

(1999) 05 P&H CK 0133

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 145-SB of 1997

Sukhdev Singh and
Others

APPELLANT

Vs

State of Panjab

RESPONDENT

Date of Decision: May 6, 1999

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 25, 50, 52, 55

Citation: (1999) 3 ACR 2002

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Judgement

R.L. Anand, J.

This is a criminal appeal and has been directed against the judgment and order dated 11.2.1997 passed by the Additional Sessions Judge, Barnala who convicted the Appellants Sukhdev Singh and Gurjant Singh u/s 15 of the N.D.P.S. Act and sentenced each of them to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. one lac each. In default of payment of fine, each of the Appellants was directed to undergo further rigorous imprisonment for a period of six months. Appellant Sukhdev Singh was further convicted u/s 25 of the N.D.P.S. Act and he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1 lac. In default of payment of fine, he was further directed to undergo rigorous imprisonment for six months. The trial court also held that substantive sentences of Sukhdev Singh shall run concurrently.

2. The brief facts of the case are that on 8.9.1992 Ashutosh. Investigating Officer was posted as SHO, Police Station, Barnala. He was holding naka on the bridge of drain on Barnala-Bajakhana Road in the company of Head Constable Jit Singh, Constable Karnail Singh and other police officials. A truck came there from the side of Court

Chowk, Barnala. It was got stopped. Its Registration Number was PB 11/A/6282. The truck was being driven by Sukhdev Singh, Appellant was sitting by the side of Sukhdev Singh. The Investigating Officer, Ashutosh told the Appellants that he wanted to take search of the truck and whether they wanted to give search in the presence of a Gazetted Officer or a Magistrate but the Appellants reposed confidence in the SHO and in this regard, statements Ex. PD and Ex. PE of Gurjant Singh and Sukhdev Singh respectively were recorded u/s 50 of the Act. These statements were read over and explained to the Appellants and these were attested by the police officials. Thereafter the SHO removed tarpaulin of the truck and found that 50 bags had been loaded in the truck and those bags were found to contain poppy husk. The SHO, drew two samples of 250 grams of poppy husk from each of the 50 bags and made sealed parcels thereof. The remaining poppy husk was weighed and each bag was found to contain 39.5 kilograms. The bags were numbered 1 to 50 and the sample parcels were numbered from 1-A to 50-A. All the sample parcels and the bags containing poppy husk were sealed with the seal bearing inscription AI and were taken into possession vide recovery memo Ex. PG attested by Head Constable Jit Singh and Constable Karnail Singh. The seal after use was handed over to Head Constable Jit Singh. The truck along with the driving licence of Sukhdev Singh Appellant and permit in the name of Rameshwar Dass were taken into possession vide memo Ex. PH. The SHO sent ruka Ex. PJ to the Police Station and on its basis formal F.I.R. Ex. PJ/1 was recorded by M.H.C. Hardev Singh. The Appellants were not in a position to produce any permit or licence for carrying poppy husk. From the personal search of the accused Sukhdev Singh a sum of Rs. 150 was recovered and from personal search of Gurjant Singh a sum of Rs. 50 was recovered which were taken into possession vide memo Ex. PK. The Investigating Officer also prepared site plan Ex. PL with correct marginal notes. On return to the Police Station, case property was deposited with MHC Hardev Singh with seals intact. During the course of investigation, one sample of each bag was sent to Chemical Examiner who vide report Ex. PA declared the samples to be that of poppy husk. After completion of the investigation, the accused were challaned in the Court of Area Magistrate who supplied copies of the documents as required under law. Amended charge was framed against the Appellant on 11.10.1993 and they were charge-sheeted u/s 15 of the N.D.P.S. Act on the allegations that they were found in possession of 50 bags of poppy husk on 8.9.1992 without any licence or permit. The charge was denied by the Appellants and they pleaded not guilty and claimed a trial.

3. In order to prove the charges, prosecution examined Rajo Bai, clerk of office of DTO, Patiala who deposed that the truck in question was registered in July, 1990 in the name of Rameshwar Dass, son of Jiwan Lal of Patiala. It was transferred in the name of Jagtar Singh, son of Surjit Singh, Patiala on 19.1. 1993. Ashutosh, Investigating Officer appeared as P.W.-2. Jit Singh, a witness of recovery appeared as P.W.-3. Finally, the prosecution tendered in evidence Ex. PA report of the Chemical Examiner and closed his case.

4. Statement of the accused was recorded u/s 313, Code of Criminal Procedure and all the incriminating circumstances appearing in the prosecution evidence, were put to the accused. Accused denied those circumstances and defence of Sukhdev Singh Appellant was as follows:

I am innocent. Two days prior to present case, a police constable of Barnala was crushed by some truck driver and on that account, there was regular checking of trucks. On the day of alleged recovery. I and my co-accused were apprehended in connection with death case of police constable. There was some altercation between police and us on which we were falsely implicated in this case.

