

(2014) 03 P&H CK 0228

High Court Of Punjab And Haryana At Chandigarh

Case No: CRA-S Nos. 1550-SB and 1570-SB of 2002

Manjit Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 12, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 25, 50, 52, 55

Citation: (2014) 3 RCR(Criminal) 683

Hon'ble Judges: R.P. Nagrath, J

Bench: Single Bench

Advocate: Baljit Mann, A.P.S. Mann and R.P. Dhira, Advocate for the Appellant; Mikhail Kad, AAG, Advocate for the Respondent

Final Decision: Allowed

Judgement

R.P. Nagrath, J.

By this common judgment, CRA-S-1550-SB of 2002 filed by Manjit Singh and Lakhwant Singh and CRA-S-1570-SB of 2002 filed by Charan Singh are being disposed of. These appeals arise out of the same judgment dated 18.09.2002 of the trial Court, convicting appellants u/s 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") and awarding them sentence to undergo rigorous imprisonment for ten years and to pay fine of Rs. 1 lac each, in default of payment of fine to further undergo rigorous imprisonment for three months each. The facts briefly narrated are that on 18.08.1994, police party headed by PW-2 Sub Inspector Mangal Singh, SHO of the Police Station Shahkot, was present at the crossing of Mal-sian Chowk, where the police party comprising of ASI Amrik Singh and HC Gurmail Singh of the Police Post Malsian met them. They were holding picketing at the culvert in the area of village Isewal. The police party spotted truck No. DIG-7665, coming from the side of village Namajipur, which stopped on seeing

them. One of the occupants of the truck was identified as Charan Singh who was known to the Sub Inspector and other members of his party, fled from the spot. The vehicle was encircled and the other occupants of the truck were interrogated. The driver of the truck was Manjit Singh and the other occupant sitting in the cabin of truck was Lakhwant Singh, the appellants in CRA-S-1550-SB of 2002. These appellants were asked as to why they were perplexed. The appellants informed the police that there was poppy-husk under the tarpaulin of the truck. The appellants were asked as to whether they want the search to be effected in the presence of some gazetted officer or a Magistrate but they reposed confidence in the police party headed by PW-2.

2. The consent memo Ex. PB of these appellants was prepared, which was thumb marked by them and attested by the witnesses. The truck was searched and 30 bags of poppy-husk covered under tarpaulin were found. A weighing machine was arranged. Each bag was found containing 40 kgs. of poppy-husk. The bags were sealed with seal impression "MS" of PW-2 and seal after use was handed over to PW-5 ASI Amrik Singh. The panchnama Ex. PC of 30 bags of poppy-husk and tarpaulin was prepared.

3. A wireless message was sent to DSP, Nakodar to reach the spot. The information in writing (ruqa) Ex. PD was sent to Police Station, Shahkot and formal FIR Ex. PD/1 was registered. In the meanwhile, PW-1 DSP Satinder Singh reached the spot. The bags were opened in the presence of DSP. A sample each weighing 250 gms. was separated from each bag and these were prepared into separate parcels. 30 sample parcels and the remaining poppy-husk in each bag weighing 39 kgs. 750 gms. were sealed with seal impression "SS" of DSP for which memo Ex. PA was prepared. Ex. PE is the rough site plan prepared by the Investigating Officer. During investigation of the case, registration certificate Ex. P-32 of the truck was taken into possession on 04.09.1994 vide memo Ex. PF.

4. The sample parcels were sent for analysis in the office of Chemical Examiner, Amritsar and report Ex. PG was received finding the contents as "Poppy Head" in each sample.

5. Charan Singh-appellant in CRA-S-1570-SB of 2002 was arrested by PW-5 ASI Amrik Singh on 23.10.1994. According to PW-5, registration certificate of the truck was produced by Nirvair Singh owner of the vehicle on 04.09.1994.

6. Charge was framed against the appellants for offence u/s 15 of the act.

7. The prosecution examined six witnesses in support of its case.

8. The Applicants were examined u/s 313 Cr.P.C. and they denied all the incriminating circumstances appearing in the prosecution evidence against them. Manjit Singh and Lakhwant Singh appellants in CRA-S-1550-SB of 2002 pleaded that they were apprehended by the police on 10.08.1994. The police took the truck from

them for use without payment of charges. When they demanded charges for using the truck for 7 or 8 days that a dispute arose and thus false recovery was planted. They further pleaded that Nirvair Singh owner of the truck sent a telegram for their false implication to DGP Punjab on 11.08.1994. Charan Singh-appellant also pleaded false implication.

