

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

CRA-S-1582-SB-2004

Date of decision: 03.09.2015

Satnam Singh alias Santa

..... Appellant

Versus

State of Haryana

..... 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. G.S. Sidhu, Advocate for the appellant.

Mr. Anil Mehta, Deputy Advocate General
for the State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 24.05.2004, passed by the learned Additional Sessions Judge, Sirsa, vide which accused-appellant Satnam Singh alias Santa 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 called 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 four years and a fine of Rs.40,000/- in default of payment of fine to further undergo rigorous imprisonment for one year.

2- As per the prosecution case, on 01.05.2003 PW1 Sub Inspector Budh Singh, SHO, Police Station Rori (the Investigating Officer) along with HC Kapoor Singh and other police employees was present at 'T' point village Kuranganwali, at Rori - Kalanwali Road in connection with crime checking. In the meantime, one person carrying a plastic bag, was seen coming from the side of village Kuranganwali. On suspicion, he was apprehended. On enquiry, he disclosed his name as Satnam Singh alias Santa son of Dholla Singh, resident of village Sukhchain. The Investigating Officer suspected some narcotic substance in the bag and served a notice under Section 50 of the Act Ex.PA to him. Vide his reply Ex.PA/1, the accused reposed faith in the Investigating Officer for taking the search of the bag. The notice and the reply were signed by the accused and the witnesses. The bag was checked by the Investigating Officer and it was found containing poppy straw. From the recovered poppy straw, two samples of 100 grams each were separated and on weighment, the residue was found to be 19 kilograms and 800 grams. The samples and the residue were converted into separate parcels and were sealed by the Investigating Officer bearing seal impression 'BS' and were taken into possession vide separate recovery memo Ex.PB, which was attested by the witnesses. The seal after use was handed over

to HC Kapoor Singh. The accused was arrested. Ruqqa Ex.PC was sent to the police station. On the basis of which, formal FIR Ex.PC/1 was registered. The Investigating Officer prepared the site plan of the place of recovery Ex.PD. Statements of the witnesses were recorded.

3- On return to the police Station, the case property and sample parcels were deposited in the Police Malkhana. The report under Section 57 of the Act was sent to the DSP, Dabwali. On 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 30.05.2003 by the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

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

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication.

7- In the defence evidence, accused examined Darshan Singh as DW1. Thereafter, the defence evidence was closed.

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. G.S. Sidhu, Advocate, learned counsel for the appellant, Mr. Anil Mehta, learned Deputy Advocate General for the State of Haryana and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellant contended that no independent witness has been associated, even though the recovery is alleged to have been effected on a public road. He further contended that there is a material contradiction in the statements of the prosecution witnesses with respect to the weight of the contraband. PW3 HC Satpal Singh has stated that the bag of the case property was containing 19 kilograms 8 grams chura post. PW2 HC Kapoor Singh has stated that the weight of the residue was 19 kilograms 200 grams. Whereas, as per prosecution story the weight of the residue was 19 kilograms 800 grams.

12- He further contended that there is delay of six days in depositing of the sample with the Forensic Science Laboratory. PW4 Constable Satish Kumar, who has carried the sample parcel to the FSL, has admitted in the cross-examination that he has tampered with with the affidavit after it was attested by the Magistrate. He further contended

that it is not established that the sample seal was sent to the FSL, so no sample seal was available with the Chemical Examiner for comparing the same with the seals affixed on the sample parcel. Thus, the link evidence is missing and the tampering with the case property cannot be ruled out. To support his contentions, he has relied upon cases ***Partap Singh Vs. State of Haryana 2009(2) RCR (Criminal) 355. Bhajan Singh alias Ghola Vs. State of Punjab 2008(3) RCR (Criminal) 520*** and ***State of Punjab Vs. Bal Kishan CRA-S-750-SBA-2001 decided on 03.11.2014.***

13- He further contended that the provisions of Section 50 of the Act have not been complied with in this case. It is not believable that accused appellant would have waived his right for the search in the presence of a Gazetted Officer or a Magistrate. The reply Ex.PA/1 is not attested by any independent witness. He contended that once the procedure for giving offer under Section 50 of the Act was followed then the compliance of the same has to be shown. Thus, he contended that the non-compliance of Section 50 of the Act has vitiated the conviction and sentence. To support his contentions, he has relied upon case ***Partap Singh Vs. State of Haryana*** (supra) and ***Bhajan Singh alias Ghola Vs. State of Punjab*** (supra).

14- He further contended that the case property was never produced before the Magistrate in compliance of Section 52-A of the Act, which is again fatal to the prosecution case. Thus, he pleaded that the conviction of the appellant has been wrongly recorded.

15- He further contended that even the sentence awarded to the appellant is harsh. The appellant was not a previous convict and was not having any criminal background. The recovery was also non-commercial. Now he is facing the agony of these proceedings for the last more than 12 years.

