

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

CRA-S-1558-SB-2004

Date of decision: 20.11.2015

Jangir Singh @ Jangira

..... 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. Rajiv Verma, Advocate for the 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 27.07.2004, passed by the learned Judge, Special Court, Patiala, vide which accused-appellant Jangir Singh alias Jangira 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 as to '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 ₹ 2000/-, in default of payment of fine to further undergo rigorous imprisonment for two months.

2- As per the prosecution case, on 22.07.2001, PW4 Sub Inspector Gurmail Singh, the Investigating Officer of the case, along with other police officials was present at 'T' point Nabha. There prosecution witness Mohan Lal met him. In the meanwhile accused-appellant was seen coming from the side of village Kakarala carrying a plastic bag. On seeing the police party, he felt perturbed. On suspicion, he was apprehended. The accused-appellant was apprised of his right to get his search conducted in presence of a magistrate or a gazetted officer. Vide memo Ex.PB, the accused-appellant opted to get his search conducted in the presence of some gazetted officer. The Investigating Officer sent a wireless message to Harmindarpal Singh, Deputy Superintendent of Police, requesting him to reach at the spot. The DSP reached at the spot. In his presence, search of the bag carried by the accused-appellant was conducted and it was found containing churra poppy heads. Two samples of 250 grams each were separated and on weighment, the residue came to be 5 kilograms. The samples were converted into parcels. The samples and the bag containing residue poppy heads were sealed with seals bearing impressions 'GS' and 'HPS' of the Investigating Officer and the DSP, respectively. Specimen Ex.P1 of seal impressions was also prepared. The case property was taken into possession vide recovery memo Ex.PD. Ruqqa Ex.PF was sent to the police station and on the basis

of which, formal FIR Ex.PF/1 was registered. Rough site plan Ex.PG of the place of recovery was prepared. On return to the police station, the case property, accused and witnesses were produced before SHO Balraj Singh, who verified the case property and put his seal bearing impression 'BS' on the same. Thereafter, the case property was deposited with the Mohrir Head Constable.

3- On the next day, the case property and the accused were produced before the learned Illaqa Magistrate vide application Ex.PJ and the learned Magistrate passed his order Ex.PJ/1. In due course, the sample parcels were sent to the Chemical Examiner 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 the Code of Criminal Procedure, 1973 (here-in-after 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 12.11.2001 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 eight witnesses.

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication. He pleaded that he was picked up from his house and this false case was planted upon him.

7- No evidence in his defence was adduced by the accused-appellant.

8- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused-appellant was held guilty and convicted by the learned trial Court 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. Rajiv Verma, Advocate, learned for the 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 case of the prosecution is entirely based on the statement of the official witnesses. Independent witness Mohan Lal was allegedly joined in the investigation but has not been examined, which raises an adverse inference against the prosecution.

12- He further contended that the search and seizure was allegedly conducted in the presence of DSP Harminderpal Singh, but even he has not been examined, which also renders the prosecution case doubtful.

13- He further contended that there is delay of 12 days in

sending the sample parcel to the Chemical Examiner. The tampering with of the case property cannot be ruled out. Thus, the case of the prosecution further becomes doubtful.

14- He further contended that the Investigating Officer has not complied the provisions of Section 52-A and 57 of the Act. The Investigating Officer neither prepared the inventory nor sent any report to the superior authorities, which is also fatal to the case of the prosecution. To support his contentions, he has placed reliance upon case ***Jasbir Singh Vs. State of U.T., Chandigarh 2015(4) RCR (Criminal) 48*** and ***State of Punjab Vs. Kulwant Singh 1996(3) Recent Criminal Reports 363***. Thus, he contended that the conviction of the appellant has been wrongly recorded by the learned trial Court.

15- He further contended that even as per the prosecution version only 5 ½ kilograms poppy husk is alleged to have been recovered from the possession of the appellant. The accused-appellant has faced the agony of these proceedings for more than 14 years. He has already undergone 03 months and 08 days out of the sentence of one year. Thus, he pleaded that the sentence awarded to the appellant should be reduced to the imprisonment already undergone by him.

