

State of Haryana Vs. State of Haryana

State of Haryana Vs. State of Haryana

SooperKanoon Citation : sooperkanoon.com/1131661

Court : Punjab and Haryana

Decided On : Feb-06-2014

Appellant : State of Haryana

Respondent : State of Haryana

Judgement :

CRA-S-747-SB-2009 (O&M) & connected appeals -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRA-S-747-SB-2009 (O&M) Date of Decision: February 06, 2014 Pardeep Kumar ...Appellant Versus State of Haryana Respondent CRA-S-424-SB-2009 (O&M) Raj Kumar ...Appellant Versus State of Haryana ...Respondent CRA-S-695-SB-2009 (O&M) Surender Kumar @ Sunder ...Appellant Versus State of Haryana ...Respondent CRA-S-1051-SB-2009 (O&M) Karan Singh ...Appellant Versus State of Haryana ...Respondent CORAM: HONBLE MR. JUSTICE NARESH KUMAR SANGHI Present: For the appellant(s): Mr. K.S. Godara, Advocate. Mr. G.S. Kaura, Advocate. Mr. Sudhir Sharma, Advocate. Mr. Sidakamat Sidhu, Advocate, for Mr. Sant Pal Singh Sidhu, Advocate. For the respondent: Mr. Nitin Kaushal, AAG, Haryana. Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -2- NARESH KUMAR SANGHI, J.

1. By this common judgment a bunch of above mentioned four criminal appeals is being disposed of, since all the appeals have arisen out of the same impugned judgment dated 31.1.2009, passed by the learned Additional Sessions Judge,

Fatehabad, whereby the appellant(s) were held guilty and ordered to undergo the following sentences: Convict Under Section Sentence Fine In Default Pardeep Kumar, 21, NDPS Act RI for ten `1,00,000/- SI for one Raj Kumar and years each each year each Surender Kumar @ Sunder Karan Singh 27-A, NDPS Act RI for ten `1,00,000/- SI for one years year 29, NDPS Act RI for ten `1,00,000/- SI for one years year Both the substantive sentences of the appellant, Karan Singh, were ordered to run concurrently.

2. Brief facts of the case are that on 14.11.2006, SI Hanuman Singh (PW18) of CIA Staff, Fatehabad, received a secret information to the effect that Pradeep Kumar, son of Makhan Lal, caste Bishnoi, resident of Bhuna; Surender Kumar @ Sunder, son of Ram Rakh, caste Harijan, resident of Tharwa; and Raj Kumar, son of Raghubir Singh, caste Jat, resident of Loharu, District Bhiwani, were indulging in selling heroin after bringing it from Rajasthan and they were present at Hans Market, Fatehabad, along with one Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -3- motorcycle of black colour, Make CT-100, without any registration number. They were waiting for some person and in case the raid was conducted, in that eventuality, huge quantity of heroin could be recovered.

3. SI Hanuman Singh (PW18) entered Report No.5 in the Daily Diary Register in this regard and sent a copy of the said report to the Superintendent of Police, Fatehabad, through Constable Gurdhayan Singh. SI Hanuman Singh (PW18) along with ASI Kailash Chander (PW17), EHC Rajinder Singh (PW15), Constable Sudhan Singh (not examined), Constable Ami Lal (not examined), Constable Nishan Singh (not examined) and Constable Satpal Singh (not examined) proceeded towards Hans Market, Fatehabad, in a Government vehicle, bearing Registration No.HR-62-1661, driven by Constable Ranbir Singh. Simultaneously, SI Hanuman Singh (PW18) informed DSP Harish Kumar Dutta (PW12) regarding the receipt of the secret information and also requested him to arrive at Hans Market, Fatehabad. The police party headed by SI Hanuman Singh (PW18) parked their vehicle at a little distance of Hans Market and proceeded towards the spot on foot. In the meantime, DSP Harish Kumar Dutta (PW12) also reached there in Government vehicle driven by HC Nahar Singh, and joined the police

party headed by SI Hanuman Singh (PW18). After covering some distance, it was found that a motorcycle, without registration number, was parked towards the right side of Hans Market and three persons were sitting over the same. The person holding the Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals - 4- handle of the motorcycle tried to start it, but failed in his attempt and thereafter the occupants of the motorcycle parked the same on its stand and tried to flee from the spot. The driver and the person occupying the pillion managed to escape from there, however, one of the appellants was nabbed by the police party and on interrogation, he disclosed his name as Pardeep Kumar, son of Makhan Lal, caste Bishnoi, resident of Bhuna. He further disclosed to the police that the person who was holding the handle of the motorcycle was Sunder @ Surender, son of Ram Rakh, caste Harijan, resident of Tharwa, and the pillion rider of the motorcycle was Raj Kumar, Jat, resident of Loharu, District Bhiwani, and an employee of the Rajasthan Police.

