

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Date of Decision: 06.07.2015

**CRA No.826-DB of 2009**

Sucha Singh

...Appellant

Versus

State of Punjab

...Respondent

**CRA No.1006-DB of 2009**

Sukhminder Singh @ Happy

...Appellant

Versus

State of Punjab

...Respondent

Present: Mr. Sanpreet Singh, Advocate, for the appellants.

Ms. Manjeri Nehru Kaul, Addl. AG, Punjab, for the respondent.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA  
HON'BLE MRS. JUSTICE LISA GILL**

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

**HEMANT GUPTA, J.**

This order shall dispose of aforementioned two appeals i.e. CRA No.826-DB of 2009 & CRA No.1006-DB of 2009 preferred by Sucha Singh and Sukhminder Singh @ Happy respectively against the judgment of conviction and order of sentence dated 21.08.2009 passed by the Judge, Special Court, Barnala, whereby both the appellants were convicted for an offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter called as 'the Act') and sentenced to undergo rigorous imprisonment for a period of 15 years and to pay a fine of Rs.1 lac each. In

default of payment of fine, the defaulter was directed to undergo rigorous imprisonment for a period of one year.

The prosecution case was set in motion on the basis of ruqa (Ex.PH) sent by Inspector Rajesh Kumar, SHO, P.S. Dhanaula on 27.07.2007 to the effect that he alongwith other police officials was present at the chowk in the area of Village Bhaini Jassa on 26.07.2007 in connection with special nakabandi and checking of the vehicles. At about 8.30 PM, a truck bearing No.RJ-31 G-6375 came from the side of Village Bhaini Jassa, which was signaled to stop by ASI Malkiat Singh. The driver of the truck instead of stopping the same, tried to sped away. Due to suspicion, the said truck was stopped. Inspector Rajesh Kumar alongwith HC Dhanna Singh came towards the driver side and apprehended the driver, whereas ASI Jagdeep Singh and HC Gurbachan Singh came towards the conductor side and apprehended the person sitting on the conductor side. Thereafter, ASI Jagdeep Singh alongwith other police officials checked the rear side of the truck, where three persons were found sitting on the gunny bags. Out of said three persons, two persons fled away by taking advantage of darkness, whereas one person was apprehended. In the meantime, one Tejinderpal Sharma son of Amrit Lal Sharma arrived there and he was joined in the police party. On enquiry, the driver told his name as Sucha Singh son of Ajmer Singh, whereas the person sitting on the conductor side and the person sitting in the backside of the truck told their names as Mohinder Singh son of Mela Singh and Sukhminder Singh @ Happy respectively. On further enquiry, they disclosed the names of their companions, who fled away, as Kheera Singh son of Atma Singh and Gobind Singh son of Ajmer Singh. Since Inspector Rajesh Kumar suspecting that the

gunny bags lying in the truck have containing some illegal intoxicating substance, he informed all the accused about their rights and sought their option for search either in the presence of a Gazetted Officer or a Magistrate. All the accused persons opted that they wanted to get searched the gunny bags lying in the truck in the presence of a Gazetted Officer. Their statements in this regard were recorded separately. Thereafter, Inspector Rajesh Kumar requested DSP Pargat Singh, Sub Division Barnala, to reach at the spot. Pursuant thereto, DSP Pargat Singh, alongwith his staff reached at the spot at about 10.30 PM. After apprising himself, DSP Pargat Singh again informed all the accused about their rights and sought their option for search either in the presence of a Gazetted Officer or a Magistrate. All the accused told that they have faith in him and he could get the gunny bags searched. Separate consent memos in this regard were prepared. Under the orders of DSP Pargat Singh, the truck was got unloaded through the officials. 30 gunny bags were recovered from the truck. On opening, all the gunny bags were found to be containing poppy husk. Two samples of 250 grams each were separated from each bag and converted into separate sealed parcels marked as 1A/1B to 30A/30B. On weighment, the remaining poppy-husk in each bag came to be 34.500 Kgs. All the gunny bags and samples were sealed with the seals 'RK' belonging to Inspector Rajesh Kumar and 'PS' belonging to DSP Pargat Singh. After use, Inspector Rajesh Kumar handed over his seal to Tejinderpal Sharma. After taking into possession all the articles, personal search of the accused was conducted as a result of which Rs.500/-, Rs.300/- & Rs.100/- were recovered from Sukhminder Singh, Sucha Singh and Mohinder Singh respectively. On the basis of such ruqa, FIR (Ex.PH/1) for the offence punishable under Section

