

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 216/2009

DARSHAN SINGH

APPELLANT (S)

VERSUS

STATE OF HARYANA

RESPONDENT (S)

WITH

CRIMINAL APPEAL NO. 217/2009

O R D E R

The factual position, as it emerges from the first information report is, that the Station House Officer of Police Station Shahar, Panipat,

(who was holding the rank of Inspector), in the company of Bhim Singh Gill, Assistant Excise and Taxation Officer, Panipat, Constable Devendra Singh and Brajpal, while on patrol duty in Government Jeep, bearing Registration No. HR-6C-973, being driven by Jaisingh, were in the area of Sukhdev Nagar, during the course of investigation in Case No. 275 of 1999, under Sections 457/380 of the Indian Penal Code. He received a secret information, that the accused-appellant before this Court, namely, Darshan Singh s/o Gopal Das Khatri, a resident of House No. 361/3, Panipat, was carrying on the business of selling charas, opium and smack, to small children of the locality, and was responsible for the said children falling in bad habits. The secret informant, allegedly disclosed to the Station House Officer of Police Station Shahar, Panipat, that if a raid was promptly conducted, the accused-appellant Darshan Singh, could be apprehended in possession of charas, opium and smack.

As per the first information report, on the aforesaid secret information, the Station House Officer of Police Station proceeded to conduct a raid on the premises of the accused-appellant Darshan Singh, along with his companions, as already noticed hereinabove. On reaching the house of the accused-appellant Darshan Singh, he was given a notice under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') informing him that he wished to conduct a search of the premises and of his person. Darshan Singh was required to choose, whether he desired to be searched by a Gazetted Officer, or by a Magistrate. The accused-appellant Darshan Singh accepted to be searched by a Gazetted Officer, and accordingly, he was searched by Bhim Singh Gill, Assistant Excise and Taxation Officer, who was accompanying the raiding party. The search of the house of the accused-appellant Darshan Singh lead to the recovery of 18 packets of opium (allegedly

wrapped in a polythene bag), 7 polythene packets of charas and some loose charas, and 23 packets of smack, from the above residential premises, on the left side of the entrance. On weighing the recovered material, it emerged that the accused-appellant Darshan Singh was in possession of 30 grams of opium, 40 grams of charas and 9 grams of smack. Having taken samples of 10 grams of opium, 10 grams of charas and 9 grams of smack, separate packets thereof were prepared. The rest of the charas and opium were confiscated, and the confiscated material was separately sealed. The recovered opium, charas and smack were made into three separate packets. Each of the three packets were individually sealed with the seal "KS". The AETO also affixed his seal "BS" separately on each of the three sealed packets. It was also alleged that a cash amount of Rs.56,141/-, which was recovered from the accused-appellant Darshan Singh, which he had allegedly collected by the sale of opium, charas and smack was also seized. For the same, a separate seizure memo was

prepared.

The factual position, depicted hereinabove was to demonstrate, that the Station House Officer of Police Station Shahar, Panipat, on the receipt of secret information, had immediately proceeded to raid the premises of the accused-appellant Darshan Singh. Consequent upon the completion of the investigation of the case, and presentation of the charge-sheet, the Additional Sessions Judge, Panipat, framed the charges against the accused-appellant Darshan Singh, leading to the holding of a trial. On the culmination of the trial, Darshan Singh, the accused-appellant, was held guilty for the commission of the offences punishable under Sections 18, 20, 21 and 25 of the NDPS Act, and was accordingly convicted for the same. The accused-appellant Darshan Singh was awarded the sentence of rigorous imprisonment for a period of ten years, and was ordered to pay a fine of Rs.1,00,000/-, for the commission of the offence punishable under Section 18 of the NDPS

Act. He was also sentenced to further undergo rigorous imprisonment for two years, in case of default in payment of fine. The accused-appellant was also sentenced to undergo rigorous imprisonment for a period of ten years, and was ordered to pay a fine of Rs.1,00,000/- for the offence punishable under Section 20 of the NDPS Act, and in case of default, to further undergo rigorous imprisonment for a period of two years. The accused-appellant was sentenced to undergo imprisonment for a period of ten years, and was ordered to pay a fine of Rs.1,00,000/- for the commission of the offence under Section 21 of the NDPS Act, and in case of default in payment of fine, to undergo rigorous imprisonment for a further period of two years. Likewise, he was sentenced to undergo rigorous imprisonment for a period of ten years, and was ordered to pay a fine of Rs.1,00,000/- for the commission of the offence under Section 25 of the NDPS Act, and in case of default of the payment of fine, to further undergo rigorous imprisonment for a period of two years.