9. In defence, the appellants examined DW-2 Nirvair Singh owner of truck who statedly sent telegram to the DGP on 11.08.1994. Attempt was made to summon postal official to prove the authenticity of the telegram. Amanjot Singh, Money Order Assistant, Office of Post Master, Tarn Taran, who was examined as DW-1 stated that record of the telegrams is destroyed after three months. The learned Judge, Special Court convicted and awarded the sentence to the appellants as aforesaid.

10. The learned appellants' counsel challenged the conviction on the grounds inter alia:-

(i) that the evidence in support of the charge comprises of only the official witnesses and no attempt was made to join any independent witness;

(ii) that the link evidence is suspicious;

(iii) that there is non-compliance of provisions of Sections 52, 55 and 57 of the Act; and

(iv) that the sample was sent after an unexplained delay of six days to the Chemical Laboratory.

11. Apart from the above contentions, learned counsel for Charan Singh-appellant in CRA-S-1570-SB of 2002 contended that the evidence against Charan Singh who statedly ran away from the spot is suspicious.

12. On the other hand, learned State counsel has supported the judgment of trial Court by referring to the evidence led by the prosecution.

13. I have heard learned counsel for the appellants, the State counsel and have also gone through the trial Court record with their able assistance.

14. The story of prosecution has been testified by PW-2 SI Mangal Singh, which is materially supported by PW-5 ASI Amrik Singh, the recovery witness and PW-1 DSP Satinder Singh, who reached the spot immediately on receiving wireless message. The story of prosecution as testified by witnesses is so meticulous and natural that there is no scope of looking the version as suspicious, so far as appellants in CRA-S-1550-SB of 2002 are concerned.

15. According to both PW-2 and PW-5, the truck loaded with bags of poppy-husk was stopped by them at 5.15/5.30 am. According to the witnesses, some time was spent in arranging weighing machine and putting seals by PW-2 on the bags. The

endorsement on ruqa Ex. PD shows that it was sent to the Police Station at about 6.30 am. FIR Ex. PD/1 bears the endorsement of Magistrate to suggest that it was delivered at 8.45 am on 18.08.1994 itself. Thus there was no scope of attacking the story as concocted.

16. The defence plea set up during cross-examination of PW-2 is that the truck was illegally taken by Police Station Kartarpur on 10.08.1994 and misused for 7-8 days. It was further suggested to PW-2 that appellants in CRA-S-1550-SB of 2002 were kept detained for about one week and later on false recovery was planted as they demanded charges for using the truck. PW-2 categorically denied this defence version. It cannot be possibly believed that another police station would detain the truck for about one week and recovery would be planted at different police station. The police officials of Police Station Shahkot would not possibly involve another police station for planting a huge recovery and to invite trouble for themselves, especially when there is nothing to suggest that the matter was highlighted at any level except relying upon a telegram allegedly sent by DW-2 owner of the vehicle. In fact the defence plea set up during cross-examination of PW-2 was that the telegram was sent by family members of these appellants, but the defence witness who allegedly sent telegram is the owner of the truck.

17. If we look at the subject matter of telegram Ex. DE, the allegation made was about apprehension of Manjit Singh driver of Nirvair Singh DW-2 being illegally detained by Police Station Kartarpur. There was no mention of Lakhwant Singh alongwith him. It is also not proved that this telegram was brought to any logical end by highlighting the issue at certain levels. I am of the firm view that the criminals who regularly deal in such type of activities would keep sending the telegrams to the authorities and utilize one of that telegram whenever required.

18. I feel it essential to observe that if owner of the vehicle is taking such a plea on the basis of Ex. DE, he should have been prosecuted in terms of Section 25 of the Act, because in such an event the onus that the contraband was carried by the appellants in the vehicle owned by DW-2 without his knowledge, was upon the owner. DW-2, Nirvair Singh stated that Manjit Singh-appellant was the driver and Lakhwant Singh the conductor of his truck but name of Lakhwant Singh was nowhere mentioned in the telegram Ex. DE. In cross-examination, DW-2 stated that he did not send any application to the higher authorities except by relying upon the telegram. DW-2 even stated that he did not produce this telegram anywhere requesting for reinvestigation of the case on that account. If the above defence plea is discarded, the conclusion would be that the evidence led by the prosecution to prove the recovery of the contraband from possession of the appellants, cannot be attacked on the ground of ulterior motive. I am also of the view that unless owner or driver of the offending vehicle are known to the police party, they would not accept such an obligation and misuse the truck for seven days. It is a heavy vehicle and if kept at the police station, the police officials would be running the risk of a serious

criticism.

