

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

**Crl. Appeal No.D- 247-DB of 2013
Date of Decision : 11.02.2015**

Chand Singh

..... Appellant

Versus

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE M.JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present : Mr. S.K.Daaria, Advocate
learned Counsel for the appellant.

Ms. Tanisha Peshawaria, Advocate
learned DAG, Haryana.

- 1. Whether Reporters of Local papers 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**

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 06.02.2013, vide which the appellant has been held guilty and convicted for the offence punishable under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'Act') and the order of sentence dated 08.02.2013, vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 12 years and

to pay a fine of Rs. 1,50,000/-, in default of payment of fine, he was further ordered to undergo rigorous imprisonment for a period of two years.

2. In nutshell, the facts giving rise to this prosecution are that on 23.4.2010, PW-13 SI Balbir Singh along with PW-12 ASI Balwan Singh and other police employees was present at old Bus Stand, Sampla. He received a secret information that appellant Chand Singh, who is a handicapped, indulges in selling charas and a if raid is conducted he can be apprehended. SI Balbir Singh reduced the secret information into writing in shape of the notice Ex.P-2 as required under Section 42 of the Act and sent the same to the Police Station through constable Baljit Singh. Thereafter, he prepared the raiding party and reached at the house of the appellant. He was found present there. The Investigating Officer served a notice under Section 50 of the Act upon the accused apprising him that he was suspected to have the Charas and the Investigating Officer want to take the search. The option was given to him as to whether he wants his search to be conducted in the presence of a Magistrate or a Gazetted Officer. Accused opted for his search in the presence of Gazetted Officer. Thereafter, PW-10, DSP Dalbir Singh was informed and he reached at the spot. SI Balbir Singh narrated the entire facts

of the case to DSP Dalbir Singh and on the directions of the DSP, SI Balbir Singh carried out the search of the accused. A cloth bag containing Charas in different shapes and different packets was recovered. The Charas contained in nine packets was weighed separately. The total came to be 1 kg. 800 gms. The Investigating Officer separated two samples of 10 gms each from every parcel. Total 18 samples were separated. The sealed parcels of the samples and remainder Charas were prepared and were sealed by the Investigating Officer with his seal bearing impression 'BS'. DSP Dalbir Singh also affixed his seal bearing impression 'DS'. The case property was taken into possession. The Investigating Officer sent the ruqa to the Police Station, on the basis of which, the formal FIR was registered. The Investigating Officer also prepared the rough site plan of the place of occurrence and accused was arrested.

3. The Investigating Officer produced the accused, witnesses and the case property before PW-11 Inspector Kuldeep Singh, the then SHO, Police Station, Sampla. He also verified the facts of the case from the witnesses as well as the accused and checked the case property. He affixed his seal bearing impression 'US' on all the sample parcels and the parcels containing the remainder Charas. The report under Section 57 of the Act was prepared and sent to

the Deputy Superintendent of Police.

4. On 24.04.2010, the case property and the accused were produced before PW-9 Sh.Vivek Yadav, Judicial Magistrate, Rohtak along with an application for disposal of the case property. The samples and the case property were checked by the learned Judicial Magistrate, Rohtak. The photographs of the case property were taken. The case property and sample parcels were again sealed by him with his seal bearing impression 'B'. The order EX.P-17 was passed by the learned Magistrate. The sample parcels were sent to Forensic Science Laboratory, Madhuban for examination. After completion of the formalities of the investigation, the report under Section 173 Code of Criminal Procedure (for short 'Cr.P.C.') was presented in the Court.

5. Accused-appellant was charge sheeted for the offence punishable under Section 20 of the Act by the learned Judge, Special Court, Rohtak, vide order dated 21.07.2010, to which the appellant pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined as many as thirteen witnesses.

7. When examined under Section 313 Cr.P.C, the accused-appellant pleaded that nothing was recovered from his possession. He is innocent and has been falsely

implicated due to party faction in the neighborhood. However, the accused did not lead any evidence in his defence.