16- On the other hand, learned State counsel contended that Mohan Lal, the independent witness associated in the investigation of the case, was given up as having been won over by the accused. So, his non-examination cannot create any dent in the cogent, consistent and reliable

evidence of the police officials.

17- He further contended that from the testimonies of PW4 Sub Inspector Gurmail Singh, the Investigating Officer of the case, PW5 HC Babu Ram, the witness of recovery duly corroborated from the testimony of PW2 Inspector Balraj Singh, SHO Police Station Kotwali Nabha, it is established that 5½ kilograms poppy husk was recovered. He further contended that learned counsel for the appellant has not been able to point out any material contradiction in their statements. Thus, he pleaded that the conviction of the appellant has been rightly recorded by the learned trial Court and sentence awarded to him is also just and appropriate.

18- I have duly considered the aforesaid contentions.

19- As per the prosecution version, one Mohan Lal was associated as an independent witness of recovery but he has not been examined by the prosecution. There is no mandate of law that the statements of the police officials cannot be acted upon without independent corroboration. The testimonies of the official witnesses should be treated at par as the testimonies of any other witness. The presumption that a person acts honestly applies as much in favour of a police personnel as that of any other person. It is not a proper judicial approach to distrust and suspect the official witness without any good ground. If the testimony of the police official appears to be reliable then the Courts can certainly act upon the same. The police witnesses cannot

be viewed with distrust. Reliance can be placed on cases *Mohan Singh Vs. State of Punjab 2007(4) RCR (Criminal) 705 (DB)* and *Kashmiri Lal Vs. State of Haryana (2013) 6 SCC 595*. In the instant case also there is no material on record to render the testimonies of PW5 SI Gurmail Singh and PW5 HC Babu Ram unworthy of credence. Learned counsel for the appellant has contended that a corruption case was registered against SI Gurmail Singh, the Investigating Officer of the case for registering a false case under the provisions of the Act. It has also been suggested to PW1 SI Gurmail Singh the Investigating Officer of the case that one Teja Singh the uncle of the present appellant has got registered a case against ASI Ronak Singh who was convicted. SI Gurmail Singh though has admitted in the cross-examination that the case FIR No.230 dated 16.07.2001 under Section 13 of the Prevention of Corruption Act, 1988 was registered against him but he categorically stated that the said FIR was cancelled and this version of SI Gurmail Singh has not been challenged any further. There is no material on record to establish that accused-appellant has any uncle named Teja Singh. There is also no material to show that said Teja Singh has got registered any corruption case against ASI Ronak Singh. There is also no material to show that said ASI Ronak Singh was convicted in that corruption case. All the suggestions to this effect put to PW4 ASI Gurmail Singh have been denied by him. There is no material on record to show that the police officials have any animus or ill will against the appellant and they

had any motive for his false implication. Thus, non-examination of Mohan Lal is no ground to disbelieve the statement of PW4 SI Gurmail Singh and PW5 HC Babu Ram, the witness of recovery.

20- Admittedly, in the instant case the recovery was effected from a bag which was in possession of the appellant. So, provisions of Section 50 of the Act were not applicable in this case. But even then the Investigating Officer on the basis of the option exercised by the appellant requested Harmindarpal Singh, DSP to reach at the spot. There was no statutory obligation to associate the DSP i.e. the Gazetted Officer in the investigation of the case. It is settled principle of law that the Court is to act upon the quality of the evidence and not the quantity of the evidence. As per Section 134 of the Evidence Act, no particular number of witnesses shall in any case be required for the proof of any fact. The prosecution has already examined PW4 SI Gurmail Singh, the Investigating Officer of the case and PW5 HC Babu Ram, the witness of recovery, to establish the recovery. The examination of DSP Harmindarpal Singh could only have been the duplicacy and repetition of the same evidence. Thus, the non-examination of DSP Harmindarpal Singh is no ground to disbelieve the statement of PW4 SI Gurmail Singh and PW5 HC Babu Ram on the point of the recovery. Their testimonies are further corroborated from the testimony of PW2 Inspector Balraj Singh, the SHO Police Station Kotwali Nabha, before whom the accused along with the case property was produced, who has sealed the case

property after verifying the facts of the case. Learned counsel for the appellant has not been able to point out any material contradiction in the statement of PW4 Gurmail Singh and PW5 HC Babu Ram on the point of apprehension of the appellant, search and seizure and the recovery of the contraband.