4. Notice (Ex.P-23) in terms of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, the NDPS Act) was served upon the appellant, Pardeep Kumar, to the effect that SI Hanuman Singh had suspicion that Pardeep Kumar was retaining intoxicating substance with him and, hence, his search was to be conducted and Deputy Superintendent of Police was also present on the spot and that if so advised, gazetted officer or Magistrate could be called at the spot. Pardeep Kumar submitted his reply (Ex.P-24) stating that he wanted to get his personal search conducted in the presence of the Deputy Superintendent of Police. The notice (Ex.P-23) and the reply (Ex.P- 24) were duly signed by the appellant, Pardeep Kumar, in the presence of ASI Kailash Chander (PW17) and EHC Dharampal. On Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -5- direction of the Deputy Superintendent of Police, the search of the appellant, Pardeep Kumar, was effected by SI Hanuman Singh and he found an envelop containing heroin from the right dub of the pants worn by him (Pardeep Kumar).

5. Two samples of 10 grams each were separated and the same were converted into sealed parcels, while the residue heroin was weighed and found to be 750 grams. The residue heroin was also packed in a packet and it was duly sealed with the seal of SI Hanuman Singh and that of the DSP. After its use, SI Hanuman Singh handed over his seal to ASI Kailash Chander while the DSP retained his seal himself. The samples, the packet containing the residue heroin, the motorcycle and two mobile phones were taken into police possession vide seizure memo (Ex.P-25). Police memo (Ex.P-17) was prepared by SI Hanuman Singh and the same was sent to the police station through Constable Nishan Singh, on the basis of which, formal FIR (Ex.P-18) was registered.

6. Rough site plan (Ex.P-39) was prepared. Statements of the witnesses, in terms of Section 161, Cr.P.C., were recorded. The appellant, Pardeep Kumar, was arrested vide arrest memo (Ex.P- 40). After completion of the investigation on the spot, the appellant, Pardeep Kumar, was got medico legally examined. After reaching the Police Station, City, Fatehabad, the appellant, Pardeep Kumar, the case property, the witnesses and the report (Ex.P-20) in compliance of Section 55 of the NDPS Act, were produced before the Station House Officer, Balbir Singh (PW-9). The facts of the Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -6- case were verified from the appellant, Pardeep Kumar, and the witnesses and thereafter the SHO, Balbir Singh (PW9), affixed his own seal on each parcel. He also made his endorsement (Ex.P- 20/A) on the report (Ex.P-20). On direction of the Station House Officer, the case property was deposited with the Moharrir Head Constable and the appellant, Pardeep Kumar, was put behind the bars.

7. On 15.11.2006, the appellant, Pardeep Kumar, was produced before the learned Area Judicial Magistrate, who granted five days police remand of the appellant, Pardeep Kumar. During interrogation, the appellant, Pardeep Kumar, suffered disclosure statement (Ex.P-32) regarding his involvement and involvement of his co-accused. Raids were conducted to nab the other accused whose names had emerged on police file. On 18.11.2006, when SI Hanuman Singh (PW18) was present in CIA Staff, then the appellant, Karan Singh, was

produced before him by Mahabir Singh and Mahender, uncle and brother, respectively, of the appellant, Karan Singh. He was formally arrested vide arrest memo (Ex.P-41).

8. During interrogation, the appellant, Karan Singh, disclosed regarding his involvement and involvement of his co-accused. On 20.11.2006, the appellant, Pardeep Kumar, was once again interrogated and he further disclosed about his involvement in selling of heroin at various places and concealment of the cash amount. The police remand of the appellant, Karan Singh, was obtained and thereafter he was once again interrogated. In his Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -7- disclosure statement (Ex.P-34), he disclosed the addresses of Jagdish (not arrested) and the appellant, Raj Kumar. In the company of the appellant, Karan Singh, the investigating officer raided the house of Jagdish, son of Mehar Singh, resident of District Panipat. On 24.11.2006, the appellant, Pardeep Kumar, was produced before the learned Area Judicial Magistrate along with the case property and an application (Ex. P-42) under Section 52-A of the NDPS Act and inventory form (Ex.P-43) along with application (Ex.P-44), was made for passing an order to deposit the case property in the Malkhana and also to get a sample of 10 grams of heroin from the packet containing the residue heroin. Learned Area Judicial Magistrate passed an order (Ex.P-45) and on his direction one sample of 10 grams of heroin was drawn from the packet containing the residue heroin. The parcels and the packet containing the residue heroin were duly sealed and thereafter the case property was deposited in the Malkhana. The appellant, Pardeep Kumar, was sent to judicial custody.

