

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D- 587-DB of 2011 (O&M)

Date of decision : 10.04.2015

Charanjit @ BituAppellant

Versus

State of HaryanaRespondent

Present: Mr. Ashok Giri, Advocate for the appellant.

Mr. Vivek Saini, AAG, Haryana.

CRA No. D- 246-DB of 2011 (O&M)

BalvinderAppellant

Versus

State of HaryanaRespondent

Present: Mr. D.R. Punia, Advocate for the appellant.

Mr. Vivek Saini, AAG, Haryana.

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

LISA GILL, J.

This judgment shall dispose of CRA No. D- 587-DB of 2011 (Charanjit @ Bitu versus State of Haryana) and CRA No. D-246-DB of 2011 (Balvinder Versus State of Haryana) arising out of judgment dated 08.01.2011.

Appellants in both the cases have impugned judgment dated 08.01.2011 passed by Special Judge, Sonapat. They have been convicted for the offence punishable under Section 15 of the Narcotic

Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced to undergo rigorous imprisonment for 15 years besides a fine of ₹1,00,000/- each and in default of payment of fine to undergo further imprisonment for six months.

As per prosecution version, SI Kalander Singh (PW9) was on patrolling duty along with SI Raj Singh (PW11), EASI Gugan Singh (PW2) and other officials when he received secret information that appellants - Balvinder Singh son of Tarsem Lal and Charanjit @ Bitu son of Jai Ram had started from Delhi in their Tata-909 vehicle. They were transporting poppy husk in large quantity beneath vegetables kept in above said vehicle bearing No. PB-08-AS-1988. This information was reduced in writing (Ex. PC) and sent to Police Station Rai through EASI Gugan Singh (PW2), on the basis of which DDR No. 25 dated 23.11.2008 (EX. PC/1) was entered at 4.20 p.m.

Consequent to information, barricade was set up by the police officials at the intersection of Sector 7/8, Sonapat. After some time a vehicle Tata-909, as mentioned above, was seen coming from Delhi side. The vehicle was intercepted, the driver and conductor were apprehended. The driver revealed his name to be Balvinder and conductor stated himself to be Charanjit @ Bitu. Notice under Section 50 of the NDPS Act (Ex. PF) was served upon the accused Balvinder Singh informing him that he was suspected of keeping narcotics and whether he wanted the search to be conducted in front of Magistrate or some Gazetted Officer. He gave option (Ex. PF/1) for his vehicle to be searched before Deputy Superintendent of Police. Pursuant thereto, SI Kalander Singh telephonically called DSP Ganaur, Banwari Lal (PW 12). DSP Banwari Lal along with staff reached the spot. He was

apprised of the facts and he directed the search of canter to be conducted after verification of the facts. 30 bags of poppy straw/husk were recovered beneath 56 bags of brinjal and 12 bags of cauliflower. Each bag contained 40 kilograms poppy straw i.e. 1200 kg poppy straw/husk was recovered. Two samples of 100 grams each were separated out of each bag. 60 samples and the residue in the remaining 30 bags were sealed with seals 'KS' of SI Kalandar Singh (PW9). DSP Banwari Lal affixed his seal 'SC' on the samples as well as on the residue. Samples and the residue were taken in police custody vide memo (Ex. PG). Ruqa (Ex. PA) was sent through ASI Subhash Chander to the Police Station for registration of FIR. Site plan (Ex.PH) was prepared. Vehicle bearing registration No. PB-08-AS-1988 along with 56 bags of brinjal and 12 bags of cauliflower were also taken in possession vide memo (Ex. PI). Personal search of the accused was conducted and intimation of arrest was also sent. SI Kalandar Singh (PW9) along with accused, witnesses of the cases property reached Bhalgarh Chowk where SI Nar Singh, SHO Police Station Rai met them. He was apprised of all the facts (Ex. PL) and all the above said produced before him. SI Nar Singh on verification of the facts affixed his seal 'NS' on the samples and the residue and made an endorsement (Ex.PM). Case property was deposited with Malkhana Mohrar. FIR No. 406 dated 23.11.2008 (EX. PB) was registered. Special report was sent to the Illaqa Magistrate and higher police officials through Constable Khan Singh on 23.11.2008. Both the accused were produced before Chief Judicial Magistrate, Sonapat on 24.11.2008. Application (Ex. PO) under Section 52 of the Act was moved. Chief Judicial Magistrate, Sonapat put his initials on the samples, on the residue and the case

property along with the accused was got photographed under direction of the Chief Judicial Magistrate. Case property was then deposited with MHC Police Station Rai (PW6). Thereafter, the vegetables under orders of the Chief Judicial Magistrate were auctioned on 25.11.2008 as proved by Bansi Lal (PW3) working in Public Primary Agriculture Society, Sonapat.

