

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-2496-SB of 2008

Date of Decision: 17.3.2015

Jasbir Singh

... Appellant(s)

Versus

State of U.T. Chandigarh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Darshan Singh.

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

Present: Kanwar Sanjiv Kumar, Advocate
for the appellant.

Mr. Neeraj Januha, Advocate
for Mr. A.S.Sullar, Assistant Public Prosecutor
for U.T. Chandigarh.

Darshan Singh, J.

1. The present appeal has been preferred by the appellant against the judgment of conviction dated 10.10.2008 passed by the learned Judge, Special Court, Chandigarh vide which he was held guilty and convicted for the offence punishable under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and the order of sentence of the even dated vide which the appellant was sentenced him to undergo rigorous imprisonment for a period of seventeen days and to pay a fine of ₹ 7,000/-, in default thereof to further undergo rigorous imprisonment for a period of four days.

2. The prosecution case as emerged from the ruqa Ex.PE is that

Sub Inspector Jaspal Singh along with his companion police officials, was on patrolling duty and laid a naka on the dividing road of Sector 35/43, Chandigarh. At about 8.35 P.M., one person, named Jasbir Singh, was seen coming from South End Chowk on a vehicle make Honda Activa, bearing registration No. CH-03-L-5307. On spotting the police party, he suddenly turned back his vehicle to flee away but in that process, he fell down on the road. PW.4 Amanpreet Singh, who was coming in his car behind the said person, stopped his car and held him. Meanwhile, the Investigating Officer apprehended the suspect. In the presence of PW Amanpreet Singh, personal search of Jasbir Singh was carried out and a polythene packet containing opium was recovered from right side pocket of his trouser. On weighing, it came to be 40 grams for which he could not produce any permit or licence for keeping the same in his possession. Out of the recovered contraband, two samples of 5 grams each were taken out and converted into sealed parcels. The remaining contraband was kept in separate sealed parcel. The seal after use was handed over to PW.4 Amanpreet Singh. The case property was taken into possession vide recovery memo Ex.PC duly attested by the witnesses and ruqa Ex.PE were sent to the Police Station for recording of formal FIR. On request of Sub Inspector Jaspal Singh, Sub Inspector Krishan Chand, the second Investigating Officer reached at the spot and the case property was handed over to him. He verified the case property and found it to be in intact condition. The rough site plan Ex.PL was also prepared along with the correct marginal notes. After recording the statements of witnesses, the appellant along

with the case property was produced before PW Jagbir Singh, Inspector/Station House Officer. The Station House Officer further sealed the samples and the case property. The above said FIR was investigated and report under Section 173 Cr.P.C. was prepared and presented in the Court.

3. On 20.2.2006, the appellant was charge sheeted for the offence punishable under Section 18 of the Act, to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, the prosecution examined as many as eight witnesses. The prosecution closed its evidence.

5. Thereafter, statement of the accused under Section 313 Cr.P.C. was recorded. All the incriminating circumstances were put to him. He denied the same and pleaded innocence. He pleaded that he was falsely implicated in this case and nothing was recovered from him. Infact, there was altercation between him and Sub Inspector Jaspal Singh prior to the registration of the present case as both of them resides in the same sector. He was picked up from his official residence i.e. House No. 42-B, Sector 46-A, Chandigarh at 10.30 P.M. by Sub Inspector Jaspal Singh and when he protested, his neighbourer Varinder, Thakur Singh and Avtar Singh etc. also attracted to the spot. He was forcibly taken away by the Sub Inspector and thereafter, the case was planted upon him on account of tussle.

6. In defence, two witnesses were examined by the appellant.

7. DW.1 Varinder Singh Malik and DW.2 Thakur Singh stated that they are neighbour of appellant Jasbir Singh. He was unlawfully

picked up by the police in their presence.

8. On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned Judge, Special Court, Chandigarh held the appellant guilty and convicted him for the offence punishable under Section 18 of the Act and was sentenced as mentioned in the earlier 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 Kanwar Sanjiv Kumar, learned counsel for the appellant, Mr. A.S.Sullar, Assistant Public Prosecutor for U.T. Chandigarh and have meticulously examined the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that the appellant has been falsely implicated in this case due to his tussle with Sub Inspector Jaspal Singh. He contended that the appellant was lifted from his house on 21.5.2005 at about 10/10.30 P.M. by him and then was falsely implicated in this case.

