not in possession of the appellants, but was in possession of their husbands. The husbands of the appellants could have been charged under the DSP Act, but not the appellants.

8. No independent witness was joined from the locality. The sole independent witness Sukhdev Singh was given up by the prosecution as they knew that he would not support the prosecution case. Section 100 of the Code of Criminal Procedure clearly states that two independent witnesses should be joined. Though it has been stated in the statement of the Investigating Officer that ASI Rajwinder Kaur, Police Station Harike, was joined, but strangely she was not brought into witness box to depose regarding the personal search of the appellants. Section 50(4) of the NDPS Act had not been adhered to.

9. Learned counsel for the State has argued that there is no infirmity in the recovery. It was on information given by Gurlal Singh @ Lalli, who was being interrogated in FIR No. 46, dated 16.6.2000 at Police Station Dhilwan, District Kapurthala, under Sections 20 and 18 of the NDPS Act, that raid was conducted on the house of the appellants in Village Thatha, Police Station Harike, District Amritsar. The police did not have much time at their disposal, as they had to conduct the raid as soon as possible, otherwise the appellants would have taken the contraband and hidden it somewhere else. An independent witness Sukhdev Singh was joined, but he was won over by the appellants. ASI Rajwinder Kaur accompanied the police party and it was she, who conducted the personal search of the appellants. The contraband was recovered from a bed on which the appellants were sitting. The bed and the room belonged to the appellants and the appellants were liable for consciously being in possession of the contraband. Section 42 of the NDPS Act was complied with as DSP Ashutosh PW-8, being a Gazetted Officer had the information regarding the raid.

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

11. The police party headed by DSP Baldev Singh PW-3, had ample opportunity to record a DDR or an FIR at Police Station Dhillwan and Police Station Harike, before the raid was going to be conducted on the house of the appellants. The least the Investigating Officer could have done was to send a ruqa to Police Station Dhillwan (District Kapurthala) or to Police Station Harike (District Amritsar). Appellants were unaware of the impending raid going to be conducted on their house. DSP Baldev Singh PW-3 was investigating the case in FIR No. 46, dated 16.6.2000, Police Station Dhillwan, District Kapurthala. Information regarding the appellants possessing contraband was given by Gurlal Singh @ Lalli, the driver of the vehicle, which they had stopped. The police party had to travel for more than 2 hours and over a distance of not less than 80 kms. and it is thereafter, they reached the house of the appellants. DSP Baldev Singh PW-3 could have easily sent a ruqa to Police Station Dhillwan or Police Station Harike for registering of a case as per information provided to him by Gurlal Singh @ Lalli was in the morning at 7.30 a.m. It has come in the statement of DSP Baldev Singh PW-3, that before conducting the raid an FIR was not registered with either of the Police Stations of Dhillwan or Harike. It has further come in his evidence that he did not inform DSP Ashutosh PW-8, in whose jurisdiction, he was going to conduct the raid. Ruqa was sent at 4 p.m. to Police Station Harike, after a delay of 11 hours. SI Nirmal Singh, who was along with DSP Baldev Singh PW-3, knew where Village Thatha was. DSP Ashutosh PW-8 met DSP Baldev Singh PW-3 at Village Thatha by chance. ASI Rajwinder Kaur was also in the party headed by DSP Ashutosh PW-8. DSP Ashutosh, in his statement has stated that he was going at that time for a raid in some excise matter. DSP Baldev Singh PW-3, has stated that the information provided to him by Gurlal Singh @ Lalli was neither reduced into writing nor conveyed to the senior officers. This was a clear violation of Section 42 of the NDPS Act. The Hon'ble Supreme Court in Beckodan Abdul Rahiman v. State of Kerala, 2002 (2) RCR 385 (SC) has stated that as per Section 42(2) of the NDPS Act, the empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate superior. If there is a total non-compliance of the provisions the same affects the prosecution case. To this extent, sending of the information is mandatory. But in the case in hand, no information was sent to the superior officers as stated by DSP Baldev Singh PW-3 and he did not even record the statement of Gurlal Singh @ Lalli. He has admitted in his testimony before the Court, that he did not inform the SSP Amritsar, SHO Harike or DSP Ashutosh PW-8 about the intended raid. Neither the disclosure statement of Gurlal Singh @ Lalli nor that of the appellants was recorded before the heroin and opium was recovered. Though one Sukhdev Singh was cited as a witness, but he has not been produced by the prosecution. DSP Baldev Singh PW-3, has stated that no respectable, Sarpanch/Panch of Village Thatha was joined by the police party. He has further

admitted that the appellants are the wives of Pargat Singh, Heera Singh and Paramjit Singh, who were the three persons who ran away when the car was stopped and FIR No. 46, dated 16.6.2000, Police Station Dhilwan, District Kapurthala under Sections 20 and 18 of the NDPS Act was recorded.

12. Section 50(4) NDPS Act clearly states that the search of a lady will be done by a lady police officer. DSP Baldev Singh PW-3, has stated "Further personal searches of the accused were conducted to find nothing from them. Accused Ranjit Kaur was found wearing 3 pairs of gold ear rings which were taken into possession by DSP Ashutosh". It is clear from the statement that the personal search of the appellants was not done by ASI Rajwinder Kaur, but by the DSP Baldev Singh PW-3 and DSP Ashutosh PW-8. This is a violation of Section 50(4) of the NDPS Act. We cannot overlook this fact that the appellants were sitting in their own house and in their own room. It was natural for them to be in the house.

13. DSP Ashutosh PW-8, has stated in his testimony, that he was going for an excise raid in his area, where on the way he met DSP Baldev Singh PW-3 of Kapurthala. Though DSP Baldev Singh PW-3, has said that ASI Rajwinder Kaur was present along the police party of Police Station Harike, which was headed by DSP Ashutosh PW-8 (the then SHO of Police Station Harike), but DSP Ashutosh PW-8 has stated that it is correct that there is no lady constable or ASI posted at Police Station, Harike. If there was no lady Police Officer in Police Station Harike, then from where did ASI Rajwinder Kaur come. It is clear that ASI Rajwinder Kaur has been asked to become a witness at a later stage, so that the lacuna of a lady Police Officer at the time of raid is covered. DSP Ashutosh PW-8 has further stated that it is correct that Village Thatha falls within the jurisdiction of Police Station, Harike. He has further confessed that Paramjit Singh and Pargat Singh of Village Thatha were already in police custody. If Paramjit Singh and Pargat Singh were in custody as stated by DSP Ashutosh PW-8, then the Investigating Officer should have brought them forward to identify the place where the contraband was lying in their house. It is clear that the contraband was planted on the appellants, though it may have belonged to Paramjit Singh and Pargat Singh.

With the above observations and discussions, we find merit in the appeal. Appellants have been falsely implicated. Doubt is created in the mind qua the recovery of the contraband, the benefit of which is given to the appellants. Appeal is allowed. Appellants are acquitted of the charges.