The plea of Gurjant Singh was as follows:

I am innocent. Two days prior to present case, some police constable died in truck accident. Police was checking trucks in that connection. I and my co-accused had some altercation with police on which they implicated us in false case.

5. In defence, the accused tendered the report u/s 173 Code of Criminal Procedure and copy of the F.I.R. which are Ex. D-1 and Ex. D-2.

6. The learned trial court believing the prosecution story and rejecting the defence, convicted and sentenced the Appellants in the manner stated above and aggrieved by their conviction and sentence, the present appeal.

7. I have heard Shri D.S. Bali, Sr. Advocate assisted by Mr. D.V. Gupta, Advocate and others on behalf of the Appellants and Shri Randhir Singh, learned DAG Punjab on behalf of the State and with their assistance have gone through the record of this case.

8. Learned Counsel for the Appellant submitted that there are many flaws in the investigation of this case. Proper procedure as envisaged in Chapter 5 of the N.D.P.S. Act has not been complied with; especially the provisions of Section 50 of the Act have not been complied with in its right earnest and therefore, the search and seizure of the alleged poppy husk allegedly found in possession of the Appellants is illegal and the trial is also illegal and therefore, the Appellants are entitled to the benefit of acquittal. Mr. Bali has also stated that even directory provisions of Sections 52 and 57 have not been complied with; that the Investigating Officer did not supply the grounds of arrest to the accused and he did not send any special report to the higher authority. He did not produce the case property before a Gazetted Officer for the purpose of double seal and cumulative effect of all these omissions is that serious prejudice has been caused to the Appellants and therefore, they are entitled to acquittal.

9. Mr. Randhir Singh, learned DAG appearing on behalf of the State has tried to convince me that even though Section 50 has not been complied with in its right earnest still no benefit of doubt can be granted to the Appellant for the reasons that the recovery in this case is very heavy and it is not believable that the Investigating

Officer would be able to plant 50 bags of poppy husk along with truck upon the Appellants. He submitted that the recovery is per chance and in these circumstances. Section 50 in this case is not applicable at all.

10. I have considered the rival contentions of the learned Counsel for the parties and I am of the opinion that the prosecution has not been able to prove the charge against the Appellants beyond reasonable doubt.

11. The first point for determination would be whether the provisions of Section 50 in this case are applicable or not. As I have stated above that the case of the State is that recovery in his case has been effected per chance and therefore, Section 50 is not applicable to the facts in hand. This argument is not acceptable to the court. Though it was the case of the prosecution that the Police Party was on naka and the truck in question came from the opposite direction but there are two vital documents on the record to show that the Investigating Officer conceived a reasonable ground to believe that the truck was containing narcotic substance. Document Ex. PD is statement-cum-notice which has been given by Ashutosh, Investigating Officer, to Gurjant Singh and Ex. PE is the statement-cum-notice which has been given to Sukhdev Singh Appellant. A reading of both these documents would show that Shri Ashutosh, Investigating Officer, specifically required from each of the Appellants Sarvshri Gurjant Singh and Sukhdev Singh that he had suspicion and he wanted to search the truck and whether the accused wanted to give search in the presence of a Gazetted Police Officer or Magistrate. Upon this, both the Appellants reposed confidence in the Investigating Officer by stating that the said officer could take search of the truck. In these circumstances, the first contention of the State has no merit when it was argued by Mr. Randhir Singh before me that the present recovery is per chance. Learned Counsel appearing on behalf of the Appellants has drawn my attention to a recent judgment delivered by Hon"ble Supreme Court on 7.4.1999 in the case of Thandi Ram v. State of Haryana decided in Criminal Appeal No. 1555 of 1995 and submitted that Hon"ble Supreme Court after relying on [State of Punjab Vs. Balbir Singh](#), and [Mohinder Kumar Vs. The State, Panaji, Goa](#), held that Section 50 is not applicable even in a case of chance recovery and in the present case, Section 50 has not been complied with in letter and spirit by the Investigating Officer, therefore, the Appellants are entitled to acquittal on this short ground. I have gone through the judgment titled Thandi Ram v. State of Haryana (supra) which has been relied upon by Mr. Bali but am not in a position to accept the same because the said judgment can be safely distinguished. Hon"ble Supreme Court in the said judgment has placed reliance upon State of Punjab v. Balbir Singh (supra) and Mohinder Kumar v. State of Panqji (supra). Therefore, in this regard, it has become necessary for me to examine these two documents along with the judgment in Thandi Ram's case (supra), which has been relied upon by the learned Counsel for the Appellant. A close reading of the judgments of Balbir Singh (supra) and Mohinder Kumar (supra), would show that the Hon"ble Supreme Court has rather recognised the principle of law that in the case of chance recovery

