

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

CRA-S-1534-SB-2004

Date of decision: 26.11.2015

Mukhtiar 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. C.L. Verma, Advocate for the appellant.

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

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 26.07.2004, passed by the learned Judge, Special Court, Ludhiana, vide which accused-appellant Mukhtiar Singh has been held guilty and convicted for the offence punishable under Section 15 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 10 years and to pay a fine of ₹1,00,000/-

and in default of payment of fine to further undergo rigorous imprisonment for a period of six months.

2- As per the prosecution case, on 19.08.2002 PW4 Assistant Sub Inspector Gurdev Singh, the Investigating Officer of the case, along with other police officials was going on the track of canal Abohar branch on patrolling. When they reached near bridge Kand, one Bahadur Singh son of Beant Singh met them and he was also joined in the police party. When the police party reached near grid of the P.S.E.B. and turned towards village Sayan Khurd, they saw the accused-appellant was standing near two gunny bags under the trees behind the raised land on the corner of 'Chari' fields. The bags were lying open and poppy husk was visible in the bags. The accused-appellant was apprehended. Two samples, each of 250 grams, were separated from each bag and the residue poppy husk was weighed, which came to be 34 kilograms and 500 grams in the each bag. The samples and residue were converted into separate parcels and sealed with seal of the Investigating Officer bearing impression 'GS'. Sample impression chit Ex.P1 was prepared. The seal after use was handed over to prosecution witness Bahadur Singh. The case property was taken into possession vide recovery memo Ex.PB. The scooter without number make Bajaj Chetak was also taken into possession vide recovery memo Ex.PD. Ruqqa Ex.PE was sent to the police station, on the basis of which, formal FIR Ex.PE/1 was registered. The Investigating Officer prepared the site plan Ex.PH of the place of

recovery. Statements of the witnesses were recorded.

3- On return to the Police Station, the Investigating Officer produced the accused, witnesses and the case property before SHO Jasbir Singh, who verified the facts and the case property and affixed his seal bearing impression 'JS' on the case property and sample seal chit. The case property with seals were deposited with Mohrir Head Constable Gulab Singh. On the next day, the accused and the case property was produced before the Illaqa Magistrate vide application Ex.PJ and Ex.PJ/1. The learned Magistrate passed the order Ex.PJ/2. In due course, the sample parcel was sent to the Chemical Examiner, Chandigarh for examination. On receipt of the report of the Chemical Examiner Ex.PK and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after called '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 14.12.2002 by the learned trial Court, to which the accused-appellant pleaded not guilty and claimed trial.

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

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication. He pleaded that on 18.08.2002, he along with his family visited Gurudwara Alamgir Sahib to

pay obeisance. At about 5:00 P.M., when they were waiting for the bus at the Bus Stand of village Alamgir, the police officials picked up him and took to the police station. Thereafter, he was involved in this false case. No recovery of poppy husk was effected from his possession.

7- In the defence evidence, accused examined Amarjit Kaur as DW1 and Bikkar Singh as DW2.

8- 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 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 Mr. C.L.Verma, Advocate, learned counsel for the appellant, Mr. Ajaib Singh, 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 as per the prosecution version, one Bahadur Singh was associated as an independent witness in the investigation of this case and even the seal was entrusted to him after use but he has not been examined, which renders the prosecution case doubtful.

12- He further contended that the gunny bags containing

poppy straw are alleged to have been recovered from a field. The Investigating Officer has not collected any evidence to establish any connection between the appellant and the said field. As per the prosecution allegations, he was merely sitting there. So, it is not proved that the appellant was in conscious possession of the contraband. He was neither the owner nor in possession of the said field. So, he could have no knowledge about the contraband lying in the field. One scooter was also alleged to be parked near the gunny bags. The Investigating Officer has also not collected any evidence to show that the appellant has any connection with that scooter. Thus, he contended that it is not proved that the appellant was in possession of the aforesaid gunny bags containing poppy straw, much less in conscious possession thereof.

13- He further contended that the statements Ex.DA and Ex.DB shows that the same were recorded on 15.08.2002 i.e. even before the registration of the case. It shows that everything was pre-planned.

14- He further contended that the accused-appellant has been falsely implicated in this case. He had come on 18.08.2002 to visit Gurudwara Alamgir Sahib along with his wife and children to pay obeisance and was illegally picked up by the police officials from Bus Stand, Alamgir. This fact is fully established with the statement of DW1 Smt. Amarjit Kaur and DW2 Bikkar Singh and the appellant on the next day was falsely implicated in this case. Thus, he pleaded that the conviction of the appellant has been wrongly recorded by the learned trial

Court.

15- On the other hand, learned State counsel contended that from the statement of PW4 ASI Gurdev Singh, the Investigating Officer of the case and PW5 ASI Devinder Singh, it is established that two gunny bags containing 35 kilogram poppy straw each were recovered from the possession of the appellant. The case of the prosecution is also corroborated from the testimony of PW1 SI Jasbir Singh, the then SHO Police Station Dehlon before whom the case property, accused and witnesses were produced immediately after the recovery. He further contended that the independent witness Bahadur Singh was given up as having been won over by the accused. He further contended that the statements Ex.DA and Ex.DB were in fact recorded on 15.09.2002 and due to clerical mistake, the date has been mentioned as 15.08.2002. He further contended that the appellant is proved to be in conscious possession of the contraband. Thus, he contended that there is no legal infirmity in the conviction of the appellant recorded by the learned trial Court.