19. The investigation in this case has rather been supervised by PW-1 DSP Satinder Singh who reached the spot and the proceedings for separation of the samples were held in his presence and the case property i.e. the bags and sample parcels were sealed with seal impression "SS" of PW-1.

20. PW-1 testified that he was present at his residence on 18.08.1994 when he received a wireless message at 6.00 am. According to PW-1, he reached the spot at about 7.30 am on which PW-2 is also consistent. PW-5 ASI Amrik Singh stated in cross-examination that PW-1 reached the spot at 8.30 or 8.45 a.m. but it is hardly a material contradiction especially when PW-5 was examined on 13.05.1999 i.e. after a period of 5 years of the recovery. All the recovery witnesses have been extensively cross-examined and no material contradiction appeared to suspect their sworn testimony.

21. Reference is made to cross-examination of PW-5 that Malsian is a big town but they did not join any independent witness from the public. PW-1 also stated that he did not take alongwith him any person from public to be associated in the proceedings. Any attempt by PW-1 to take alongwith him an independent witness would have been futile exercise because the recovery was already made and PW-1 had gone only to supervise rest of the proceedings. It would not have been possible to join independent witness as the instant is not a case of any prior information with the police party while holding picketing on the road. Moreover it was quite early in the morning when the truck was stopped. PW-2 in cross-examination also stated that when he came to know that the truck was loaded with bags of poppy-husk, he sent a constable to bring some public witness but nobody met that constable. That was Constable Jiwan Ram, who was also deputed to bring the weighing material.

22. I am further of the view that for non-joining of independent witness, the Courts have to be extra cautious in sifting evidence led in support of the charge, which I find to be worth of credit as the witnesses have withstood the test of scrutiny in extensive cross-examination.

23. It would be appropriate to refer to following portion of the cross-examination of PW-1, which would make his testimony to be quite convincing:-

"When I reached the spot bags containing poppy-husk were not inside the truck but these were outside. I was sure that these bags were being carried in the truck standing at the spot. The bags were not unloaded from the truck in my presence. I became sure that the bags were being carried in the truck as the remnants of poppy-husk were lying therein. However, those remnants were not collected and prepared into parcels"

I am of the view that collecting remnants of material from body of the truck and preparing the same into a parcel was not at all required.

24. It was, however, contended that apart from the recovery memo Ex. PA no other document was signed by DSP thereby suggesting that PW-1 signed the papers at his office. This contention cannot be sustained because the only document that was prepared after PW-1 reached the spot is Ex. PA as ruqa had already been sent after preparing panchnama of taking into possession the vehicle and poppy-husk.

25. Even the entire case property including the truck in question were produced during examination of PW-1 and PW-2. The bags of poppy-husk are Ex. P-2 to P-31 as testified by PW-1. In cross-examination, PW-1 also stated that he affixed the slips on the bags containing particulars of accused and the case. PW-1 affixed two or three seals on each bag.

26. PW-2 in cross-examination stated that the slips were visible on the bags produced during his examination. The witness stated that on some of these bags there were four seals and on the other bags there were two seals. Out of these bags seals on some of the bags were broken and non-legible. This is a normal wear and tear of such a case property when produced in the Court after a gap of two years.

27. With regard to the applicability of Section 50 of the Act, the law on the subject is quite well settled that requirement of Section 50 of the Act is necessary only when recovery is made on search of the person of accused and not on search of the bags or the vehicle in which the contraband is being carried. This principle was held in [Kalema Tumba Vs. State of Maharashtra and Another](#), and is being consistently followed. It was held in [Sarjudas and Another Vs. State of Gujarat](#), that on plain reading of Section 50 of the Act, it would come into play only in the case of a search of a person as distinguished from search of any premises etc.

28. It would also be appropriate to deal with the contention that there was some delay in sending the sample. In [Hardip Singh Vs. State of Punjab](#), 40 days delay in sending the samples of seized opium to Forensic Science Laboratory was found to have no consequence for the fact that the recovery of the said sample from possession of the appellant stands proved and established by cogent and reliable evidence led at the trial. In that case also statement regarding recovery made by the IO was corroborated by higher officer of the rank of DSP, who was examined at length during the trial. It was found that the said recovery was effected in the presence of DSP, a senior officer, who also put his seal on the said parcels of opium. Besides it had also come in evidence that till the date, the parcels of sample were received by chemical examiner, the seal put on the said parcels was intact. That itself proves and establishes that there was no tampering with the aforesaid seal on the sample at any stage and the sample received by the analyst for chemical examination contained the same opium which was recovered from possession of the appellant.