8. Initiating the arguments, learned counsel for the appellant contended that as per the admitted case of the prosecution, the recovery is alleged to have been effected on the basis of the secret information from the residential house of the appellant situated in the residential locality. The secret information is alleged to have been received at the old Bus Stand, Sampla, a busy public place. But, even then no independent witness has been associated, which renders the prosecution case doubtful.

9. He further contended that the accused-appellant is 100 % handicapped person. He is not even able to walk. So, it is not probable that he will indulge in such activity.

10. There is no evidence to establish that he was found in conscious possession of the contraband. Even, no question has been put to the appellant in his statement under Section 313 Cr.P.C that he was in conscious possession of the contraband, which has resulted in serious prejudice to the appellant.

11. He further contended that the Investigating Officer has violated the mandatory provisions of the rules with respect to the quantity of the sample. He further

contended that as per the notification issued by the Central Government, a minimum quantity of 24 gms should have been separated as sample for the chemical test. But, in this case only 10 gms has been separated as sample. The violation of the notification issued by the Central Government is fatal to the prosecution case. To support his contentions, he relied upon cases **Union of India Vs. Bal Mukund & Ors. 2009(2) RCR (Criminal) 574** and **Rajinder Singh @ Pappu Vs. State of Punjab, Criminal Appeal No.S-1148-SB of 2003**, decided by this Court on 18.12.2013. Thus, he pleaded that the conviction of the appellant has been wrongly recorded.

12. On the other hand, learned State counsel contended that there is no reason to disbelieve the statements of the official witnesses. The prosecution version has been corroborated by PW-10 DSP Dablr Singh, a Gazetted Officer in whose presence the search and seizure has been carried out. There was no reason for false implication of the appellant. Mere this fact that he was a handicapped person is no ground to hold the prosecution case doubtful. She further contended that it was established from the evidence of the prosecution that the appellant was found in possession of 1800 gms of Charas. So, it was for the accused to show that he was not in conscious

possession of the contraband. She, further contended that the notification issued by the Central Government with respect to the quantity of the sample is only the guideline and not the statutory provision. In the report of the FSL, it is nowhere mentioned that the quantity was insufficient for examination. So, no prejudice has been caused to the appellant on account of the quantity of the sample. Thus, she pleaded that there is no infirmity in the conviction of the appellant recorded by the learned trial Court.

13. We have duly considered the aforesaid contentions.

14. It is not disputed that the recovery in this case has been effected on the basis of the secret information. The place of recovery is the residential house of the appellant situated in the residential locality. But, no independent witness has been associated in the investigation of the case. PW-12 ASI Balwan Singh, the witness of recovery has categorically deposed that they tried to associate independent witnesses when notice was served to the accused, but they showed their inability to join the investigation. PW-10 DSP, Dalbir Singh, also deposed that no public person was ready to join the investigation. The recovery has been effected from the house of the accused situated in his village. The person who might be available at

the spot would be the inhabitants of his locality having social relations with the appellant. So, it is not expected that they will join the investigation in order to earn the wrath of the appellant, their co-villager. The version of PW-10 DSP Dalbir Singh and PW-12 ASI Balwan Singh that nobody agreed to join the investigation seems to be plausible and natural.

15. Moreover, it is well settled principle of law by this time that testimonies of the official witnesses also carries the same evidentiary value as that of any other witness and their testimonies can not be discarded merely on the ground of their official status. The Investigating Officer and the other prosecution witnesses had no animus or motive for the false implication of the appellant. PW-10 DSP Dalbir Singh is a Gazetted Officer, who has supervising the search and seizure. It is not expected that a senior police officer will become a party to support the false version of his subordinates. The Hon'ble Supreme Court in case **Akmal Ahmed Vs. State of Delhi, 1999(2) RCR (Criminal) 265,** has laid down that the evidence of search or seizure made by the police will not become vitiated solely for the reason that same was not supported by any independent witness. The same ratio of law has been laid down by the Hon'ble Apex Court in cases **State of NCT of Delhi Vs. Sunil (2000)**

1 Supreme Court Cases 748, Rohtash Vs. State of Haryana, 2013(3) RCR (Criminal) 355, M. Prabhulal Vs. Assistant Director, Directorate of Revenue Intelligence, 2004(1) RCR (Criminal) 160 and Ravinderan @ John Vs. Superintendent of Customs, 2007 (3) RCR (Criminal) 80.