9. On 25.11.2006, the appellant, Karan Singh, was once again interrogated. SI Hanuman Singh presented an application before the Cyber Crime Bureau for collecting the details of mobile phones of the appellants, Pardeep Kumar, Karan Singh and Raj Kumar, regarding their conversations from 1.4.2006 to 14.11.2006. The call details (Exs.P-14 and P-15) were supplied to the SI Hanuman Singh. The appellant, Raj Kumar, surrendered before the learned Area Judicial Magistrate on 26.11.2006 and the said fact Sharma Seema 2014.03.06 16:51 I attest to the

accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -8- was brought to the notice of SI Hanuman Singh. On the application of the investigating officer, the custody of the appellant, Raj Kumar, was granted to the police and during interrogation, he (Raj Kumar) suffered disclosure statement (Ex.P-35) to the effect that he had kept concealed the amount of his share with his friend and could get the same recovered after demarcation. In pursuance of the disclosure statement suffered by the appellant, Raj Kumar, the police party reached Bharatpur and Chhattishgarh, but nothing was recovered. While crossing from village Adhiyana in District Panipat, the appellant, Raj Kumar, pointed towards the house of Jagdish. On 1.12.2006, the appellant, Raj Kumar, was produced before the learned Area Judicial Magistrate and his further police custody was obtained.

10. In pursuance of the investigation/interrogation carried out, the police party went to Jaipur and Jhunjhunu along with the appellant, Raj Kumar, in search of Jagdish and recovery of the disclosed amount of `1,50,000/-. However the cash amount could not be recovered. The appellant, Raj Kumar, suffered yet another disclosure statement to the effect that he could demarcate and get the amount recovered, however, nothing was recovered.

11. The appellant, Surender Kumar @ Sunder, was arrested on 14.1.2007 by SI Balwan Singh (PW10) while he was standing near the gate of Civil Hospital, Tohana. During interrogation, his disclosure statement (Ex.P-22) was recorded. Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -9- 12. After completion of the investigation, the papers were placed before the SHO Ajit Singh (PW-11), who prepared the report under Section 173, Cr.P.C., and presented the same before the learned Area Judicial Magistrate.

13. The copy of the report prepared under Section 173, Cr.P.C., and the copies of the documents annexed therewith, were supplied to the appellants free of cost in terms of Section 207, Cr.P.C. and thereafter the learned Chief Judicial Magistrate committed the case to the Court of Session since the offences were exclusively triable by the latter court. The case was entrusted to the learned Additional

Sessions Judge, Fatehabad, for trial.

14. Finding a prima facie case, charge for commission of the offence punishable under Section 21 of the NDPS Act was framed against the appellants, Surender Kumar @ Sunder, Raj Kumar and Pardeep Kumar, while the appellant, Karan Singh, was charge- sheeted for the offences punishable under Sections 27-A and 29 of the NDPS Act, to which they pleaded not guilty and claimed trial.

15. In order to substantiate its case, the prosecution examined the following witnesses: PW-1 Jagir Singh: He was Municipal Commissioner of Fatehabad and witness to the extra-judicial confession allegedly made by appellant Karan Singh before him. He did not support the prosecution case, therefore, he was declared hostile. With the permission of the Court, the learned Public Prosecution cross-examined the witness Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -10- at length but nothing material in favour of the prosecution could be elicited from his mouth. PW-2 Raj Kumar: He was also witness from the public and failed to support the prosecution case. Even from his cross-examination, nothing favourable to the prosecution could be abstracted. PW-3 Rajesh: He was also a witness from the public and he too toed the depositions of PW-1 and PW-2 and failed to depose in favour of the prosecution. From his cross-examination also, the Public Prosecutor, could not bring out anything in favour of the prosecution. PW-4 Hans Raj @ Hansu: He too was a private person and failed to support the prosecution case. Even from his lengthy cross-examination, the learned Public Prosecutor could not improve the prosecution case. PW-5 Sandeep: He was also a private person and the position remained the same. He too failed to support the case of the prosecution and in spite of the cross-examination running into two pages, the Public Prosecutor failed in his attempt to elicit anything in favour of the prosecution. PW-6 Raghbir Singh, retired Sub Inspector of the Police: He deposed that on 21.11.2006 while he was posted as ASI in CIA Staff, Fatehabad, he accompanied the Sub Inspector and other police officials to the Police Station, Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -11- Sadar, Fatehabad, and in his presence convict Karan