29. With regard to compliance of Section 55 of the Act, it may be noted that PW-2 was himself the Incharge of Police Station and he obtained necessary orders from

the Magistrate on the same day by producing the case property before the learned Magistrate. It is settled law that provisions of Section 55 of the Act are directory in nature.

30. Section 55 of the Act reads as under:-

"55. Police to take charge of articles seized and delivered - An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station."

31. Learned counsel for the appellants in CRA-S-1550-SB of 2002 relied upon judgment of this Court passed in [Pargat Singh Vs. State of Haryana](#), to contend that where the case property was not produced before the Magistrate as required by Section 55 of the Act and that the noncompliance is deliberate on the ground that it was directory, the conviction was set aside.

32. This contention could not be ultimately insisted because there is an application in the record of trial Court dated 18.08.1994 itself where under Manjit Singh and Lakhwant Singh appellants in CRA-S-1550-SB of 2002 were produced before the Magistrate and the order was passed thereon by the Magistrate, granting remand of the accused upto 19.08.1994. It was also recorded that the case property was produced and seals were found intact.

33. It also appeared in the statement of PW-2 that he had produced the truck and other case property and these appellants before the Magistrate at Nakodar and thereafter the case property was deposited with seals intact with Moharrier Head Constable (MHC) of the Police Station. PW-2 in cross-examination, however, stated that Magistrate has not affixed his own seal on the gunny bags containing poppy-husk but saw the case property. Therefore, there is substantial compliance of Section 52 of the Act.

34. Hon"ble Supreme Court in [Babubhai Odhavji Patel, Vs. State of Gujarat](#), held that provisions of Sections 52, 55 and 57 of the Act are not mandatory provisions and they are only directory. In the said case, it was found that there was no serious violation of these provisions and those are found to be substantially complied with.

35. Similarly in [State of Punjab Vs. Leela](#), Hon"ble Supreme Court held as under:-

"13. It is not in dispute that provision of Section 55 are directory in nature. In the instant case, the DSP who was examined as PW-1 is an officer and was higher in rank or of the same rank as the SHO in the instant case. There is no reason indicated as to how the accused has been prejudiced by PW-1 putting his seal instead of the

SHO. The provisions are directory and as there is no doubt about the authenticity of the official Act, the High Court ought not to have held that there was noncompliance with the requirement of Section 55."

Even in this case, the case property was ultimately sealed with seal of the DSP who reached the spot within a short time.

36. With regard to the argument on Section 57 of the Act, there is also the meticulous compliance in this case. Section 57 of the Act reads as under:-

"57. Report of arrest and seizure. - Whenever any person makes any arrest or seizure, under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior."

37. In this case, PW-1 DSP Satinder Singh was informed by wireless message to reach the spot and supervise the whole proceedings. Even intimation in writing vide ruqa Ex. PD was also sent from the spot on the basis of which FIR was registered. It is recorded in the FIR itself that after the FIR was registered necessary intimation was sent to the Control Room as well as to senior officers.

38. It was next contended that there is suspicion in the link evidence adduced in this case, PW-1 DSP Satinder Singh stated that after putting seals over the case property he had also prepared the sample impression of the seal "SS" used on the case property. Reference is made to cross-examination of PW-1 wherein PW-1 stated that he does not remember that CFSL form was filled at the spot or not. To the same effect is the statement in chief-examination of PW-2 and his cross-examination. PW-2 rather stated that he had seen CFSL form but he does not remember anything about the said fact. However, it is certified by chemical examiner that the seals were intact and in good condition which comprised of 30 sample parcels containing 250 gms. each of the content and description of the seal used is also mentioned thereon.

39. PW-3 HC Gurpal Singh tendered his affidavit Ex. PH that he entrusted the sample parcels to constable alongwith sample seal impression. This witness had also sworn in an affidavit Ex. DA, which was otherwise not tendered by prosecution and that affidavit did not refer to the sample seal. In the cross-examination, PW-3 stated that he does not remember whether he made entry in register No. 19 with regard to number of sample impression deposited with him. The contents of affidavit Ex. PH have not been confronted by summoning register No. 19 to show that register did not contain the entry of deposit of sample impression of the seal.

40. PW-4 Constable Bakhshish Singh tendered his affidavit Ex. PJ to the effect that he deposited the sample parcels alongwith sample seal impression in the office of Chemical Examiner in the intact condition. There was similar discrepancy in his affidavit Ex. DD earlier sworn in by him and attached with the challan but that will

not make any dent in the prosecution story as already observed. The prosecution thus was successful in proving the story of recovery of 30 bags each containing 40 kgs. of poppy-husk beyond any doubt.

