

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

CRA-S-1067-SB-2004

Date of decision: 03.08.2015

Sultan Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

Present: Ms. Puja Sharma, Advocate for the appellant.

Mr.Jashanpreet Singh, AAG, Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment dated 04.05.2004, passed by the learned Judge, Special Court, Patiala, vide which accused-appellant Sultan Singh has been held guilty and convicted for the offences punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after called the 'Act') and the order on quantum of sentence of the even dated, vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2000/-, in default of payment of

fine, to further undergo rigorous imprisonment for two months.

2- As per the prosecution case, on 05.08.2001 at about 05:30 P.M., Sub Inspector Bindu Bala along with other police employees was present at the bridge of canal minor in the area of Ghagga in a private vehicle in connection with patrolling. PW Ram Lal also arrived there and S.I. Bindu Bala was talking with him. In the meanwhile, accused Sultan Singh came from the side of village Bootasinghwala, who on seeing the police party, turned towards his left hand side. He was carrying a bag in his right hand. On suspicion, he was apprehended. The Investigating Officer asked from him about option for his search in the presence of a Gazette Officer or the Magistrate. Vide his consent memo Ex.PA, he opted his search in the presence of some Gazetted Officer. Ashish Kapur, Deputy Superintendent of Police, Samana was called at the spot through wireless message. In his presence, the bag in the possession of the accused was searched, which was found containing one kilogram opium. Two samples of 10 grams each were separated. Separate sealed parcels of sample and residue opium were prepared and taken into possession vide memo Ex.PC. The Investigating Officer sent Rukka Ex.PF to the Police Station. On the basis of which, formal FIR Ex.PF/1 was registered. The Investigating Officer prepared the site plan of the place of recovery Ex.PG. The accused was arrested. The case property was deposited in intact condition in the Malkhana. On the next day, the case property was produced before the Illaqa Magistrate vide application Ex.PH. On which, learned Illaqa Magistrate passed his order Ex.PH/1. Sample parcels were

sent to the Forensic Science Laboratory, Chandigarh for examination. On receipt of the report of the FSL Ex.PJ and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after called the 'Cr.P.C.') was presented in the Court.

3- The accused appellant was charge sheeted for the offence punishable under Section 18 of the Act vide order dated 23.10.2001 by the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

4- In order to substantiate its case, prosecution examined as many as five witnesses.

5- When examined under Section 313 Cr.P.C., accused pleaded false implication and pleaded that on that day he came to Samana to purchase spare parts of his crop cutting machine. When he was waiting for bus at bus stand, a policeman brought him to the police station. He snatched his spare parts and involved him in this case. One person who was already sitting in the police station, was allowed to go.

6- In the defence evidence, accused examined Tarsem Chand Singla as DW1 and Suresh Kumar as DW2. Thereafter, the defence evidence was closed.

7- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused appellant was held guilty for the offence punishable under Section 18 of the Act and was awarded the sentence as mentioned in the upper part of the judgment.

8- Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

9- I have heard Ms. Puja Sharma, Advocate, learned counsel for the appellant, Mr. Jashanpreet Singh, learned Assistant Advocate General for the State of Punjab and have meticulously examined the record of the case.

10- Initiating the arguments, learned counsel for the appellant contended that one Ram Lal was associated as an independent witness in this case and even the seal after use was handed over to him but he was not examined on the ground that he was won over by the accused. She contended that merely saying so by the Public Prosecutor that witness has been won over is not sufficient. He should have been produced in the whiteness box. Thus, the non-examination of Ram Lal is fatal to the prosecution case. To support her contentions, she relied upon case **Pappu Ram alias Pappu Vs. State of Punjab 2007(3) RCR (Criminal) 455, Sukhwinder Singh and others Vs. State of Punjab 2014(1) DC (Narcotics) 507 and Sawroop Vs. State of Haryana 2014 (2) RCR (Criminal) 571.**