Singh, who was lodged in jail was interrogated by Inspector Ishwar Singh (not examined). Thereafter, he along with other police official went to Loharu in District Bhiwani and where one of the relatives of the convict, Karan Singh, produced a mobile phone which was allegedly purchased with the money collected from the sale of heroin. The same was taken into possession vide recovery memo Ex.P7. The bill of the said mobile was Ex.P8. The sim of the said mobile was bearing No.98964- 08245 and the same was also taken into police possession. Since the Public Prosecutor was not satisfied with the deposition of the witness, therefore, he was declared hostile and when with the permission of the Court, the learned Public Prosecutor cross-examined the witness, then he deposed that the mobile (Ex.P9), sim (Ex.P-10) and the bill were produced by Karan Singh. PW-7 Ashok Kumar, Computer Operator from S.P. Office, Fatehabad: deposed that he had taken out the call details of different mobile numbers and handed over the same to ASI Niranjana Singh and Reader to DSP, Fatehabad. PW-8 Head Constable Om Parkash : He tendered his duly attested affidavit (Ex.P-16) to be read in evidence. Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -12- PW-9 Inspector Balbir Singh, CIA Staff Fatehabad:deposed that on 14.11.2006 he was posted as Station House Officer, Police Station, City, Fatehabad and on that day memo (Ex.P-17) in the hand of Sub Inspector Hanuman Singh was received through Constable Nishan Singh in the police station, on the basis of which, formal FIR (Ex.P-18) was recorded by him. He made endorsement (Ex.P-19) over the document (Ex.P-17). On the same day, Sub Inspector Hanuman Singh produced before him the report (Ex.P- 20), the case property, sample, witnesses and the accused. The witness verified the facts of the case from the accused and the witnesses. The samples were also checked and he affixed his seal 'BS' on samples. He retained his seal after use and directed the investigating officer to deposit the case property with Moharrir Head Constable and to lodge the accused in the lock up. The endorsement on report (Ex. P-20) by the witness is Ex.P20/A. PW-10 Sub Inspector Balwan Singh : deposed that on 14.11.2006 he was posted in CIA Staff, Hisar and the investigation of the case was with him on that day. He received the information that accused Surender was standing near the gate of Civil Hospital, Tohana, and if the raid was conducted then he could be apprehended

Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -13- from there. The witness rushed to the said spot and arrested the appellant Surender vide arrest memo (Ex. P-21). He was brought to the police station and lodged in the lock-up. Next day, Surender was interrogated and he disclosed the whereabouts of Lakhan accused. His disclosure statement (Ex.P-22) was recorded, which was signed by the appellant and attested by Head Constable Om Parkash. PW-11 Ajit Singh: retired Inspector of Police. He deposed that on 18.4.2007 while he was posted as Inspector/Station House Officer at Police Station, City, Fatehabad, after completion of investigation he prepared the report under Section 173, Cr.P.C. under his signatures. PW-12 Harish Dutta ASP, Sadar, Gurgaon. Deposed that on 14.11.2006 when he was posted as Deputy Superintendent of Police, District Fatehabad, he received a mobile call from Sub Inspector Hanuman Singh regarding the secret information received by him and thereafter the witness along with police officials reached at Fountain Chowk in a Government vehicle. He found Hanuman Singh, Sub Inspector along with other police officials present at the spot. Three persons were found sitting on the motor-cycle make Bajaj, near Hans market. On seeing the police party, the occupants of the motor- Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals - 14- cycle tried to start it but failed in their attempt and two persons sitting over there managed to escape from the spot. One was apprehended and he disclosed his name as Pardeep. He further disclosed that Surender and Raj Kumar were the persons who had run away after alighting from the motor-cycle. Sub Inspector Hanuman served a notice (Ex.P-23) under Section 50 of the NDPS Act to the effect that his motor-cycle was to be searched and if he wanted to get himself searched before any Magistrate or Gazette Officer, they could be called on the spot or he (Pardeep) could be produced before them as it was his legal right. The notice (Ex.P-23) was signed by Pardeep Kumar appellant, Kailash Chander and Dharampal, the police officials. The appellant gave reply (Ex.P-24) to the effect that he wanted to be searched before the Deputy Superintendent of Police, who was already there on the spot. On the instructions of the witness, appellant Pardeep was searched. A small bag of cloth was recovered from the pocket of his