15 of the Act was registered against Sukhminder Singh @ Happy; Sucha Singh; Mohinder Singh; Kheera Singh and Gobind Singh.

All the three accused arrested at the spot alongwith entire case property were produced before the Judicial Magistrate Ist Class, Barnala on 27.07.2007, who directed to conduct the ossification test of Mohinder Singh. It was on 10.09.2007, accused Lakhvir Singh @ Kheera was arrested.

After completion of investigation and other formalities, report under Section 173 Cr.P.C. was submitted in the Court against Sukhminder Singh @ Happy, Sucha Singh and Lakhvir Singh @ Kheera, whereas accused Mohinder Singh was sent to the Juvenile Court to face trial. Subsequently, after the arrest of accused Hargobind Singh, supplementary challan was presented against him, which was ordered to be attached with the main challan.

It may be mentioned that during the course of trial, accused Lakhvir Singh @ Kheera died as a result of which proceedings against him stood abated.

During trial, the prosecution has examined PW-1 HC Sarabjit, who tendered his affidavit Ex.PA into evidence; PW-2 Constable Jatinder Kumar, who also tendered his affidavit Ex.PB into evidence; PW-3 Bahadur Chand, UDC, District Transport Office, Hanumangarh, who proved the record in respect of truck bearing No.RJ-31-G-6375; PW-4 Inspector Rajesh Kumar, the Investigating Officer, who deposed with regard to the investigations carried out by him and PW-5 DSP Pargat Singh (Retd.) before whom the search and recovery proceedings were carried out.

After conclusion of the prosecution evidence, all the incriminating circumstances appearing against the accused were put to them while recording their statements under Section 313 Cr.P.C. However, they pleaded false implication. In defence, they examined DW-1 HC Karamjit Singh; DW-2 Tejinderpal Sharma, the alleged independent witness and DW-3 Sushil Kumar Chopra, Nodal Officer, Bharati Airtel Limited, who brought the record pertaining to Mobile Nos.9872211843 in the name of Jagdeep Singh and 9814582353 in the name of Krishan Kumar Dua and proved the same as Exs.DC and DF respectively. However, the call details Ex.DF pertain to Mobile No.9876491948.

After going through the evidence on record, the learned trial Court acquitted Hargobind Singh of the charges levelled against him, whereas convicted and sentenced Sukhimder Singh and Sucha Singh, the present appellants, as mentioned above.

Before this Court, learned counsel for the appellants could not dispute any part of the statements of the prosecution witnesses to point out any inconsistency. However, he argued that as per the prosecution DW-2 Tejinderpal Sharma was joined as an independent witness. However, he was not examined by the prosecution agency, but by the defence. As per counsel for the appellants, DW-2 Tejinderpal Sharma has denied the process of recovery having been witnessed by him. It is also argued that though the samples were drawn on 26/27.07.2007, but the same were sent to the office of the Chemical Examiner on 07.08.2007 i.e. after the delay of more than 72 hours. Therefore, such delay is fatal to the prosecution case. It is also argued that PW-4 Inspector Rajesh Kumar, the Investigating Officer and ASI Jagdeep

Singh, who stopped the truck and apprehended the accused, were not in the area in question at the time of alleged recovery, which is evident from their mobile call details produced as Exs.DC & DF. Thus, the story propounded by the prosecution is not reliable and trustworthy on the basis of which conviction of the present appellants cannot be sustained.

