

Pardeep Kumar and Another Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Jan-31-2013

Appellant : Pardeep Kumar and Another

Respondent : State of Punjab

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH (i) Crl.

Appeal not D-497-DB of 2008 Date of Decision: January 31, 2013 Pardeep Kumar and another ...Appellants VERSUS State of Punjab ...Respondent (ii) Crl.

Appeal not D-625-DB of 2008 Mukesh Kumar ...Appellant VERSUS State of Punjab ...Respondent CORAM: HON'BLE Mr.JUSTICE JASBIR SINGH HON'BLE Mr.JUSTICEINDERJIT SINGH 1

To be referred to the Reporters or not?.

2. Whether the judgment should be reported in the Digest?.

Present: Mr.S.P.S.Tinna, Advocate for the appellant.

(in CRA not D-497-DB of 2008) Mr.Amardeep Singh, Advocate for appellant No.1.

(in CRA not D-625-DB of 2008) Mr.J.S.Bains, Advocate, for appellant No.2.

(in CRA not D-625-DB of 2008) Mr.B.S.Bhalla, Addl.

Advocate General, Punjab for the respondent-State.

**** INDERJIT SINGH, J.

This judgment shall dispose of two connected criminal appeals; CRA not D-497-DB of 2008 and CRA not D-625-DB of 2008 arising out of the

JUDGMENT / ORDER

dated 10.07.2008, passed by Judge, Crl.

Appeal not D-497-DB of 2008 & connected appeal -2- Special Court, Jalandhar convicting and sentencing the appellants to undergo rigorous imprisonment for twelve years and to pay a fine of ` 1,50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year each, on each count under Section 15 of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

The brief facts of the prosecution case are that on 23.08.2006, Inspector/SHO Jaskaranjit Singh, Police Station, Phillaur along with other police officials was present near Sutlej River Bridge, Phillaur in connection with special Nakabandi, where he received secret information that Darshan Singh, Pardeep Kumar and Mukesh Kumar were carrying poppy husk in LP truck bearing not HR-61-2335, and they have to supply the poppy husk in the area of Nawanshahr.

In the meantime, Amrit Bhakhri met the police party and he was joined by them.

After few minutes, a LP truck bearing not HR-61-2335 came from the side of Ludhiana.

He got stopped that truck and all the accused-appellants Darshan Singh, Pardeep Kumar and Mukesh Kumar were inside the truck and Darshan Singh was driving the truck, whereas Pardeep Kumar and Mukesh Kumar were sitting by his side.

Inspector Jaskaranjit Singh disclosed his identity to them and told that he suspected some contraband allegedly in the truck and asked them that if they wanted to get search of the truck from him or from some Gazetted Police Officer or

some Magistrate for which they have legal right.

All the accused opted for search in presence of some Gazetted Police Officer.

DSP Gursharandeep Singh Grewal was informed on Crl.

Appeal not D-497-DB of 2008 & connected appeal -3- his mobile phone, who reached at the spot after about fifteen minutes.

DSP disclosed his identity to all the accused-appellants and told them that he suspected some contraband in the truck which was in possession of the accused-appellants and asked them if they wanted to get search from him or from Magistrate.

All the accused-appellants reposed confidence in DSP.

The consent statements of all the accused-appellants Ex.PB, PC and PD respectively, were recorded, which were signed by them and attested by PW Amrit Bhakhri.

As per direction of DSP, Inspector Jaskaranjit Singh conducted search of the truck and 15 gunny bags of poppy husk covered with tarpaulin were recovered from the truck.

After arranging floor scale, recovered poppy husk was weighed which came to 35 kgs.

in each bag.

Poppy husk of five bags was mixed on tarpaulin.

Two samples of 250 gms each were separated and converted into parcels and the remaining poppy husk was again put in the same bags.

In this way, samples were drawn from the remaining poppy husk bags by mixing five bags each time.

Samples and the remaining bags containing poppy husk were sealed with the seal 'JKS' and DSP also sealed the samples and gunny bags with his seal 'GS'.

The Investigating Officer handed over the seal to ASI Surjit Singh and DSP retained his seal with him.

Photographs of the whole process were taken at the spot.

Case property along with samples were taken into police possession vide recovery memo Ex.PE.

Accused-appellants were arrested.

Personal search memos were prepared.

Rough site plan was prepared.

Ruqa Ex.PU was sent to Police Station, on the basis of which formal FIR Crl.