Thus, the non-joining of independent witness is no ground to discredit the prosecution version.

16. Mere this fact that accused-appellant is a handicapped person is also no ground to render the prosecution version doubtful. The allegations against the appellant was only that he indulges in selling the charas at his house. These activities can be easily carried out by the appellant even without doing rigour physical labour and his handicapness cannot be any obstacle in carrying on these activities. The material available on record also depicts that appellant was convicted in case FIR No. 172 dated 1.6.2007, under Section 20 of the Act of Police Station Sampla, which shows that the track record of the appellant indulging in such activities earlier also. So, this plea raised by learned counsel for the appellant is devoid of any merit.

17. PW-13 SI Balbir Singh, the Investigating Officer of the case has categorically deposed that on the direction of the DSP Dalbir Singh, he searched the accused and found printed cloth bag from near the right leg of the cot. The

search of the said bag resulted into recovery of 9 packets containing charas. All the packets were found containing 1 kg 800 gms of charas in total. Charas recovered from the appellant was in different shapes. This version of the Investigating Officer has been fully corroborated by PW-12 ASI Balwan Singh, the witness of recovery and PW-10 DSP Dablr Singh in whose supervision the search and seizure has been carried out. The testimony of PW-11 Inspector Kuldeep Singh, the then SHO, Police Station, Sampla further corroborates the prosecution case before whom the appellant, witnesses and case property were produced by the Investigating Officer. PW-12 ASI Balwan Singh has categorically deposed that the accused was found sitting on the cot. The cloth bag containing of the charas was lying near the right leg of that cot, which shows that accused-appellant was in the control and physical possession of the contraband. All these witnesses have been cross-examined at considerable length, but nothing material could be brought out in their cross-examination to shatter their testimonies. So, from the consistent, cogent and reliable testimonies of the aforesaid witnesses, it is established that the accused-appellant was found in possession of 1 kg 800 gms of Charas.

18. Once the possession of the contraband is

established, the presumption under Sections 35 and 54 of the Act arises against the accused. The Hon'ble Supreme Court in case **Madan Lal Vs. State of Himachal Pradesh 2003(4) RCR (Criminal) 100**, has laid down that once the possession is established, the person who claims that it was not a conscious possession, has to establish it, because how he came to be in possession is within his special knowledge. It was further held that Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 of the Act, where also presumption is available to be drawn from the possession of illicit article. Similar ratio of law has been laid down by Hon'ble Supreme Court in case **Gian Chand and others Vs. State of Haryana 2013(3) RCR (Criminal) 916**.

19. The omission in the statement under Section 313 Cr.P.C with respect to the conscious possession has also not resulted in any prejudice to the appellant. The cloth bag containing the packets of Charas was lying near the left leg of the cot upon which the appellant was sitting. Nobody else was present near the said cloth bag. So, it was only the accused-appellant, who was in possession of the contraband. While framing the charge against the appellant, it was categorically mentioned that he was found in

conscious possession of the contraband. So, the appellant was very much aware of the fact that he has been charged for having been found in conscious possession of the contraband. Thus, mere omission of the specific question about the conscious possession, is no ground to conclude that appellant was not properly examined under Section 313 Cr.P.C. To support this view, reference can be made to case **Jarnail Singh s/o Jawara Ram Vs. State of Haryana 2013(2) RCR (Criminal) 580**, a Division Bench Judgment of this Court. The Hon'ble Apex Court also in case **Gian Chand and others Vs. State of Haryana (Supra)** laid down that every error or omission in the statement of accused does not necessarily vitiate the trial, unless the accused is able to show that the same has resulted in prejudice to him. In the instant case, as already discussed, the accused was aware from the very beginning that he was charged for having been found in conscious possession of the contraband. So, there was no question of any prejudice to the appellant in view of the omission of the specific question with respect to conscious possession in the statement under Section 313 Cr.P.C.

20. As per the prosecution case, two samples of 10 gms each have been separated from every parcel. Total 18 samples have been separated by the Investigating Officer.

