

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

CRA-S-1617-SB-2004

Date of decision: 13.10.2015

Sukhchain

..... 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. Rakesh Nagpal, Advocate for the appellant.

Mr. Ashok Mutherja, Deputy Advocate General
for the State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 11.08.2004, passed by the learned Judge, Special Court, Kaithal, vide which accused-appellant Sukhchain 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 dated 12.08.2015, vide which the appellant has been sentenced to undergo rigorous

imprisonment for a period of eight months and a fine of ₹1000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.

2- As per the prosecution case, on 03.02.2003 PW5 Assistant Sub Inspector Waryam Singh, Police Station Siwan (the Investigating Officer of the case) received a telephonic message from ASI Satbir Singh, Police Post Ramthali that 16 kilograms poppy husk was recovered from one Kala son of Ram Kumar, resident of village Chhatter Police Station Uchana and on interrogation, he disclosed that he had brought the poppy husk from Dera of Sukhchain Singh and if raid is conducted on his house, poppy husk can be recovered. At this, a raiding party was formed by the Investigating Officer. Notice under Section 42 of the Act was sent to the senior police officer. The raiding party proceeded towards Dera/house of the appellant. When they reached near the Dera, they met one Harbans Singh son of Kehar Singh resident of Chakku Ladana. He was joined in the raiding party. Thereafter, when the police party reached at the house of the accused-appellant, he was coming from the house carrying a plastic bag in his right hand. He was apprehended. A notice under Section 50 of the Act Ex.PG was served upon him giving him an option as to whether he wanted to get his search conducted in presence of a gazetted officer or a magistrate. Vide his consent memo Ex.PG/1, the accused-appellant opted to get his search conducted in the presence of a gazetted officer. Thereafter, the accused-appellant, the witnesses and the plastic bag were

produced before Shri Dharampal Dalal, DSP in his office. The DSP verified the facts and directed the Investigating Officer to take search of the plastic bag. The bag was checked by the Investigating Officer and it was found containing poppy husk. On weighment, it was found to be 5 kilograms. Two samples of 200 grams each were separated and the samples as well as residue were converted into separate parcels and were sealed with the seal of the Investigating Officer bearing impression 'WS' and seal of the DSP bearing impression 'DS'. The sample parcels, residue parcel and sample seal impressions were taken into possession vide separate recovery memo Ex.PD, which was attested by the witnesses. Seal of the Investigating Officer after use was handed over to HC Balbir Singh whereas the DSP retained his seal with him. 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.PH. 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 ASI Roop Singh the SHO, who verified the case property and put his seal bearing impression 'RS' on each parcel. The case property was deposited with Mohrir Head Constable. Report under Section 57 of the Act Ex.PE was prepared and sent to the DSP. On 07.02.2003, MHC Ishwar Singh handed over sample to Constable Sunil Kumar for depositing the same with FSL, Madhuban. On receipt of the report of the FSL 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 10.08.2004 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 seven witnesses.

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

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 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. Rakesh Nagpal, Advocate, learned counsel for the appellant, Mr. Ashok Mutherja, 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 one Harbans Singh was alleged to have been joined as independent witness in the investigation of the case but he has not been produced in the witness box. No other witness from the locality has been associated, though the recovery is alleged to have been effected when the appellant was present in his house situated in the residential locality, which renders the prosecution case doubtful. To support his contentions, he relied upon case ***Ranjit Singh Vs. State of Punjab 2015(1) AICLR 592*** and ***Radha Bai Vs. State of Haryana 2015(2) RCR (Criminal) 713***.

12- He further contended that the documents have been fabricated later on. The notice under Section 50 of the Act and consent memo are bearing the entire particulars of the case including the offence, even though these documents are alleged to have been prepared before the recovery.

13- He further contended that the seal after use was entrusted to HC Balbir Singh, but even he has not been examined. The DSP had not come to the spot. So, there is no corroboration to the testimony of the Investigating Officer about the place of apprehension of the appellant and other material facts. He further contended that it is not believable that the accused-appellant will be roaming in his house having a Thela (bag) containing poppy husk in his hand. This story has only been fabricated to show the appellant in exclusive possession of the contraband. This made

up story renders the prosecution case doubtful. He further contended that even the timings alleged by the Investigating Officer are contradicted by the documents prepared by him i.e. the notice under Section 42 of the Act Ex.PF.

14- He further contended that it is alleged that the recovery has been effected on the basis of the disclosure statement made by one Kala son of Ram Kumar, who was arrested by ASI Satbir Singh in some other case. Said Satbir Singh ASI has not been examined nor the said disclosure statement has been placed on record. Thus, he pleaded that the appellant has been falsely implicated.

15- On the other hand, learned State counsel contended that from the statement of PW5 ASI Waryam Singh, the Investigating Officer of the case and PW4 Dharampal Dalal, DSP Guhla, it is established that 5 kilogram poppy husk was recovered from the possession of the appellant. The case of the prosecution is also corroborated from the statement of PW7 ASI Roop Singh, the then SHO, Police Station Siwan. He contended that independent witness Harbans Singh could not be examined as he was won over by the accused. He further contended that learned counsel for the appellant has not been able to point out any material contradiction in the statements of the prosecution witnesses. Thus he contended that there is no infirmity in the conviction of the appellant recorded by learned trial Court.