12. He further contended that PW.4 Amanpreet Singh, the alleged independent witness, has categorically deposed that he was under the pressure of Sub Inspector Jaspal Singh. Even his name has been lateron substituted in the recovery memo by doing a cutting which shows the manipulation and interpolation in the documents. The statement of such a witness cannot be relied upon.

13. He further contended that PW.4 Amanpreet Singh had not been produced before the Station House Officer, which is a non-compliance of Section 55 of the Act. The inventories have been

prepared by the Deputy Superintendent of Police but there is no evidence on record to establish that the case property was ever produced before him.

14. He further contended that from the cross-examination of PW.6 Sub Inspector Krishan Chand, the subsequent Investigating Officer, it is apparent that his signatures have only been procured to complete the formalities. Infact, he had neither visited the spot nor prepared any document. The whole show was managed by Sub Inspector Jaspal Singh.

15. He further contended that there are material contradictions in the statements of the prosecution witnesses which render the prosecution case entirely doubtful. The defence plea raised by the appellant is fully established from the statements of DW.1 Varinder Singh Malik and DW.2 Thakur Singh, his neighbours, in whose presence the appellant was taken away to the police station. Thus, he pleaded that it is a clear case of false implication by Sub Inspector Jaspal Singh.

16. On the other hand, learned counsel for the U.T. Chandigarh contended that 40 grams of opium was recovered from the possession of the appellant. The case of the prosecution is fully supported by PW.3 Sub Inspector Jaspal Singh and PW.4 Amanpreet Singh, the independent witness. The subsequent investigation has been conducted by PW.6 Sub Inspector Krishan Chand. The appellant along with the case property and the witness was produced before PW.7 Inspector Jagbir Singh, the then Station House Officer, Police Station Sector 36,

Chandigarh. The inventories were duly certified by the Magistrate. Thus, he contended that there is no infirmity in the conviction of the appellant recorded by the learned trial Court.

17. I have duly considered the aforesaid contentions. It was incumbent upon the prosecution to prove its case beyond shadow of reasonable doubt by leading the cogent, consistent and reliable evidence. In the instant case, a specific defence has been raised by the appellant that he had some altercation with Sub Inspector Jaspal Singh as both of them reside in the same sector. Thereafter, he was picked up from his official residence by Sub Inspector Jaspal Singh. His neighbourers protested, but he was forcibly taken away by the said Sub Inspector and the case was planted upon him on account of tussle with him. Once this specific plea has been raised by the appellant levelling serious allegations against the Investigating Officer, the Court is duty bound to scrutinize the prosecution evidence carefully, consciously and minutely.

18. On the point of recovery, the case of the prosecution is based on the statements of PW.3 Sub Inspector Jaspal Singh, the Investigating Officer of the case and PW.4 Amanpreet Singh, the alleged independent witness of recovery. PW.4 Amanpreet Singh cannot be considered to be an independent and impartial witness. In the cross-examination, he has admitted that he does the private job of lifting the vehicles for the banks. He further deposed that his seniors are well-known to Sub Inspector Jaspal Singh and his boss is a friend of Sub Inspector Jaspal Singh and they used to visit each other frequently. He used to effect the recoveries

from all over Chandigarh and more particularly in Sector 36 which falls under the area of Sub Inspector Jaspal Singh. He further admitted that he is facing trial in three theft cases and two of the cases relates to Police Station Sector 36, Chandigarh wherein Sub Inspector Jaspal Singh was posted. He has further categorically admitted that he is a little bit under the pressure of Sub Inspector Jaspal Singh. He further clarified in answer to the Court question that he was under pressure as false theft cases, mentioned above, have been registered against him. So, PW.4 Amanpreet Singh was well acquainted with Sub Inspector Jaspal Singh. He was an accused in three theft cases. Two of the cases relate to Police Station Sector 36, Chandigarh where Sub Inspector Jaspal Singh was posted and he has categorically admitted that due to those theft cases, he was under pressure of Sub Inspector Jaspal Singh. Thus, Sub Inspector Jaspal Singh has selected the person, who was under his pressure and convenient to him to cite as a witness, which creates doubt about the authenticity of the prosecution case.