11- She further contended that as per the prosecution version, the police party was travelling in a private vehicle being driven by a private person, so, admittedly, he was present at the spot but even he has not been joined, which also renders the prosecution case doubtful. To support her contentions, she relied upon case **Ranbir Singh Vs. State of Haryana 2001(1) RCR (Criminal) 674.**

12- She further contended that S.I. Bindu Bala was the Investigating Officer of the case. She has carried out the entire proceedings. Even the challan has been filed by her. She has not complied with the provisions of Section 57 of the Act, which also renders the prosecution case doubtful. She further contended that the Investigating Officer has not produced the case property before the Station House Officer and A.S.I. Surjit Singh, who was officiating S.H.O. has not affixed his seal. To support her contentions, she relied upon cases **Pragat Singh Vs. State of Haryana 2008(4) RCR (Criminal) 596, Gurbax Singh Vs. State of Haryana 2001(1) RCR (Criminal) 702, Kulwant Singh and another Vs. State of Punjab 2014(4) RCR (Criminal) 316 and Mohmed Salim Vs. State of Haryana 2008(2) RCR (Criminal) 128.**

13- She further contended that there is delay of more than five days in sending the samples to the Forensic Science Laboratory, Chandigarh. No explanation has been given for this delay. There is every possibility of the case property having been tampered with. The Investigating Officer has stated that Ram Lal has handed over the seal back to her only on the next day. So, the seal was available to the Investigating Officer. The specimen seal impressions have not been attested by the recovery witnesses. The CFSL form has not been prepared at the spot. The Constable, who has carried the sample to the FSL, has not stated that he has also deposited the specimen seal impressions with the laboratory. These lapses further renders the

prosecution case doubtful. To support her contentions, she relied upon cases **Pragat Singh Vs. State of Haryana** (supra), **Gian Singh Vs. State of Punjab 2006(2) RCR (Criminal) 611**, **Mohmed Salim Vs. State of Haryana** (supra), **Bhola Singh Vs. State of Punjab 2005(2) RCR (Criminal) 520** and **Ramu Vs. State of Punjab 2008 (3) RCR (Criminal) 506**.

14- She further contended that the Deputy Superintendent of Police Ashish Kapoor, who has supervised the search and seizure, has not been examined. She contended that the story of the prosecution is improbable. It is not possible that the FIR could have been recorded in just 20 minutes. She further contended that as per the site plan, there is a drain on the side towards which the accused is alleged to have turned on seeing the police party, which is impossible. Thus, she pleaded that the appellant has been falsely implicated. She further contended that severe punishment has been provided under the provisions of the Act. So, it must be strictly proved but the prosecution has miserably failed to do so. To support her contentions she relied upon case **Noor Aga Vs. State of Punjab and another 2008(3) RCR (Criminal) 633**.

15- On the other hand, learned State counsel contended that the case of the prosecution is fully proved. From the statements of PW-1 S.I. Bindu Bala, the Investigating Officer of the case and PW-4 A.S.I. Karan Singh, it is established that one kilogram opium was recovered from the possession of the appellant. There was absolutely no reason for his false implication. The appellant is resident of Distt. Kaithal. So,

there can be no reason that the local police officials might be having any grudge with him. He contended that Ram Lal the independent witness was won over, so he was given up by the prosecution. The case property has remained intact. Thus, mere delay of five days in sending the sample will not cause any dent in the prosecution story. Section 57 of the Act is not mandatory. Moreover, the D.S.P. himself was present at the spot and had sealed the case property as well as attested the documents. So, no prejudice has been caused due to non-compliance of Section 57 of the Act. He further contended that the Investigating Officer was herself the S.H.O. of the police station. So, it was not required that A.S.I. Surjit Singh, who was the officiating S.H.O. in her absence should affix his seal. Thus, he pleaded that the conviction of the appellant has been rightly recorded by the learned trial Court.

16- I have given my thoughtful consideration to the aforesaid contentions.

