

**(2012) 08 P&H CK 0314**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CRA No. 1585-SB of 2004

Ram Swaroop

APPELLANT

Vs

The State of Haryana

RESPONDENT

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**Date of Decision:** Aug. 17, 2012

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15(c), 35, 42, 50

**Citation:** (2013) 1 RCR(Criminal) 34

**Hon'ble Judges:** Paramjeet Singh, J

**Bench:** Single Bench

**Advocate:** G.S. Benipal, in CRA No. 1584-SB of 2004 and Mr. Vivek Suri, in CRA No. 2185-SB of 2003, for the Appellant; Amit Goyal, AAG, Haryana, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Paramjeet Singh, J.

By this common order, Criminal Appeals viz. CRA No. 1585-SB of 2004 and CRA No. 2185-SB of 2003 shall be decided together as the same arise from judgment dated 14.07.2003 passed by the learned Addl. Sessions Judge, Bhiwani. Both the appeals are directed against the judgment of conviction dated 14.07.2003 and order of sentence dated 15.07.2003 passed by the learned Additional Sessions Judge, Bhiwani, whereby the appellants have been convicted and sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of Rs. One lac for the offence punishable u/s 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act"). In default, to further undergo RI for one year.

2. Brief facts of the case are that on 14.12.2000, A.S.I. Raghbir Singh along with HC Dariyav Singh and Constables Ranbir Singh and Daya Chand was present while

making nakabandi at Jhuppa chowk on Hissar-Rajgarh Road. In the meantime, Satbir Singh son of Shish Ram, resident of Motipura reached there and he was having conversation with ASI Raghbir Singh. In the meantime, a matador bearing registration No. DI-8C-4165 was seen coming from the side of Rajgarh and the said vehicle was signalled to stop. After the stoppage of said vehicle, it was found that five gunny bags were kept on the rear side of the vehicle. Since ASI Raghbir Singh suspected contraband in the vehicle, he asked the driver and the conductor whether they wanted the search of the vehicle in the presence of Gazetted Officer or Magistrate. The accused gave option that search of the matador be effected in the presence of either Magistrate or Gazetted Officer. Thereafter, Narender Singh DSP, Siwani on being called through VT message (Ex.PJ), reached at the spot. On the direction of the DSP, the vehicle was searched, which led to the recovery of 5 gunny bags each containing 45 packets of poppy straw. In total 200 small packets weighing 1 kg. each of poppy straw were recovered from all the five gunny bags and its total weight came to 200 kgs. One kg packet from each bag i.e. in total 5 packets were separated for sample and made into parcels. Samples and remaining poppy straw were sealed separately and taken into possession. Seal after use bearing inscription RS was handed over to Satbir Singh, whereas seal bearing inscription NS after use was kept by Narinder Singh DSP. The entire case property i.e. samples, residues and matador were taken into possession vide recovery memo Ex.PG. Ruqa Ex.PB was sent to Police Station, on the basis of which formal FIR Ex.PC was recorded. Rough site plan was prepared. Accused along with witnesses and case property were produced before the SI/SHO Police Station Siwani, who after verifying the facts affixed seal bearing inscription PS on the samples, as well as residues and prepared his report Ex.PD. Samples were sent to the office of Forensic Science Laboratory, Haryana, Madhuban for analysis. Vide FSL report Ex.PE, it was found that the contents of samples were that of poppy straw. After completion of investigation of the case, challan was presented against the accused in the Court. Finding a prima facie case against the accused, they were charge-sheeted to which they pleaded not guilty and claimed trial.

3. The prosecution, in order to prove its case, examined PW1 SI Om Parkash, PW2 MHC Kanwar Singh, PW3 SI Partap Singh, PW4 HC Daya Chand, PW5 Narender Singh, DSP and PW6 SI Raghbir Singh. PWs HC Dariyav Singh and HC Randhir Singh were given up as unnecessary witnesses, whereas PW Satbir Singh was given up as having been won over by the accused. After tendering report of FSL, the prosecution closed its evidence.

4. Thereafter, statements of the accused were recorded u/s 313 Cr.P.C. All incriminating circumstances were put to them. They denied the same and pleaded innocence. However, in their defence, they have examined DW1 Satbir Singh.

5. The learned Trial Court, after trial, convicted and sentenced the accused-appellant as mentioned in the earlier part of the judgment. Hence, this appeal.

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

7. 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 who was called at the spot, prior to that recovery has been effected from a vehicle bearing registration No. DL-8C-4165. 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 Satbir 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. There are number of contradictions and discrepancies in the statements of Police witnesses.

8. Learned State counsel has opposed the contentions raised by the learned counsel for the appellant and submitted that recovery has been effected from a Matador and not from the person of the accused. Huge quantity has been recovered from the vehicle which has turned out to be a poppy straw weighing about 200 kgs. which was contained in 40 small packets of 1 kg each in five bags. 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 cannot be discarded merely on the ground that they are police officials. The prosecution has categorically proved by leading a cogent evidence the recovery of articles of the contraband from the truck which was in conscious possession of the appellant and the other accused.

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

10. 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 wanted to be searched either by a Gazetted Officer or a Magistrate. As such, at the spot, DSP, a Gazetted Officer was called and the search was carried out.

11. 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.

12. 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 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 Vs. State of Haryana](#), 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 Vs. State of Gujarat](#).

13. 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.

14. 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. 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.

15. The recovery of the huge quantity of gunny bags from a matador at the spot is indicative of the conscious possession of the appellant as per Section 35 of the NDPS Act. The presumption of existence of such mental state will be presumed against the appellant especially in view of the explanation given in 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. However, the learned counsel for the appellant has failed to rebut the same specifically when he has been apprehended at the spot.

16. 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, both the appeals fail and are dismissed. Since appellants are on bail, the authorities may take appropriate measures for arrest of the appellant to serve the remaining part of the sentence.