

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Appeal No. S. 601 SB of 2007
Date of decision : 28.01.2015.

Nachhattar Singh and another

..... Appellants.

versus

State of Punjab

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. Kunal Malwali, Advocate for the appellants.
Mr. Yogesh Gupta, AAG, Punjab.

K.C.PURI, J.

Challenge in this appeal is the judgment and order dated 28.11.2006 passed by Shri B.S.Sandhu, Special Judge, Moga vide which the accused-appellants were convicted under Section 15(c) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short – the Act) and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- each and in default thereof to further undergo rigorous imprisonment for a period of one year each.

2. Briefly stated, the prosecution story is that on 25.11.1996 a police party headed by SI Tehal Singh along with ASI Dilbag Singh, ASI

Bhinder Singh other police officials held Naka on the bridge of Canal in the area of village Jhandiana. At about 4.00a.m., a truck bearing registration No.PAR 7338 being driven by accused Buta Singh came from the side of village Jhandiana. Accused Mewa Singh (since deceased) was sitting in the body of the truck. He also jumped out of the truck and escaped. Both accused Buta Singh and Mewa Singh were identified by SI Tehal Singh and his companions as they were having prior acquaintance with them. Accused Nachhattar Singh was sitting in the cabin of the truck by the side of the driver. He was nabbed at the spot. SI Tehal Singh told accused Nachhattar Singh that he suspected some intoxicant material in the truck occupied by him and, therefore, it was to be searched. He told the accused that he was required to be searched and in case he so desired search could be conducted in the presence of a Gazetted Officer or a Magistrate but the accused opted search in the presence of some Magistrate or Gazetted Officer accordingly DSP (D) Ranjit Singh was called at the spot. On his reaching there he introduced himself to accused Nachhattar Singh. Accused Nachhattar Singh opted his search in the presence of DSP Ranjit Singh. Therefore, on the direction of DSP Ranjit Singh, SI Tehal Singh conducted search of the body of the truck from which 15 bags of poppy husk were recovered. He took out two samples of 250grams each from each of the recovered bags and converted them into separate sample parcels. The remaining poppy husk was weighed in the bags. Each of the bags was found to have contained 39kgs.500grams of poppy husk. Their separate 15 parcels were prepared. Seal after use was handed over to ASI Bhinder Singh. Accused was

arrested. He also prepared rough site plan of place on recovery with correct marginal notes and further recorded statements of the witnesses. Later on accused Mewa Singh was also arrested. After receipt of report of FSL, and completion of formal investigation, challan against the accused was presented in court.

3. On presentation of challan, copies of documents were supplied to accused free of costs as required under section 207 Cr.P.C. Charge under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was framed against the accused. Accused pleaded not guilty and claimed trial. During trial accused Mewa Singh died. Later on accused Buta Singh was also arrested and supplementary challan was presented against him. Fresh charge under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was framed against the accused. Accused pleaded not guilty and claimed trial.

4. In support of the case prosecution examined PW1 SI Tehal Singh, PW2 Constable Dulla Singh, PW3 ASI Bhinder Singh, PW4 HC Amrik Singh, PW-5 DSP Ranjit Singh, PW-6 MHC Tara Chand, PW-7 HC Kuldeep Kumar, PW-8 SI Balbir Singh and thereafter learned Additional Public Prosecutor for the State closed the prosecution evidence.

5. After the closure of prosecution evidence, all the incriminating circumstances appearing against the accused were put to accused in their statement recorded under section 313 Cr.P.C., they denied the prosecution allegations and pleaded their innocence. However, accused examined Rachhpal Singh as DW-1 in their defence.

6. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused vide judgment and order dated 28.11.2006, as aforesaid.

7. Feeling dissatisfied with the aforesaid judgment and order dated 28.11.2006, accused have directed the present appeal.

8. Learned counsel for the appellant has submitted that there is non-compliance of Section 42 of the Act. No information was given to the superior regarding the recovery of the contraband.

9. I have carefully considered the said submission but do not find any force in the said submission.

10. Gazetted Officer was called at the spot who was immediate superior to the police party. Ruka was also stated to be sent from the place of recovery. It was not a case of secret information but a recovery at the time of nakabandi. So, it cannot be said that ingredient of offence under Section 42 of the Act are attracted to the facts of the present case.