Appeal not D-497-DB of 2008 & connected appeal -4- was registered.

Statements of the witnesses were recorded.

On return to the Police Station, case property was deposited with MHC.

Next day, accused-appellants and case property were produced before the Magistrate.

All the samples and bulk parcels were sealed by the Magistrate with his seal bearing impression 'VKG'.

Photographs of whole process were taken.

Order passed by Magistrate for disposal of case property is Ex.PV/1.

On return to the police station, case property was deposited with MHC.

Statements of the witnesses were recorded.

After receipt of report of Chemical Examiner Ex.PX, challan was presented against the accused- appellants.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellants under Section 207 Cr.P.C. Finding prima facie case, the appellants were charge- sheeted under Sections 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, to which the appellants pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Head Constable Harjinder Singh, who is a formal witness, tendered into evidence his affidavit Ex.PA.

PW-2 DSP Gursharandeep Singh Grewal, under whose supervision search was conducted, mainly deposed as per prosecution version.

PW-3 Inspector Jaskaranjit Singh, who is the Investigating Officer, mainly deposed regarding investigation of the case and the recovery of poppy husk from the accused-appellants.

PW-4 Narinder Singh, Proprietor Jagat Studio, Crl.

Appeal not D-497-DB of 2008 & connected appeal -5- mainly deposed regarding photographs taken of the case property in the Court Ex.P1 and its negative Ex.P2.

PW-5 Harkrishan Singh, Addl.

Ahlmad, mainly brought the record.

He identified the signatures of the then SDJM, on the order dated 24.08.2006 passed in this case.

PW-6 ASI Surjit Singh, is the witness to the recovery.

He also deposed as per prosecution version.

PW-7 Sonu, Photographer, who taken the photographs at the place of occurrence, deposed regarding negatives Ex.P1 to P16 and photographs Ex.P17 to P32.

PW-8 Constable Des Raj, is a formal witness, who tendered into evidence his affidavit Ex.PW8/A.

Learned Public Prosecutor closed the evidence after tendering into evidence report of Chemical Examiner Ex.P1.

At the close of the evidence, the accused-appellants were examined under Section 313 Cr.P.C.and the accused-appellants denied the correctness of the evidence and pleaded themselves as innocent.

Accused-appellants Darshan Singh and Pardeep Kumar have stated that they are falsely implicated due to enmity and party faction.

Accused-appellant Mukesh Kumar stated that the truck and poppy husk belonging to someone else was planted upon him and the actual owner of the truck and smuggler of poppy husk was let off by the police with ulterior motives.

He further stated that Head Constable Jasbir Singh went to his house at Raikot in District Ludhiana on 23.08.2006 and picked ` 2 lacs from his house and later on he was falsely implicated in the present case.

Accused-appellant Pardeep Kumar examined DW-1 Sukhdev Singh, who mainly deposed that he CrI.

Appeal not D-497-DB of 2008 & connected appeal -6- knot Pardeep Kumar present in the Court, who is his neighbour.

On 22.08.2006, police had arrested Pardeep Kumar from his house at 5.00 P.M.Many people gathered in the house of Pardeep Kumar and asked the police as to why they took the accused.

The police said that for conducting inquiry accused Pardeep Kumar was apprehended.

He further stated that next day, the poppy husk was recovered from the accused.

Again said, nothing was recovered from the accused Pardeep Kumar and he was falsely implicated.

Accused- appellant Darshan Singh examined DW-2 Gurdev singh.

He deposed that on 22.08.2006, police had arrested Darshan Singh from his house at 5.00 P.M. Many people had gathered in the house of Darshan Singh and asked the police as to why they took the accused.

The police said that for conducting inquiry accused Darshan Singh was apprehended.

On the next, DW-2 went to Police Station Phillaur and came to knot that Darshan Singh has been falsely implicated in this case.

On the basis of the evidence produced by the prosecution, accused-appellants were convicted and sentenced as stated above by the Judge Special Court.

At the time of argument, learned counsel for the appellants argued that no independent witness was joined during the proceedings especially when Dhaba and Restaurants were nearby the place of occurrence.

Learned counsel for the appellants next contended that accused-appellants were apprehended from their house and a false case has been planted upon them as deposed by Crl.

Appeal not D-497-DB of 2008 & connected appeal -7- DWs.

Learned counsel for the appellants further contended that conscious possession of accused-appellants was not proved by the prosecution.