pants and the contents thereof were found to be 'Heroin'. Two samples each of 10 grams were drawn from the bulk and converted into sealed parcels. The residue heroin was 750 grams. The residue was also converted into sealed parcel. The packets were smeared with the seal 'HB' and 'HK'. The recovery memo of the motor-cycle was Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -15- Ex.P-25. The seal of the Inspector after its use was handed over to ASI Kailash Chander, while the DSP retained his own seal. PW-13 Head Constable Pawan Kumar: He had tendered his duly sworn affidavit (Ex.P-26) to be read into evidence. PW-14 Jaivir Singh : a private accountant, deposed that on 07.12.2006 he was employed as an accountant at Rulhani Automobile, Fatehabad Road, Bhuna. All types of Bajaj vehicles were available with the said company. The job of the witness was to show the vehicle to customers whenever they used to come to purchase the vehicle. On 23rd October 2006, the witness had delivered challan No.88 in the name of Surender Kumar s/o Ram Rikh r/o Tharva, Tehsil Tohana, whereby Surender Kumar had purchased one motor-cycle Bajaj CT-100. The witness proved the photostat copy of the delivery (Ex.P-27). The witness further proved the copy of the agreement with Ind Land Bank (Ex.P-30). The witness also produced the documents Ex.P-27 to P-30 before the police on 07.12.2006 and the same were taken into police possession vide recovery memo (Ex.P- 31). PW-15 EHC Rajinder Singh : deposed that on 14.11.2006, when he was posted in CIA Staff, Fatehabad, Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -16- then accused Pardeep Kumar produced one mobile phone make Nokia-2300 to Hanuman Singh, Sub Inspector in his presence, which was taken into possession vide recovery memo (Ex.P-31/A). On the next day, i.e. 15.11.2006, EHC Rajinder Singh and EHC Dharampal were accompanying sub Inspector Hanuman Singh. Appellant Pardeep Kumar was interrogated and the disclosure statement (Ex.P-32) was recorded. Pardeep suffered yet another disclosure statement (Ex.P- 33). On 22.11.2006 appellant Karan Singh suffered disclosure statement (Ex.P-34) before Sub Inspector Hanuman Singh in presence of the witness and EHC Dharampal and his disclosure statement was also recorded. On 27.11.2006 appellant Raj Kumar was

interrogated by Sub Inspector Hanuman and his disclosure statement (Ex.P-35) was recorded, which was signed by the witness and Constable Sughan Singh. On 04.12.2006, appellant Raj Kumar once again suffered disclosure statement (Ex.P-36) with regard to concealment of the cash amount in a box at his house. PW-16 Dr. Hitesh Kumar, Arora Orthopedic Hospital, Hisar: did not depose in favour of the prosecution and after declaring him hostile, he was cross-examined by the learned Public Prosecutor with permission of the Court. Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -17- The Public Prosecutor could not elicit anything in favour of the prosecution. PW-17 ASI Kailash Chander : was accompanying the investigating officer and fully deposed about the secret information, arrival of the DSP on the spot, running away of two appellants, arrest of Pardeep Kumar and recovery of heroin etc. He also deposed about the investigation conducted on the spot. He also deposed regarding the production of the appellant, case property and the witnesses before the Station House Officer Balbir Singh. He also deposed that the seal after use was handed over to him by Sub Inspector Hanuman Singh. He further deposed that Sub Inspector Hanuman Singh had produced a report under Section 55 of the NDPS Act before the Station House Officer. It was further deposed that on the direction of the Station House Officer, the case property was deposited with MHC and accused Pardeep was lodged in the lock-up. PW-18 Inspector Hanuman Singh, SP Office, Hisar : He was the investigating officer and he deposed in detail about the investigation conducted by him. The facts described in initial part of the judgement were derived from his deposition PW-19 SI Satish Kumar: He deposed that on 6.12.2006 he was posted at Police Station, City, Rewari. On being Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -18- called by Sub Inspector Hanuman Singh, he went to join the investigation at Fatehabad on 07.12.2006. The witness disclosed to the Sub Inspector that he had gone to Madhuban from District Rewari to attend VIP Security Force and 13 persons attended the course. Karan Singh was one of them. On 13.11.2006, the witness had gone for one day leave and while going he gave his mobile Nokia 1100 to Karan Singh and took away mobile 6681 from Karan Singh but both of them used

their respective sim cards. After return to Madhuban on 14.11.2006, he returned the mobile to Karan Singh and received his mobile from Karan Singh. Thereafter with the permission of the Court, the witness was declared hostile. The lengthy cross-examination by the Public Prosecutor could not bring anything in favour of the prosecution.

16. After completion of the oral evidence of the prosecution, the learned Public Prosecutor tendered the FSL report (Ex.P-54) to be read in evidence and closed the evidence of the prosecution.