16- I have duly considered the aforesaid contentions.

17- No doubt as per the case of the prosecution one Bahadur was associated as an independent witness during the investigation of the case. Even the seal after use was entrusted to this witness by the Investigating Officer. But said Bahadur Singh has not been examined by the prosecution and was given up as having been won over by the

accused by the learned Additional Public Prosecutor vide his statement dated 28.05.2003. Thus, Bahadur Singh, the independent witness associated in the investigation of the case, could not be examined by the prosecution 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 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 Bahadur Singh, who was won over by the accused is no ground to discredit the testimonies of the official witnesses.

18- The plea raised by the appellant with respect to his false implication has also no legs to stand. DW1 Smt. Amarjit Kaur is the wife of the appellant. She deposed that on 18.08.2002 she along with her husband and children visited Gurudwara Amalgiri Sahib to pay obeisances and were waiting for the bus. At about 05:00 P.M. a jeep came from Ludhiana side consisting of police officials. They picked up her husband. While taking him away they told her that they were taking him for inquiry purpose. On the next day, she came to know that a false case was foisted upon her husband by the police of Police Station – Dehlon.

At the time of apprehension, no incriminating substance was recovered from her husband and her husband has been falsely implicated. DW2 Bikkar Singh is also closely related to the accused-appellant. Accused-appellant is the son of his mother's sister. He also corroborated the version of DW1 that appellant Mukhtiar Singh was picked up on 18.08.2002 at 05:00 P.M. by the police while he was waiting for the bus and nothing was recovered from his possession and he came to know that he has been falsely implicated in this case. DW1 Amarjit Kaur is the wife of the appellant. She deposed that she went back to Ferozepur and informed her relatives. About 10 persons were sent by her to enquire about the whereabouts of the appellant. They returned back to Ferozepur at about 04:00 P.M. and told that a case has been registered against her husband. She further deposed that she did not make any complaint against any police official. She further categorically admitted that they had no enmity with the police. DW2 Bikkar Singh who is also closely related to the appellant has also stated that he did not make any complaint to the higher authorities against the false implication of the accused-appellant. If the accused-appellant would have been illegally picked up in this manner as alleged by both these witnesses, they must have moved some complaint to the higher authorities on the same day but they kept mum. Even after registration of the case, they have not moved any complaint to the higher authorities for the false implication of the appellant. The accused-appellant is resident of Tarberi, Distt. Ferozepur

and the present case has been registered by the police of Police Station Dehlon, Distt. Ludhiana. DW1 Smt. Amarjit Kaur has categorically admitted that they had no enmity with the police. Thus, as the accused-appellant was not the resident of the local area of Police Station Dehlon and he had no enmity with the police, so there was no reason for the police official to illegally take him away from the bus stand and to falsely implicate him in this case. Thus, the plea of false implication raised by the appellant appears to be an afterthought and does not inspire any confidence.

19- The defence plea of false implication raised by the appellant as discussed above has no substance. There is no material on record to show that the police official of Police Station Dehlon, Distt. Ludhiana had any ill will or motive to falsely implicate the appellant. Learned counsel for the appellant has also not been able to point out any material contradiction in the statements of the official witnesses. Their statements are cogent and consistent qua the mode of the apprehension of the accused, search and seizure and the recovery of the contraband from his possession. Thus, mere non-examination of PW Bahadur Singh, who was won over by the accused, is no ground to discredit the otherwise trustworthy and credible testimonies of the police officials.

20- The Investigating Officer in this case has committed the serious lapses. He has not collected any evidence about the ownership of the land where the accused-appellant was found present along with gunny

bags containing the contraband. He has also not collected any evidence with respect to the ownership of the scooter. But these lapses on the part of the Investigating Officer is no ground to record the acquittal of the appellant, when the recovery of the contraband from the possession of the appellant is otherwise established. In case ***V.K. Mishra and another Vs. State of Uttrakhand and another 2015(3) RCR (Criminal) 899*** the Hon'ble Apex Court has laid down that any omission on the part of the Investigating Officer cannot go against the prosecution. The interest of justice demands that such acts and omission of the Investigating Officer should not be taken in favour of the accused otherwise it would amount to placing a premium upon such omissions. Thus, the aforesaid lapses on the part of the Investigating Officer is no ground to extend any benefit to the appellant.

21- From the consistent testimonies of PW4 ASI Gurdev Singh, the Investigating Officer of the case and PW5 ASI Devinder Singh the witness of recovery, it is established that the accused-appellant was apprehended while sitting near two gunny bags containing poppy straw under the tree in the field of 'Chari' (fodder) in the area of village Sayan Khurd. Even said gunny bags were lying open and the poppy husk contained therein was visible. The case of the prosecution is further corroborated from the testimonies of PW1 SI Jasbir Singh, the then SHO Police Station Dehlon, before whom the case property were produced immediately after the recovery. He has also verified the facts of the case,

interrogated the accused, thereafter put his seals on the parcels of the case property. Thus, from the aforesaid evidence it is established that the accused-appellant was in possession of 2 gunny bags containing 35 kilograms poppy straw each.

