

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

Crl. Appeal No.D-731-DB of 2010

Jand Singh

... **Appellant**

v.

State of Punjab

... **Respondent**

2.

Crl. Appeal No.D-967-DB of 2010

Ajmer Singh

... **Appellant**

v.

State of Punjab

... **Respondent**

Date of decision: September 28, 2015.

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 Sant Pal Singh Sidhu, Advocate and
Shri Sidakmeet Singh Sandhu, Advocate for the appellant
in CRA-D-731-DB-2010.

Shri Mohammad Imran, Advocate for the appellant
in CRA-D-967-DB-2010.

Mrs. Manjari Nehru Kaul, Additional Advocate General,
Punjab for the respondent-State.

Raj Rahul Garg, J.

The aforesaid two appeals have been directed against the
judgment of conviction dated 2.7.2010 rendered by the learned Judge,

Special Court, Kapurthala whereby the appellant-accused Jhand Singh and Ajmer Singh were convicted for committing an offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter mentioned as the Act), whereas Lakhwinder Singh was acquitted for the reason that the prosecution has failed to prove its case against him beyond any shadow of reasonable doubt. Vide order of sentence of the even date, both the appellants were sentenced to undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs.1.00 lac each and in default of payment of fine to undergo further rigorous imprisonment for a period of 1½ years each for the offence under Section 15 of the Act.

Briefly, prosecution case is like this: that on 2.8.2007, DSP Balbir Singh received a secret information that Lakhwinder Singh @ Lakha and Jhand Singh son of Deva Singh indulge in the business of sale of poppy husk on a large scale. They bring poppy husk from Gwalior and supply the same in different cities of Punjab. That day, both of them were bringing poppy husk by truck bearing fake registration No.PB-08-AD-7902 by keeping the same under the bags of “mausmis”. They are coming from the side of Kartarpur and going towards the area of Begowal-Bholath to supply poppy husk. In case, a nakabandi at 'Bein bridge' in the area of Bholath is laid, they can be apprehended red-handed. Finding this information reliable, DSP sent information to SSP, Kapurthala through HC Puran Singh. Ruqa Ex.PH was sent to the Police station for registration of the case against the accused through constable Gurmit Singh, on the basis of which

formal FIR Ex.PB was recorded. Memo Ex.PC was prepared by DSP Balbir Singh for conducting the search without obtaining the warrants and sent the same to Court through Constable Gurvinder Singh. DSP reached the spot, i.e., 'Bein bridge' Bholath where SHO Gurbachan Singh along with police party reached. Ranjit Singh son of Darshan Singh was joined in the investigations of this case. At about 10 pm, one truck bearing registration No.PB-08-AD-7902 was seen coming from the side of Kartarpur. SHO gave signal with the help of torch to stop the truck. The truck came to a halt. Ajmer Singh (accused) was driving the aforesaid truck and Jhand Singh (acused) was sitting on the co-driver seat. DSP disclosed his identity to the accused and told them that he was having suspicion that they were in possession of some contraband. He also apprised them of their legal right of search by a Gazetted Officer or a Magistrate. However, the accused reposed confidence in the DSP. Their consent memo Ex.PD and Ex.PE were prepared. The same were signed by the accused besides witnesses on the direction of DSP. Inspector Gurbachan Singh conducted search of the truck whereupon 39 gunny bags containing poppy husk were recovered as the same were lying under the bags of 'mausmis'. All the bags were unloaded from the truck. Inspector Gurbachan Singh separate two samples of 250 grams each from each of the recovered gunny bags of poppy husk. On weighment, the remainder was weighed to 35 kilograms in each bag. All the aforementioned samples as well as 39 gunny bags were converted into parcels and sealed with the seal bearing impression 'BS' and the same were taken into police possession vide memo Ex.PF. Form No.29-C was also

prepared at the spot. Seal after use was handed over to Ranjit Singh PW. CFSL form was also taken into possession vide aforesaid memo. Rough site plan of the place of occurrence was prepared as Ex.PG. 70 bags of 'mausmis' were also taken into police possession vide memo Ex.PH. Statements of witnesses were recorded. Accused Jhand Singh and Ajmer Singh were arrested. Accused as well as the case property were handed over to Inspector Gurbachan Singh who handed over the same to the MHC of the Police Station. On the next day, Inspector Gurbachan Singh took the case property from the MHC of the Police Station and produced the same along with the accused before the Ilaka Magistrate, Kapurthala in compliance with the provisions of Section 52-A of the Act.

Finding prima-facie case against the accused, they were charge sheeted for offence punishable under Section 15 of the Act, to which they did not plead guilty but claimed trial.