21- The recovery in this case has been effected on 22.07.2001. As per the report of the Chemical Examiner, the sample parcel has been received in the laboratory on 02.08.2001. So, there is delay of 12 days in sending the sample to the laboratory. In case ***Mohan Singh Vs. State of Punjab 2007*** (supra), 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 was 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. PW4 Sub Inspector Gurmail Singh, the Investigating Officer of the case, has stated that the case property was deposited with MHC Lakhwinder Singh. On the next day, the Investigating Officer produced the case property before learned Illaqa Magistrate vide application Ex.PJ. The learned Magistrate, passed the order Ex.PJ/1. Then the prosecution examined the then MHC Lakhwinder Singh as PW6, who has filed his affidavit Ex.PJ/A and deposed that the case property remained intact in the Malkhana. PW6 MHC Parshotam has filed his affidavit Ex.PA and deposed that the case property remained intact so long it remained in his possession. PW7 Constable Shadi Lal, who has carried the sample parcels to the Chemical Examiner, has filed his affidavit Ex.PK mentioning therein that the sample parcels remained intact. Ex.PK is the report of the Chemical Examiner, which also depicts that the sample parcel was properly sealed and seals tallied with the specimen seal impression. Thus, from the aforesaid evidence, it is established that the sample parcel remained intact and was not tampered with at any stage of the proceedings. So, mere delay of 12 days in sending the sample will not create any dent in the prosecution case.

22- The provisions of Section 52-A and 57 of the Act are not mandatory and are only directory. Reliance can be placed upon ***Gurbax Singh Vs. State of Haryana, Law Finder Doc ID # 12911***. Mere non-

compliance of Section 52-A and 57 of the Act will not cause any dent in the prosecution case. In case ***Jasbir Singh Vs. State of U.T., Chandigarh*** (supra) the non-compliance of Section 52 and 52-A of the Act was not the only reason for the acquittal of the appellant. There were various other infirmities in the prosecution case. Case State of ***Punjab Vs. Kulwant Singh*** (supra), relied upon by learned counsel for the appellant cannot help the appellant in view of authoritative pronouncement of Hon'ble Apex Court in case ***Gurbax Singh Vs. State of Haryana*** (supra).

23- Thus, from the testimonies of PW4 SI Gurmail Singh and PW5 HC Babu Ram, it is established that 5 ½ kilograms poppy husk has been recovered from the possession of the appellant. Their testimonies are further corroborated from the testimonies of PW2 Inspector Balraj Singh, the then SHO, Police Station - Kotwali Nabha, before whom the accused, case property and the witnesses were produced. There is also no material to establish that the police officials had any ill will or motive for the false implication of the appellant. Thus, I have no reason to differ with the findings of the learned trial Court that it is proved beyond shadow of reasonable doubt that accused-appellant was found in conscious possession of 5 ½ kilograms poppy husk.

24- However, I find substance in the contentions raised by learned counsel for the appellant with respect to reduction in the quantum of sentence. The appellant is facing these proceedings for the last more than 14 years. The recovery also can not be stated to be on the higher

side. So, some lenient view in the matter of sentence will suffice the ends of justice.

25- Thus, keeping in view my aforesaid discussion, I do not find any illegality or impropriety in the conviction of the appellant recorded by the learned trial Court. Thus, the conviction of the appellant as recorded by the learned trial Court is hereby maintained and confirmed. However, the substantive sentence awarded by the learned trial Court is reduced to rigorous imprisonment for a period of six months instead of one year and the sentence in default of payment of fine is reduced to one month instead of two months. With this modification in the matter of sentence, the present appeal being devoid of merits is hereby dismissed.

26- The accused-appellant is on bail. His bail stand cancelled. He will 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: 20.11.2015.
sunil yadav

(DARSHAN SINGH)
JUDGE