17. The statements of the appellants in terms of Section 313, Cr.P.C. were recorded. The incriminating material was put to them. Appellant Surender Kumar in response to question No.16 answered as under :- I am innocent. I have been implicated in this case by the police. I have no concern with the alleged Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -19- occurrence. I have been falsely implicated in this case.. 18. Appellant Pardeep simply said that he was innocent and was falsely implicated in this case.

19. Appellant Raj Kumar in response to question No.16 stated as under :- I am innocent. My name is not mentioned in the ruqqa nor I belong to the place which is mentioned in the FIR. The person mentioned in the FIR is another Raj Kumar. Police of Fatehabad took into custody that Raj Kumar but later on due to some political pressure and considerations he had been let off. PW Hanuman Singh demanded illegal gratification from my brother Pawan and assured him that if he would make the payment of money then he would be discharged by producing the report u/s 169 Cr.P.C., later on when my brother refused to make the payment, I have been implicated in this case by the police. I have no concern with the alleged occurrence. I have been falsely implicated.. 20. Appellant karan Singh also denied the incriminating material put against him but in response to question No.16 he stated as under :- I am innocent. I was appointed as SI in Haryana Police by previous government which was headed by Sh. Om Parkash Chautala, Indian Lokdal, and later on in the election, present government came in power and they have terminated the services of about 60 Sub Inspectors of Haryana police who

Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -20- were appointed by the previous government and the present government was putting pressure on the remaining 12 Sub Inspectors to resign and when I refused, I have been implicated in this case due to political pressure. I have been implicated in this case by the police. I have no concern with the alleged occurrence. I have been falsely implicated in this case.. 21. In the defence evidence, the following witnesses were examined :- DW1- Krishan Kumar, Superintendent, I.G. Office, Hisar : He deposed that he had brought the summoned record pertaining to the termination of P/SI in the year 2005-06 in Hisar Range, Hisar. Total in number 14 P/SIs were terminated and the list thereof is Ex.DW1/A. DW2-Inspector Bali Singh, AVT Cell, Panipat : deposed that document Ex.DW2/A was bearing his signature. He could not identify the signature of ASI Azad Singh of Police Station, City, Fatehabad, on the report. He denied this fact that as to why he signed the document Ex.DW2/A. DW3-Pawan Kumar : He deposed that Raj Kumar accused was his elder brother and was an employee of Rajasthan Police. He surrendered before the Area Magistrate, Fatehabad on 25.11.2006 and remanded to police custody from 27.11.2006 to 4.12.2006. On 18.11.2006, the witness was issued a notice under Section 160, Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -21- Cr.P.C. to join the investigation in CIA, Fatehabad. Sub Inspector Hanuman Singh told the witness that Raj Kumar was wanted in the case and if the money was paid to him then his brother would be got discharged from the court of Area Magistrate by filing the report under Section 169 Cr.P.C. Sub Inspector Hanuman Singh demanded ` 2,00,000/- from the witness but he showed his inability to pay the amount. When the witness told that he could arrange ` 30,000/- then Sub Inspector Hanuman Singh directed him to come with money at Fatehabad and thereafter he (witness) went to his place of posting at Jhunjhunu. On 28.11.2006, Sub Inspector Hanuman Singh visited the place of posting of the witness Pawan Kumar and put pressure on him but at the asking of the senior officers at the office of the witness Sub Inspector Hanuman Singh came back. While issuing directions to the witness to come at Fatehabad carrying the money otherwise his brother

would not be released. From 1.12.2006 to 6.12.2006 Sub Inspector Hanuman Singh contacted the witness on mobile phone No.94144-91549 from mobile No.094167-89048. Sub Inspector Hanuman Singh was insisting to bring ` 30,000/- and the said conversation was recorded by Pawan Kumar on his mobile phone. He produced his mobile phone (Ex.D3) on record. He also identified the Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -22- voice of Sub Inspector Hanuman Singh. The witness further deposed that Sub Inspector Hanuman Singh pressurized accused Raj Kumar to ask the witness to pay ` 30,000/-. It was further deposed that there was yet another Raj Kumar, who was left by Sub Inspector Hanuman Singh while his brother Raj Kumar was implicated.

22. After completion of the evidence of both the sides, arguments were heard and the learned trial court held the four appellants guilty and awarded the sentences as has been discussed in the earlier part of this judgement.

23. Mr. Sidakamat Sidhu, learned counsel representing the appellant Pardeep Kumar argued that there was non-compliance of Section 42 of the NDPS Act since receipt of the secret information was not reduced into writing and no information regarding the same was sent to the senior police officers. He further argued that no independent witness was joined to witness the recovery. Therefore, the whole case propounded by the prosecution qua appellant Pardeep Kumar was doubtful and benefit of the same should be extended to him.