After taking entire prosecution evidence, statements of the accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation appearing against them and pleaded their innocence. They also pleaded that they have been falsely implicated in this case. In their defence, the accused examined Karamjit Kaur wife of Ajmer Singh as DW1 and Vijay Kumar son of Sat Parkash as DW2. This Vijay Kumar deposed about the cases pertaining to Lakhwinder Singh accused.

After hearing both the counsel for the parties and perusing the entire evidence on record, the learned trial Judge recorded the judgment of conviction against both the appellants and passed order of sentence against

them, as mentioned in the earlier part of this judgment.

We have heard learned Counsel for the appellants and learned Counsel for the State and have gone through the entire record of this case.

First of all, it was argued by learned Counsel for the appellants-accused that in fact nothing was recovered from the possession of the accused and they have been falsely implicated in this case on account of tiff with the police. DSP Balbir Singh was not present at the spot. A quarrel took place between the police officials and Jhand Singh. Daughter of Jhand Singh was married at village Ucha. On 2.8.2007, Jhand Singh came to meet his daughter at night. At that time, police party was holding a naka and the entire police party was under the influence of liquor. At that time, some quarrel took place between the police party and the accused Jhand Singh. The police party gave beatings to Jhand Singh. In the meantime, Ajmer Singh was also passing through that place. He tried to save Jhand Singh from the police officials and under those circumstances, the police officials also gave beatings to him and registered this case falsely against them.

The above contention of learned Counsel for the appellants is not sustainable as of course the accused examined Karamjit Kaur wife of Ajmer Singh as DW1 who deposed so yet such a defence has never been taken by the accused in their statements under Section 313 Cr.P.C. Besides that, the recovery memo Ex.PF, vide which 39 bags of poppy husk recovered from the possession of the accused, were taken into possession, was prepared by DSP himself. Inspector Gurbachan Singh, SHO and another police official besides Ranjit Singh public witness have signed this

memo. This very document itself proves the presence of DSP Balbir Singh at the spot. Even all other memos, as mentioned above, have been prepared by DSP himself. In fact, DSP Balbir Singh is the investigating officer of this case. DSP received the secret information against the accused and he had sent that information to his superior officers. DSP Balbir Singh as PW1 and Inspector Gurbachan Singh, who was SHO at the relevant time as PW3, categorically deposed about the conduct of investigations of this case by DSP. Not only this, even the statements of PW1 and PW3 are consistent on all material points inspiring confidence in the mind of the court regarding guilt of the accused. Short of repetition, both the witnesses have fully supported the prosecution case as set out above. Even during the course of cross examination of PW1 and PW3, no suggestion has been given to the prosecution witnesses that DSP Balbir Singh was not present at the spot or that he had not received the secret information or did not lay any naka at the spot. With this overwhelming evidence on the file, the presence of DSP Balbir Singh at the naka, i.e., spot is established on the file.

It was next argued by learned Counsel for the appellants-accused that the secret information was allegedly received against Lakhwinder Singh @ Lakha Singh and Jhand Singh. When there was no secret information against Ajmer Singh, therefore, compliance of Section 42 of the Act was not made by the prosecution. This argument is again devoid of any force. The secret information received by the DSP was against Lakhwinder Singh and Jand Singh. DSP Balbir Singh gave information regarding secret information to SSP, Kapurthala. As such whatever secret

information was received by him, due information was given regarding that by the DSP to his superior police officers. It is always not necessary that the case should proceed strictly in accordance with the secret information received otherwise it will not sustain. In some cases, even after receipt of secret information, no recovery is effected. As such, for the simple reason that secret information was not against Ajmer Singh, therefore, provisions of Section 42 of the Act are not complied with, is not the tenor of Section 42 of the Act.

Lastly, regarding sentence, it was argued by learned Counsel for the appellants-accused that appellant Jhand Singh is an old aged person, suffering from heart attack. During the course of trial, he suffered two serious heart attacks; he has five children; his wife is also bed-ridden and suffering from paralysis. The wife of Ajmer Singh is a kidney patient. Ajmer Singh himself is an old man. Ajmer Singh has a daughter and a son. He has to look after them. As such, some lenient view be taken regarding sentence.

Taking into consideration the aforesaid contentions of learned Counsel for the appellants-accused, we are of the considered view that the ends of justice would be met in case the sentence of both the appellant-accused is reduced from 12 years to 10 years whereas the sentence of fine shall remain the same. So is ordered accordingly.

For the reasons recorded above, finding no merit in these appeals, maintaining judgment of conviction dated 2.7.2010 and order on sentence of even date, with the modification as indicated above, the same

are dismissed.

September 28, 2015.
kadyan

[**Raj Rahul Garg**]
Judge

[**Hemant Gupta**]
Judge