17- No doubt, as per the prosecution version Ram Lal was associated as an independent witness in the present case and even seal after use was handed over to him but he has been given up by the learned Public Prosecutor vide his separate statement dated 25.02.2003 as having been won over by the accused. The Hon'ble Supreme Court in case **Banti alias Guddu Vs. State of Madhya Pradesh 2003(4) RCR (Criminal) 911** has laid down that there is no illegality if the Public Prosecutor has given up the whiteness who was not likely to support the prosecution case. In case **Masalti Vs. State of Uttar Pradesh, AIR 1965 SC 202**, it

was held that it is, undoubtedly the duty of the prosecution to lay before the Court all material witnesses, available to it, whose evidence is necessary for unfolding the case, it would be unsound to lay down it as a general rule that every witness must be examined even though his evidence may not be material or even if it is known that he has been won over or terrorised. In **Roop Singh Vs. State of Punjab 1996 (1) RCR (Criminal) 146**, the Division Bench of this Court held that no adverse inference can be drawn, when the only independent witness was given up by the prosecution, as won over by the accused. It was further laid down that the panch witnesses, being human beings, are quite exposed and vulnerable to human feelings of yielding, browbeating, threats and inducements and giving up of the public witnesses as won over, is fully justified in the present day situation, prevailing in the society. The same rule of law has been reiterated by another Division Bench of this Court in case **Karnail Singh Vs. State of Punjab 1983 Criminal Law Journal, 1218**.

18- In view of the consistent rule of law laid down in the cases referred above, case **Pappu Ram alias Pappu Vs. State of Punjab** (supra), relied upon by learned counsel for the appellant is of no help to her and the non-examination of Ram Lal as having been won over by the accused is no ground to reject the prosecution version.

19- It is the admitted version of the prosecution that at the time of recovery, the police party was in the private vehicle. The driver of the said vehicle was also a private person but he has not been

associated as a witness. The Investigating Officer has already associated Ram Lal as an independent witness in the present proceedings. It is a different matter that later on he was won over by the accused and was not examined by the prosecution. It is not necessary that there should be the duplicacy of the evidence. It is also not statutorily provided that each and every independent person, who happens to be present at the spot, must be associated as a witness in the investigation. Thus, once Ram Lal an independent person was associated in the investigation, it was not necessary that the driver of the private vehicle should also have been joined.

20- Mere this fact that S.I. Bindu Bala, the Investigating Officer of the case, has conducted the entire proceedings is also not a ground to reject the prosecution case. The accused has not been able to show as to what prejudice have been caused to him by the proceedings being carried out by S.I. Bindu Bala, the Investigating Officer of the case. The Hon'ble Supreme Court in case **S. Jeevanantham Vs. State through Inspector of Police, TN 2004(3) RCR (Criminal) 333** has laid down that if the police officer who is the complainant, has also conducted the investigation of the case and it is not proved that any prejudice was caused to the accused on account of adoption of such a course, the accused cannot be acquitted. In the instant case also, there is no material on record to show that any prejudice has been caused to the accused by the Investigating Officer conducting the entire proceedings.

21- The provision of Section 57 of the Act are directory in

nature. The purpose of Section 57 of the Act is that the superior officer, should come to know about the proceedings and genuineness thereof. In the instant case, D.S.P. Ashish Kapur, the immediate superior officer of the Investigating Officer, was informed through wireless message, who arrived at the spot and supervised the search and seizure of the contraband from the possession of the appellant. In these circumstances, the non-compliance of Section 57 of the Act has also not caused any prejudice to the appellant.