24. Shri Sudhir Sharma, learned counsel representing the appellant Raj Kumar submitted that the identity of appellant Raj Kumar has not been established in the present case since the name mentioned in the FIR was of Raj Kumar Jat resident of Loharu, while appellant Raj Kumar is son of Raghbir Bairagi resident of Ladonda, District Jhunjhunu. He further submitted that concededly nothing Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -23- was recovered from the appellant and merely running away from the spot would not give rise to the presumption with regard to involvement of the appellant, Raj Kumar, in the crime. He further submitted that even if the whole case of the

prosecution is taken in its entirety then also the culpability of appellant Raj Kumar has not been established by the prosecution. In support of his contentions, learned counsel has placed reliance on Narinder Singh vs. State of Punjab, 1997(1) RCR(Criminal) 592.

25. Shri K.S. Godara, learned counsel representing the appellant Surender Kumar @ Sunder has submitted that except the deposition of the official witnesses, there is no other material to connect the appellant with the alleged crime. He further submitted that the learned trial court while delivering the impugned judgement failed to discuss the depositions of DW1 and DW2, therefore, the judgement without discussing the entire evidence is bad in law. He further submitted that no test identification parade of the appellants was got conducted by the investigating agency, therefore, the oral version of the police officials that the appellants ran away from the spot would not be sufficient to hold them guilty for such a serious offence.

26. Shri G.S. Kaura, learned counsel representing appellant Karan Singh submitted that there is not an iota of word against the appellant, Karan Singh, to the effect that either he was present on the spot or in any manner connected with Surender Kumar, Raj Kumar and Pardeep Kumar, his co-convicts. He further contended Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals - 24- that even the name of appellant Karan Singh was not found mentioned in the FIR. Therefore, the conviction and sentence of appellant Karan Singh is without any basis. He also argued that during investigation, the investigating agency had recorded the statement of PW3-Rajesh to the effect that Karan Singh suffered extra-judicial confession before him and he had failed to support the prosecution case when he appeared as PW3 and even after lengthy cross-examination by the Public Prosecutor nothing could be brought on record showing the involvement of appellant Karan Singh.

27. On the other hand, learned counsel for the State while controverting the submissions of Mr.Sidakamat Sidhu, Advocate representing the appellant Pardeep Kumar submitted that as soon as the secret information was received by Sub

Inspector Hanuman Singh, PW18, the same was reduced into writing and the senior officers of the police were informed, therefore, it does not lie in his mouth to say that there was non-compliance of Section 42 of the NDPS Act. He further submitted that the deposition of the official witnesses is so clear and without pointing out any infirmity in their depositions, it cannot be said that while discarding the same, the appellants should be acquitted merely on the ground that no independent witness was joined. He further submitted that it is the quality and not the quantity which should matter with the Court while appreciating the evidence and as such the submission of the learned counsel for the appellants that no independent witness Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -25- from the public was joined to witness the recovery would not affect the well reasoned judgment recorded by the learned trial court.

28. I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

29. In the case in hand, the appellants can be categorized as under:- (i) The appellant who was arrested from the spot with the heroin (ii) the appellants ran away from the spot after seeing the police party; and (iii) the appellant whose name was neither mentioned in the FIR nor he ran away at the spot and only allegation against whom was that he suffered extra-judicial confession admitting his guilt before the witnesses.

30. The case of appellant Pardeep Kumar would fall in the first category since he was apprehended from the spot and on search 770 grams of heroin was recovered from his personal search. Even the motorcycle make Bajaj on which he was sitting was also taken into possession. After apprehending the appellant, Pardeep Kumar, notice under Section 50 of the NDPS Act was issued by SI Hanuman Singh (PW-18). Pardeep Kumar posed faith in Harish Dutta, Deputy Superintendent of Police, (PW-12) and thereafter the search was conducted and a small bag of cloth containing heroin was recovered from the pocket of his pants. Two Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -26-

