

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA S-174-SB of 2004
Date of Decision: 08.12.2015

Major Singh

....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present: Mr. K.S. Dhaliwal, Advocate, for the appellant.
Mr. Vikram Bishnoi, Assistant A.G., Punjab.

T.P.S. Mann, J.

The appellant was tried for committing the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'). Vide impugned judgment and order dated 17.11.2003, learned Judge, Special Court, Patiala, convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs. one lac and, in default of payment of payment of fine, to further undergo rigorous imprisonment for six months. The period of detention already undergone by him was ordered to be set off in accordance with the provisions of Section 428 Cr.P.C.

According to the prosecution, on 17.8.2001, ASI Bindu Bala, along with other police officials was going from village Dedhna towards village Kakrala. On reaching the bus stop of village Dedhna, one Mohinder Singh met them, who was joined in

the police party. The police party proceeded towards village Kakrala and when it reached on the bridge of canal minor in the revenue limits of village Dedhna, accused Major Singh was seen sitting on the bags, which were four in number. On seeing the police party, he tried to slip away, but on suspicion, he was apprehended with the help of other police officials. On inquiry, he disclosed his whereabouts. ASI Bindu Bala told him that he was suspected to be carrying some contraband in the gunny bags and, therefore, they were required to be searched. She further told him that if he so desired, the search could be effected in the presence of some Gazetted Officer or Magistrate, on which he opted for search to be conducted in the presence of some Gazetted Officer. Statement of the accused in this regard was recorded, which was signed by him and attested by the witnesses. ASI Bindu Bala, then requested Shri Ashish Kapoor, DSP, Circle Samana on wireless to reach the spot. After sometime, the DSP reached the spot and after disclosing his identity, apprised the accused that he was a Gazetted Officer and posted as DSP at Samana. He also told the accused that if he so desired, the search of the bags could be conducted in the presence of some other Gazetted Officer. However, the accused reposed confidence in the DSP. His statement in that regard was recorded.

Under the directions of the DSP, ASI Bindu Bala conducted the search of the bags, which were found to contain poppy husk. Two samples of 250 gms each, were separated from each of the four bags and made into separate parcels. The residue

in each bag came to be 24.500 kgs. The residue was put in the same bags and made into separate parcels. All the parcels were sealed with the seal bearing inscriptions 'BB' of ASI Bindu Bala and 'AK' of DSP Ashish Kapoor. Specimen seal impressions were also prepared. Entire case property was taken into possession vide separate recovery memo, which was attested by the witnesses. The seals after use were entrusted to Mohinder Singh. From the personal search of the accused, cash amounting to Rs.90/- was recovered which was taken into possession vide separate recovery memo. ASI Bindu Bala, then sent ruqa to the Police Station for registration of the case against the accused. On its basis, FIR No. 164 dated 17.8.2001 under Section 15 of the NDPS Act, was registered at Police Station Ghagga.

During investigation of the case, ASI Bindu Bala prepared rough site plan with correct marginal notes; recorded the statements of the witnesses; arrested the accused after serving grounds of arrest on him; and on return to the Police Station, produced the accused and the case property before ASI Karan Singh, Officiating SHO, who verified the investigation and then deposited the case property with MHC Hardial Singh. On the next day, ASI Surjit Singh produced the accused along with the case property before the Illaqa Magistrate. On return, he re-deposited the case property with the MHC. After receipt of the report of the Chemical Examiner and completion of the investigation, the accused was challaned. He was thereafter charged for the afore-

mentioned offence, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined six witnesses.

PW1-DSP Ashish Kapoor, deposed that on 17.8.2001, he had received a wireless message from Police Station Ghagga and accordingly, he reached the spot in the area of village Dedhna, where the police party headed by ASI Bindu Bala, Mohinder Singh, Member Panchayat and accused Major Singh, were found present. Four bags were lying there alongside the accused. After disclosing his identity as a Gazetted Officer to the accused, he told him that he wanted to conduct search of the bags. After the accused reposed confidence in him, ASI Bindu Bala, conducted the search of the bags from which poppy husk was recovered. Two samples of 250 gms each, were taken out from each of the four bags and duly sealed. The residue was also separately sealed. Separate seal impressions were prepared.

PW2-HC Hardial Singh tendered into evidence his affidavit Ex.PC.

PW3-Constable Darshan Singh also tendered into evidence his affidavit Ex.PD.

PW4-ASI Karan Singh deposed that on 17.8.2001, he was posted as Incharge SHO, Police Station Ghagga. On that day at about 2.00 p.m., ASI Bindu Bala produced before him the

accused, case property, sample parcels, seal impressions and the witnesses. He verified the facts from the accused and checked the case property. Thereafter, he deposited the case property with MHC Hardial Singh.

