

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. D-702-DB of 2010

Date of Decision: 11.09.2015

Kala Singh

...Appellant

Versus

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? Yes
3. Whether the judgment should be reported in the Digest?

Argued By: Mr. S. K. Rana, Advocate for the Appellant.

**Mr. Sukhdip Singh Brar, Additional Advocate General,
Punjab.**

Raj Rahul Garg, J.

This is an appeal directed against the impugned judgment of conviction dated 25.05.2010 rendered by the learned Judge, Special Court, Barnala whereby appellant-accused was convicted for committing offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as 'NDPS Act'*) for keeping in his possession 7 bags of poppy husk, containing 25 k.g. poppy husk in each bag, without any permit or license. Vide order on sentence of the even date, he

was sentenced to undergo rigorous imprisonment for 12 years and to pay a fine of Rs. 1,00,000/- (Rupees one lac). In default of payment of fine, he shall undergo further rigorous imprisonment for two years.

As per the prosecution case, on 12.12.2008, SI Kuldeep Singh along with police officials were present at bridge over the canal at Vidhate Road, Sehna. A secret information was received against appellant-accused that he indulge in sale of poppy husk from a *Chhan* built in the land which he has taken on lease (*theka*). In case of raid, heavy quantity of poppy husk could be recovered. On this information, Ruqqa, Ex. PC, was sent to the police station through Constable Sukhwinder Singh, whereupon, formal FIR Ex. PC/1 was recorded. Harbans Singh son of Darbara Singh was joined as witness in the investigations of this case. Raid was conducted at the *Chhan* of the accused situated in the fields in the area of village Sehna. The appellant-accused was found sitting on the aforesaid bags. SI Kuldeep Singh disclosed his identity and expressed his suspicion that he was suspecting some narcotic substance in the aforesaid bags and the same are to be searched. He also apprised the accused of his legal rights to get the search effected in the presence of Gazetted Officer or Magistrate. Appellant-accused exercised his option in favour of Gazetted Officer. Writing to this effect was made which was duly signed by the appellant-accused. Harbans Singh also signed this writing as witness. DSP was called at the spot through wireless message. On reaching the spot, DSP disclosed his identity to the accused and asked him if he wanted to get the aforesaid plastic bags searched in the presence of a Magistrate or Gazetted Officer. The accused

reposed his confidence in the DSP Devinder Singh. In this regard also writing was prepared. Thereafter, on the instructions and under the supervision of Devinder Singh DSP, Kuldeep Singh SI/SHO conducted the search of the aforesaid bags which were seven in number. Same were found to be containing poppy husk. Two samples of 250 grams each were prepared from each bag. The remaining poppy husk of each bag was weighed to 24.5 k.g. All the sample parcels were separately sealed with the seal of 'KS' and 'DS'. The residue poppy husk was sealed in each bag with the seal of 'KS' and 'DS'. Specimen seal was also prepared. Bulk parcels, sample parcels as well specimen seal were taken into police possession, vide memo Ex. PF. Site plan of the spot was prepared as Ex. PH. The accused was arrested. SI Kuldeep Singh prepared report under Section 57 of the NDPS Act, Ex. PJ, and the same was sent to the DSP Tapa. Case property was deposited with MHC of the malkhana. On 13.12.2008, case property was taken from the MHC and produced the same along with accused and inventory report Ex. PK before the Illaqa Magistrate. Thereafter, the bulk parcels as well the sample parcels of each bag were deposited in the malkhana. After obtaining Chemical Examiner's report, whereby, the contents of the samples, sent for chemical examination, were reported as that of poppy head, the challan was presented against the accused.

The appellant-accused was charge-sheeted for committing offence punishable under Section 15 of the NDPS Act for keeping in his possession 7 bags of poppy husk without any permit or license.

After taking entire prosecution evidence; recording of statement

of accused and after hearing both the sides, the aforementioned impugned judgment of conviction and order on sentence was recorded by the learned Judge, Special Court, Barnala.

We have heard Mr. S. K. Rana, Advocate for the Appellant and Mr. Sukhdip Singh Brar, Additional Advocate General, Punjab for the State of Punjab and have also gone through the entire record.