We have heard learned counsel for the parties at length and perused the record carefully. No doubt, the prosecution has joined DW-2 Tejinderpal Sharma as an independent witness, but he appeared as defence witness and denied that he was joined by the police party headed by PW-4 Inspector Rajesh Kumar, the Investigating Officer. However, he deposed that he has been visiting P.S.Dhanaula alongwith his friend Baljinder Singh, who was on visiting terms with Inspector Rajesh Kumar. He further deposed that his signatures were procured on blank papers, when he visited P.S. Dhanaula in drunkard condition. We find that DW-2 Tejinderpal Sharma is not a witness, who can be relied upon. His stand is that he visited P.S.Dhanaula alongwith his friend Baljinder Singh, who was on visiting terms with Inspector Rajesh Kumar. But no question was asked in a lengthy cross-examination to PW-4 Inspector Rajesh Kumar, the Investigating Officer, as to whether he is known to any person by the name of Baljinder Singh or that Tejinderpal Sharma was not a witness to the recovery process. Rather, PW-4 Inspector Rajesh Kumar, in his cross-examination stated that Tejinderpal Sharma was not known to him or other members of the police party. Similarly, no question was asked with regard to the obtaining of signatures of Tejinderpal Sharma on blank papers. Apart from this, we find that signatures of DW-2 Tejinderpal Sharma appearing on numerous papers i.e. documents of consent and documents of

recovery of contraband etc. at different places of the pages just beneath the writing thereon. Therefore, it is difficult to believe that numerous signatures on various papers having different writing material could be signed by a witness on blank papers. In fact, the recovery process stands proved by the consistent, coherent and reliable testimony of PW-4 Inspector Rajesh Kumar, the Investigating Officer, which was corroborated by PW-5 DSP Pargat Singh. Both the appellants were apprehended at the spot. There is no reason for the police officials to depose against the appellants. There is no allegation of enmity against the police officials to falsely implicate the appellants in the present case. Therefore, we find that the learned trial Court rightly concluded that non-examination of Tejinderpal Sharma for the reason that he has been won over by the accused does not raise any doubt in the prosecution story.

In respect of argument that the call details Exs.DC and DF shows that the police officials namely PW-4 Inspector Rajesh Kumar and ASI Jagdeep Singh were not in the area in question at the time of alleged recovery, we find that such argument is again not tenable. While appearing in the witness-box, PW-4 Inspector Rajesh Kumar in his cross-examination stated that at the relevant time his mobile number was 9873491948 and the mobile number of ASI Jagdeep Singh was 9872211843, whereas the call details Exs.DC and DF pertain to mobile Nos.9872211843 and 9876491948 respectively. The mobile number disclosed by PW-4 Inspector Rajesh Kumar is at variance with the record produced of mobile No.9876491948. Still further, no cross-examination was conducted in respect of the fact whether the witness was not available in the area in question at the time of alleged recovery. The accused-appellants were felt satisfied only by elucidating

mobile numbers. Therefore, only on the basis of call details Exs.DC and DF produced by the accused-appellants, it cannot be held that the police officials were not present in the area in question at the time of alleged recovery.

In respect of the argument that samples were not sent to the office of the Chemical Examiner within 72 hours, learned counsel for the appellants relies upon number of judgments of this Court such as Sukhdev Singh @ Sukha Vs. State of Punjab 2006 (1) RCR (Criminal) 4; Parminder Singh Vs. State of Haryana 2006 (4) RCR (Criminal) 495; Jagmohan Singh @ Jago Vs. State of Punjab 2007 (3) RCR (Criminal) 900; Basir Mohammad Vs. State of Haryana 2008 (3) RCR (Criminal) 244; Karan Singh Vs. State of Haryana 2010 (3) RCR (Criminal) 790; Din Dayal Vs. State of Punjab 2014 (1) RCR (Criminal) 502; Ram Lubhaya Vs. State of Punjab 2014 (1) RCR (Criminal) 697 & Darshna @ Moli Vs. State of Punjab 2014 (5) RCR (Criminal) 162, wherein this Court has set aside the conviction on the basis that the samples were not sent within 72 hours as per the Standing Instructions issued by the Narcotic Control Bureau. However, we find that the said judgments do not lay down correct law in the light of the judgment of the Hon'ble Supreme Court reported as Khet Singh Vs. Union of India (2002) 4 SCC 380.