18. Ex.PC is the recovery memo of the opium from the possession of the appellant. The seizure memo Ex.PC is the first document, prepared by the Investigating Officer and is the most important and vital one. In the body of seizure memo Ex.PC, the name of the independent witness has been substituted by erasing the name earlier written and thereupon the name of Amanpreet Singh has been over written, which is apparent to the bare eyes. So even the name of PW.4 Amanpreet Singh has been substituted by doing interpolation in the seizure memo.

19. The record of the case shows that Sub Inspector Jaspal Singh

was managing the entire show in this case. It is shown that at the spot itself, after the recovery, further investigation was handed over to PW.6 Sub Inspector Krishan Chand. But the cross-examination of Sub Inspector Krishan Chand depicts that his signatures have been obtained just to complete the formality. Sub Inspector Krishan Chand deposed that the statements were infact not recorded by him but he asked Sub Inspector Jaspal Singh to record the statements. Personal search memo was also prepared by Sub Inspector Jaspal Singh. He has not drafted any document in the present case but he has appended his signatures thereon to show that he had carried out further investigation. He further deposed that except signing some papers, he had not done anything in the present case. These admissions of Sub Inspector Krishan Chand establish that it was Sub Inspector Jaspal Singh who was the major actor in this case and signatures of Sub Inspector Krishan Chand were obtained on the documents merely to show that the subsequent investigation was conducted by some other police officer. The aforesaid admissions of Sub Inspector Krishan Chand exposes the conduct of Sub Inspector Jaspal Singh and further renders the prosecution case doubtful.

20. The over-zealousness of Sub Inspector Jaspal Singh in the present case is further evident from the fact that he has produced the case property and accused before the Magistrate. It is the admitted case of the prosecution that further investigation was handed over to PW.6 Sub Inspector Krishan Chand. It is not known as to how the investigation was again taken up by Sub Inspector Jaspal Singh. The order Ex.PK/1

passed by the learned Duty Magistrate, Chandigarh shows that the case property was produced before the learned Magistrate along with an application under Section 52(A) of the Act by Sub Inspector Jaspal Singh. The case property was again returned to him by the learned Magistrate after certifying the inventory.

21. PW.4 Amanpreet Singh has stated that Sub Inspector Jaspal Singh had escorted him to the Court on the date when his statement was recorded. Sub Inspector Jaspal Singh has appeared in the Court and got his statement recorded on 2.8.2007. However, the statement of PW.4 Amanpreet Singh has been recorded on 15.5.2008. But still, he was after the witness cited by him and escorted him to the Court which shows the extent of interest being taken by Sub Inspector Jaspal Singh in the present case and the admission of PW.4 Amanpreet Singh that he was under the pressure of Sub Inspector Jaspal Singh is thus evident.

22. There are serious contradictions in the statements of the prosecution witnesses. According to PW.3 Sub Inspector Jaspal Singh, all the cloth pouches were prepared by him at the spot after sewing the same with thread and needle. He further deposed that Constable Jatinder Singh had sewed that cloth in the shape of three cloth parcels with his hands with the help of thread and needle in his presence. But PW.4 Amanpreet Singh stated that Investigating Officer Jaspal Singh stitched the loose cloth to make out "*thailies*" with a view to parcel the contrabands in those "*thailies*". He stitched it with his own hands and with the help of thread and needle. Sub Inspector Jaspal