Learned counsel further argued that secret information was not reduced into writing and was not sent to the senior officer and it is violation of Section 42 of NDPS Act, 1985.

Learned counsel for the appellants, in the alternative, made prayer for reducing the sentence of accused-appellants as they are poor persons and

fiRs.offendeRs.On the other hand, learned Additional Advocate General, Punjab for the respondent-State has argued that the case of the prosecution has been duly proved by the statements of PWs.

He argued that there is no reason or ground to falsely implicate the accused-appellants.

PW-3 Jaskaranjit Singh, Investigating Officer, recovery witness PW-6 ASI Surjit Singh and PW-2 DSP Gursharandeep Singh Grewal have consistently deposed regarding recovery from the accused-appellants.

Accused-appellants Pardeep Kumar and Mukesh Kumar were sitting along with accused-appellant Darshan Singh, Driver and there is no suggestion by the accused- appellants to the PWs that they were not knowing about the incriminating articles in the truck or that they have boarded the truck for going somewhere etc.Therefore, the conscious possession of these accused-appellants has been duly proved.

He further argued that in the present case, recovery has been effected from the moving truck and therefore, Section 43 of NDPS Act, 1985 regarding search will apply and provisions of Section 42 will not apply.

Crl.

Appeal not D-497-DB of 2008 & connected appeal -8- We have heard the learned counsel for the parties and with their assistance, have gone through the evidence on record minutely and very carefully.

From the evidence on record, we find no merits in the arguments of the learned counsel for the appellants.

In the present case, Amrit Bhakhri, who as per cross-examination of PW-2 Gursharandeep Singh Grewal, is a Press Reporter, is an independent witness, who was joined with the police party.

Mere non-examination of Amrit Bhakhri does not create any doubt.

It is settled law that testimony of police officials is as good as of any other witness unless some enmity or motive is alleged and proved against the police officials.

In the present case, police officials have no enmity or motive to falsely depose against the accused-appellants.

Otherwise also, from the evidence on record, we find that the accused-appellants have not given any motive for police officials to falsely implicate them.

Even, in the statements under Section 313 Cr.P.C., they have stated that they are innocent and have been falsely implicated due to party faction.

But, there is nothing on the record, where they reside, with whom they have dispute and under whose pressure/influence police officials have falsely implicated them.

Therefore, the plea taken by the accused-appellants in their statements under Section 313 Cr.P.C. is a vague and general plea.

When Amrit Bhakhri independent witness was with the police party, there was no necessity to join or call other person from the nearby dhaba or restaurant etc. Otherwise also, as per evidence on record, police party received specific secret Crl.

Appeal not D-497-DB of 2008 & connected appeal -9- information against the accused-appellants.

In the meantime, Amrit Bhakhri had joined and within few minutes, as deposed by PW-3 Inspector Jaskaranjit Singh, they saw the truck coming and accused-appellants were apprehended.

As regarding the defence version, we find that both the DWs have deposed regarding arrest of Pardeep Kumar and Darshan Kumar from their house one day earlier to the recovery, but in the cross-examination, they stated that they have not moved any application before any higher authority or in the Court at any stage.

These DWs should have brought to the notice of the Court or higher police authorities that the accused-appellants have been falsely implicated in the present case.

Therefore, the statements of DWs cannot be believed as such type of statements can be procured at any time.

The statements of DWs are not supported or corroborated by any documentary evidence also.

Therefore, the defence version cannot be believed.

As regarding conscious possession of accused-appellants Pardeep Kumar and Mukesh Kumar, we find that there is no specific statement of the accused-appellants that they boarded the truck from somewhere or were going somewhere as a passenger etc. Therefore, in the absence of any such defence, it cannot be held that they were not knowing regarding incriminating articles in the truck.

They were travelling in the truck and the poppy husk was transported in that truck.

The specific secret information was also against accused-appellants Darshan Kumar, Pardeep Kumar and Mukesh Kumar by name.

Therefore, conscious possession of these accused-appellants along with Darshan Singh Crl.

Appeal not D-497-DB of 2008 & connected appeal -10- has been duly proved by the prosecution.

As regarding not reducing into writing the secret information by the Investigating Officer, we find that as per evidence on record, recovery was effected during the transit period i.e. from the moving LP truck, which was coming from Ludhiana and going towards Phillaur side.

Therefore, the search of the bags was made at the public place while applying Section 43 of NDPS Act, 1985 in the present case.