22- Moreover, once it is established that the appellant was in possession of the contraband, it is for him to show that he was not in conscious possession thereof because how he came to be in possession is within his special knowledge. Hon'ble Supreme Court in case ***Madan Lal and Anr. Vs. State of Himachal Pradesh 2003(4) RCR (Criminal) 100***, has laid down as under :-

“Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

23- In case ***Dharampal Singh Vs. State of Punjab, 2010(4) RCR (Criminal) 504***, the Hon'ble Apex Court has laid down as under :-

“9. ***** In the context of Section 18 of the Act once possession is established the accused, who claims that it was not a conscious possession has to establish it because it is within his special knowledge. Section 54 of the Act raises presumption from possession of illicit articles. It reads as follows :

"54. Presumption from possession of illicit articles. - In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of -

(a) any narcotic drug or psychotropic substance or controlled

substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

From a plain reading of the aforesaid it is evident that it creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence in case he fails to account for the possession satisfactorily. Possession is a mental state and Section 35 of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact. The possession, therefore, has to be understood in the context thereof and when tested on this anvil, we find that the appellants have not been able to account for satisfactorily the possession of opium. Once possession is established the Court can presume that the accused had culpable mental state and have committed the offence."

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

"14. From the conjoint reading of the provisions of Section 35 and 54 of the Act, it becomes clear that if the accused is found to be in possession of the contraband article, he is presumed to have committed the offence under the relevant provisions of the Act until the contrary is proved. According to Section 35 of the Act, the court shall presume the existence of mental state for the commission of an offence and it is for the accused to prove

otherwise.

Thus, in view of the above, it is a settled legal proposition that once possession of the contraband articles is established, the burden shifts on the accused to establish that he had no knowledge of the same.”

25- Thus, in view of the aforesaid ratio of law once the possession is established, it is for the accused to show as to how he came to be in possession of the contraband as this fact is specially within his knowledge. The presumption under Section 35 of the Act arises against him in the absence of any explanation and the Court shall presume the existence of the mental state for commission of the offence. Similar is the position in terms of the provisions of Section 54 of the Act, where also such presumption is to be drawn from the possession of the contraband.

26- In case ***Megh Singh Vs. State of Punjab 2003(3) RCR (Criminal) 319*** the accused was found sitting on the gunny bags containing poppy straw. The Hon'ble Apex Court held that the accused was in conscious possession of the contraband. As the accused has not been able to show that the possession was not conscious in the logical background of Section 35 and 54 of the Act. In case ***Balbir Kaur Vs. State of Punjab 2009(3) RCR (Criminal) 580*** the accused was found sitting on 2 bags on the road. On seeing the police party she behaved in a suspicious manner. The Hon'ble Apex Court held that she was found to be in conscious possession of the contraband.

27- Again in case ***State of Punjab Vs. Lakhwinder Singh & Anr. 2010(2) RCR (Criminal) 582*** the accused were found at an early

morning sitting on 35 bags of the poppy husk. On seeing the police they tried to hide themselves. No satisfactory reply came forward from the accused as to how and why they came from other State and were found sitting on those bags. The Hon'ble Apex Court held that the conscious possession was duly established. All these authorities are fully applicable to the facts of the case. In this case also the accused-appellant belongs to the another district. He has not explained as to how he was found sitting in the filed along with the gunny bags containing straw which were lying open. His plea of false implication carries no substance. The Same ratio of law has been reiterated in case ***Kulwinder Singh & Anr. Vs. State of Punjab*** (supra). Thus, the accused-appellant is established to be in conscious possession of the contraband i.e. 70 kilograms poppy husk.

28- No doubt in the statements Ex.DA and Ex.DB, the date under the signatures of the Investigating Officer has been mentioned as 15.08.2002. These statements have been recorded by PW5 ASI Devinder Singh. He has categorically deposed that he has recorded the statements of HC Gulab Singh and Constable Kulwant Rai on 15.09.2002. However, inadvertently the date was mentioned as 15.08.2002. So, the Investigating Officer has given a plausible explanation that there was inadvertent clerical mistake in writing the date under his signatures as 15.08.2002 instead of 15.09.2002. Even the substance of these statements shows that these have been recorded after the registration of this case. So, in these

circumstances, the mistake in the date in the statement Ex.DA and Ex.DB is fully explained.

29- Thus, keeping in view my aforesaid discussion, the prosecution has been able to establish beyond shadow of reasonable doubt that accused-appellant kept in his conscious possession 70 kilograms poppy straw. Thus, I have no reason to differ with the findings of the learned trial Court.

30- Resultantly, there is no legal infirmity or impropriety in the conviction of the appellant as recorded by the learned trial Court and the sentence awarded to him.

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

Dated: 26.11.2015.
sunil yadav

(DARSHAN SINGH)
JUDGE