

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Appeal No.D-447-DB of 2010
Date of decision: September 28, 2015.

Mahipal and others

... Appellants

v.

State of Haryana

... Respondent

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

CORAM: **HON'BLE MR. JUSTICE HEMANT GUPTA**
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Shri R.S. Bajwa, Advocate for
Shri K.S. Dhaliwal, Advocate for the appellants.

Shri Vivek Saini, Assistant AG, Haryana
for the respondent-State.

Raj Rahul Garg, J.

The present appeal is directed against the judgment of conviction dated 19.2.2010 and the order of sentence dated 22.2.2010 whereby the accused, appellants herein, have been ordered to undergo rigorous imprisonment for a period of 14 years and to pay a fine of Rs.1 lac each for the commission of an offence punishable under Section 20 read with Section 8 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter mentioned as the Act), and in default of payment of fine, to

undergo further imprisonment for a period of one year each; for having been found in possession of three kilograms of charas without any permit or licence.

Necessary facts briefly narrated, are to the effect that the appellants were apprehended at a naka laid by the police on the drain of dirty water at Gharipur while driving a Maruti car without having number plate on the front, coming from the side of Hansi Chowk, Karnal. On seeing the police party, the driver tried to turn back towards Hansi Chowk but he was apprehended along with car, which bore number on the rear side being HR-33-9911. Three young boys were sitting in the car who disclosed their names as Mahi Pal, Ram Pal and Dola Singh, present appellants. There was a cream colour cloth bag between the two seats inside the car. Upon suspicion, notice under Section 50 of the Narcotic Drugs & Psychotropic Substances Act, 1985 was served, whereupon all the youth reposed faith in the Investigating Officer. Search of the bag revealed charas in the bag. Two samples of 50 grams each were separated and the remaining contraband weighed to 2 kilograms and 900 grams. Thereafter, all the necessary formalities as contemplated under the Act regarding recovery were completed.

From the checking of the dash board of the car, one RC (Ex.P3) of the car and an affidavit of Narender Singh (Ex.P4) along with the car were taken into possession vide memo Ex.P12. Seal after its use was handed over to the Investigating Officer. Ruqa was sent to the Police Station, on the basis of which formal FIR was recorded by SI Prem Singh.

Site plan of the place of recovery was prepared and statements of the witnesses were recorded. All the accused were arrested.

All the accused, witnesses, case property and samples were produced before Shri Raj Kumar, Inspector, SHO Police Station City Karnal for verification of the facts, who, after inquiry about the facts of the case from the accused and the witnesses, put his seal on the samples as well as the case property and then directed the Investigating Officer to deposit the same with the MHC of the Police Station. Report under Section 57 of the act was prepared.

On 30.12.2008, the Investigating Officer took the case property as well as the samples from the MHC of the Police Station and produced the same as well as the accused before the Ilqa Magistrate by moving an application under Section 52-A of the Act (Ex.P18). Inventory Ex.19 was prepared, photographs Ex.P22 to Ex.P28 were taken and thereafter the Ilqa Magistrate issued certificate Ex.P29. After completion of the investigations, the challan was presented in the court for trial.

Finding a prima facie case against the accused, they were charge sheeted under Section 20 read with Section 8 of the Act, to which they did not plead guilty and claimed trial.

In support of its case, the prosecution examined six witnesses, all of whom, but one were police officials. PW3 Narender Singh is the erstwhile owner of the maruti car involved in the commission of the crime.

After conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. and all the incriminating

material appearing against them in the prosecution evidence were put to them, to which they denied each prosecution allegation and pleaded their innocence.

After hearing both the counsel for the parties and appraising the entire evidence and material on record, the trial court recorded aforementioned judgment of conviction and order on sentence.

We have heard learned Counsel for the parties and gone through the entire material coming on record.

First of all, it was argued by learned Counsel for the accused-appellants that there was no independent corroboration of the evidence available on record. As per the prosecution case, the place of alleged recovery is a public place. PW5 SI Lalit Singh deposed that Hansi chowk is a busy place. People were coming and going at that time. He further deposed that he tried to join the public persons in the investigations but they expressed their inability. He also stated that he did not take any action against those persons. With this statement of Investigating Officer, it is evident that no explanation is given by the Investigating Officer as to why he did not take any action against any of those public persons who refused to join the investigations of the case. His simple statement that the public persons expressed their inability to join the investigation is not sufficient to absolve the Investigating Officer of his liability to join the independent witnesses in the investigation of the case. Even otherwise, statement of Investigating Officer that the public witnesses refused to join the investigation is a vague statement and cannot be believed. If public

witnesses were available then they should be joined and if not, then some reasonable explanation should be given. In this regard, he has also cited Mohinder Singh v. State of Haryana, 1996(3) RCR (Crl.) 367. Thus, on account of non joining of independent witness, the prosecution case cannot be said to be free from doubt, benefit of which has to go to the accused.

The above contention of learned Counsel for the appellants is not sustainable. It is true that rule of prudence demands that there should be some corroboration through independent source of the statements of official witnesses but at the same time in Shera Singh v. State of Punjab, 1996(2) RCR (Crl.) 128, it has been held that there is no rule that evidence of police officials cannot be accepted unless it is corroborated by panch witness, if police officer is otherwise dependable. It is settled proposition of law that if the testimonies of the official witnesses inspire confidence in the mind of the court regarding guilt of the accused, the same can very well be made the basis of conviction. If the testimonies of official witnesses are consistent, cogent, convincing, reliable and trustworthy, the conviction can be recorded in a case as it is the settled law that the testimonies of the official witnesses are at par with the testimonies of non-official witnesses. Only because no independent witness was willing to join the investigations, the consistent statements of official witnesses would not be belied.