First of all, it was argued by learned counsel for the appellant-accused that conviction in this case has been recorded only on the basis of testimony of Investigating Officer. Harbans Singh was joined as independent witness in this case but later on he was given up as having been won over by the accused. As such, only on the basis of sole testimony of Investigating Officer SI Kuldeep Singh, PW-4, conviction is not sustainable. This argument of learned counsel for the appellant-accused does not appeal to reason as the judgment of conviction has not been recorded on the sole testimony of PW-4. Devinder Singh, DSP, PW-5, fully corroborated the testimony of SI Kuldeep Singh, Investigating Officer. DSP is a Gazetted Officer. In his presence and under his supervision, recovery of 7 bags of poppy husk was effected from the possession of accused. Samples were duly taken and sent to FSL for examination. The report FSL, Ex. PF, says that the seals on the samples were intact and further that the same was not tampered with. Chemical Examiner reported the contents of parcels as that of poppy head. After recovery of contraband, it was firstly deposited with MHC of the police station and thereafter on the next day the same were taken from the MHC of the police station by the Investigating Officer and produced before

Illaqa Magistrate in compliance with the provisions of Section 52-A of the NDPS Act. He also verified the contents of case property as well samples. Also there is nothing on record to show that the Investigating Officer or the DSP were in any way inimical to the accused. There is no reason for false implication of accused by planting commercial quantity of poppy husk on him. The statement of PW-4 and that of PW-5 are consistent and inspire confidence in the mind of the court regarding guilt of the accused. Under these circumstances, it cannot be said that the judgment of conviction has been recorded by the learned Judge, Special Court only on the basis of statement of PW-4 SI Kuldeep Singh, Investigating Officer of the case.

It was next argued by learned counsel for the appellant-accused that 25 bags of poppy husk were recovered from the possession of accused but there is no evidence on file to show that any amount of the contents of the aforesaid bags were used by the accused. This argument is of no help to the appellant-accused as it is nowhere requirement of law for recording conviction under Section 15 of the NDPS Act that he must have used the contraband. The proof of exclusive possession of poppy husk without any permit or licence makes him liable for the offence under Section 15 of the NDPS Act.

The next contention of learned counsel for the appellant-accused is that nothing was recovered from his possession and he was lifted from his house by the police in the presence of Harbans Singh and false recovery has been planted on him. There is, in fact, no material on the file to show that actually the accused was picked up from his house or was falsely

implicated in this case. Harbans Singh has not been examined as defence witness by the accused. Short of repetition, it has also been discussed above that the Investigating Officer or the DSP were not inimical to the accused. As such, there is no reason for them to falsely implicate accused in this case. Also for false implication, no one would be able to plant commercial quantity of the poppy husk as it would be very difficult for anyone to obtain such a huge quantity of poppy husk for false implication.

It was further argued by learned counsel for the appellant-accused that in the report FSL, Ex. PF, there is no mention about the percentage of the narcotic found in the sample sent for chemical examination. As such for this reason, the accused is entitled to benefit of doubt. This argument is again not sustainable as the contents of the sample itself were reported as that of poppy heads. As the contents of the sample itself were that of poppy husk, therefore, the question of its percentage was not there.

It was also argued by learned counsel for the appellant-accused that in this case Harbans Singh was joined as independent witness but later on he was given up as having been won over by the accused. Had prosecution produced him as witness in the court, the prosecution case would have been disclosed. Even if, a witness is won over, he has to be examined in the court so as to know the genuineness of the prosecution case. Since without examination of Harbans Singh in the court, he has been given up as having been won over by the accused, therefore, accused is entitled to benefit of doubt.

It is true that rule of prudence demands that there should be some corroboration through independent source of the statements of the official witnesses but if the independent witness though joined by the prosecution, but given up as having been won over by the accused, it would not be fatal for the prosecution case. The prosecution has examined a Gazetted Officer to prove the process of recovery. There is no reason as to why such person would depose falsely. There is no allegation of enmity or any other reason, as to why, the police officials would depose against the appellant. In a case where the police had joined the independent witness but not examined, a heavy duty is cast upon the court to scrutinize the statements of police officials with care and caution. If the testimony of the official witness inspire confidence in the mind of the court regarding the guilt of the accused; if the same are consistent, cogent, convincing, reliable and trustworthy, the conviction can well be based. It is also the settled proposition of law that testimonies of the official witnesses are at par with the testimonies of non-official witnesses. As such it cannot be said that if the independent witness is not joined then the testimony of a Gazetted Officer or a Magistrate or the consistent statements of official witnesses would not be believed. As such this contention of learned counsel for the appellant-accused is also devoid of any merit.

On the point of sentence, it was argued by learned counsel for the appellant-accused that the accused is a poor person. He is the first offender. He has to support his family. As such, some leniency may be shown in the matter of sentence. Taking into consideration the above

contention of learned counsel for the appellant-accused, the sentence to undergo rigorous imprisonment for 12 years awarded to the accused-appellant is reduced to 10 years. However, the amount of fine of Rs. 1,00,000/- is maintained and it is ordered that in default of payment of fine, he shall undergo further rigorous imprisonment for two months. As such, the order of sentence dated 25.05.2010 is modified accordingly.

For the reasons recorded above, finding no merit in this appeal, the judgment of conviction dated 25.05.2010 is maintained. However, the order on sentence of the even date is modified to the extent indicated above.

This appeal is, thus, ordered to be dismissed, accordingly.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

11.09.2015

Waseem Ansari