

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

CRA-S-1475-SB-2004

Date of decision: 11.12.2015

Parwinder Singh @ Balwinder 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. Sushma Verma, Advocate for appellant.

Mr. Manjit Singh Naryal, Additional Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 10.07.2004, passed by learned Judge, Special Court, Patiala, vide which accused-appellant Parvinder Singh has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and the order on the quantum of sentence of the even dated, vide which the accused-appellant has been sentenced to undergo rigorous imprisonment for a period of 18 months and to pay a fine of ₹ 2000/-, in default of payment of fine to further undergo rigorous

imprisonment for a period of 02 months.

2- In nutshell, the allegations of the prosecution are that on 28.02.2003, PW1 Sub Inspector Jai Singh (the Investigating Officer of the case) along with other police officials, was leading the police party and when they reached near Kaka Hotel, Rajpura, one Om Parkash met them. The Investigating Officer was talking with him. Meanwhile, the accused-appellant was seen coming on foot from the side of Gagan Chowk, Rajpura. He was carrying a gunny bag on his head. On perceiving the police party, he tried to dodge. On suspicion, he was apprehended by the police party. The Investigating Officer apprised the accused-appellant of his right to get his search conducted in the presence of any magistrate or a gazetted officer. The accused-appellant reposed faith in the Investigating Officer vide his consent memo Ex.PA. On search of the bag, it was found containing churra poppy heads. On weighment, it came to be 35 kilograms. Two samples of 250 grams each were separated. Separate sealed parcels of the sample parcels and residue were prepared and were sealed with the seal bearing impression 'JK'. The seal was handed over to public witness Om Parkash after use. The contraband was taken into possession vide memo Ex.PB. Investigating Officer sent the ruqqa Ex.PD, on the basis of which formal FIR Ex.PD/1 was registered. The accused-appellant was arrested. The Investigating Officer prepared the site plan of the place of recovery Ex.PE.

3- On return to the police station, the accused-appellant along with the case property and the witnesses were produced before Inspector

Balwinder Singh, SHO Police Station- City Rajpura, who verified the factum of recovery and put his seal 'BS' on all the three parcels. The case property in intact condition was deposited with the Mohrir Head Constable. On the next day, the Investigating Officer produced the case property before the Illaqa Magistrate vide request Ex.PG and the learned Illaqa Magistrate passed order Ex.PG/1. The sample parcel was sent to the Chemical Examiner for examination. On receipt of the report of the Chemical Examiner Ex.PH and on completion of formalities of investigation, report under Section 173 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') was presented in the Court.

4- The accused-appellant was charge-sheeted for the offence punishable under Section 15 of the Act vide order dated 04.07.2003, to which he pleaded not guilty and claimed trial.

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

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded that no recovery was effected from him and he is innocent. He pleaded that a false case has been planted upon him after arresting him from his village.

7- Accused-appellant did not lead any defence evidence.

8- 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 15 of the Act and was awarded the sentence as mentioned in the upper part of the judgment.

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

10- I have heard Ms. Sushma Verma, Advocate, learned counsel for appellant, Mr. Manjit Singh Naryal, learned Additional Advocate General for the State of Punjab and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellant contended that the entire case of the prosecution is based on the statements of the police officials. She contended that it is alleged that one Om Parkash was associated as an independent witness during the investigation of the case. Even the seal was alleged to have been entrusted to him but he has not been examined. She contended that his non-examination is fatal to the prosecution. To support her contentions, she relied upon cases ***Sahab Singh Vs. State of Haryana 2015 (1) RCR (Criminal) 594***, ***Din Dayal Vs. State of Punjab 2014 (1) RCR (Criminal) 502*** and ***Amrik Singh Vs. State of Punjab 2010 (3) RCR (Criminal) 653***. She further contended that the prosecution witnesses have admitted that said Om Parkash was known to them. In fact he was a stock witness of the police.

12- She further contended that there are material contradictions in the statements of the prosecution witnesses with respect to the weighing of the contraband and the production of Om Parkash the independent witness before the SHO. They are also discrepant with respect to the bedsheet used to weigh the contraband. She contended that

these contradictions render the testimonies of the official witnesses unworthy of credence.