In the case in hand, the statements of PW5 SI Lalit Singh, Investigating Officer of the case, and that of PW4 HC Ashok Kumar are consistent, inspiring confidence in the mind of the court regarding guilt of the accused. There is no material on the file to show that PW5 SI Lalit

Singh was in any way inimical to the accused. Even otherwise, three kilograms of charas was recovered from the conscious possession of the accused-appellants which they were carrying by a car bearing registration No. HR-33-9911. The possibility of planting of aforesaid commercial quantity of charas by the Investigating Officer on the appellants is not there at all and no body would plant such a huge quantity of contraband falsely on the accused.

It was next argued by learned Counsel for the appellants that in this case, provisions of Section 50 of the Act were not complied with. No option was given to the accused telling them their right to be searched by a Gazetted Officer or a Magistrate.

On the other hand, it was argued by learned Counsel for the State that during the course of checking of the vehicle, the charas was found in a bag lying in the car occupied by the accused-appellants, therefore, it is a case of chance recovery. The charas was not recovered from the person of the accused. Section 50 is applicable only in those cases where the charas was recovered on personal search of the accused. He has also cited Baldev Singh v. State of Punjab, 1998(2) RCR (Crl.) 730. In that case, it was held that in case of chance recovery, provisions of Section 50 of the Act are not applicable.

Keeping in view the above argument of learned Counsel for the State and further the fact that even though Section 50 of the Act was not applicable in this case, yet notices under Section 50 of the Act were given to the accused which are Exhibited as Ex.P5 to Ex.P7 and to those notices,

appellant-accused gave their reply Ex.P8 to Ex.P10 reposing confidence in the Investigating Officer for search and under those circumstances, the Investigating Officer of the case took the search of the bag lying in between the two seats of the car. As such, the above contention of learned Counsel for the appellants is not sustainable.

It was next argued by learned Counsel for the appellants that in this case, recovery officer as well as the Investigating Officer is the same which is against the settled law as the recovery officer would go out of the way to show success of his case by adopting any means. As such, since the investigation of this case is conducted by the police officer who conducted the search and seizure of the contraband, therefore, the accused is entitled to acquittal.

The above argument of learned Counsel for the accused-appellants is devoid of any force as in this case, when the police party was present on patrol and vehicle checking at Gogripur road near Bhagwaria Gas Agency, maruti car occupied by the accused-appellants was seen coming from Hansi Chowk side. On seeing the police party, the driver of the aforesaid car turned back the vehicle towards Hansi Chowk. Under those circumstances, the Investigating Officer with the help of police officials could apprehend the car at the spot and thereafter on inquiry, the accused-appellants disclosed their identity and thereafter on checking of the car, a cream colour cloth bag was found in between two seats inside the car. After giving notice under Section 50 of the Act and obtaining replies of the accused, the search of the aforesaid bag was conducted. Under these

circumstances, the question of the Investigating Officer being complainant of the case does not arise. It is a case of chance recovery of the contraband by the police officer while he was on duty for vehicle checking.

It was lastly argued by learned Counsel for the appellants-accused that since the alleged recovery was made from a bag lying in the car, therefore, it cannot be said that the accused-appellants were in conscious possession of the contraband simply because they were occupying the vehicle, it cannot be said that each one of them was in exclusive possession of the contraband.

The above argument is again not sustainable as it is the settled proposition of law that in case any of the occupants of the car takes up the defence that he was not knowing that the vehicle was carrying a contraband, he has to show that he was having no knowledge about it. None of the accused has taken such a defence when their statements under Section 313 Cr.P.C. were recorded. The cloth bag containing 3 kilograms of charas was found lying in between the two seats inside the car. Mahi Pal was driving the aforesaid car whereas Ram Pal was sitting on the rear seat and Dolla Singh was sitting on the seat next to the driver seat. The very fact of turning back the car on seeing the police party further shows that the occupants of the car were very well knowing about the presence of contraband in the car which they were carrying. Since all the three accused were occupying the car which was carrying 3 kilograms of charas, therefore, all of them are proved to be in conscious possession of the contraband.

In the end, it was also argued by learned Counsel for the

appellants that in case of holding the appellant-accused guilty, lenient view may be taken regarding matter of sentence. It was stressed that all the three appellant-accused are unmarried; they are fatherless; they have to support their families. It is their first offence and not only that, they are also to raise their own families.

Taking into consideration the aforesaid arguments of learned Counsel for the appellants-accused and further keeping in view the fact that it is a case of commercial quantity, we are of the view that the ends of justice would be met if the sentence of the accused is reduced from 14 years to 10 years. As such, the appellant-accused are ordered to undergo rigorous imprisonment for a period of 10 years each and to pay a fine of Rs.1.00 lac each for committing the offence punishable under Section 20 read with Section 8 of the Narcotic Drugs & Psychotropic Substances Act, 1985, and in default of payment of fine, they shall further undergo rigorous imprisonment for a period of one year each. Benefit of Section 428 Cr.P.C. be also given to them.

For the reasons recorded above, finding no merit in this appeal, maintaining the judgment of conviction dated 19.2.2010 and order on sentence dated 22.2.2010, with the modification in the order of sentence, as indicated above, the appeal is dismissed.

September 28, 2015.
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[**Raj Rahul Garg**]
Judge

[**Hemant Gupta**]
Judge