The Additional Sessions Judge, Panipat directed that the above sentences would run concurrently.

Dissatisfied with the order passed by the trial court, the accused-appellant Darshan Singh preferred Criminal Appeal No.344-SB of 2001 before the High Court of Punjab and Haryana. The aforesaid appeal came to be dismissed by the High Court vide the impugned judgment and order dated 08.04.2008. The appeal preferred by the accused-appellant Darshan Singh was dismissed, and the sentences imposed upon him under different provisions of the NDPS Act by the trial court were also affirmed.

At the beginning of hearing the instant appeals, learned senior counsel for the appellant informed the Bench, that he would be raising various grounds in his challenge to the order passed by the Additional Sessions Judge, Panipat, as also, the impugned judgment and order passed by the High Court. Having heard the first

submission, advanced at the hands of learned senior counsel, premised on Section 42 of the NDPS Act, we are satisfied, that it would not be necessary for us to deal with the remaining submissions, and accordingly, we did not hear learned senior counsel for the appellant, on the remaining submissions.

Insofar as the contention of learned senior counsel for the appellant under Section 42 of the NDPS Act is concerned, he relied on the interpretation placed by a Constitution Bench judgment of this Court on the above provisions in *Karnail Singh v. State of Haryana*, (2009) 8 SCC 539, wherein, this Court recorded its conclusions in Paragraph 35, which is being extracted hereunder:

"In conclusion, what is to be noticed is that 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 Sections 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 Register concerned and forthwith send a copy to his immediate 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 sections 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 official 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 with requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with 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 of 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."

(emphasis is ours)

Based on conclusion (d) recorded hereinabove, it was the vehement contention of the learned senior counsel for the appellant, that the mandate contained in Section 42 of the NDPS Act was not at all complied with, by the Station House Officer, Police Station, Shahar, Panipat, who had received the secret information and conducted a raid on the premises of the accused-appellant Darshan Singh. Based on the non-compliance of the provisions of Section 42 of the NDPS Act, requiring the officer concerned to record in writing the details in respect of secret information received by him under Section 42(1) of the NDPS Act, and further, to communicate the aforesaid details to the officer superior to him forthwith [under Section 42(2) of the NDPS Act], learned senior counsel seeks setting aside of the conviction of the accused-appellant Darshan Singh, at the hands of the Additional Sessions Judge, Panipat, and affirmed at the hands of the High Court.

Whilst it was the case of the learned senior counsel for the appellant that the provisions of Section 42(1) of the NDPS Act had not been complied with at all, learned counsel for the respondent-State vehemently contested the aforesaid assertion. For contesting the submission advanced at the hands of the learned senior counsel for the appellant, reliance was placed on the factual position narrated in Paragraph 26 of the order dated 06.02.2001, passed by the trial court. Paragraph 26 is being extracted hereunder:

"26. In the present case, no doubt the report of the arrest of the accused and the seize has not been sent to the Police Station, but in the present case immediately after effecting the recovery, the ruqua was sent to the Police Station and on the basis of the same formal FIR Ex.PB/1 was recorded at 5.15 p.m. and Ex.PB1 further proves that the copy of the said FIR was sent through special messenger, which was received by the then Chief Judicial Magistrate, Panipat at 8.45 p.m. on the same day and the copy was also sent to the S.P., Panipat. Thus, it stands proved that about the arrest and seizure of the accused, the information was received by the superior officer, as

such there is compliance of Section 57 of the Act."