Singh deposed that he had weighed the contraband with small traditional scale but it was not of the same as is used by the Goldsmiths. But PW.4 Amanpreet Singh deposed that the weighing scale was that of which is used by the jewellers specifically. As per Sub Inspector Jaspal Singh, he prepared all the memos by standing on the road side at the spot. But PW.4 Amanpreet Singh deposed that the papers were drafted by the Investigating Officer by sitting inside his Indica car. But he does not know what was written by him. As per the basic story of the prosecution, on seeing the police party, the accused/appellant turned back his scooter and fallen down on the road. PW.4 Amanpreet Singh was going in the car behind the said scooter. He stopped his car and tried to pick up the appellant. PW.4 Amanpreet Singh has even deposed that the writing work was conducted by Sub Inspector Jaspal Singh while sitting in the said car. But PW.6 Sub Inspector Krishan Chand deposed that he did not see Amanpreet Singh as to where he went and by which mode of transportation. He was not having any car with him. This contradiction goes to the root of the case and renders the presence of PW.4 Amanpreet Singh as well as PW.6 Sub Inspector Krishan Chand doubtful at the spot. Sub Inspector Krishan Chand has further deposed that Amanpreet Singh did not accompany the police party when they took the accused to the police station. He further deposed that the witness was freed from the spot at 11.15 P.M. This version of Sub Inspector Krishan Chand again contradicts the prosecution story as PW.7 Jagbir Singh, the then Station House Officer, Police Station Sector 36, Chandigarh has stated that he had verified the facts from the

Investigating Officer, the witness and the accused. But Sub Inspector Krishan Chand stated that the witness was freed from the spot and was not taken to the police station. It falsifies the testimony of PW.7 Jagbir Singh, Deputy Superintendent of Police (the then Inspector/Station House Officer) with respect to the verification of the facts from all the witnesses. PW.4 Amanpreet Singh has stated that he does not know from where the accused was brought to the spot by the police. He does not know by which mode the police had come to the spot. He does not know from where the containers were brought. He does not know from which metal the containers were made. He further deposed that he can tell only the name of Sub Inspector Jaspal Singh, rest he does not know who else were with him. He further deposed that he had only signed some papers. He was called in the police station later on. He further deposed that he does not know what investigation was carried out by the Investigating Officer in this case at the spot as he did not see anything being done by him. He further categorically deposed that all the parcels were prepared in the police station by the Investigating Officer. He further deposed that two/three more persons from the public had signed the memos in the police station in his presence. This version of PW.4 Amanpreet Singh also goes to the root of the case. He has even stated that he did not see the Investigating Officer doing anything at the spot and all the parcels were prepared in the police station, whereas as per the prosecution story, those are alleged to have been prepared at the spot. He even deposed that two/three other persons had signed the memos in his presence which is not supported from the documents.

Thus, the aforesaid contradictions and infirmities further render the prosecution case doubtful.

23. As per Section 52A(2) of the Act, it is the Officer-in-Charge of the police station who will prepare the inventory of the contraband. But in this case, the inventory Ex.PJ has been prepared by the Deputy Superintendent of Police (South), U.T. Chandigarh and not by the Officer-in-Charge of the police station. PW.7 Jagbir Singh, the then Station House Officer has categorically admitted in the cross-examination that he himself did not prepare the inventory of the case property produced before him, which is a non-compliance of Section 52A of the Act. Furthermore, the inventory can only be prepared on examining the parcels of the case property, seals affixed thereupon and even the weight of the parcels has to be verified. The Deputy Superintendent of Police, who has prepared the inventory has not been examined by the prosecution. There is also no evidence on record to show that the case property was ever produced before the Deputy Superintendent of Police for preparing the inventory. Malkhana Moharrir Head Constable Tikka Singh has appeared as PW.1. He has nowhere deposed that on 23.5.2005, the date mentioned in the inventory Ex.PJ, parcels of the case property were sent to the Deputy Superintendent of Police (South), U.T. Chandigarh for preparing the inventory. So how the Deputy Superintendent of Police prepared the inventory of the case property is again a mystery.

24. Thus, keeping in view my aforesaid discussion, the cumulative effect of all the circumstances discussed above, renders the prosecution

version doubtful. The appellant deserves the benefit of doubt and his conviction and sentence as recorded by the learned trial Court cannot be sustained in the eyes of law. Consequently, the present appeal is hereby allowed. The conviction and sentence of the appellant is hereby set aside. The appellant stands acquitted of the charges.

(Darshan Singh)
Judge

March 17, 2015

“DK”