22- I also do not find any substance in the contentions of learned counsel for the appellant that the provision of Section 55 have been violated as S.I. Bindu Bala has not produced the case property before the S.H.O. of the police station and the seal of the S.H.O. was also not affixed on the case property. PW-1 S.I. Bindu Bala, the Investigating Officer of the case, has categorically stated that on the date of recovery she was posted as A.S.I./S.H.O. Police Station Ghagga. PW-3 S.I. Surjit Singh has deposed that on 05.08.2001, he was posted as A.S.I. in Police Station Ghagga and on that day, he was officiating as S.H.O. Thus, PW-3 S.I. Surjit Singh was not the regular S.H.O. of Police Station Ghagga. Rather, A.S.I. Bindu Bala the Investigating Officer of the case herself was the regular S.H.O. of the Police Station. As A.S.I. Bindu Bala was out of the police station on patrol duty at that time, so in her absence PW-3 S.I. Surjit Singh was officiating S.H.O. The moment A.S.I. Bindu Bala returned to the police station, PW-3 S.I. Surjit Singh ceased to be the S.H.O. of the police station. In these circumstances, when the

Investigating Officer of the case herself was the S.H.O./Officer in Charge of the Police Station and was having the custody of the case property, so it was not required that PW-3 S.I. Surjit Singh, who was officiating as S.H.O. in her absence, should have sealed the case property. So, there is no non-compliance of Section 55 of the Act.

23- The recovery in this case has been effected on 05.08.2001. As per the report of the F.S.L., the sample parcel has been received in the laboratory on 10.08.2001. So, there is delay of five days in sending the sample to the laboratory. In case **Mohan Singh Vs. State of Punjab 2007(4) RCR (Criminal) 705**, there was delay of 10 days in sending the sample to the F.S.L. The Division Bench of this Court held that mere delay in sending the sample to the laboratory is not fatal where there is evidence that the seized articles were kept in proper and safe custody. The Hon'ble Apex Court also in case **State of Orrisa Vs. Kanduri Sahoo 2004(1) RCR (Criminal) 196** has also laid down that mere delay in sending the sample to the laboratory is not fatal where there is evidence that the case property are kept in proper and safe custody. In case **Baggar Singh alias Gaggi Vs. State of Haryana 2009(4) RCR (Criminal) 183**, there was delay of 18 days in sending the sample to the F.S.L. and the another Division Bench of this Court held that it would not render the case of the prosecution doubtful if the seals remain intact when the sample reached to the F.S.L. In the instant case also, there is no material on record to establish that the sealed articles were tampered with. Rather, from the evidence on record it comes out that the sealed

articles were kept in proper and safe custody and reached the F.S.L. in intact condition. PW-1 S.I. Bindu Bala the Investigating Officer of the case, has stated that the case property was deposited with M.H.C. Hardyal Singh. PW-4 A.S.I. Karan Singh on the directions of S.I. Bindu Bala, the Officer Incharge of the Police Station, produced the case property before the learned Illaqa Magistrate on the next day vide application Ex.PH. The learned Magistrate passed the order Ex.PH/1 dated 06.08.2001, wherein it is categorically mentioned that the seals were intact and the seals of the case property agreed with the sample and thereafter he directed to deposit the case property with the M.H.C. So, the order passed by the learned Judicial Magistrate shows that the seals on the case property/seized articles were intact and tallied with the specimen seal impression. Then the prosecution examined the then M.H.C. Hardyal Singh as PW-2, who has filed his affidavit Ex.PK and deposed that the case property remained intact in the Malkhana. Prosecution also examined Constable Fakir Chand as PW-5, who carried the sample parcels to the Forensic Science Laboratory, Punjab, Chandigarh. He also deposed about the intactness of the sample parcel. Ex.PJ is the report of the F.S.L., which also depicts that the sample parcel was properly sealed and seals tallied with the specimen seal impression. Mere an omission in the affidavit of PW-5 Fakir Chand with respect to deposit of specimen seal impression with the laboratory cannot be attached undue importance in view of the specific recital in the report of the F.S.L. for having received the specimen seal impression. Thus, from the aforesaid

evidence, it is established that the sample parcel remained intact and was not tampered with at all at any stage of the proceedings. So, mere delay of five days in sending the sample will not create any dent in the prosecution case.