13- She further contended that no question has been put to the accused in his statement under Section 313 Cr.P.C. with respect to his conscious possession over the contraband, which is further fatal to the prosecution case.

14- She further contended that the Investigating Officer has admitted that he has not sent any special report to the higher police authorities which is a violation of Section 57 of the Act, which is also fatal to the prosecution case. To support her contentions, she relied upon cases ***Gurbax Singh Vs. State of Haryana 2001 Supreme Court Cases (Criminal) 426*** and ***Ramapada Saha Vs. State of West Bengal 2015(3) RCR (Criminal) 512.***

15- She further contended that the Investigating Officer has not complied with the mandatory provisions of Section 50 of the Act. The option given by him to the accused was not legal. To support her contentions, she relied upon case ***Karam Singh @ Karma and another Vs. State of Punjab 2015(3) RCR (Criminal) 632.***

16- In the alternative, she contended that the accused-appellant is a poor person. He had never indulged in any criminal activity. He has faced the agony of these proceedings for the last 12 years. So, he deserves the leniency in the matter of sentence. To support her contentions, she relied upon case ***Darshan Kumar Vs. State of Haryana 2015(3) RCR (Criminal) 1007.***

17- On the other hand, learned State counsel contended that from the testimonies of PW1 SI Jai Kishan, the Investigating Officer of the case and PW2 HC Ajaib Singh, the witness of recovery, it is established that 35 kilograms poppy husk was recovered from the possession of the appellant. The case of the prosecution is also corroborated from the testimony of PW4 SI Balwinder Singh, the then SHO Police Station - City Rajpura. He contended that Om Parkash, the independent witness, has to be given up as he was won over by the accused. The provision of Section 57 of the Act are not mandatory. Thus, he contended that there is no infirmity in the conviction of the appellant recorded by learned trial Court.

18- I have duly considered the aforesaid contentions.

19- It is not disputed that one Om Parkash son of Ajmer Singh, resident of village Dhmolli (Rajpura), was associated as an independent witness during the investigation of the case. Even the seal after use was entrusted to this witness but he has not been examined by the prosecution and was given up by the learned Additional Public Prosecutor vide his statement dated 07.11.2003 as having been won over by the accused. So, PW Om Parkash has not been examined by the prosecution as he was 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 witness 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***. In a recent case titled as ***Kulwinder Singh & Anr. Vs. State of Punjab 2015(2) RCR (Criminal) 918***, two independent witnesses were associated in the investigation but they were not examined by the prosecution as they were won over by the accused. The Hon'ble Apex Court held that no adverse inference can be drawn for non-examination of the said witnesses and the case of the prosecution cannot be rejected solely on the ground that those independent witnesses have not been examined when on perusal of the evidence the court finds that the case put forth by the prosecution is trust worthy. There is no

reason not to rest the conviction on the basis of the statements of the official witnesses when they are trustworthy and credible. In view of the aforesaid factual and legal position the non-examination of PW Om Parkash, who was won over by the accused, is no ground to discredit the testimonies of the official witnesses. In view of the aforesaid ratio of law laid down in the cases referred above by the Hon'ble Apex court and the Division Bench of this Court, the cases relied upon by learned counsel for the appellant on this aspect of the case cannot help the appellant.

20- It is further the settled principle of law that the testimonies of the official witnesses are also at par with that of any other witness. Their official designation *ipso facto* is no ground to discard or disbelieve their testimonies. There is no statutory rule that the testimonies of the official witnesses must be corroborated by the independent witnesses before those can be acted upon. The police officials cannot always be treated with suspicion and distrust. In the absence of any animosity, ill will or a motive for false implication on the part of the official witnesses, there is no reason or ground to reject their testimonies. In the instant case, the accused-appellant belongs to village Talwandi Kalan, Distt. Ludhiana and was apprehended from G.T. Road Rajpura, Distt. Patiala. The plea raised by the appellant in his statement under Section 313 Cr.P.C. that he was arrested from his village by the police has no legs to stand when the accused-appellant was not earlier known to the Investigating Officer. There is also no material to show that he had

any ill will or animosity against the accused, so there was no reason for him to go in the jurisdiction of another Police Station to arrest the appellant and plant the false recovery. It appears that this plea raised by the appellant is merely an afterthought. Consequently, the non-examination of Om Parkash the alleged independent witness, who was won over by the accused, is no ground to reject the testimonies of the official witnesses, which are otherwise credible and inspires confidence.