16- On the other, learned State counsel contended that the Investigating Officer has tried to associate the independent witness but they did not agree. So, no fault can be found with the Investigating Officer due to non-joining of the independent witness. He further contended that the accused has not alleged any ill-will against the Investigating Officer. So, there is no reason to disbelieve the statements of the official witnesses.

17- He further contended that from the consistent statement of PW1 SI Budh Singh, the then SHO of Police Station Rori, Distt. Sirsa and PW2 HC Kapoor Singh, it is established that 20 kilograms poppy husk was recovered from the possession of the accused-appellant. He further contended that the contradiction pointed out by learned counsel for the appellant with respect to the weight of the contraband are only the typographical mistakes. No other material contradiction could be pointed out in the statements of the prosecution witnesses. He further contended that the case property has remained intact, so mere delay of six days in sending the sample to the FSL has not resulted in any prejudice to the accused. The provision of Section 52-A of the Act are not mandatory.

Thus, he pleaded that there is no infirmity in the conviction of the appellant recorded by the learned trial Court.

18- I have duly considered the aforesaid contentions.

19- No doubt the recovery in this case has been effected at the 'T' point of village Kuranganwali on the road leading to village Rori to Kalanwali. But no independent witness has been associated. PW1 SI Budh Singh, the Investigating Officer of the case, has stated that 2/3 persons were asked to become witness but they showed their inability but he had not enquired of their names and he did not mention their names in the ruqqa, recovery memo and other documents. PW2 HC Kapoor Singh has also stated that 4/5 persons came at the spot. They were asked to become witness but they showed their inability to do so. He further deposed that out of them, two came from the side of Kuranganwali and 2/3 from the side of Kalanwali. From the aforesaid consistent statements of PW1 SI Budh Singh and PW3 Kapoor Singh, it comes out that the Investigating Officer has requested the public men to join the investigation but they expressed their inability. So, in that situation, no option was left with the Investigating Officer to proceed further with the investigation of the case associating only the official witnesses.

20- The accused has examined DW1 Darshan Singh, who has deposed that he has been got falsely implicated by Leela Singh son of Maghar Singh due to party faction, as the appellant belongs to Congress party and said Leela Singh belongs to Indian National Lok Dal, which

was in power in State of Haryana at that time. But there is no corroborative evidence to the statement of DW1 Darshan Singh. Said Darshan Singh has admitted in the cross-examination that he is the supporter of the Congress party and is also co-villager of the present appellant. There is also no material to establish that the appellant was having any enmity or dispute with said Leela Singh. It is not believable that mere this fact that the appellant and Leela Singh belonging to different political parties, can be a reason for false implication of the appellant. There is also no material on record to show that as to what was the status of Leela Singh in the Indian National Lok Dal, as to whether he was in a position to exercise any influence over police officials of the area. The accused-appellant has not moved any representation to the higher police authorities against SI Budh Singh for his false implication. In these circumstances, the defence plea raised by the appellant that he has been falsely implicated at the instance of Leela Singh son of Maghar Singh due to party faction does not appeal to the reasons.

21- It is well settled principle by this time that mere non-joining of the independent witness itself is not a ground to discard the prosecution case. The testimonies of the official witnesses also carries the same evidentiary value as that of any other witness. As discussed above, the defence plea of the appellant that he has been falsely implicated at the instance of Leela Singh due to party faction has no substance, so there was no motive for the false implication of the accused-appellant by SI

Budh Singh, the Investigating Officer of the case. In these circumstances, the non-joining of the independent witness is no ground to discredit the testimonies of the prosecution witnesses. Reference can be made to cases *Akmal Ahmed Vs. State of Delhi 1999(2) RCR (Criminal) 265*, *Ravinderan @ John Vs. Superintendent of Customs, 2007 (3) RCR (Criminal) 80* and *Rohtash Vs. State of Haryana, 2013(3) RCR (Criminal) 355*.

22- The recovery in this case has been effected on 01.05.2003. The report of the FSL shows that the sample parcel was received in the laboratory on 07.05.2003. So, there is six days delay in depositing the sample with the Forensic Science Laboratory, Madhuban, Haryana (Karnal). In case *Mohan Singh Vs. State of Punjab 2007(4) RCR (Criminal) 705*, 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 the tampering with of the case property. Learned counsel for the appellant has tried to take the benefit of the minor clerical omissions/lapses in the statements of PW3 Satpal Singh Head Constable, the then MHC Police Station Rori and PW4 Constable Satish Kumar, who had carried the sample parcels to FSL, Madhuban. PW3 HC Satpal Singh has stated in the cross-examination that the bag of case property was containing 19 kilograms and 8 grams chura post. There appears to be a typographical mistake in describing the weight of the residue parcel in the cross-examination. Ex.PF is the affidavit of this witness and Ex.PG is the affidavit of PW4 Constable Satish Kumar. Even if word “Mohar” is considered to have been added later on, the sense of the sentence conveys that the specimen seal impression/sample seal was deposited with the Moharir Head Constable and the same was sent to the FSL through Constable Satish Kumar. The report of the FSL Ex.PX also shows that the seals on sample parcel were intact and tallied with specimen seal as per the forwarding authority's letter. It clearly shows that in fact the specimen seal impression was forwarded to the Forensic Science Laboratory and that is why the same has been compared and have been found to be tallied with the seal impressions on the sample parcel. From the statement of PW3 HC Satpal Singh, PW4 Constable Satish Kumar and the report of the FSL Ex.PX, it comes out that the sample parcel has