PW5-SI Bindu Bala deposed that on 17.8.2001, she along with other police officials, was on patrol duty and when they were at bus stop of village Dedhna, PW-Mohinder Singh met them, who was joined in the police party. She further stated that when they reached the bridge of canal minor, the accused was seen sitting on the bags. On seeing the police party, he tried to slip away but on suspicion he was apprehended. His whereabouts were inquired into. She told him that she suspected some contraband in the gunny bags and therefore, wanted to search them. Accused was made aware of his right that if he so desired, the search could be effected in the presence of some Gazetted Officer or Magistrate. The accused opted to be searched in the presence of Gazetted Officer. Statement Ex.PE of the accused was recorded. Then she called Shri Ashish Kapoor, DSP Circle, Samana, who after arriving at the spot, disclosed his identity to the accused. He also told him that he wanted to conduct the search of the bags and if he so desired, the search of the bags could be conducted in the presence of some other Gazetted Officer, but the accused reposed confidence in him. Consent statement of the accused was recorded, which was attested by the DSP. She then conducted the search of the bags, which led to recovery of poppy husk. Two samples of 250 gms each, were separated from each of

the four bags and made into parcels. The residue in each bag came to be 24.500 kgs, which was put in the same bags and made into separate parcels. All the parcels were sealed with seals bearing inscriptions 'BB' and 'AK'. Specimen seal chit Ex.P1 was also prepared. Seals after use were entrusted to PW Mohinder Singh. Entire case property was taken into possession vide recovery memo Ex.PA. From the personal search of the accused, cash amounting to Rs.90/- was recovered. She prepared rough site plan Ex.PF with correct marginal notes. She sent ruqa Ex.PG to the Police Station and on its basis, FIR Ex.PG/1 was recorded. She recorded the statements of the witnesses. The accused was conveyed the grounds of arrest vide memo Ex.PH. After completion of investigation at the spot, she returned to the Police Station. Case property, accused, sample parcels, sample seal impressions and chit were produced before ASI Karan Singh, who was working as SHO at that time and verified the factum of recovery, which he found to be correct. ASI Karan Singh deposited the case property with MHC Hardial Singh. On the next day, the case property, sample seal chit and sample parcels were taken out by the MHC and handed over to ASI Surjit Singh for producing the same before the Illaqa Magistrate. On receipt of report Ex. PK of the Chemical Examiner and after completion of formal investigation, the accused was challaned.

After the prosecution concluded its evidence, the accused was examined under Section 313 Cr.P.C. He denied all the incriminating circumstances appearing in the prosecution

evidence and stated that he was innocent and falsely implicated in the case after detaining him from his village in the presence of Jagtar Singh and others. However, nothing incriminating was recovered from him.

In his defence, the accused examined DW1-Constable Kuldeep Singh and DW2-Jagtar Singh.

After hearing learned counsel for the parties and on going through the record, the trial Court believed the prosecution case and convicted and sentenced the appellant, as mentioned above. Hence, the appeal.

Learned counsel for the appellant submitted that the prosecution case is based upon the testimonies of only official witnesses. Mohinder Singh, who was an independent witness and was shown to be present at the time of recovery of the contraband from the appellant, has not been examined. Said Mohinder Singh was even a stock witness of the police and, therefore, the trial stood vitiated. In support of his stand, he has drawn the attention of the Court to the statement of DW1-Constable Kuldeep Singh, who proved copies of the FIRs Exs.D2 to D6 in which said Mohinder Singh had been cited as witness.

It is true that the prosecution has not examined Mohinder Singh, an independent witness in support of its case. However, said Mohinder Singh was cited as a witness by the prosecution in the final report under Section 173 Cr.P.C. Subsequently, he was given up as having been won over by the

accused. Therefore, the prosecution case cannot be rejected merely on the ground that it is based upon the testimonies of the official witnesses. In Sukhdev Singh alias Sukha v. State of Punjab, 2006(1) RCR (Criminal) 4, the independent witness, who was given up as won over by the accused, was examined by the accused therein as his defence witness. As he denied the recovery having been effected from the accused, the Division Bench set aside the judgment of conviction. In the present case, the appellant made no attempt to examine Mohinder Singh, independent witness in support of his case by producing him in his defence. In another case titled as Nirmal Singh v. State of Punjab, 2010(3) RCR (Criminal) 54, relied upon by learned counsel for the appellant, the independent witness, namely, Ranjit Singh therein had stepped into the witness box as DW2 and supported the plea of the accused therein. As regards aforementioned Mohinder Singh having been cited as a witness in the FIRs Exs. D2 to D6, suffice it to mention that the said FIRs were registered subsequent to the registration of the FIR in the present case. The defence did not bring on record any FIR registered prior to the present FIR and, thus, it can safely be concluded that the present case was the first case in which Mohinder Singh was associated as an independent witness and accordingly, cannot be termed as a stock witness of the police.