16- I have duly considered the aforesaid contentions.

17- It is the admitted case of the prosecution that the raid has been conducted at the house of the appellant on the basis of an information received by the Investigating Officer from ASI Satbir Singh. It is alleged that Harbans Singh son of Kehar Singh resident of village Chakku Ladana Police Station Guhla was associated as an independent witness in the present case but said Harbans Singh has not been produced in the witness-box and has been given up by learned Public Prosecutor as having been won over by the accused. So, now the case of the prosecution is based only on the statement of the official witnesses. It is not disputed that the recovery is alleged to have been effected when the appellant was present at his residential house, which is admittedly situated in the residential locality. No witness of locality has been associated in the investigation by the Investigating Officer. Harbans Singh, who was alleged to be associated in the investigation of the case, does not belong to the village/Dera wherein the house of the appellant is situated, rather he belongs to village Chakku Ladana, situated in Police Station Guhla. It is not explained under what circumstances said Harbans Singh was found present near the Dera of the appellant. So, even the presence of said Harbans Singh at the place of recovery appears to be doubtful. Consequently, in these peculiar circumstances, the non-examination of the independent witness adversely affects the credibility of the prosecution case.

18- As per the basic story of the prosecution, on 03.02.2003

when PW5 ASI Waryam Singh was present in the Police Station, he received a telephonic information from ASI Satbir Singh, Incharge Police Post Ramthali that one Kala Singh son of Ram Kumar resident of Chhatter has disclosed that he has brought the poppy husk from the present appellant. If a raid is conducted, the poppy husk can be recovered from his possession. So, this information was the basis for conducting the raid at the house of the appellant, which allegedly led to the recovery of 5 kilograms poppy husk from the possession of the appellant. The information supplied by Kala Singh son of Ram Kumar who was arrested by ASI Satbir Singh in some other case in the shape of his disclosure statement was the basic information received by the police against the appellant. That information has been withheld. The prosecution has not placed on file the copy of such disclosure statement made by Kala Singh in the another case, nor ASI Satbir Singh, the Investigating Officer of that case who has telephonically supplied the information to the Investigating Officer, has been produced in the witness-box. So, the very basis of conducting the raid at the house of the appellant is not established.

19- PW5 ASI Waryam Singh, the Investigating Officer of the case has stated in the cross-examination that they proceeded from the Police Station at 04:00 P.M. He further deposed that they reached at the Dera of the accused at 04:30 P.M. It is the admitted case of the prosecution that the notice/information under Section 42 of the Act Ex.PF

has been sent by the Investigating Officer from the Police Station itself on receiving the telephonic information. It is very surprising to note that the notice/information Ex.PF bears the time as 04:40 P.M. on 03.02.2003 whereas the Investigating Officer has stated that he had left the Police Station at 04:00 P.M. and even reached at the Dera of the appellant at 04:30 P.M., which is a material contradiction in the prosecution case and renders the time of the recovery extremely doubtful.

20- The story, as set up by the prosecution, is also highly improbable. It is alleged that when the police party reached at the house of the appellant, he was seen while coming out of his house having a plastic bag in his hand. The appellant has not been interrogated as to whether he was going to supply the contraband somewhere. In the absence of that fact, there was no purpose of the appellate carrying the poppy husk in a plastic bag in his house. It appears that this story has only been introduced by the prosecution just to show the appellant in exclusive possession of the contraband, as other family members were also residing along with appellant in the said residential house. The Investigating Officer was having a specific information that appellant is the supplier of the poppy husk. The Investigating Officer has nowhere stated that he had carried out the house search of the appellant to find out as to whether the more contraband was stored in his house or not. If the information received by the Investigating Officer would have been reliable and the Investigating Officer would had acted upon the said

information, he must have carried out the house search of the appellant in order to make sure that some more poppy husk may not be stored by him in his house and in that case, he would not have been satisfied just with the recovery of 5 kilograms poppy husk from the appellant. So, the story of the prosecution appears to be artificial and does not inspire any confidence.

21- Thus, keeping in view my aforesaid discussion and totality of the circumstances discussed above, the prosecution has not been able to establish its case beyond shadow of reasonable doubt. So, the accused-appellant deserves the benefit of doubt and his conviction and sentence as recorded by the learned trial Court is not sustainable in the eye of law.

22- Consequently, the present appeal is hereby allowed. The conviction and sentence of the appellant as recorded by the learned trial Court is hereby set aside. By giving the benefit of doubt, the accused-appellant is hereby acquitted of the charges. The amount of the fine, if deposited by him with the learned trial Court, be refunded to him in accordance with rules.

Dated:13.10.2015
sunil yadav

(DARSHAN SINGH)
JUDGE