

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-S-2127-SB of 2003
Date of Decision: May 20, 2015**

Dharamvir Singh @ Bhola

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Avinash Mittal, Advocate
for the appellant.

Mr. J.S. Brar, DAG, Punjab.

FATEH DEEP SINGH, J.

The appellant Dharamvir Singh @ Bhola has impugned his conviction by virtue of judgment and order of sentence dated 26.9.2003 of learned Special Judge, Bathinda under Section 15 of the Narcotic Drugs Psychotropic Substances Act, 1985, (for short, 'the Act') whereby, he has been sentenced to undergo rigorous imprisonment for 10 years and to pay fine of ₹1 lac and in default thereof to further undergo rigorous imprisonment for two years.

After hearing learned counsel for the parties and perusing the records of the case. The brief factual matrix that is emancipating from submissions and records of the case are that on 14.9.2000 around 7 30 p.m. police party headed by S.I./SHO Devinder Kumar in the area of bridge of the drain village Rampura Mandi received information that the accused appellant was carrying on activities dealing in narcotics and has hidden poppy husk in the cowshed of his house and which information was reduced into writing by way of Ex.PD and

meanwhile the ruqa Ex.P1 was sent leading to the registration of the FIR Ex.PD/1. The Investigating Officer on arrival in the presence of DSP Balbir Singh Khaira after apprising the accused of his rights prepared consent memo Ex.PA and by way of recovery memo Ex.PB recovered 10 bags each weighing 34 kgs and 500 gms poppy husk from the cattle shed of the house. Personal search memo Ex.PC was also prepared and the accused was served with formal memo of arrest Ex.PD. Rough site plan of this place Ex.PE was also prepared and, thereafter, report Ex.PG was despatched and upon recording of statements of the witnesses and preparation of the samples parcels as well as residual parcels were duly sealed. On 15.9.2002 the accused and the articles were produced before the learned Judicial Magistrate, Ist class, Phul and application Ex.PF was moved leading to the passing of orders Ex.PF/1, Ex.PF/2 and Ex.PF/3. On receipt of report of the Forensic Science Laboratory Ex.PK opining the contents to be of poppy husk the accused was put to trial.

The prosecution examined PW1 DSP Balbir Singh Khaira, PW2 S.I. Devinder Kumar, PW3 Constable Kulwinder Singh whereas, after recording statement under Section 313 Cr.P.C the accused in his defence examined DW1 Chand Singh and DW2 Constable Babu Ram and after tendering report under Section 173 Cr.P.C. closed his defence and it is consequent thereupon, the impugned findings were recorded.

The first and foremost contention that has been raised by the learned counsel for the appellant revolves around the very violation of Section 42 of the Act submitting that the recovery has been effected after 7.30 p.m. and, thereafter, it was essential for the Investigating Agency to have procured the warrants/authorisation for such a search. It is well illustrated as has been pointed out by the learned State counsel in the deposition of PW1 DSP, Balbir Singh Khaira

that he was intimidated by the Investigating Officer and he joined the police party and it is the own case of the prosecution that one independent witness Ashok Kumar was also associated and, therefore, it was in the presence of a Gazetted Police Officer this search has been conducted. Learned counsel for the appellant could not convince this Court that this requirement was mandatory and even in the case of **Union of India vs. Satrohan 2008(8) SCC 313** have laid in a similar proposition that in such a eventuality compliance of Section 42 is not at all necessary. In another ratio of the Hon'ble Apex Court in **Jaswant Singh vs. State of Haryana 2005 (1) RCR (Criminal) 802** in case of recovery of contraband after sunset and before sunrise it was observed that search warrants were not required and what is more vital and important is that the Investigating Officer should observe care and caution. In this case, prior to the raid, immediately upon receipt of secret information the same has been reduced into writing by way of Ex.PA and, thus, leaves no scope to doubt the same and the counsel for the appellant could not bring to the notice of the Court any glaring defects which could go to the roots of the case of the prosecution and it cannot be accepted as has sought to be projected that a false case has been implanted keeping in view that 10 bags weighing 350 kgs of poppy husk a commercial quantity have been recovered and it cannot be easily accepted that it was case of a false implantation of a contraband. Ratios cited and laid in **Jaswant Singh vs. State of Punjab 1998(2) RCR (Criminal) 760** and **2014(1) RCR (Criminal) 490 Nachhattar Singh vs. State of Haryana** do not come to the rescue of the appellant. The second contention that has been put forth revolves around the non-compliance of provisions of Section 100(4) Cr.P.C. Though, admittedly it is the own story of the prosecution that the recovery has been effected from a cowshed within the dwelling unit of the accused and which fact

that the accused is its owner and possessor was never the stand of the accused who invariably throughout the trial accepted that he was the owner and in possession of that very premises. As has been highlighted by the State counsel that Investigating Officer immediately on receipt of secret information has reached the place and along with an independent witness Ashok Kumar and that Gazetted Officer Balbir Singh Khaira, whose signatures on the documents Ex.PK, Ex.PB, Ex.PC and Ex.PD sufficiently rebuts the case of the defence. It is the matter of common knowledge that people rarely come forward to support the prosecution story. No doubt, this independent witness was never examined but it is not a mandate of law but only a rule of caution for the prosecution to seek independent corroboration to its allegations and there is nothing suggestive that the testimony of this official witness could not be relied upon when the deposition of Gazetted Officer, who was witness to this recovery is there and there is nothing which can be pointed out on behalf of the appellant to show any discrepancies between the statements of the Investigating Officer and the Gazetted Officer.

In **State of Punjab vs. Balbir Singh 1994(1)RCR (Criminal) 736** the Hon'ble Supreme Court has held that mere non-compliance of Section 100(4) Cr.P.C. does not vitiates the trial. The prosecution through its witnesses has clearly and cogently established the recovery of huge contraband from the dwelling unit of the accused and since the factum of recovery has been well established therefore in terms of Section 54 of the Act onus lies on the accused to prove that he was not in conscious possession of the contraband which the accused failed to do. More so, the Investigating Officer has also resorted to the provisions under Section 57 of the Act by immediately despatching report of the arrest and seizure under the Act to his immediate officer superior and, thus, is in itself a material corroboration that all was well

with the story of the prosecution.

Learned counsel for the appellant could not raise any other issue. Having regard to the quantity of the contraband recovered and the fact that there has been due compliance of the various provisions enunciated under the Act by the Investigating Officer and that the recovered contraband from the date and time of its recovery till analysis of the samples are well proved to be in an intact state leaves no scope to doubt the veracity of the prosecution.

The learned trial Court has given a well reasoned findings and nothing can be found fault with it. The appeal of the appellant being hopelessly without any merit stands dismissed.

The appellant who is presently on bail is directed to surrender before the trial Court to serve the remaining sentence.

(FATEH DEEP SINGH)
JUDGE

May 20, 2015
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