

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

**Criminal Appeal No.S-1053-SB of 2004 (O&M)**

**Date of decision: 30<sup>th</sup> September, 2015**

Harmail Singh

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. Subhash Godara, Advocate/Legal Aid Counsel,  
for the appellant.

Mr. B.S.Bhullar, AAG, Punjab,  
for the respondent(s)-State.

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**INDERJIT SINGH, J.**

Appellant Harmail Singh has filed the present appeal against the judgment of conviction and order of sentence dated 04.05.2004, passed by the learned Judge, Special Court, Patiala, vide which he has been held guilty for the commission of offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'the Act') and accordingly convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one month under the aforesaid Section.

Brief facts of the prosecution case are that on 14.05.2003, ASI Jaswinder Singh alongwith other police official was going on scooter for patrol duty. When they reached in front of the house of Amar Kaur, they saw a young person in her room, who on seeing the police party, tried to escape but on suspicion, he was

apprehended by ASI Jaswinder Singh. A plastic bag was also found there near the bed and some quantity of poppy husk was lying scattered. A weighing scale and three weights of 500 grams, 200 grams and 50 grams were also lying there. On weighment, the poppy husk came to be 17 kgs. Out of the said poppy husk, two samples of 250 grams each were separated and parcels of the samples were prepared and sealed with the seal bearing impression 'JS'. The case property was taken into police possession vide recovery memo Ex.PA. Ruqa was sent to the police station on the basis of which formal FIR was registered. Accused were arrested. Rough site plan was prepared and statements of witnesses were recorded. After necessary investigation, challan against the accused was presented before the Court.

On presentation of challan, copies of challan and other documents were supplied to accused under Section 207 Cr.P.C. Finding a prima facie case against the accused, he was charge-sheeted for the commission of offence punishable under Section 15 of the Act to which he pleaded not guilty and claimed trial.

The prosecution, in support of its case, examined **PW1** ASI Jaswinder Singh, Investigating Officer, who deposed regarding the investigation of the case. **PW2** Constable Surjit Singh is a formal witness, who tendered into evidence his affidavit Ex.PJ. **PW3** Inspector Harbhajan Singh, SHO, who deposed that on 14.05.2003, when he was present in the police station, ASI Jawinder Singh produced case property before him and he (PW3) verified the factum of recovery and found to be correct and affixed his seal on all the

parcels. Thereafter, he directed ASI Jaswinder Singh to deposit the case property with MHC Surinder Singh. **PW4** Head Constable Surinder Dutt is a recovery witness, who joined the police party headed by ASI Jaswinder Singh. He deposed as per prosecution version. **PW5** Head Constable Surinder Singh is the formal witness, who tendered into evidence his affidavit Ex.PK.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of prosecution. He denied the correctness of the evidence and pleaded himself as innocent. He also stated that false case has been planted upon him after arresting him from the village on 13.05.2003 and no recovery was effected from him.

The accused did not lead any defence evidence.

The trial Court, after appreciation of evidence, convicted and sentenced the appellant-accused as stated above.

Aggrieved against the said judgment of conviction and order of sentence, the appellant has preferred this appeal.

At the time of arguments, learned counsel for the appellant contended that the appellant has been falsely implicated in the present case. The house from where the said poppy husk was recovered belongs to Amar Kaur but she has not been joined in the investigation. No independent witness has been joined. Even the compliance of Section 50 of the Act has not been made. Learned counsel for the appellant further contended that the version of the prosecution is highly improbable as the police party was going on scooter and how they saw the accused sitting in the room.

Therefore, learned counsel for the appellant contended that there being merit in the appeal, it should be allowed.

On the other hand, learned State counsel contended that case has been duly proved by the prosecution by bringing on record cogent evidence. There are no material contradictions or improbabilities in the prosecution version. The recovery is sudden and by chance. There was no opportunity to join independent witness as recovery was effected from the bag lying in the room. Therefore, there was no necessity to give the offer to the accused to get himself searched before a Gazetted Officer as the recovery has not been effected from the person of the accused. Learned State counsel further contended that as per prosecution version, Amar Kaur is the mother of the accused, therefore, she has not been joined in the investigation. Learned State counsel further contended that there is no merit in the appeal and the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

It is now settled law that the testimony of police official is as good as of any other witness unless some enmity or motive of police official is alleged and proved against the accused. In the present case, there is no such evidence on record to prove any enmity or motive of the police official to falsely implicate the accused. Therefore, there is nothing on the record to show that the accused has been falsely implicated in the present case.

Even in the statement under Section 313 Cr.P.C., the

accused has admitted that he has been arrested from the village on the date of occurrence. Further, this Court finds that the police party was on scooter when they saw the accused sitting in the room and the bag containing poppy husk, weights and weighing scale were lying there. They also saw that some of the poppy husk was lying scattered on the floor. Therefore, on seeing the police party, as a natural conduct, the accused ran away from the spot and on suspicion he was apprehended. So, in no way, it can be held that the version of the prosecution is improbable. As the recovery, effected from the accused was sudden and by chance, therefore, there was no opportunity with the police to join any independent witness. PWs have consistently deposed regarding the prosecution version. There are no material contradictions or material improvements in the statements of prosecution witnesses which may go to the root of the case. The prosecution witnesses have consistently deposed regarding the prosecution version. The cross-examination of PWs nowhere shows that they are unreliable.

As regarding the argument that compliance of Section 50 of the Act has not been made, the poppy husk has not been recovered from the accused. Rather the plastic bag containing poppy husk was lying on the floor near the bed. Therefore, Section 50 of the Act will not apply in this case.

From the aforesaid discussion, I find that the prosecution has duly proved its case by leading cogent evidence and no reasonable doubt exists in the prosecution version. The impugned judgment of conviction and order of sentence passed by the learned

trial Court are correct and as per law and the same are upheld.

Learned counsel for the appellant further contended that at the time of recovery i.e. In the year 2003, the accused was a young person of 19 years old and since then he had been suffering from the long protracted criminal proceedings.

Keeping in view the facts and circumstances of the present case and the facts that at the time of occurrence, the appellant was young person of 19 years old; no other conviction has been proved against him; he is the first offender and he has already suffered a lot due to long protracted criminal proceedings since the year 2003 i.e. for more than 12 years, the sentence imposed upon him is reduced to rigorous imprisonment for a period of 9 months. However, the sentence of fine shall remain the same.

With the aforesaid modification, the instant appeal stands dismissed.

The appellant is directed to surrender himself before the jail authorities to undergo remainder of sentence, failing which, the concerned authority shall proceed against him as per law.

**30<sup>th</sup> September, 2015**  
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**(INDERJIT SINGH)**  
**JUDGE**