samples each of 10 grams were drawn from the bulk and converted into sealed parcel. The residue heroin was weighed and it was found to be 750 grams and the same was also converted into a sealed parcels. The seal, after use, was handed over to ASI Kailash Chander (PW-17). Harish Dutta, Deputy Superintendent of Police, (PW-12), ASI Kailash Chander (PW-17) and SI Hanuman Singh (PW- 18) fully supported the prosecution case and there was nothing to disbelieve the depositions of the said witnesses. With regard to the arrest of appellant Pardeep Kumar from the spot and recovery of 770 grams of heroin from the pocket of his pants, the submission of his learned counsel, Sh.Sidakamat Sidhu, that there was non- compliance of Section 42 of the NDPS Act since no information regarding receipt of secret information was reduced into writing and no senior police official was informed regarding the receipt of such secret information is not tenable being factually wrong. It was specifically deposed by SI Hanuman Singh (PW-18) that after receipt of the secret information, report No.5 was entered in the Daily Diary Register and a copy thereof was sent to the Superintendent of Police, Fatehabad, through Constable Gordhan Singh, therefore, the learned trial court had rightly held the appellant, Pardeep Kumar, guilty for the offence punishable under Section 21 of the NDPS Act and awarded rigorous imprisonment for ten years and to pay fine of ` 1,00,000/- and in default thereof, to undergo further simple imprisonment for one year and as such, the conviction and sentence of appellant Pardeep Kumar is maintained Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -27- by this Court.

31. So far as the case of appellants Raj Kumar and Surender Kumar @ Sunder is concerned, it would fall in the second category (supra) since they were neither arrested from the spot nor any contraband was recovered from their possession. None of the independent witnesses from the public examined by the prosecution had supported the prosecution case with regard to the involvement of appellants Raj Kumar and Surender Kumar @ Sunder. The depositions of the police officials with regard to identity of these two appellants cannot be accepted in view of the glaring defects in that regard. Mere disclosure statement of the co- accused of these appellant would not be sufficient to hold them guilty for such a serious offence. It was rightly argued by the learned counsel of these appellants that even

if the case of the prosecution was accepted for the sake of discussion that Raj Kumar and Surender Kumar @ Sunder (appellants) ran away from the spot after seeing the police party, it would not lead to a conclusion that they were in conscious possession of the alleged contraband and had run away with a guilty mind. Reference can be made to Narinder Singh's case (supra) where this Court held that mere fleeing of accused on seeing the police party would not raise presumption that they were in conscious possession of the contraband.

32. Concededly, no contraband was recovered from Raj Kumar and Surender Kumar @ Sunder (appellants); their identity is Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -28- also in dispute since no test identification parade was conducted and none of the official witnesses had a previous acquaintance with those appellants; it has not been proved on record by any evidence that Raj Kumar and Surender Kumar @ Sunder (appellants) had prior association with Pardeep Kumar and that they were aware that Pardeep Kumar was retaining a bag of cloth containing heroin in the pocket of his pants, therefore, the conviction and sentence of the appellants, Raj Kumar and Surender Kumar @ Sunder as recorded by the learned trial court, does not find favour with this Court and by setting aside the judgment and the order of conviction, the appellants, Raj Kumar and Surender Kumar @ Sunder, are hereby acquitted.

33. The case of the appellant, Karan Singh, would fall in the third category (supra). There is not an iota of evidence connecting him (Karan Singh) with the offences punishable under Section 27-A and 29 of the NDPS Act for which he was held guilty and awarded rigorous imprisonment for ten years for each count. For holding a person guilty for the offence punishable under Section 27-A of the NDPS Act, the prosecution has to prove that the appellant was indulging in financing, directly or indirectly, for any of the activities specified in sub-clause (i) to (v) of Clause (viii-a) of Section 2 or harboured any person engaged in any of the aforementioned activities. Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -29-34. Similarly for holding a person guilty under Section 29 of the NDPS Act, the prosecution has to prove that the appellant abetted or was a party to criminal

conspiracy to commit an offence punishable under Chapter IV of the NDPS Act, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy.

35. Perusal of the deposition of the prosecution witnesses would reveals that not an iota of word had emerged on record to attract the essential ingredients of Sections 27-A and 29 of the NDPS Act to hold the appellant guilty for commission of the said offences, therefore, the conviction and sentence of the appellant, Karan Singh, is also set aside, and by allowing his appeal, he is acquitted of the charges levelled against him.

36. To sum up, appeal bearing No.S-747-SB of 2009 filed by Pardeep Kumar is hereby dismissed and CRA-S-424-SB-2009 of appellant Raj Kumar, CRA-S-695-SB-2009 of Surender Kumar @ Sunder and CRA-S-1051-SB of 2009 of Karan Singh are allowed and they are acquitted of the charges levelled against them. The fine, if deposited by the appellants who have been acquitted, would be returned to them. (NARESH KUMAR SANGHI) February 06, 2014 JUDGE Pk Kapoor/seema Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh CRA-S-747-SB-2009 (O&M) & connected appeals -30- Sharma Seema 2014.03.06 16:51 I attest to the accuracy and integrity of this document Chandigarh

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com