As per Forensic Science Laboratory report (Ex.PX), the contents of the contraband were found to be poppy husk/poppy straw.

On completion of investigation, challan was prepared and presented by (PW8) SI Nar Singh, SHO Police Station Rai. Charge was framed against the accused on 26.05.2009 to which they pleaded innocence and claimed trial. Prosecution examined 12 witnesses in support of their case. Accused when confronted with incriminating material in their statement under Section 313 Cr.P.C. pleaded false implication and denied the evidence and allegations against them. However, no evidence in defence was led.

Learned counsel for the appellants vehemently argued that the prosecution case is highly suspect in the absence of any independent witness. It is argued that on receipt of secret information, it was incumbent upon the police officials to have arranged for an independent witness. Recovery has been made from a place which is frequented by general public. No effort was made by the police to associate any independent witness at the time of alleged recovery though it is admitted that the place of recovery is a busy place. The entire proceedings, thus, stand vitiated and prosecution case falls to the ground.

Learned counsel for the appellants while relying upon the

judgment of Hon'ble Supreme Court in **Avtar Singh versus State of Punjab** 2002 (4) RCR (Criminal) 180 further submit that conscious possession of the accused over the contraband is not proved. It is argued that there is nothing on record to show that Balvinder Singh, who was the driver and Charanjit Singh, the conductor/cleaner had any knowledge about the narcotics being carried in the canter, therefore, they cannot be said to be in conscious possession of the contraband.

It is further submitted that false implication of the accused comes to the fore from the fact that ruqa (Ex. PA) in respect to the secret information was received at the police station at 4.30 p.m. whereas the vehicle in question was intercepted at about 2.30 p.m. It is vehemently urged that arrest of the accused is reflected at 10.15 p.m. whereas the canter is intercepted at 2.30 p.m. in the after noon. This fact in itself shows that the entire proceedings were carried out by the police while sitting at the police station and no recovery, as alleged, was ever effected from the accused persons. Therefore, the entire case has been falsely built up.

Learned counsel attempts to display that link evidence is not complete and submit that specimen seal was not forwarded to the FSL. It is further urged that an alternate charge under Section 8 of the NDPS Act has not been framed thereby vitiating the trial. It is also urged that Form 29 was not filled at the spot, therefore, causing a serious dent in the prosecution version.

Learned counsel for the State while supporting the impugned judgment submits that there is overwhelming evidence on record, which clearly inculpatates the accused. There is specific and cogent evidence on record, which reflects the guilt of the accused

persons, therefore, he prays for upholding the conviction and sentence imposed upon the accused persons.

We have heard learned counsel for the parties and gone through the record.

Argument of learned counsel for the appellants that absence of independent witness vitiates the trial is not tenable in the facts and circumstances of the case. There is nothing on record to show that the police officials had an axe to grind against the accused persons. There is no reason whatsoever as to why they would falsely implicate the present appellants. SI Kalander Singh (PW9), SI Raj Pal (PW11) as well as DSP Banwari Lal (PW 12) have duly supported the prosecution version. All these witnesses have given a consistent version, which proves the recovery of the contraband from the accused. Their evidence is not rendered untrustworthy only on account of their being official witnesses. No prejudice has been caused to the appellant by the absence of an independent witness.

It has been held by the Hon'ble Supreme Court in **Dharampal Singh versus State of Punjab 2010 (4) R.C.R. (Criminal) 504** that mere absence of independent witness in itself would not vitiate the proceedings until and unless it is shown that evidence on record is unreliable and untrustworthy.

Learned counsel for the appellants have been unable to point out anything which would render the evidence of official witnesses to be unreliable and untrustworthy.