A perusal of Paragraph 26 extracted above reveals that immediately after conducting the raid, the concerned Station House Officer, Police Station Shahar, Panipat, registered a first information report, which was subsequently dispatched to the Superintendent of Police, Panipat on the same day, i.e. to the officer superior to the officer, who had conducted the raid (on receipt of secret information). According to the learned counsel for the respondent-State since first information report was sent to the superior officer, non-compliance of Section 42 had not caused any prejudice to the appellant, and therefore, he could claim no benefit under Section 42.

The solitary question that arises for our consideration in the instant appeal, is whether the registration of the first information report, narrating the factual position as has already been

described at the beginning of this order, as also, the communication of the first information report to the Superintendent of Police, Panipat would constitute an effective compliance of the provisions contained in Section 42 of the NDPS Act.

Having given our thoughtful consideration to the submission advanced at the hands of learned counsel for the respondent, we are of the view that the mandate contained in Section 42(1) of the NDPS Act, requiring the recording in writing, the details pertaining to the receipt of secret information, as also, the communication of the same to the superior officer are separate and distinct from the procedure stipulated under the provisions of the Criminal Procedure Code. Sub-section 1 of Section 41 of the NDPS Act provides that a Metropolitan Magistrate or a Magistrate of the First Class or any Magistrate of Second Class specially empowered by the State Government may issue a warrant for the arrest of

any person whom he has reason to believe to have committed any offence punishable under Chapter IV. Sub-section (2) of Section 41 refers to issue of authorization for similar purposes by the officers of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence, etc. Sub-section (1) of Section 42 of the NDPS Act lays down, that the empowered officer, if he has a prior information given by any person, should necessarily take it down in writing, and where he has reason to believe from his personal knowledge, that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building, etc. he may carry out the arrest or search, without warrant between sunrise and sunset and he may do so without recording his reasons of belie. The two separate procedures noticed above are exclusive of one another. Compliance of one, would not infer the compliance of the other. In the circumstances contemplated under Section 42 of the NDPS Act the mandate of the procedure

contemplated therein will have to be followed separately, in the manner interpreted by this Court in Karnail Singh's case (supra) and the same will not be assumed, merely because the Station House Officer concerned had registered a first information report, which was also dispatched to the Superintendent of Police, in compliance with the provisions of the Criminal Procedure Code.

In the above view of the matter, it is not possible for us to accept the submission of the learned counsel for the respondent-State, that the registration of the first information report at the hands of the Station House Officer, Police Station Shahar, Panipat and its communication to the Superintendent of Police, Panipat would constitute sufficient compliance of the mandate of Section 42 of the NDPS Act.

In aforesaid view of the matter, we are satisfied that Section 42 of the NDPS Act was not complied with at all, insofar as the present

controversy is concerned. Thus viewed, conclusion (d) recorded in Paragraph 35 of the judgment rendered in Karnail Singh's case (supra), would fully apply to the facts and circumstances of the present case, and we are left with no other option, but to set aside the conviction and the sentence of imprisonment of the accused-appellant Darshan Singh. Ordered accordingly. The appeal stands allowed.

Criminal Appeal No. 217/2009

The instant appeal is disposed of in terms of the order passed in Criminal Appeal No. 216/2009 i.e. the appeal preferred by the accused-appellant Darshan Singh. The necessary implication thereof would be, that the recovered amount as also the fine amount, shall have to be refunded to the

accused-appellant Darshan Singh. Ordered
accordingly.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(R. BANUMATHI)

NEW DELHI,
SEPTEMBER 02, 2015

ITEM NO.101

COURT NO.4

SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 216-217/2009

DARSHAN SINGH

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

(With appln.(s) for stay)

Date : 02/09/2015 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. R.S. Sodhi, Sr. Adv.
Mr. S.S. Das, Adv.
Mr. Yash Anand, Adv.
Mr. Yash Singhal, Adv.
Mr. David A., Adv.
Mr. Satpal Singh, Adv.

For Respondent(s) Dr. Monika Gusain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Criminal Appeal No(s). 216/2009

The appeal is allowed in terms of the signed order.

Criminal Appeal No(s). 217/2009

The appeal is disposed of in terms of order passed in
Criminal Appeal No(s). 216/2009.

(VINOD KR.JHA)
COURT MASTER

(RENUKA SADANA)
COURT MASTER

(Signed order is placed on the file)