Section 50 is not applicable. The observations of the Hon"ble Supreme Court given in Thandi Ram"s case can be quoted with advantage:

Learned Counsel for the Appellant contended that in view of the decision of this Court in the case of [State of Punjab Vs. Balbir Singh](#) , as well as 8 Judge -Bench decision in the case of [Mohinder Kumar Vs. The State, Panaji, Goa](#) , the conclusions of the High Court is not sustainable in law and the conviction of the Appellant cannot be sustained. We find sufficient force in the aforesaid contention of the leaned counsel for the Appellant. In view of the pronouncement of this Court in the aforesaid cases and in view of the findings as recorded in the judgment of the High Court that provisions of Sections 55 and 57 have not been complied with, the conviction is bad in law. The Appellant has already undergone sentence for 9 years. We, accordingly, set aside the impugned judgment of the High Court and that of the learned Additional Sessions Judge, Hisar and acquit the Appellant of the charges levelled against him. The appeal is accordingly allowed. The bail bond stands discharged.

12. In Balbir Singh case (supra), Hon"ble Supreme Court has been pleased to hold that provisions of Section 50 are mandatory but these provisions are not attracted in the case of chance recovery of narcotic drug. It has been stated by the Hon"ble Supreme Court that where a Police Officer acting under Criminal Procedure Code comes across a person and on search recovered narcotic drug, question of compliance of Section 50 would not arise. The snag in this case is somewhere else. Learned senior counsel was right when he submitted that provisions of Section 50 of the N.D.P.S. Act have not been complied with in its letter and spirit. I have just held above that in case of chance recovery. Section 50 is not mandatory but here the case is not of chance recovery because the Investigating Officer conceived a reasonable ground to believe that the truck was carrying narcotic drug. Section 50 would apply in this case but the point for determination would be whether Section 50 has been complied with by the investigating agency or not. We all know that Section 50 has been enacted by the Legislature and has been placed in Chapter 5 for the benefit of the accused. It is the basic principle of law that stricter is the offence, greater the proof. A reading of notices Ex. PD and Ex. PE would show that these notices have not been got attested by Ashutosh either from Head Constable Jit Singh and Karnail Singh or by any independent witness from the locality of the area. Would it be safe solely to depend upon the statement of Ashutosh when he stated that he inquired from the Appellants whether they wanted to give search in the presence of a Gazetted Officer or a Magistrate and they reposed confidence in him. The answer of this Court would be in the negative. When an accused wants to shed his very valuable right which has been granted by the Legislature in favour of the Investigating Officer, the expectation of law would always be that such a statement must be attested by an independent witness may be by a stranger, may be a person of the area, or may be a Gazetted Officer. The conduct of the Investigating Officer must create confidence in the mind of the Court about genuineness of the

statement if any made before him (Investigating Officer) otherwise consequences would be very fatal. They cannot be left at the hands of one Thanedar and one Head Constable. The present is a recovery from the public place at about 6 or 6.30 p.m. in the month of September, 1992. In these circumstances, it cannot be said that the Investigating Officer could not find a single person from the area or from the road so as to get attestation on the statements Ex. PD and Ex. PE allegedly made by the accused. So much so, Head Constable Jit Singh and Constable Karnail Singh were admittedly present in the Police Post. These witnesses though had attested document Ex. PG recovery memo but they had not attested documents Ex. PD and Ex. PE. Reasonable inference can be drawn that these documents Ex. PD and Ex. PE must have been prepared subsequently convenient to the Investigating Officer and he might have forgotten that he should also get attestation of Head Constable Jit Singh and Constable Karnail Singh.

13. It is the case of the prosecution that 50 bags of poppy husk were recovered. These bags were weighed at the spot. The Police Party must have arranged weights and scales, still Investigating Officer did not take the trouble to get attestation from any independent witness on the recovery memo or on the statements Ex. PD and Ex. PE so as to create confidence in the mind of the Court about genuineness of the procedure. In such a situation, it cannot be said that Section 50 has been complied with in letter and spirit.

14. Things do not rest here. Even the directory provisions of the N.D.P.S. Act have not been complied with in this case. No special report has been issued to the higher authority about this heavy recovery. The Investigating Officer did not even take trouble to invite any Gazetted Officer at the spot so as to verify facts and investigation. He does not produce the case property and the accused before the Gazetted Officer. He does not supply the grounds of arrest to the Appellants. In these circumstances, to base conviction on the testimony of the statement of Shri Ashutosh and Head Constable Jit Singh would not only be unsafe but also hazard.

15. Resultantly, I extend the benefit of doubt to the Appellants and acquit them of the charges framed against them. Case property stands confiscated to the State and shall be disposed of according to law. The truck in question however, shall be returned to the owner against valid Registration Certificate. Appeal accepted.