Otherwise also, information was given to PW-2 DSP Gursharandeep Singh Grewal and search was made in his presence and there was no time to reduce the secret information in writing and sending it to the police station etc.as in the meantime, there was every possibility of escaping of the accused-appellants from the police.

Furthermore, there is marked difference between Sections 42 and 43 of NDPS Act, 1985.

A five-Judge Bench of Hon'ble the Supreme Court in Karnail Singh v.

State of Haryana (2009) 8 SCC 53.has reconciled the ratio of law propounded in two different judgments rendered by three-Judge Bench in Abdul Rashid Ibrahim Mansuri v.

State of Gujarat (2000) 2 SCC 51.and Sajan Abraham v.

State of Kerala (2001) 6 SCC 692.and has held as under:

34.As a result, if the statutory provision under Sections 41(2) and 42(2) of the Act of writing down the information is interpreted as a mandatory provision, it will disable the haste of an emergency situation and may turn out to be in vain with regard to the criminal search and seizure.

These provisions should not be misused by the wrongdoers/offenders as a major ground for acquittal.

Consequently, these provisions should be taken as a discretionary measure which should check the misuse of the Act rather than providing an escape to the hardened drug peddleRs.Crl.

Appeal not D-497-DB of 2008 & connected appeal -11- In State of Haryana v.

Jarnail Singh (2004) 5 SCC 188.Honble the Supreme Court has dilated upon the distinction between two Sections, i.e.Section 42 or Section 43, of the Act and has to say as under: 7.

The next question is whether Section 42 of the NDPS Act applies to the facts of this case.

In our view Section 42 of the NDPS Act has no application to the facts of this case.

Section 42 authorises an officer of the Departments enumerated therein, who are duly empowered in this behalf, to enter into and search any such building, conveyance or place, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance, etc. is kept or concealed in any building, conveyance or enclosed place.

This power can be exercised freely between sunrise and sunset but between sunset and sunrise if such an officer proposes to enter and search such building, conveyance or enclosed place, he must record the grounds for his belief that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender.

8. Section 43 of the NDPS Act provides that any officer of any of the Departments mentioned in Section 42 may seize in any public place or in transit any narcotic drug or psychotropic substance, etc. in respect of which he has reason to believe that an offence punishable under the Act has been committed.

He is also authorised to detain and search any person whom he has reason to believe to have committed an offence punishable under the Act.

Explanation to Section 43 lays down that for the purposes of this section, the expression public place.

includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

9. Sections 42 and 43, therefore, contemplate two different situations.

Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit.

If CrI.

Appeal not D-497-DB of 2008 & connected appeal -12- seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with.

There is no such proviso in Section 43 of the Act and, therefore, it is obvious that if a public conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act for searching the vehicle between sunset and sunrise.

Further, in State, NCT of Delhi versus Malvinder Singh (2007) 11 SC 314, the reasoning propounded in Jarnail Singh's case (supra) was relied.

In Karnail Singh's case (supra), a further distinction between both the Sections i.e. Section 42 and Section 43 of the Act has been noticed as under:- 26.

The material difference between the provisions of Sections 42 and 43 of the NDPS Act is that Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article, etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful.

Therefore, from the above, we find that PWs have consistently deposed as per prosecution version.

There are no material contradictions or improvements in their statements.

There is nothing in their cross-examination, which may make their statements unreliable.

Link evidence is complete.

Therefore, the conviction of the accused-appellants by the trial Court is upheld.

Crl.

Appeal not D-497-DB of 2008 & connected appeal -13- As regarding alternative prayer made by learned counsel for the appellants for reducing the sentence being excessive, we find that, as argued, accused-appellants are fiRs.offendeRs.The occurrence took place in the year 2006 and more than six and a half years have already elapsed.

The accused have suffered mental pain and agony of a protracted trial.

There is nothing on record to show that accused were earlier convicted under any Section of the Act and the fact that accused are poor persons and have to maintain the families, we reduce the sentence of accused-appellants from twelve years rigorous imprisonment to ten years rigorous imprisonment and to pay a fine of `1,00,000/- instead of ` 1,50,000/- and further, in default of payment of fine, to further undergo rigorous imprisonment for six months instead of one year each, on each count.

As Mukesh Kumar (appellant in CRA not D-625-DB of 2008) is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

(JASBIR SINGH) (INDERJIT SINGH) JUDGE JUDGE January 31, 2013 Vgulati

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