24- The non-preparation of the CFSL form at the spot is also no ground to discredit the prosecution. The Division Bench of this Court in case **Pipal Singh Vs. State of Punjab, Criminal Appeal No.D-1039-DB of 2007 decided on 14.11.2014** laid down as under:-

“35. Mere this fact that the CFSL form has not been prepared at the spot is no ground to throw away the prosecution's case. Learned counsel for the appellants have not been able to show us any statutory provisions/rules under the NDPS Act or the Code of Criminal Procedure that it is mandatory to prepare the CFSL form at the spot itself. Moreover, in view of the statement of MHC Gurpreet Singh, Head Constable Rajinder Singh and the report of the Chemical Examiner, the samples remained intact so the non-preparation of the CFSL form at the spot has not resulted into any prejudice to the accused and cannot throw any doubt about the intactness of the sample parcels/the case property. In the cases **Kuldip Singh versus State of Punjab, Jaswinder Singh versus State of Punjab and Gurcharan Singh versus State of Punjab** (supra) mere non preparation of the CFSL form at the spot was not the sole ground for acquittal.”

25- In view of the aforesaid ratio of law, the cases relied upon by the learned counsel for the appellant on this aspect is of no help to her.

26- D.S.P. Ashish Kapur was informed through wireless by

PW-1 S.I. Bindu Bal, the Investigating Officer of the case and thereafter he reached at the spot. He supervised the search and seizure of the contraband from the possession of the accused and also affixed his seal on the case property. He has not been examined by the prosecution. The non-examination of D.S.P. Ashish Kapur is also no ground to reject the prosecution evidence brought on record. The statement of PW-1 S.I. Bindu Bala has been fully corroborated on every material aspect of the case by PW-4 A.S.I. Karan Singh, who was the member of the police party in whose presence the appellant was apprehended, his search was carried out and the contraband was recovered from his possession. Learned counsel for the appellant has not been able to point out any material contradiction in the testimony of PW-1 S.I. Bindu Bala and PW-4 A.S.I. Karan Singh on the point of recovery. So, non examination of the D.S.P. is no ground to ignore the cogent, consistent and reliable testimonies of PW-1 S.I. Bindu Bala and PW4 Karan Singh A.S.I.

27- I do not find any improbability in the prosecution version. The short time spent in the registration of the FIR is no ground to render the prosecution version doubtful. The police station was only at a distance of one kilometer from the place of recovery. In that eventuality the FIR can be got promptly recorded.

28- The site plan Ex.PG depicts that on seeing the police party, the accused had diverted towards the pavement of the canal. So, it cannot be stated that on the other side there was canal and it was not possible that he could have gone towards that side.

29- I do not find any substance in the plea raised by learned counsel for the appellant that it is a case of false implication. There is no material on record to establish that the Investigating Officer was having any grudge or animosity with the accused. The defence evidence adduced by the appellant does not inspire any confidence. DW-1 Tersem Chand Singla has stated that the appellant was taken to police station as his name appears to be of a Muslim. Firstly, there is no material on record to show that as to when the police came to know about the name of the appellant. Moreover, it does not appeal to the reasons that a person will be round up and taken to the police station simply on the ground that his name appears to be a Muslim name. If the purpose of the police would only have been to falsely implicate the accused, there was no reason to plant one kilogram opium. This object could have been achieved even with a less quantity.

30- Thus, keeping in view my aforesaid discussion, from the evidence adduced by the prosecution, there is no escape from the conclusion that the prosecution has been able to establish beyond shadow of reasonable doubt that the appellant was found in conscious possession of one kilogram opium. Thus, the conviction of the appellant and sentence awarded to him by the learned trial Court is well founded and is hereby maintained.

31- Consequently, present appeal has no merits and the same is hereby dismissed. The accused-appellant is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this

judgment before the learned Chief Judicial Magistrate, Patiala, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Patiala, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

Dated: 03.08.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**