remained intact throughout. In these circumstances, mere delay of six days in depositing of the sample with the FSL has not resulted in any prejudice to the accused.

23- The recovery in this case has been effected from a bag which the appellant was carrying on his head. So, it is not the case where the recovery has been effected from the personal search of the accused. Hence, the provisions of Section 50 of the Act were not applicable in this case. To support this view reference can be made to cases *State of Himachal Pradesh Vs. Pawan Kumar* 2005 Supreme Court Cases (Criminal) 943, *Ajmer Singh Vs. State of Haryana* (2010) 3 Supreme Court Cases 746 and *Ram Swaroop Vs. State (Government of NCT of Delhi)* (2013) 14, Supreme Court Cases 235. In view of the aforesaid authoritative pronouncements of the Hon'ble Apex Court, the Single Bench judgments of this Court, relied upon by learned counsel for the appellant are of no help to him.

24- No doubt, the Investigating Officer of the case has not produced the case property before the Magistrate to comply with the provisions of Section 52-A of the Act but that lapse on the part of the Investigating Officer will also not vitiate the conviction or trial as the provisions of Section 52-A of the Act are directory and not mandatory in nature. To support this view, reference can be made to cases *Cyril Archibong Vs. State of Union Territory, Chandigarh* 2003(2) RCR (Criminal) 211 (DB), *Ajmer Singh Vs. State of Punjab* 2003(2) RCR (Criminal) 256 (DB), *Amarjeet Kaur Vs. State of Haryana* 2003(1)

RCR (Criminal) 99 and Sanjiv Kumar alias Sanju and another Vs. State of Punjab 2007(4) RCR (Criminal) 744.

25- PW1 SI Budh Singh and PW2 HC Kapoor Singh have consistently deposed about the manner of apprehension of accused-appellant, the search and seizure of the contraband from his possession. Learned counsel for the appellant has not been able to point out any material contradiction in their statements. Learned counsel for the appellant has pointed out that PW2 HC Kapoor Singh has stated that the residue was found 19 kilograms 200 grams which was taken into possession vide memo Ex.PB. This appears to be a typographical mistake as PW1 SI Budh Singh has categorically deposed that the weight of the residue contraband was 19 kilograms 800 grams. It has been so mentioned in the seizure memo Ex.PB, ruqqa Ex.PC, FIR Ex.PC/1 and the report under Section 57 of the Act Ex.PE. The seizure memo Ex.PB is also attested by PW2 HC Kapoor Singh. So, there is no escape from the conclusion that the weight of the residue was 19 kilograms 800 grams. Thus, from the cogent, convincing and reliable evidence adduced by the prosecution, it is established beyond shadow of reasonable doubt that 20 kilograms poppy husk was recovered from the conscious possession of the appellant. So, the conviction of the appellant for the offence under Section 15 of the Act is maintained and upheld.

26- Learned counsel for the appellant has also pleaded for a reduction in the sentence awarded to the appellant. There is no material

on record to establish that the accused had any criminal background or was involved in any other case under the provisions of the Act. There is also no material on record to show that he was a previous convict. The recovery effected from the appellant is non commercial quantity. He has already faced the agony of the proceedings/prosecution for the last more than 12 years. Thus, in these circumstances the appellant certainly deserves the reduction in sentence. He has been sentenced to undergo rigorous imprisonment for a period of four years and has been ordered to pay a fine of Rs.40,000/- in default of payment of fine, he has been directed to to further undergo rigorous imprisonment for a period of one year. In my opinion, the rigorous imprisonment for two years and a fine of Rs.20,000/- in default of payment of fine, to further undergo rigorous imprisonment for a period of four months will suffice the ends of justice.

27- Thus, keeping in view my aforesaid discussion, there is no legal infirmity in the conviction of the appellant recorded by learned trial Court. The same is hereby maintained and upheld. However, the sentence of the appellant is reduced and he is ordered to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of four months, instead of sentence awarded by the learned trial Court.

28- Except with this modification in the quantum of sentence, the 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, Sirsa, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Sirsa, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

Dated: 03.09.2015.*sunil yadav***(DARSHAN SINGH)
JUDGE**