

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-620-DB-2010 (O&M)

Date of decision: 05.11.2015

Sukhbir Kaur @ Jaspal Kaur and another

..... Appellants

Vs.

State of Punjab

..... Respondent

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

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

Argued by: Ms. Aditi Girdhar, Advocate as amicus curiae
for the appellants.

Ms. Manjari Nehru Kaul, Additional Advocate General
Punjab.

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 18.05.2010 and order on sentence dated 20.05.2010 rendered by learned Special Court, Kapurthala whereby the appellants-accused were convicted for committing offence punishable under Section 15 of Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be called as N.D.P.S. Act) for keeping in their possession 24 bags of poppy husk which were recovered from the truck bearing fake number

PCH 9245; and under Sections 419, 465, 468 and 471 of Indian Penal Code (for short 'IPC'). Vide order of sentence dated 20.05.2010, each one of the accused was sentenced to undergo rigorous imprisonment for 12 years and to pay a fine of ₹1 lac with default clause for committing offence punishable under Section 15 of the N.D.P.S. Act; for offence under Section 419 IPC, to undergo rigorous imprisonment for 2 years; for offence under Section 465 IPC to undergo rigorous imprisonment for 1 year; for offence under Section 468 IPC to undergo rigorous imprisonment for 3 years and to pay a fine of ₹1,000/- with default clause and for offence under Section 471 IPC to undergo rigorous imprisonment for 2 years and to pay a fine of ₹1,000/- each with default clause.

Brief facts of the case are like this; that on 13.11.2003, SI Lehmber Singh (Investigating Officer), In-charge Police Station, Satnampura, received a secret information that near the *kothi* of Rawalan in Mohalla Satnampura, Truck No. PCH 9245, S-Model is parked in an open plot in which Gurdip Singh s/o Beant Singh, resident of Rawalan, *kothi*, Mohalla Satnampura, was sitting on the driver seat with huge quantity of poppy husk and was waiting for the customers. In case, the raid is conducted at once, the aforesaid Gurdip Singh can be apprehended along with huge quantity of poppy husk in the truck. On this information, *ruqa* was sent to Police Station, City, Phagwara, whereupon, formal FIR was recorded. SHO was requested for sending some Gazetted Officer at the spot. Information to Control Room was

also sent. Raid was also conducted at the disclosed place. On the way, PW Bikramjit Singh met them who was also joined in the raiding party. On seeing the police party, one person sitting in the driver seat of the truck and one lady who was talking to him, managed to escape on a motorcycle which was parked across the Railway Lines by taking advantage of darkness. PW Bikramjit Singh, identified both the accused Gurdip Singh and Sukhbir Kaur as they were tenants in his house. In the meantime, Harmanbir Singh Gill, SP Phagwara, came at the spot. On his directions, Investigating Officer conducted the search of the truck and 24 bags of poppy husk were recovered from the body of the aforesaid truck which were covered by paddy straw. Two samples of 250 grams each were taken from each bag. On weighment, the remainder was weighed to 34 kg.500 gm. of poppy husk. Parcels of the samples were separately sealed with the seal of 'LS' whereas the residue of the each bag was separately sealed with the seal of 'LS'. Seal of 'SP' bearing letters 'HS' were also put on the aforesaid samples and residues. Sample seal was also retained. Investigating Officer handed over his seal to PW Bikramjit Singh whereas SP retained his seal with him. Truck was also taken into police possession vide separate recovery memo. Rough site plan of the spot with correct marginal notes was prepared. Statement of witnesses were recorded. On reaching the police station, Investigating Officer, produced the case property before Inspector/SHO Harpreet Singh of the Police Station, City, Phagwara, who verified the facts and put his own seal impression of 'HS' on the

case property. Thereafter, the case property was deposited with the MHC of the police station. On the next day, the case property was obtained from the MHC of the police station by the Investigating Officer and produced the same before *Ilaqa* Magistrate who verified the facts and signed the case property. Thereafter, the case property was deposited with the MHC of the police station with the seals intact.

When Investigating Officer was coming back to P.P.Satnampura, on the way near Railway Crossing, someone informed him on telephone that Sukhbir Kaur accused was present at her rented house. In case of raid, she can be apprehended. After joining the Lady Constable Parvez Rani, the raid was conducted at the disclosed place i.e. the rented house of Sukhbir Kaur and she was apprehended from there. PW Bikramjit Singh, on information of Investigating Officer, reached the police station and identified accused Jaspal Kaur. Report of Chemical Examiner was received and, thereafter, the challan was put in the Court against the accused.

Accused Harvinder Singh was arrested by SI Rajinder Singh through production warrant. On 16.05.2004, Investigating Officer was present in the police station, when MHC produced one letter from ADGP (Crime), addressed to SSP, Kapurthala mentioning therein that the accused did not disclose their real names and they placed fictitious number on the number plate of the truck. In this regard, a detailed inquiry was conducted by DSP Joginder Pal. Direction was also issued by ADGP that a supplementary challan

against both the accused be also filed in the Court. Photographer also clicked the photographs of the truck to prove the fictitious number. Then supplementary challan was presented in the Court.

Finding a *prima-facie* case against the accused, they were charge-sheeted for committing offence punishable under Section 15 of the N.D.P.S. Act and under Sections 419, 465, 468 and 471 IPC.

