

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

CRA-S-1478-SB-2004

Date of decision: 22.09.2015

Rachhpal 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: Mr. Harshit Sethi, 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 21.07.2004, passed by the learned Judge, Special Court, Amritsar, vide which accused-appellant Rachhpal Singh has been held guilty and convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as '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 two years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for one month.

2- As per the prosecution case, on 09.12.1998 PW2 Sub Inspector Malkiat Singh, (the Investigating Officer of the case) along with other police officials was going from Bhikhiwind towards Marri Gaur Singh and Chung in connection with patrolling. When they reached near the turning of metalled road, Tara Singh, Member Panchayat of village Bhai Ladhu met them and he was associated in the police party. In the meantime, accused-appellant, while carrying a bag in his right hand, was seen coming from the side of Algon. On seeing the police party, he tried to slip away. On suspicion, the Investigating Officer apprehended him and asked him that he was suspected of having some intoxicant in his possession, so his search was to be conducted. If he wanted, a magistrate or a gazetted officer could be called at the spot for the purpose of search. Vide his consent memo Ex.PA, he opted his search to be conducting in the presence of some gazetted officer. PW4 Amarjit Singh Bajwa, Deputy Superintendent of Police, Bhikhiwind was called at the spot. In his presence, the search of accused-appellant was conducted and 500 grams opium, wrapped in a glazed paper, was recovered from the bag being carried by the accused-appellant. One sample of 50 grams was separated and put in a small plastic box. Separate parcels of the sample and residue opium were prepared and sealed by the Investigating Officer with his seal

bearing impression 'MS'. Sample seal chit was also prepared. The sealed parcels and sample seal chit were taken into possession vide separate recovery memo Ex.PB. The seal after use was handed over to SI Gurcharan Singh. Ruqqa Ex.PD was sent to the police station. On the basis of which, formal FIR Ex.PD/1 was registered. The Investigating Officer prepared the site plan Ex.PE of the place of recovery. The accused was arrested vide memo Ex.PF. Sample parcel was sent to the Chemical Examiner, Amritsar for examination. On receipt of the report Ex.PG of the Chemical Examiner and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after referred to as 'Cr.P.C.') was presented in the Court.

2- The accused appellant was charge sheeted for the offence punishable under Section 18 of the Act vide order dated 21.04.1999 by the learned trial Court, to which the accused-appellant pleaded not guilty and claimed trial.

3- In order to substantiate its case, the prosecution examined as many as four witnesses.

4- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication. He pleaded that his brother sent applications to the higher authorities regarding his false implication.

5- In the defence evidence, the accused-appellant examined HC Hardip Singh as DW1 and Rasal Singh, his brother, as DW2.

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

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

8- I have heard Mr. Harshit Sethi, 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.

9- Initiating the arguments, learned counsel for the appellant contended that the appellant has been falsely implicated in this case. He was lifted from his house on 08.12.1998. The brother of the appellant had sent the written application and telegram to the higher police authorities and even to the Chief Minister of Punjab. He further contended that Tara Chand, the independent witness of the recovery has not been examined. So, there is no independent corroboration to the testimonies of the official witnesses. He further contended that the presence of PW4 A.S. Bajwa, D.S.P. at the place of recovery is extremely doubtful. He has not affixed any seal on the case property. If he would have been present at the place of recovery, he must have affixed his seal.

10- He further contended that the entire documents have been fabricated in order to falsely implicate the appellant in the present case.

All the particulars of the case including the offence has been mentioned in the consent memo Ex.PA, which was prepared even before conducting the search of the accused, which renders the case of the prosecution doubtful. To support his contentions, he relied upon case ***Didar Singh alias Dara Vs. The State of Punjab, 2010 (3) RCR (Criminal) 337.***

11- On the other hand, learned State counsel contended that from the statements of PW2 Inspector Malkiat Singh, the Investigating Officer of the case and PW4 A.S. Bajwa, D.S.P., under whose supervision the search and seizure has been carried out, it is established that 500 grams opium has been recovered from the possession of the appellant. There is no evidence to show that the case property was tampered with. He further contended that non-examination of independent witness Tara Singh is no ground to disbelieve the statements of the official witnesses. Thus, he contended that there is no infirmity in the conviction of the appellant, as recorded by the learned trial Court.

12- I have duly considered the aforesaid contentions.

13- The accused-appellant in this case has set up a specific defence that he was illegally taken away from his house by the police officials prior to the alleged date of recovery. Rasal Singh, the brother of the appellant has moved the application Ex.DW2/A and also sent telegram Ex.DW2/B about the illegal custody of the appellant. When these types of allegations supported by the documents are leveled by the accused with regard to his false implication, the testimonies of the official witnesses require the independent corroboration.

14- As per the prosecution version the place of recovery is a public road. It is alleged that one Tara Singh, Member Panchayat, was associated as an independent witness in the investigation of the case. The memos have also been attested by him, but he has not been examined by the prosecution. It cannot be disputed that Tara Singh, the sole independent witness, was a material witness of the prosecution. It is very surprising that such an important witness has been given up by the prosecution being unnecessary. By no stretch of imagination it can be stated that said Tara Singh, the independent witness of recovery, was an unnecessary witness. Thus, the non-examination of Tara Singh, Member Panchayat, in these circumstances, creates serious doubt about the genuineness of the prosecution version.