Similarly, the submission that conscious possession of the accused over the contraband is not proved is untenable. 1200 kilograms of poppy husk beneath 56 bags of brinjal and 12 bags of

cauliflower was recovered on receipt of secret information. Present is not a case of chance recovery. Police had specific information about the accused carrying contraband. It is on this specific information about the accused carrying the contraband in canter Tata-909 bearing No. PB-08-AS-1988 that barricades were laid. Thereafter, accused were apprehended along with the contraband. Therefore, the judgment of Hon'ble Supreme in Avtar Singh's case (supra) would not be relevant in the peculiar facts of this case. In Dharampal's case (supra) reliance was placed on Avtar Singh's case (supra) to urge that the driver and person travelling alongwith in a private car cannot be attributed conscious possession of the contraband recovered from the said car. Hon'ble Supreme Court while negating this contention held as under:-

“It needs no emphasis that the expression possession is not capable of precise and completely logical definition of universal application in context of all the statutes. Possession is a polymorphous word and cannot be uniformly applied, it assumes different colour in different context. In the context of Section 18 of the Act once possession is established the accused, who claims that it was not a conscious possession has to establish it because it is within his special knowledge. Section 54 of the Act raises presumption from possession of illicit articles. It reads as follows :

"54. Presumption from possession of illicit articles - In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of -

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured,

for the possession of which he fails to account satisfactorily."

From a plain reading of the aforesaid it is evident that it creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence in case he fails to account for the possession satisfactorily. Possession is a mental state and Section 35 of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact."

Conscious possession of the appellants over the contraband in the present case is duly proved.

Link evidence in this case is complete. Perusal of FSL report (Ex. PX) clearly shows that seals on 30 sealed cloth parcels received were intact and they tallied with the specimen seal as per the Forwarding Authority's letter. It is proved on record that there was no tampering with the samples and the sample seals. An extremely futile attempt has been made by learned counsel for the appellants to suggest that DSP Banwari Lal was not present at the time of recovery

as he could not have a seal 'SC' as his name is Banwari Lal. Said argument is misconceived, hence, rejected.

DSP Banwari Lal (PW 12) has duly supported the recovery and has testified in no uncertain terms that he affixed the seal 'SC' on the samples as well as residue at the time of recovery. SI Kalandar Singh (PW9) had affixed his seal 'KS'. Seal 'NS' has been affixed by SHO Nar Singh (PW8). All the seals were found intact as per FSL report (Ex.PX). ASI Krishan Lal (PW7) has testified that the Investigating Officer had deposited 30 sealed bags of poppy straw and 60 sealed parcels of poppy straw with seal 'KS' 'SC' and 'NS' on 23.11.2008. The investigating officer had taken the case property on the next day on 24.11.2008 at about 10/10.15 a.m. and re-deposited all of them with stamp of the Court on the same day. 30 parcels of poppy straw were sent to the Forensic Science Laboratory for chemical examination vide RC No. 154-M on 26.11.2008 through Constable Surjit Singh. During this period, the case property was not tampered with. Constable Surjit Singh (PW5) has tendered his affidavit (Ex. PE) that the samples were not tampered with in any manner while they remained in his custody. He deposited 30 sealed parcels with Forensic Science Laboratory, Madhuban on 26.11.2008. Non preparation of Form 29 at the spot in the peculiar facts and circumstances of the case is not fatal to the prosecution case. Similarly, accused having been arrested formally at 10.15 p.m. on 23.11.2008 does not point to any false implication. It is a matter of record that secret information was received by SI Kalandar Singh (PW9). In compliance with Section 42 of the NDPS Act, this information was reduced into writing and sent for intimation to the higher officials within 72 hours as stipulated. EASI Gagan Singh (PW2)

has duly proved this fact. Registration of DDR (EX. PC/1) at 4.30 p.m. in this situation is irrelevant.

In the facts and circumstances as noted above, prosecution has indeed successfully proved its case beyond reasonable doubt.

Faced with this situation, learned counsel for the appellants submit that the accused appellants are first offenders. They are not involved in any other case. They are the sole bread earners of their family. Thus, the sentence of 15 years be reduced. It is submitted that the appellants have undergone over six years of actual imprisonment in this case.

Learned counsel for the State confirms that the appellants are not involved in any other case except the present one.

Keeping in view the peculiar facts and circumstances of the case, it is considered just and expedient to reduce the sentence of 15 years of rigorous imprisonment imposed upon the appellants to that of rigorous imprisonment for 10 years. Fine of ₹1,00,000/- imposed upon them shall remain the same being the minimum provided in the Statute. In default of payment of fine, appellants to undergo further imprisonment for six months.

With the above said modification in the sentence, both the appeals are dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

April 10, 2015
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