

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1034 OF 2003

DALEL SINGH

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

J U D G M E N TV.S.SIRPURKAR, J.

1. This is an appeal by the appellant-accused against his conviction for the offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS Act") and the consequent sentence of R.I. for 10 years and to pay fine of Rs. 1.5 lakhs, in default to undergo further R.I. for one year.

2. The prosecution story in very short conspectus is that on 4.7.1997 at about 2 p.m., Inspector Mahabir Singh along with other police officials was present at Gubhana bus-stop where he received a secret information that the appellant-accused was doing the business of selling charas and was keeping charas in the courtyard of his house. On this information, Inspector Mahabir Singh immediately informed his superior Kala Ramchandran, Additional Superintendent of Police on wireless and the police party went to the house of the

accused after joining Surajbhan, Namberdar and Chanderbhan, Chowkidar as witnesses. In the meantime, ASP Kala Ramchandern also reached the spot and directed the Inspector Mahabir Singh to conduct the search of the premises. The house of the accused which was in a gher (compound) was found locked. Ultimately, it was the wife of the accused who brought the key of that "gher". The "gher" had three rooms. The "gher" was opened and searched. In the fodder room (kotha of tura) inside the "gher", one plastic bag was found which was opened and checked and charas weighing 6.5 kilo gram was recovered. The usual investigation went on. The samples were collected and sent along with the seal; a rukka (information) was immediately sent on the basis of which the first information report was registered in the concerned police station. In support of its case, prosecution examined PW6 Inspector Mahabir Singh, PW5 ASP Kala Ramachandra apart from examining, PW1 Surajbhan, PW2 Satbir Singh, PW3 Constable Sunil Kumar and PW4 ASI Hari Singh. They were all part of the raiding party along with Inspector Mahabir Singh. On the basis of their evidence, the trial court convicted the accused against which there was an appeal before the High Court. The High Court dismissed the appeal. Hence, the present appeal.

3. Mr. Ratan Kumar Choudhary, learned counsel appearing

for the appellant very painstakingly took us through the

evidence of all the witnesses and urged that this was a case where there was a total non-compliance of the provision of Section 42 of the NDPS Act inasmuch as there was no recording of the information prior to taking any action. Under the said Section, the investigating officer had to record the information and send the same to the immediate superior officer. However, that was not done either before the raid or even thereafter. It was pointed that the said non-compliance was the breach of a mandatory provision of the Act and as such the said non-compliance was fatal to the prosecution case. The other point argued by the learned counsel is that there were discrepancies inasmuch as the PW 6 Inspector Mahabir Singh had stated in his statement that the recovered charas weighed 4 ½ kilo gram while PW1 Suraj Bhan, an independent witness had said on oath that the recovered charas weighed only 1.5 kilo gram while, actually it was 6.5 kilo gram which was alleged to have been recovered from the appellant.

4. We have seen the evidence ourselves. However, we are totally convinced that there was undoubtedly the contraband of chars found in the house which was described as "gher" (compound). Learned counsel was at pains to point out that there was no evidence collected regarding the ownership of

the room from where the contraband charas was seized. We do not think that this can be urged at this stage as both the courts below have accepted that the house actually belonged to the

accused and the concerned room was within the "gher" (compound) and was in his possession. This is apart from the fact that there is no serious cross-examination of any of the witnesses on the question of ownership of the house. Insofar as the recovery of contraband charas is concerned, it has been fully established that 6.5 kilo grams of charas was recovered and the samples thereof were sent to the forensic laboratory along with the seals. The documents like panchanama and seizure memos clearly bring out the position that 6.5. K.G. Of charas was found in the plastic bag. On that backdrop, the error committed by witnesses could be attributed to failure of human memory which is inconsequential. The courts below have accepted this discovery.

5. Learned counsel for the appellant very vehemently urged that there was total non-compliance of Section 42 of the NDPS Act. We do not think that the accused can succeed even on this point in view of the judgment of Constitution Bench of this court rendered in Karnail Singh Vs. State of Haryana 2009(10) SCALE 255 wherein, in paragraph 10, it was held as

under:

"In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

- (a) The officer on receiving the information (of the nature referred to in Sub-section (1) of Section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediately official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).
- (b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to

the official superior.

- (c) In other words, the compliance with the requirements of Section 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the

recording of the information in writing and sending a copy thereof to the officer superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

- (d) While total non-compliance of requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the

police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or

not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

6. On this backdrop when we see the prosecution case here, it is apparent that the information was received by PW6 Inspector Mahabir Singh when he was not in the police station but was on patrol duty in the town. He immediately, after receipt of the information, informed his superior officer on wireless. There is no doubt that he did not record it in writing but passed on it to his superior ASP Kala Ramachandran by wireless. The fact that the superior officer was informed is deposed to by ASP Kala Ramachandran who appeared as PW5.

We have seen her cross-examination which really is totally irrelevant. Similarly, we have gone through the evidence of PW6 Inspector Mahabir Singh. Again, his cross-examination is also redundant cross-examination. Both the witnesses have deposed about the information having been transmitted through wireless and in our opinion would be a substantial compliance of Section 42 of the NDPS Act since the situation was of emergency. Had the police officer not moved right in the earnest, the appellant-accused would have had an opportunity to remove the contraband charas and escaped from the arms of police. Under the circumstances, we are unable to agree with the contentions raised before us by learned counsel for

the appellant. In our view, there is no infirmity in the judgments of the courts below. The appeal, being devoid of any merit, is dismissed.

7. The appellant is reported to be on bail. The bail bonds are cancelled. The appellant is directed to surrender within four weeks from today to serve out the remaining sentence failing which non-bailable warrants shall be issued to secure his arrest. We appreciate the sincere efforts made by Mr. Ratan Kumar Choudhary, learned counsel appearing for the appellant to assist us during the hearing of the matter as the learned counsel for the State of Haryana remained absent.

.....J.
[V.S. SIRPURKAR]

.....J.
[DEEPAK VERMA]

NEW DELHI
OCTOBER 7, 2009.