41. However, the evidence with regard to Charan Singh appellant in CRA-S-1570-SB of 2002, cannot be held as free from suspicion. The police party comprised of seven officials including driver of the vehicle. In the ruqa Ex. PD it was not stated at all that the police party tried to chase the culprit who tried to run away. A version was put up during the course of evidence that Charan Singh-appellant was chased by the police party. In consonance with the said story, PW-2 testified that Charan Singh-appellant who was also sitting in the cabin of truck jumped out of the vehicle and ran away. It is even testified by PW-2 that the appellants in CRAS-1550-SB of 2002 also tried to run away from the spot but they were apprehended. PW-5 stated that he knew Charan Singh-appellant in CRA-S-1570-SB of 2002 even earlier also and thus Charan Singh-appellant was identified at the spot. In cross-examination PW-2 stated that truck was at a distance of 40-50 karams when it was stopped. Charan Singh-appellant fled from there. It is difficult to believe that culprit running from the spot could be identified as the vehicle was stopped in the early morning at about 5.30 am. PW-5 for the first time in cross-examination propounded a story that Charan Singh-appellant was chased but he jumped in the distributory. The above fact was, however, not recorded in the ruqa Ex. PD. PW-2 was having a service revolver with him but did not fire to scare Charan Singh-appellant. According to him, the sun had dawned after running of Charan Singh-appellant. PW-2, however, stated that Charan Singh was not related to him nor he was arrested by PW-2 in any other case. As already referred Charan Singh-appellant was arrested after about two months of the recovery.

42. Learned counsel for the appellant rightly contended that the story of one of the culprit running away from the spot is difficult to believe when the police party comprised of seven officials. It was not stated by PW-2 or PW-5 that they chased Charan Singh appellant in the vehicle which was with the police party.

43. Learned counsel for this appellant referred to the judgments of Division Bench of this Court. In Harpreet Singh v. State of Punjab, 2005 (2) RCR (Criminal) 127 the story of one of the culprit having run away, was not believed. Charan Singh-appellant admittedly was not the owner of vehicle. In that case also at the time of running away of two persons, the police party had not opened fire in the air. The facts of the case were that the said accused remained at some distance from the police party till they disappeared and then it became dark.

44. Similarly in Karamjit Singh v. State of Punjab, 2003 (4) RCR (Criminal) 431, this Court dealt with the similar situation and held as under:-

"18. Counsel for the appellants contended that Jit Singh was not apprehended at the spot and it was alleged by the prosecution that on seeing the police party, he had

run away and was identified by PW-4 Sukhdev Singh, Sub Inspector, in torch light. Admittedly, the alleged recovery had taken place at midnight because PW-4 Sukhdev Singh had held Nakabandi at about 10.15 p.m. It is difficult to believe that in the presence of large number of police officials (i.e. 12 to 13 persons), Jit Singh had escaped. PW-4 had not stated how he knew Jit Singh. Mere stating that Jit Singh was known to him earlier is not enough. Admittedly, he was not known to PW-5 ASI Gurdev Singh. PW-5 ASI Gurdev Singh stated that Head Constable Gurmej Singh and Sukhwinder Singh, Constable, also knew him. However, they have not been examined to prove the identity of Jit Singh beyond reasonable shadow of doubt. PW-5 admitted in his cross-examination that he had not stated in his statement recorded u/s 161 Cr.P.C. that Jit Singh @ Tipa was identified by Gurmej Singh, Head Constable and PHG Sukhwinder Singh. In the groove of trees at about mid-night, it is difficult to identify a person from a distance with the help of torch light. It is not the case that the independent witness, Ranjit Singh, already knew Jit Singh @ Tipa. It is also not the case that Jit Singh @ Tipa was involved in some cases, which were investigated by PW-4 Sukhdev Singh, Sub Inspector. PW-4 did not state in his statement that he knew him earlier. In such circumstance, it is doubtful that Jit Singh @ Tipa was present at the spot and run away."

45. No effort was made to collect evidence as to how Charan Singh-appellant was connected with the appellants in CRAS-1550-SB of 2002 and owner of the vehicle. In view of the above discussion, appeal qua Manjit Singh and Lakhwant Singh appellants in CRA-S-1550-SB of 2002 is dismissed and CRA-S-1570-SB of 2002 filed by Charan Singh is allowed being not free from doubt and he stands acquitted of the charge framed against him.