
(2001) 05 P&H CK 0160

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 285-DB, 343-DB and 345-DB of 1999

Balwant Singh @ Banta

APPELLANT

Vs

State of Punjab
 Om Parkash Vs State of Punjab

 Surinder Singh @ Sinda Vs State of Punjab

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 42(2)

Citation : (2001) 3 RCR(Criminal) 802

Hon'ble Judges : H.S. Bedi, J;A.S. Garg, J

Bench : Division Bench

Advocate : Mr. T.S. Sangha, for the Appellant; Mr. S.S. Randhawa, Dy. AG, for the Respondent

Final Decision : Allowed

Judgement

H.S. Bedi, J.—These three appeals No. 285-DB of 1999, 343-DB of 1999 and 345-DB of 1999 arise out of the following facts :-

2. At about 11.10 P.M. on June 2, 1997, DSP Pritpal Singh (PW-1) alongwith a police party was holding a Nakabandi on the canal bridge near village Mial. In the meanwhile, one Didar Singh Sarpanch, a resident of village Achgal Khurd also reached there. As the two were conversing with each other, they saw a truck coming from the side of village Mial Khurd and on seeing the police party, the driver suddenly stopped the truck, arousing its suspicion. The truck was accordingly surrounded and the three accused were asked to alight from it. They were interrogated and on enquiry the driver revealed that he was Om Parkash, whereas the other persons sitting alongside identified themselves as Arif, Balwant Singh alias Banta, and Surinder Singh alias Sinda. DSP Pritpal Singh then told the accused that he intended to conduct a search of the truck and if they so desired, the search could be made in the presence of a Magistrate. The accused, however, stated that they had full faith in him and had no objection to search by him. This statement was recorded in the shape of a consent memo.

The truck was thereafter searched and 110 bags of maize were first recovered and from underneath these bags, 60 bags each containing 35 kgs. of poppy-husk were taken out. Samples of poppy-husk were taken from each of the bags and were duly sealed. A ruqa was also sent to Police Station, Samana and on its basis a formal FIR was drawn up at 11.20 P.M. on June 2, 1997. On the completion of the investigation, the accused were charged for an offence punishable u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and as they pleaded not guilty, were brought to trial.

3. In support of its case, the prosecution examined PW-1 DSP Pritpal Singh, who deposed to the actual search and seizure and PW-3 ASI Jaswinder Singh, who had witnessed the recovery. The report of the Laboratory to the effect that the seized article was in fact poppy-husk was also tendered into evidence.

4. The prosecution case was then put to the accused and their statements recorded u/s 313 of The Code of Criminal Procedure. The accused denied the allegations levelled against them and stated that they had been involved in a false case for various reasons. They also examined one Sahib Singh as DW-1 in their defence.

5. The trial Court held that the provisions of Section 50 of the Act were not applicable as the search and seizure had been made from a truck and that too by chance. The Court also found that the recovery of the seizure articles had been proved from the evidence of DSP Pritpal Singh (PW-1) and ASI Jaswinder Singh (PW-3). The defence story was also rejected as being unworthy of acceptance. The Court accordingly convicted the accused for an offence punishable u/s 15 of the Act and sentenced them to undergo rigorous imprisonment for eleven years and to pay a fine of Rs. one lakh each and in default thereof to undergo further rigorous imprisonment for one year.

6. Three appeals have been filed against the aforesaid judgment. Criminal Appeal No. 285-DB of 1999 by Balwant Singh alias Banta, Criminal Appeal No. 343-DB of 1999 by Om Parkash and Arif, and Criminal Appeal No. 345-DB of 1999 by Surinder Singh alias Sinda accused. As already mentioned above, all the three matters are being disposed of by this judgment.

7. Mr. T.S. Sangha, the learned counsel for the accused in Criminal Appeal No. 285-DB of 1999 has argued that it had come in the evidence of DSP Pritpal Singh (PW-1) that the Nakabandi had been held on prior information and that the said information had been received in his office, some time in the morning of June 2, 1997, whereas the truck had been intercepted at about 6.00 P.M. but despite this, no FIR had been registered nor any written report sent to any superior officer and in this view of the matter the provisions of Section 42(2) of the Act had been violated, leading to a presumption that the accused had been severely prejudiced as one of the statutory procedural safeguards had been ignored. He has placed reliance on the judgment of Hon'ble Supreme Court in State of Punjab v. Balbir Singh 1994 (1) RCR (Cr.) 737 (SC), wherein it had been held that the provisions of Section 42(2) of the Act were mandatory and a complete

non-compliance thereof would vitiate the trial. This argument has been controverted by Mr. S.S. Randhawa, Deputy Advocate General, Punjab with reference to a later judgment of the Hon'ble Supreme Court in Abdul Rashid Ibrahim Mansuri v. State of Gujarat 2009(1) RCR 611 (SC), in which a larger Bench had considered the judgment in Balbir Singh's case (supra) and concluded as under :-

"If the Officer has reason to believe from personal knowledge or prior information received from any person that any narcotic drug or psychotropic substance (in respect of which an offence has been committed) is kept or concealed in any building, conveyance or enclosed place, it is imperative that the officer should take it down in writing and he shall forthwith send a copy thereof to his immediate official superior. The action of the officer, who claims to have exercised on the strength of such unrecorded information would become suspect, though the trial may not vitiate on that score alone. Nonetheless the resultant position would be one of causing prejudice to the accused."

8. We have gone through the two judgments cited before us and find that in Balbir Singh's case (supra) it had been categorically held that if the provisions of Section 42(2) of the Act were totally ignored that would vitiate the prosecution story and thus adversely affect the prosecution case and to that extent they were mandatory, whereas in Abdul Rashid Ibrahim Mansuri's case (supra) the Hon'ble Supreme Court after considering the judgment in Balbir Singh's case (supra) has observed that the trial would not vitiate on this score alone but the resultant position would be that it could be presumed that prejudice had been caused to the accused and we believe that this presumption too, like other, presumption would be rebuttable. To our mind, this presumption has not been rebutted on the facts as the recovery had been supported by only two police officers, as Didar Singh, the independent witness, had not been examined, as having been won over by the accused.

9. Mr. Randhawa has, however, argued that the evidence of DSP Pritpal Singh could not be taken at its face value as in his examination-in-chief he had nowhere stated that he had received secret information which had led to the holding of the Nakabandi, and as the cross-examination of this witness had been conducted after more than one-and-a-half year from the date of the examination-in-chief, it appeared that he had in the meanwhile been persuaded to weaken the prosecution case. We are of the opinion that this argument of the learned counsel would be imprudent for the reason that if the DSP was held to be an unreliable witness, virtually no other evidence against the accused was available. Moreover, we have gone through the record and find that the delay between the examination-in-chief and the cross-examination of the DSP had been occasioned by reasons beyond the control of either of the parties as is clear from the zimmi orders which have been reproduced in the paper book. We are, therefore, of the opinion that the case against the accused has not been proved. We accordingly allow the appeals and order their acquittal. We also direct that truck No. OR-01

-9139, if confiscated, shall be returned to its registered owner.

10. Appeals allowed.