11. Learned counsel for the appellant has further submitted that no test identification parade was conducted. Accused Buta Singh was not previously known to the police party. No independent witness was joined. There is a delay of 20 days in sending the sample, moreover DSP has stated that only one sample was drawn. In support of his arguments, counsel for the appellant has relied upon the following authorities :-

(i) **Buta Singh vs. State of Punjab reported in 2006 (1) R.C.R. (Criminal) page 835 ;**

(ii) **Satnam Singh vs. State of Punjab reported in 2010(3) R.C.R. (Criminal) page 672 ;**

- (iii) Pappu Singh and others vs. State of Haryana
reported in 2013 (4) R.C.R. (Criminal) page 402 ;
- (iv) Harbans Singh @ Kala vs. State of Haryana
reported in 2014 (1) R.C.R. (Criminal) page 493 ;
- (v) Dharambir vs. The State of Haryana
reported in 2008 (4) R.C.R. (Criminal) page 40 ;
- (vi) Harbans Singh @ Kala vs. State of Haryana
reported in 2014 (1) R.C.R. (Criminal) page 493 ;
- (vii) Nachhattar Singh vs. State of Haryana reported in
2014 (1) R.C.R. (Criminal) page 490 ;
- (viii) Amar Singh @ Kabu vs. State of Haryana
reported in 2008 (4) R.C.R. (Criminal) page 440 ;
- (ix) Gurnam Singh vs. State of Haryana reported in
2014 (1) R.C.R. (Criminal) page 669 ;
- (x) Daler Chand vs. State of Haryana reported in
2011 (1) R.C.R. (Criminal) page 666 ;
- (xi) Dalbir Singh s/o Arjan Singh, R/o Mohalla
Gogalpura, Tarn Taran vs. The State of Punjab
reported in 2008 (3) AICLR. (Criminal) page 58 ;
- (xii) Gurbux Singh vs. Union of India reported in
2011 (2) R.C.R. (Criminal) page 468 ; &
- (xiii) Baldev Singh and another vs. State of Punjab
reported in 2014 (2) R.C.R. (Criminal) page 197.

12. I have carefully considered the said submission but do not find any force in that submission.

13. Joining of independent witness is not the rule of law but rule of pre-caution. The recovery has taken place at 4.00a.m., and as such it cannot be said that at that time independent witness could be available, mere delay in sending the sample is not fatal more-so, when the appellants have failed

to prove the fact that there is any tampering with the sample at any stage. So far as the submission made by counsel for the appellants to the effect that PW-5 DSP Ranjit Singh has stated about drawing one sample is concerned that submission is also without any substance. Both the investigating officer and recovery witnesses have categorically stated that two samples were drawn, one sample from each bag was sent for analysis whereas the second sample was produced in the Court. So, the above said arguments are without any substance.

14. The Hon'ble Apex Court in authority **Jarnail Singh vs. State of Punjab reported in 2011(1) RCR (Criminal) page 925** held that delay of 12 days in sending the sample to Chemical Examiner is not fatal. In authority **Hardip Singh vs. State of Punjab reported in 2008 (4) R.C.R. (Criminal) page 97** even the delay of 40 days in sending the sample was held not fatal where the case property remained intact. So, in view of the above-mentioned authorities, authorities **Buta Singh's case (supra)** ; **Satnam Singh's case (supra)** ; **Pappu Singh and others' case (supra)** ; **Harbans Singh @ Kala Dharambir's case (supra)** ; **Harbans Singh @ Kala's case (supra)** ; **Nachhattar Singh's case (supra)** ; **Amar Singh @ Kabu's case (supra)** ; **Gurnam Singh's case (supra)** ; **Daler Chand's case (supra)** ; **Dalbir Singh s/o Arjan Singh, R/o Mohalla Gogalpura, Tarn Taran's case (supra)** ; **Gurbux Singh's case (supra)** & **Baldev Singh and another's case (supra)** relied upon by learned counsel for the appellants are distinguishable. The point of non-examination of independent witness has also been considered in **Jarnail Singh's case (supra)**. The test

identification parade was not required in the present case as the investigating officer and other police officials had categorically stated that Buta Singh was known to them. Otherwise also Nachhattar Singh accused was arrested at the spot and he has disclosed the name of Buta Singh. Mewa Singh was also one of the accused and the truck in question was registered in the name of Sukhdev Singh son of said Mewa Singh, which lend further support to the prosecution story. It cannot be believed that prosecution will falsely implicate the appellants in respect of recovery of huge amount of poppy husk weighing 600kgs.

15. Counsel for the appellants has further submitted that source of contraband has not been disclosed and as such the prosecution story is doubtful.

16. I have carefully considered the said submission but do not find any force in that submission.

17. Non-disclosure of source of the contraband is not fatal for the prosecution case.

18. So far as the sentence part of the judgment is concerned, minimum sentence has been awarded to the accused, which has been prescribed under the Act. So, no ground for interference in the sentence part is also made out.

19. Consequently, the finding of guilt recorded against both the accused/appellants under Section 15 of the Act does not call for any interference.

20. Consequently, the appeal is without any merit and the same stands dismissed.

21. The accused/appellants are stated to be on bail. They be taken into custody to undergo the remaining part of the sentence.

22. A copy of this order be conveyed to the trial Court for strict compliance.

January 28 , 2015

SV

**(K. C. PURI)
JUDGE**