Learned counsel for the appellant further submitted that while effecting the recovery of the contraband, the police did not comply with the provisions of Section 50 of the NDPS Act.

However, on going through the evidence, it is made out that when the police party headed by ASI Bindu Bala had reached on the bridge of canal minor in the revenue limits of village Dedhna, the appellant was seen sitting on the bags. On seeing the police party, he tried to slip away, but on suspicion, he was apprehended. ASI Bindu Bala then apprised the appellant that she suspected him to be carrying contraband in the gunny bags and, therefore, the search was required to be conducted. She further told him that if he so desired, the search could be effected in the presence of a Gazetted Officer or a Magistrate. In response thereto, the appellant stated that he be searched in the presence of some Gazetted Officer. His statement in that regard was recorded which was signed by him and also attested by the witnesses. ASI Bindu Bala then contacted Shri Ashish Kapoor, DSP, Circle Samana on wireless and requested him to reach the spot. Shri Ashish Kapoor, DSP, after reaching the spot disclosed his identity to the appellant and thereafter, again gave an offer to him that if he so desired, the search of the bags could be conducted in the presence of some other Gazetted Officer. However, the appellant reposed confidence in Shri Ashish Kapoor and, thereafter, on his direction ASI Bindu Bala conducted the search of the bags which led to recovery of poppy husk. Thus, there was no violation of the provisions of Section 50 of the NDPS Act. Even otherwise, it was a case of recovery of contraband from the bags on which the appellant was sitting. As it was not a case of personal search, the police was not required to even comply with the provisions of

Section 50 of the NDPS Act. In Jit Singh v. The State of Punjab, 2008(2) RCR (Criminal) 655, it was observed that the Investigating Officer was under a duty to make the accused aware of his right of search in the presence of a Gazetted Officer or a Magistrate and if he was not made aware of such a right, his conviction stood vitiated. However, in the present case, as mentioned above, Section 50 of the NDPS Act, was strictly not applicable as it was a case of recovery of the contraband from the bags and not from the person of the appellant.

It was also submitted on behalf of the appellant that ASI Karan Singh had deposed that after he checked the case property and verified the seal impressions, he deposited the case property with MHC Hardial Singh, whereas according to SI Surjit Singh, the case property was deposited by ASI Bindu Bala on the direction of the Officiating SHO ASI Karan Singh. Further in his affidavit Ex.PC, PW2-Hardial Singh stated about depositing the case property by ASI Bindu Bala. Therefore, there was contradiction inter-se and thus, the link evidence in the case was missing.

From the evidence, it is made out that PW4-ASI Karan Singh, was the Officiating SHO on the day of incident and on the direction of ASI Karan Singh, it was ASI Bindu Bala, who had deposited the case property with MHC Hardial Singh. Thus, it cannot be said that link evidence was missing.

As regards the plea of the appellant that he had been falsely implicated in the case after being picked up from his house in the presence of Jagtar Singh whom he examined as DW2, suffice it to say that in his cross-examination DW2-Jagtar Singh, deposed that he did not make any complaint to any other higher official regarding false implication of the appellant. He also deposed that he was neither Sarpanch nor Panch nor even Lambardar of the village. Apparently, being a co-villager of the appellant, he has deposed falsely.

While relying upon the judgment in the case of State of Punjab v. Hari Singh and others, 2009(2) RCR (Criminal) 143, it was submitted that as no question with regard to possession or conscious possession was put to the accused during his examination under Section 313 Cr.P.C., his conviction was required to be set aside. In the said case, the accused was found sitting atop bags containing contraband and thus, in conscious possession of their contents. Despite the same, no question was put to him that he was in possession or conscious possession of the contraband. However, in the present case, on seeing the police party, the appellant, who was sitting on the bags, had tried to slip away and his conduct in slipping away led the police to suspect that he was carrying contraband in his possession. Even otherwise, during his examination under Section 313 Cr.P.C, the appellant was informed that ASI Bindu Bala had told him that she wanted to conduct search of the bags as said bags were suspected to be containing some contraband. He was also

informed that DSP Samana had also suspected him to be keeping four bags containing contraband in his possession. Of course, the appellant denied the same, but that will not be sufficient to hold that the appellant was not asked that he was in possession or conscious possession of the contraband.

In view of the above, no case is made out for any interference in the impugned judgment of conviction and order of sentence passed by the learned trial Court. The appeal is without any merit and accordingly, dismissed.

(T.P.S. Mann)
Judge

08.12.2015
ds

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No