15- It is alleged that before taking the search of the appellant the Investigating Officer has sought the option of the appellant for conducting his search in the presence of some gazetted officer or a magistrate or by him. The appellant opted for conducting his search in the presence of some gazette officer. So, PW4 A.S. Bajwa, D.S.P. was informed and he arrived at the spot. Then the consent memo Ex.PA was prepared. So, as per the prosecution version the consent memo Ex.PA was prepared before the registration of the case and conducting the search of the appellant. It is very surprising that the entire particulars of the case i.e. FIR number, date of offence, under Section 18 of the Act and Police Station Bhikhiwind are mentioned in the consent memo Ex.PA. It is not known that how the Investigating Officer came to know about the nature

of the contraband in the bag of the accused and how he has mentioned the offence punishable under Section 18 of the Act in the particulars recorded in the consent memo Ex.PA even before taking the search. These facts shows that either the case against the appellant was already framed prior to the alleged recovery of the contraband or the particulars of the case have been inserted later on just to complete the paper formalities. But in both these situations, it seriously reflects upon the integrity and genuineness of the prosecution version.

16- Ex. PD ruqqa is the basic document, on the basis of which the present case has been registered. The Investigating Officer has admitted in the cross-examination that this document bears cutting in the time at the bottom of the ruqqa as well as in the endorsement made by police official who had recorded the FIR. From the perusal of the ruqqa Ex.PD, it comes out that earlier the time was mentioned as 04:40 P.M. at the bottom of the ruqqa and later on, it has been changed to 05:20 P.M. In the endorsement also, the first figure with respect to the time has been changed. The Investigating Officer has not explained due to what reason this overwriting has taken place, which further renders the time of recovery as well as proceedings doubtful.

17- In the cross-examination of PW4 A.S. Bajwa, D.S.P., it has been suggested that Rasal Singh, the brother of the accused, has moved the telegram prior to the alleged recovery to the effect that the accused has been taken away by the police before the alleged recovery. In his statement under Section 313 Cr.P.C. the appellant has categorically

stated that he was picked up from his farm-house by the police and later on, falsely implicated in this case. His brother has sent application to the higher officials regarding the same.

18- In defence evidence, appellant examined HC Hardip Singh, Office of the S.S.P., Tarn Taran as DW1. He has appeared in the witness box along with the summoned record pertaining to the application moved by Rasal Singh, the brother of the accused dated 08.12.1998 regarding the illegal detention of the appellant. He stated that photocopies of the same are Mark-A and Mark-B. The original were sent to the Chief Minister of Punjab. He further deposed that the original of Mark-B was never received in their office. So, DW1 Hardip Singh has admitted that the application dated 08.12.1998 Mark-A sent by Rasal Singh, brother of the appellant, was duly received in the office of the Superintendent of Police, Tarn Taran.

19- Rasal Singh the brother of the appellant has appeared as DW2 . He deposed that on 08.12.1998 at about 04:00/05:00 A.M. in the morning, he was present in his house. Some police officials forcibly entered in their house and searched their house. Nothing incriminating was recovered from their house. They took away his brother Rachhpal Singh. On the same date, he gave telegram and application to the higher officers. The photocopies of the application and telegram moved by him to the higher authorities are Ex.DW2/A and Ex.DW2/B, respectively. He also placed on record the original postal receipts Ex.DW2/C, Ex.DW2/D and Ex.DW2/E. The application Ex.DW2/A shows that it has been

categorically mentioned therein that on 08.12.1998 in the morning, 8/10 persons came to their house and said that they are police officials and they are to conduct the search of their house. They were not accompanied with any respectable of the village. They asked them to conduct the search. While conducting the search, they forcibly lifted his brother Rachhpal Singh and put him in the vehicle. They made repeated requests but they neither released his brother nor disclosed the place to which they were proceeding. This application clearly establishes that appellant was forcibly taken away by the police from his house on 08.12.1998 in the morning i.e. one day prior to the alleged recovery and registration of the present case. DW2 has placed on file the original postal receipts vide which this application has been sent to the higher authorities. All these postal receipts bear the the date as 08.12.1998 in the stamp of the postal authorities, which corroborate the version of DW2 that this application was dispatched to the higher authorities on 08.12.1998 i.e. one day prior to the registration of this case. The version mentioned in the application totally renders the prosecution case doubtful.

20- Thus, keeping in view my aforesaid discussion and the totality of the circumstances discussed above, the prosecution has not been able to establish its case beyond shadow of reasonable doubt against the present appellant and the conviction and sentence of the appellant, as recorded by the learned trial Court, is unsustainable in the eye of law.

21- Resultantly, the present appeal is hereby allowed. The conviction of the appellant and the sentence awarded to him by the

learned trial Court are hereby set aside. By giving the benefit of doubt, the accused-appellant is hereby acquitted of the charges. Fine, if deposited, be refunded to the appellant as per rules.

Dated: 22.09.2015.
sunil yadav

(DARSHAN SINGH)
JUDGE