In Khet Singh's case (supra), Standing Order 1/88 and Standing Order 2/88 were referred. After referring to the Instructions, the Hon'ble Supreme Court held to the following effect:

“9. The learned Counsel for the appellant contended that these instructions issued by the Narcotics Control Bureau, New Delhi, were not followed and the seizure memo was not prepared at the spot and there was delay in depositing the seized drug in the godown. It was argued that this has caused serious prejudice to the accused and therefore, his conviction is vitiated on that account.

10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation. It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the article seized was by itself substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody.”

The said judgment was followed by the Hon’ble Supreme Court in State of Punjab Vs. Makhan Chand (2004) 3 SCC 453. In fact, the Standing Instruction/Standing Orders issued by the Narcotic Control Bureau are the guidelines issued by the Bureau to regulate and control their internal working. Narcotic Control Bureau is an authority established by the Central Government in exercise of powers conferred under Section 4(3) of the Act. Such authority is for the purpose of exercising powers and functions of the Central Government under the Act. It is the Central Government, who is empowered to frame Rules in terms of Section 76 of the Act or the State Government under

Section 78 of the Act. The Narcotic Control Bureau does not frame any Rules under the Act.

Still further, Standing Order 1/88 prescribed the procedure for drawal, storage, testing and disposal of samples from seized narcotic drugs and psychotropic substances. Such instructions have been issued to streamline the functioning of the officers of the Narcotic Control Bureau when it stipulated that samples must be deposited within 72 hours of the seizure. In fact, it is Section 52 of the Act, which deals with the disposal of persons arrested and articles seized. The said Section reads as under:

“**52.** Disposal of persons arrested and articles seized – (1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) **Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to –**

- (a) the officer-in-charge of the nearest police station, or
- (b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or article.” (...emphasis supplied)

Section 52 of the Act, as reproduced above, does not prescribe any period during which sample is to be sent. It only says that every person arrested and article seized shall be forwarded without unnecessary delay to the Magistrate. Whether it is unnecessary or unreasonable delay is a question of fact depending upon facts of each case. Mere fact that the samples were not sent to the office of the Chemical Examiner within 72 hours will not be a case

of unnecessary delay. Therefore, all the judgments of this Court, referred to by the learned counsel for the appellants, have been rendered without noticing the judgments in Khet Singh's case (supra) and Makhan Chand's case (supra) and do not lay down a binding precedent.

In the present case, the samples and the accused were produced before the Magistrate on 27.07.2007. As per the affidavit tendered by PW-1 HC Sarabjit Singh, he after taking out 30 sample parcels of poppy husk sealed with seals 'RK' & 'PS' from the Malkhana handed over the same to Constable Jatinder Kumar on 06.08.2007 with a direction to first get dispatch number and forwarding note from the office of the SSP, Barnala and then deposit the same with the office of the Chemical Examiner, Chandigarh. Similarly, as per affidavit tendered by PW-2 Constable Jatinder Kumar, he deposited the sample parcels with the office of Chemical Examiner, Chandigarh on 07.08.2007 and on return he handed over the receipt to MHC on 08.08.2007. Both of them have categorically stated that till the time case property remained with them neither they nor anybody else tampered with it. Firstly, there is no case of inordinate delay and secondly, samples were received in sealed intact condition. Therefore, none of the rights of the appellants was infringed in any manner.

Thus, we do not find any error in the findings recorded by the learned trial convicting the appellants for an offence under Section 15 of the Act. However, keeping in view the facts and circumstances of the case, we think that the sentence imposed by the learned trial Court is excessive. Accordingly, we modify the sentence imposed upon the appellants to that of

rigorous imprisonment for 10 years and fine of Rs.1,00,000/-. The period of imprisonment in default of such fine shall unchanged.

With the said observations and modification in the sentence, both the appeals are disposed of.

(HEMANT GUPTA)  
JUDGE

06.07.2015  
Vimal

(LISA GILL)  
JUDGE