

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-347-SB of 2008

DATE OF DECISION: MAY 18, 2015

ANGREJ SINGH

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MS. TANU BEDI, ADVOCATE FOR THE APPELLANT.
MS. RITU PUNJ, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Accused Angrej Singh was convicted under Section 15(c) of the Narcotic and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and was sentenced to undergo 10 years R.I. and to pay a fine of ₹1 lac, in default of payment of fine to undergo further period of 1 year R.I. Aggrieved by the above conviction and sentence passed by the trial Court, accused Angrej Singh has preferred the present appeal.

2. It is the case of the prosecution that on 8.6.2004, PW3 SI Tehal Singh, Incharge of CIA Staff, Moga alongwith other police officials were present at bus stand of village Chand Puran, where he got secret information to the effect that the accused Angrej Singh and his companion Bakshish Singh were peddling poppy husk. They were present alongwith a truck bearing No.PB-10-G-9792 loaded with poppy husk near the bridge of drain on the metalled road leading from village Langeana to Jaimalwala and that they were waiting for the customers. PW3 SI Tehal Singh sent ruqa to the

police station. Based on the ruqa, a formal FIR was registered under Section 15 of the NDPS Act. PW3 flashed a wireless message to PW8 DSP Bhulla Singh, who also arrived at the spot without any loss of time. The police party headed by PW3 found accused Angrej Singh @ Kala and his companion Bakshish Singh @ Sheru in the truck loaded with bags of poppy husk. On seeking the police party, both of them jumped out of the truck and escaped. PW1 HC Krishan Kumar and PW11 HC Bikkar Singh who already identified accused Angrej Singh @ Kala and his companion Bakshish Singh @ Sheru, as they had prior acquaintance with them. 40 bags of poppy straw were recovered from the body of the truck. On the directions of PW8 DSP Bhulla Singh, PW3 SI Tehal Singh drew two samples of 250 gms. from each of the recovered bags of poppy husk and converted them into 80 separate parcels. Each of the bags weighed 34.500 kgs. of poppy husk. All the parcels were sealed by PW3 with his seal mark. PW8 DSP Bhulla Singh also put his seal mark on the parcels. The entire case property was taken into possession by preparing separate recovery memo attested by S.I. Baldev Singh and DSP Bhulla Singh. The case property was produced before the SI/SHO Satpal Singh. Later on, the case property was produced before the learned Judicial Magistrate. Learned Judicial Magistrate passed the order of destruction of the contraband. Accused Bakshish Singh was convicted and sentenced on 11.9.2006 and 12.9.2006.

3. Later on, accused Angrej Singh was arrested on 3.11.2006 and he was also remanded to judicial custody. The samples were sent for examination and the chemical examiner reported that the samples contained poppy husk.

4. As many as 12 witnesses were examined on the side of the prosecution. The incriminating portions in the evidence adduced by the prosecution were put to accused Angrej Singh, who disputed the recovery made from his possession, in his statement under Section 313 Cr.P.C.

5. The trial Court having relied upon the evidence adduced on the side of the prosecution held that the prosecution established that accused Angrej Singh was found in possession of commercial quantity of poppy husk.

6. PW3 SI Tehal Singh, who was the investigating officer in this case, PW1 who was one of the attesting witnesses to the recovery of the contraband, PW11 Bikkar Singh who was also one of the recovery witnesses and PW8 DSP Bhulla Singh, have spoken in one voice in regard to the presence of accused Angrej Singh with his co-accused on the truck loaded with poppy husk and their escape from the truck. PW3 also deposed as regards the secret information he received. The above evidence of the prosecution witnesses would go to establish that accused Angrej Singh was infact sitting in the truck loaded with 40 bags of poppy husk and escaped alongwith his companion giving a slip to the police party. The FSL report would go to establish that the contraband was nothing, but poppy husk.

7. Learned counsel appearing for the appellant would vehemently submit that the prosecution failed to establish that accused Angrej Singh was a proclaimed offender as disclosed by the secret informer. Learned Addl.A.G., Punjab would submit in reply that it was only an information furnished by the secret informer which was scrupulously reduced into writing by PW3. Even if no evidence has been adduced that appellant Angrej Singh was a proclaimed offender, then also the case of the

prosecution is not affected, it is further submitted by learned Addl.A.G., Punjab.

8. After all, the police official receive and record the secret information passed on by the informers. It is not necessary that all the information furnished by the informer should be correct in all respects. The fact remains that accused Angrej Singh was admittedly involved in yet another case and he was also convicted. That was the reason why the trial Court chose to pass an order that the sentence passed in this case as against accused Angrej Singh shall run concurrently. The secret informer having collected some information about accused Angrej Singh that he was involved in many cases would have embellished that he was infact a proclaimed offender. Such an overdoing of the informer, in my view, does not affect the case of the prosecution.

9. It is submitted by learned counsel appearing for the appellant that PW3 without waiting for the real recovery to be made from accused Angrej Singh, chose to register a case immediately on receipt of the secret information and thereafter, proceeded to the spot for recovery.

10. I find that there is no bar for the police official to register a case on receipt of the secret information which disclosed the commission of offence. A police official is well within the four corners of law. When he registers a case based on the reliable information which discloses cognizable offence. It is not always necessary that the police official should wait till the recovery is effected for registration of the case. It depends upon the reliability of the information received by the police official concerned. If the police official doubts the version of the secret informer, he is at liberty to wait till the information shared by the secret informer is tested.