21- Mere this fact that Om Parkash the independent witness was earlier known to the official witnesses is no ground to dub him as a stock witness. There is no material on record to show that said Om Parkash was cited as a prosecution witness in other cases relating to Police Station - City, Rajpura and had appeared as a prosecution witness in those cases. Thus, the plea raised by the learned counsel for the appellant that Om Parkash was a stock witness is devoid of merit.

22- Learned counsel for the appellant has pointed out some contradictions in the statements of the prosecution witnesses. She has contended that PW1 SI Jai Kishan has stated that Om Parkash accompanied them to the Police Station, but PW4 SI Balwinder Singh has stated that the independent witness was not produced before him in the Police Station. She further pointed out that PW1 SI Jai Kishan deposed that firstly the entire poppy heads were made into heap on the bedsheet and then it was weighed but PW2 HC Ajaib Singh has stated that after weighing the contraband in lots it was put on the bedsheet and made into heap. She further pointed out that PW1 SI Jai Kishan has stated that the

bedsheet was brought from a nearby place but he does not remember the name of the constable who had brought the same, but PW2 HC Ajaib Singh has stated that said bedsheet was brought from a nearby hotel. All these contradictions pointed out by learned counsel for the appellant do not go to the root of the case. It is settled principle of law that only the material contradiction in the statements of the prosecution witnesses may prove fatal. Each and every discrepancy in their testimonies cannot render their testimonies unworthy of credence. The material/major discrepancies are those which are not expected from a witness in the normal course. In the instant case, the learned counsel for the appellant has not been able to point out any contradiction in the statements of the prosecution witnesses with respect to the apprehension of the appellant, search and seizure and recovery of the contraband from his possession. The discrepancies pointed out by learned counsel for the appellant, which are minor in nature, can occur even in the statement of the truthful witness due to lapse of time as the memory fades with the passage of time and it is not expected that the witnesses will give parrot like version. It is a known fact that police officials take part in several raids and investigations of such like cases as a part of their duty. It is not possible for them to remember the minute details of each and every cases. Thus, the discrepancies/contradictions pointed out by learned counsel for the appellant cannot adversely affect the evidentiary value of the testimonies of the prosecution witnesses.

23- No doubt, in the statement of appellant under Section 313

Cr.P.C., no specific question has been put to the appellant with respect to his conscious possession but that omission in the statement under Section 313 Cr.P.C. is also no ground to vitiate the conviction. In the instant case 35 kilograms poppy husk has been recovered from the search of the bag carried by accused-appellant. Every error or omission in the statement under Section 313 Cr.P.C. does not necessarily vitiate the conviction/trial. The accused has to show that some prejudice has been caused to him due to that omission. The Hon'ble Supreme Court in case ***Paramjeet Singh @ Pamma Vs. State of Uttarakhand 2010(4) RCR (Criminal) 548*** after considering large number of cases on this issue authoritatively laid down as under:-

“Thus, it is evident from the above that the provisions of Section 313 Cr. P.C make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the court to question the accused on any incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court”

24- Similarly, in case ***Gian Chand and others Vs. State of Haryana 2013(3) RCR (Criminal) 916***, the Hon'ble Apex Court has reiterated the same legal position and laid down as under:-

“So far as Section 313 Cr.P.C. is concerned, undoubtedly, the attention of the accused must specifically be brought to inculpable pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. A three-Judge Bench of this

Court in *Wasim Khan v. The State of Uttar Pradesh*, AIR 1956 SC 400; and *Bhoor Singh & Anr. v. State of Punjab*, AIR 1974 SC 1256 held that every error or omission in compliance of the provisions of Section 342 of the old Cr.P.C. does not necessarily vitiate trial. The accused must show that some prejudice has been caused or was likely to have been caused to him.”

25- In view of the aforesaid consistent rule of law, it would not be enough for the accused to show that the specific question regarding conscious possession has not been put to him but he has to further show what prejudice has been caused to him due to such non-examination and how it had resulted in failure of justice. All these aspects are totally lacking in this case. The appellant has not been able to point out as to what prejudice has been caused to him due to omission of the specific question with respect to his conscious possession and how it had caused failure of justice. Hence, it cannot advance the case of the appellant in view of the aforesaid circumstances.