After taking entire prosecuting evidence, statement of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation appearing against them and pleaded their innocence and false implication. They also pleaded that nothing was recovered from their possession. They examined 5 witnesses in their defence.

After hearing both the sides and appraising the entire material and evidence coming on record, the learned trial Court convicted both the accused for committing offence punishable under Section 15 of the N.D.P.S. Act and under Sections 419, 465, 468 and 471 IPC and also passed the order of sentence, as mentioned in the earlier part of this judgment.

We have heard learned counsel for the parties, besides appraising the entire material and evidence coming on record.

Learned counsel for the appellants-accused contended that the appellants have been falsely implicated in this case and actually they have got nothing to do with the alleged recovery of 24 bags of poppy husk from the truck No. PCH 9245, S-Model. The aforesaid truck does not belong to the appellants-accused. At the time of effecting of alleged recovery,

the appellants-accused were not present. They have been arrested at a subsequent stage and then implicated in this case falsely.

In order to prove the false implication of the accused, the statements of Investigating Officer Lehmbir Singh (PW5) and that of Harmanbir Singh (PW6) were referred. Lehmbir Singh (PW5), Investigating Officer of the case, deposed that he received a secret information on 13.11.2003 that near the *kothi* of Rawalan in Mohalla Satnampura, Truck No. PCH 9245, S-Model is parked in an open place (*TUR*) in which Gurdip Singh son of Beant Singh, resident of near Govt. Primary School, Dakoha, presently resident of Mohalla Satnampura, Phagwara, was sitting in the driver seat with huge quantity of poppy husk and was waiting for the customers. Informer also told him that in case raid is conducted at once, the accused can be apprehended along with huge quantity of poppy husk in the truck. At this, he sent *ruqa* to the police station and formed the raiding party. While, they were going to the disclosed place for conducting the raid, Bikramjit Singh, independent witness met them. He was also joined in the raiding party. Thereafter, raid was conducted at the disclosed place. Investigating Officer deposed that on seeing the police party accused Harvinder Singh, while sitting in the driver seat in the truck and one lady namely Jaspal Kaur was talking to Harvinder Singh, had run away from the spot. PW Bikramjit Singh, identified both the accused as they were his tenants. In the meanwhile, Harmanbir Singh, SP Phagwara, reached the spot along with his gunman. He was made acquainted with

the facts of the case and, thereafter, on his directions, Investigating Officer conducted the search of aforesaid truck and recovered 24 bags of poppy husk from that truck which were covered under the '*Parali*'. Thereafter, all the formalities of drawing of samples, sealing etc. were completed. Harmanbir Singh (PW6), simply deposed about search of the truck and recovery of 24 bags of poppy husk from that truck after removal of straw ('*Parali*') and, thereafter, drawing of samples and sealing of the same etc.

Learned counsel for the appellants-accused deposed that as the accused were not apprehended from the spot and as there is no evidence on the file regarding their identification at the spot, therefore, they cannot be said to be in exclusive possession of 24 bags of poppy husk and the present offence cannot be said to be proved against them.

The above contention of learned counsel for the appellants-accused carries weight. From the above-discussed statement of Lehmbir Singh, (PW5), Investigating Officer, it is evident that the accused were identified by PW Bikramjit Singh on account of the fact that they were his tenants. Investigating Officer was not known to the accused. Accused were not apprehended at the spot. As per the statement of Investigating Officer, on seeing the police party, accused had run away on the motorcycle taking advantage of darkness. The best evidence could have been that of Bikramjit Singh, which is not available on the record.

Learned counsel for the appellants-accused contended that

Bikramjit Singh, was initially examined as witness but at that time only examination-in-chief was recorded. He was not subjected to cross-examination. Thereafter, he did not appear as witness. As such, in the absence of cross-examination, his statement cannot be read into evidence. This argument of learned counsel for the appellants-accused carries weight. In the absence of statement of Bikramjit Singh, who allegedly identified accused Harvinder Singh, present in the truck and accused Sukhbir Kaur, talking to Harvinder Singh, while standing outside the truck; the evidence regarding identification of accused at the spot is said to be missing. It is evident from the prosecution case that accused were not apprehended at the spot. They have in fact run away from the spot. Under those circumstances, in the absence of proper identification of accused, it cannot be said that it is the accused alone who were present in the truck, containing 24 bags of poppy husk.

Of course, prosecution examined Anita wife of Bikramjit Singh. She deposed that the accused were tenants in the upper story of the house of her husband located at Mohalla Stanampura, Phagwara, yet the statement of Anita cannot be said to be on the fact that she identified the accused present with the truck from which 24 bags of poppy husk were recovered by the police. With this evidence on record, we are of the considered view that the prosecution has miserably failed to connect the accused with this crime unless the prosecution proves that the accused were in exclusive possession of 24 bags of poppy husk, lying in the truck in question, they cannot be convicted.

As a result, finding merit in this appeal, the impugned judgment dated 18.05.2010 and order on sentence dated 20.05.2010 are set aside and the appeal is accepted, by giving benefit of doubt, appellants-accused are ordered to be acquitted. They be released at once, if not wanted in any other case.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

05.11.2015
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