The Ministry of Finance Department of Revenue, Narcotics Control Bureau, New Delhi has issued the standing order no. 1/89 laying the instructions/ guidelines with respect to the general procedure for sampling, storage, quantity of sample and method of withdrawal of the samples. The relevant portion of **Section-II, Clause 2.3** of Standing Order no. 1/89 reads as under:-

2.1

2.2

2.3. Quantity to be drawn for the sampling: The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

21. As per the aforesaid clause, in case of charas a quantity of 24 gms should be separated as a sample for the chemical test. However, in the instant case, the Investigating Officer has separated 10 gms of charas as a sample. But, learned counsel for the appellant has not been able to show that the guidelines issued under this Standing

Order are mandatory and violation thereof will render the conviction vitiated. In fact, these instructions/guidelines have been issued only for the purpose of the guidance of the Investigating Officer. There is no statutory provision in the Act specifying the minimum quantity of the sample for any contraband for the purpose of test. The report of the FSL Ex.P-7 shows that the FSL has not raised any objection with respect to the inadequate quantity of the sample. The examination of the sample parcels has been carried out by the Senior Scientific Officer (N.D.P.S) Cum-ex-officio Asstt. Chemical Examiner to Govt. of Haryana Forensic Science Lab.(H) Madhuban (Karnal) and in consequence thereof he had come out with the definite observations and opinion that samples were identified as charas. Only 2.5 gms of Charas was assumed for the purpose of examination. The sample parcel containing 7.5 gms Charas each was returned, which shows that the quantity of the sample separated by the Investigating Officer was much more than the quantity required by the FSL for test. Learned counsel for the appellant has not been able to point out as to what prejudice has been caused to the appellant for separating the less quantity of the sample as prescribed in Standing Order no. 1/89.

22. The plea regarding the violation of the provisions

of this very Standing Order was raised before the Division Bench of this Court in case **Jarnail Singh s/o Jawara Ram Vs. State of Haryana (Supra)**, the Division Bench of this Court has laid down as under:-

“50. The learned counsel for the appellant also contended that only one sample was drawn from each bag against the mandatory requirement of drawing two sample, as per standing order no.1/89 dated 13.06.1989 issued by the Government of India. He also placed reliance upon ***Jaswinder Singh and another V. State of Punjab, 2013(1) RCR (Criminal) 257***; passed by this Court. The standing order no. 1/89 (Supra) is not mandatory, as the same was not passed by the Parliament under a statute. In the Act, there is no such mandate that two samples from each bag of contraband should be taken, No prejudice has been caused to the appellant with the drawal of one sample from each bag, as he has no right to get the second sample analyzed from the Forensic Science Laboratory. When that was, so, no prejudice can be said to have been caused to the appellant.”

23. In view of the aforesaid judgment of the Division Bench of this Court, case **Rajinder Singh @ Pappu Vs. State of Punjab (Supra)** relied upon by the learned counsel for the appellant is of no help to the appellant. In case **Union of India Vs. Bal Mukund & Ors.(Supra)** relied upon

by the learned counsel for the appellant, it is nowhere been held that the standing instructions are mandatory in nature and violation thereof will result in vitiating the conviction.

24. Thus, keeping in view our aforesaid discussion, the prosecution has been able to establish beyond shadow of reasonable doubt that the accused-appellant was found in conscious possession of 1800 gms of Charas.

25. The handicapness of the appellant is also no ground for the reduction of the sentence awarded by the learned trial Court in the impugned order on the quantum of sentence. Learned trial Court has categorically mentioned that the appellant was also convicted and sentenced previously for keeping in his possession 1 kg of charas vide judgment dated 07.02.2005. These facts mentioned by the learned trial Court has not been challenged by the learned counsel for the appellant. Now, he has been found in possession of 1800 gms of Charas, which falls within the definition of the commercial quantity and also shows that even after his previous conviction, he has not reformed. So, he does not deserve any reduction/leniency in the reduction of sentence.

26. Consequently, we do not find any legal infirmity or impropriety in the conviction and sentence of the appellant as recorded by the learned trial Court and are

hereby maintained and affirmed.

27. Resultantly, the present appeal has no merits and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

February 11, 2015

s.khan