26- Moreover, in the case in hand the accused-appellant was carrying bag on his head. It is not a case where the contraband has been recovered from the search of a vehicle or building. Rather accused-appellant was himself possessing the bag containing the contraband. So, there is no escape from the conclusion that he was in conscious possession of the contraband.

27- The Division Bench of this Court in case *Balwinder Singh Vs. State of Haryana 1998(1) RCR (Criminal) 191* has laid down that Section 52 and 57 of the Act are not mandatory. The same legal position has been reiterated by the Hon'ble Apex Court in case *Rangi*

Ram Vs. State of Haryana 2002(2) RCR (Criminal) 811(SC), wherein it has been held that provisions of Section 57 are not mandatory. Non-compliance thereof by itself cannot vitiate the conviction. The purpose of sending the report under Section 57 of the Act is that the superior officers should have knowledge about the search and seizure made by the subordinates and to check the misuse of the provisions of the Act. In the instant case, the accused-appellant along with contraband was produced immediately after the recovery before PW4 SI Balwinder Singh, the SHO Police Station City Rajpura. He has also verified the factum of recovery from the prosecution witnesses and, thereafter, sealed the case property. Thus, mere this fact that the Investigating Officer has not sent the report under Section 57 of the Act to his superior officers is also no ground to found fault with the conviction of the appellant. Even in case ***Gurbax Singh Vs. State of Haryana*** (supra) relied upon by learned counsel for the appellant, the Hon'ble Apex Court has laid down that the provisions of Section 52 and 57 of the Act are directory and violation thereof would not ipso facto violate the trial or conviction. The failure to comply with this provision however will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the articles. In the instant case, as discussed above the testimonies of the prosecution witnesses are consistent, cogent and reliable on the point of the arrest of the accused and the search and seizure of the contraband from his possession. Case ***Ramapada Saha Vs. State of West Bengal*** (supra) is quite distinguishable on facts. In that case the recovery was effected from the

house. There was no document to show that accused was the exclusive owner of the house from where the contraband articles were recovered and there was no proof as to how the intelligence officer had sent information to his superior authorities. Whereas in the case in hand the recovery has been effected personally from the accused. The Investigating Officer has sent the ruqqa Ex.PD to the SHO Police Station City Rajpura, his immediate superior officer and even the copies of the FIR were forwarded to the senior officers.

28- The plea raised by learned counsel for the appellant with respect to the non-compliance of Section 50 of the Act is totally misconceived. In the instant case the recovery has been effected from a bag and not from the personal search of the appellant. So, the provisions of Section 50 of the Act were not applicable in this case.

29- From the consistent statements of PW1 SI Jai Kishan, the Investigating Officer of the case and PW2 HC Ajaib Singh, the witness of recovery, which are further corroborated from the statements of PW4 SI Balwinder Singh, the then SHO Police Station- City, Rajpura, it is established beyond shadow of reasonable doubt that accused-appellant kept in his conscious possession 35 kilograms poppy husk. Thus, I do not find any legal infirmity in the conviction of the appellant as recorded by the learned trial Court.

30- However, I find substance in the alternative plea raised by learned counsel for the appellant with respect to the reduction of sentence. At the time of the occurrence, the accused-appellant was a

young man of 23 years of age. As per the custody certificate placed on record by learned State counsel the accused-appellant is not involved in any other criminal activity. He is facing the agony of these proceedings for the last more than 12 and a half year. Thus, even the lenient view in the matter of sentence will suffice the ends of justice and the appellant deserves the reduction in sentence.

31- Thus, keeping in view my aforesaid discussion, the conviction of the appellant as recorded by the learned trial Court does not suffer from any legal infirmity and the same is hereby maintained and confirmed. However, the substantive sentence awarded to the appellant by the learned trial Court is hereby reduced to one year from 18 months as awarded by the learned trial Court. With this modification in the matter of sentence, the present appeal having no merits is hereby dismissed.

32- 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: 11.12.2015
sunil yadav

(DARSHAN SINGH)
JUDGE