11. In the instant case, PW3 should have taken efforts to associate an independent witness while recovering the contraband from the truck. The fact remains that the contraband was recovered near the bus stand. Though it was early morning time, many passengers would have come to the bus stand even at that point of time. But the Court cannot shut its eyes to the reality. People are very much afraid of associating themselves in such heinous crimes even as a witness. The question is whether the evidence adduced on the side of the prosecution passes the test of trustworthiness and reliability. If the evidence adduced by the prosecution is credible, the question of rejecting the evidence adduced by the prosecution just because an independent witness was not associated does not arise for consideration.

12. Learned counsel appearing for the appellant vehemently attacked the identification of accused Angrej Singh by PW1 and PW11. It is her submission that PW1 and PW11 had not furnished particulars as regards their association with the accused and therefore, their identity is highly doubtful.

13. In the instant case, it is found that the secret informer had given the name of accused Angrej Singh as one of the persons who was sitting on the truck loaded with poppy husk waiting for customers. PW1 and PW11 have categorically deposed that as they had served in the area where the accused was residing, they had an acquaintance with the accused and therefore, they could identify him the moment he jumped out of the truck and escaped from the clutches of the police. The above facts and circumstances do not admit of any doubt.

14. It is further submitted by the learned counsel appearing for the appellant that 16 armed officials were present at the place where the truck

was found parked. The accused would not have got the guts to escape from the armed forces. Even otherwise, the armed Police officials could have easily apprehended the accused. In short, her submission is that the prosecution has come out with an artificial and unbelievable story that in the face of 16 armed Police officials, the accused had the courage to escape from the truck.

15. The reality is that the armed forces very rarely use their arms in order to avoid counter allegations. Further, there could be some casualty on account of opening of fire. The armed Police official concerned will have to face not only the wrath of the public, but also a criminal case of graver proportion. Therefore, the failure on the part of the armed officials in not opening fire is quite understandable. Even otherwise, when accused Angrej Singh was identified by PW1 and PW11 when he jumped out of the truck alongwith his companion, failure on the part of the armed Police officials to capture accused Angrej Singh does not loom large.

16. Learned counsel appearing for the appellant would submit that the prosecution miserably failed to prove conscious possession of the contraband. She would also submit that there was no question which was put to the accused under Section 313 Cr.P.C. as regards the conscious possession.

17. The secret information received by PW3 disclosed that accused Angrej Singh and his companions were sitting on the truck loaded with contraband waiting for the customers. The police party headed by PW3 and PW8 DSP Bhulla Singh who was requisitioned had infact witnessed accused Angrej Singh who was identified by PW1 and PW11 while jumping out of the truck loaded with poppy husk. If at all, accused Angrej Singh

was not concerned either with the truck or with the contraband loaded in the truck, there was no reason for him to escape from the truck. In other words, the possession of poppy husk loaded in the truck is established by the prosecution. When possession is established, culpable mental state can be presumed under Section 35 of the NDPS Act.

18. The Court is supposed to draw the attention of the accused as regards the incriminating circumstances spoken to by the witnesses under Section 313 Cr.P.C. The witnesses cannot speak about the conscious possession at all. They can depose as regards the series of events they witnessed. It is only the Court which will have to draw inference from the facts and circumstances spoken to by the witnesses as to whether the accused had a culpable mental state while sitting on the truck with poppy husk. The Court on its own cannot put any question beyond the circumstances spoken to by the witness. In other words, the inference that could be drawn by the Court based on the evidence adduced by the witness cannot be put to the accused under Section 313 Cr.P.C. Under such circumstances, in my view, the absence of any question under Section 313 Cr.P.C. as regards conscious possession does not at all affect the case of the prosecution.

19. Learned counsel appearing for the appellant would bring to the notice of this Court that the case property was not at all exhibited. It is found that learned Judicial Magistrate has passed a considered order for destruction of the contraband. Therefore, the contraband could not be exhibited before the trial Court.

20. It was submitted that CFSL Form was not prepared at the spot on the same day of recovery. In the instant case, the fact remains that PW12

SI Satpal Singh infact spoke about the preparation of CFSL Form at the time when the sample was taken out from the malkhana and despatched to the Forensic Science Laboratory. In my view, non-preparation of CFSL Form at the spot cannot be construed as a material lapse on the part of the investigating agency. Even otherwise, it is found that CFSL Form was infact prepared sent to the FSL.

21. The contraband was recovered on 8.6.2004, whereas the sample was despatched on 14.6.2004 and the same was received by the FSL by the next day. I find that the investigating official had taken bare minimum time to despatch the sample to the FSL. No discrepancy was noted down by the FSL when it received the sample. Further, the seal was found intact by the FSL. Therefore, the delay in despatching the sample does not loom large in this case.

22. I find that the trial Court has rightly come to the conclusion based on the evidence on record that accused Angrej Singh was in conscious possession of poppy husk found loaded in the truck from where he jumped out and escaped. I do not find any ground for interfering with the well considered verdict of the trial Court. Therefore, the judgement of conviction and sentence passed by the trial Court stands confirmed and the appeal is dismissed.

May 18, 2015
Gulati

(M. JEYAPPAUL)
JUDGE