

In the High Court of Punjab and Haryana at Chandigarh

Crl. Appeal No. S-1173-SB of 2010
Date of Decision: 25.02.2015

Charan Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. D.S.Sandhu, Advocate
for the appellant.

Mr. K.S.Aulakh, AAG, Punjab.

SABINA, J.

Appellant had faced the trial in FIR No. 105 dated 1.8.2004, registered at Police Station Sultanpur Lodhi.

Prosecution story, in brief, is that on 1.8.2004, Assistant Sub Inspector ('ASI' for short) Tirath Singh and ASI Iqbal Singh were present on patrol duty on Talwandi Madhopur path near the sand blocks. Gurbachan Singh was joined with the police party. In the meantime, appellant came on a scooter from Talwandi Madho side. On seeing the police party, appellant threw his scooter and tried to run away but was apprehended on the basis of suspicion. Appellant was apprised that the bags lying on the scooter, were to be searched as the police party suspected that it contained some narcotic substance and he had the right to get the search of the bags effected in the presence of a gazetted officer or a Magistrate. Appellant stated that the bags be searched in the presence of a gazetted officer. In this regard, consent memo of the appellant was

prepared. Deputy Superintendent of Police ('DSP' for short) Kulwinder Singh was requested to reach the spot. DSP introduced himself to the appellant. Appellant reposed confidence in the DSP and consent memo in this regard was prepared. On search of the bags, poppy husk was recovered. Each bag contained 35 kilograms poppy husk. Bags were made into sealed parcels and were sealed with seal bearing impression 'TS' (seal of ASI Tirath Singh) and 'KS' (seal of DSP Kulwinder Singh). The parcels were taken in possession. Rough site plan of the place of recovery was prepared. Ruqa was sent to the police station for registration of the FIR. Appellant was arrested and his personal search memo was prepared. Scooter bearing No. PB-33-4895 was taken in possession. The case property was produced before Station House Officer ('SHO' for short) Ram Dutt by ASI Tirath Singh on return to the police station. SHO deposited the case property with MHC Manjit Singh. On the next day, ASI Tirath Singh accompanied SHO Ram Dutt to the Court and the appellant was produced before the Magistrate along with the case property. Samples were drawn from the bags and were sealed by the Magistrate with his seal bearing impression 'GS'. Thereafter, the case property was redeposited with MHC Manjit Singh. Appellant remained in police remand till 4.8.2004. While in police custody, on 4.8.2004, appellant during interrogation by ASI Tirath Singh, in the presence of Head Constable Sharanjit Singh, disclosed that he had kept concealed two bags of poppy husk on the left side of the government tubewell near the road leading from Toti to Sherpur and offered to get the same recovered. On the basis of the disclosure statement made by the appellant, the bags were recovered from the disclosed place.

Each bag contained 30 kilograms of poppy husk. The bags were

made into sealed parcels and were sealed with seal bearing impression 'TS'. The bags were taken in possession. On return to the police station, appellant along with the bags was produced before SHO Ram Dutt. The bags were sealed by the SHO with seal bearing impression 'RD' after verifying the facts. SHO deposited the case property with MHC Manjit Singh. On the next day, the case property was taken by ASI Tirath Singh and the same was produced by ASI Tirath Singh and SHO before the Court and samples were drawn from the recovered bags. The case property as well as the sample parcels were sealed by the Magistrate with his seal bearing impression 'GS'. Thereafter, the case property was redeposited by ASI Tirath Singh with MHC Manjit Singh along with two sample parcels weighing 250 grams each duly sealed with the seal bearing impression of the Area Magistrate along with specimen seal impression.

After completion of investigation and necessary formalities, challan was presented against the appellant by SHO Ram Dutt.

Charge was framed against the accused under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('Act' for short).

In order to prove its case, prosecution examined six witnesses during trial.

Appellant when examined under Section 313 of the Code of Criminal Procedure, 1973, after the close of prosecution evidence, pleaded as under:-

"I was innocent. The present case has been falsely planted upon me. In fact, ASI Vijay Kumar who was posted in P.P.Mothanwali, had tried to outrage the

modesty of my sister while she was present in the house. To this effect, a number of complaints were made to the higher police officials. In order to save his skin, ASI Vijay Kumar got registered a false case u/s 307 IPC against me, my parents and other family members. We were tried and acquitted by Sh. Sanjiv Berry, Addl. Sessions Judge (Fast Track Court), Kapurthala. Upon this, said ASI Vijay Kumar became more furious and he got registered false cases under the NDPS Act, against me, my brother and my father, who had already been acquitted by this Hon'ble Court."

Appellant examined three witnesses in his defence.

Trial Court vide judgment/order dated 10.4.2010/12.4.2010 ordered the conviction and sentence of the appellant under Section 15 of the Act. Hence, the present appeal by appellant.

Learned counsel for the appellant has submitted that prosecution had failed to prove its case. In fact, ASI Vijay Kumar, who was posted in Police Post Mothanwali, had tried to outrage the modesty of the sister of the appellant. Due to this reason, appellant and his family members were falsely involved in a case under Section 307 of the Indian Penal Code, 1860 ('IPC' for short) and they were acquitted by the Trial Court. Thereafter, the appellant had been falsely involved in this case.

Learned State counsel, on the other hand, has opposed the appeal and has submitted that prosecution had been successful in proving its case.

ASI Tirath Singh while appearing in the witness box as

PW-4, deposed as per the prosecution story. Statement of PW-4 was corroborated by PW-2 DSP Kulwinder Singh, PW-3 Head Constable Sharanjit Singh and PW-6 Sub Inspector Ram Dutt on material aspects.

PW-1 Constable Bhupinder Singh deposed that on 12.8.2004, he was entrusted with the sample parcels for depositing the same with the Chemical Examiner, Chandigarh. He deposited the samples in the office of Chemical Examiner, Chandigarh on the same day and produced the receipt before the MHC.

PW-5 Head Constable Manjit Singh deposed that on 1.8.2004, he was posted as MHC, Police Station Sultanpur Lodhi. On that day, SHO Ram Dutt had deposited the case property with him i.e. two bags of poppy husk duly sealed with seals bearing impressions 'RD', 'TS' and 'PS' along with specimen seal impression. On the next day, ASI Tirath Singh took the case property with him for producing the same before the Area magistrate and thereafter, it was redeposited with him. On 4.8.2004, SHO deposited two bags of poppy husk duly sealed with seals bearing impression 'TS', 'RD' and 'KS' along with specimen seal impression. On the next day, ASI Tirath Singh took the case property for producing the same before the Area Magistrate and it was redeposited with him on the same day along with two sample parcels weighing 250 grams each duly sealed with seal bearing impression of the Area Magistrate. On 12.8.2004, he handed over two samples to Constable Bhupinder Singh for depositing the same in the office of Chemical Examiner, Chandigarh and after doing the needful, Constable Bhupinder Singh handed over the receipt to him. Till the case property remained with him, he did not allow anyone to tamper with the same.

DW-1 Jit Singh deposed that he knew the appellant. In August 2004, some officials of Police Station Sultanpur Lodhi had gone to the house of the appellant and had taken him forcibly in custody. Nothing was recovered from the appellant. ASI Vijay Kumar was posted at Police Post Mothanwali which fell under the jurisdiction of Police Station Sultanpur Lodhi. ASI Vijay Kumar along with another Constable, had tried to outrage the modesty of the sister of the appellant. He along with other respectables had approached the police and had made a complaint against ASI Vijay Kumar. In order to save his skin, ASI Vijay Kumar had falsely involved the appellant and his family members in a case under Section 307 IPC. Appellant and other accused were acquitted in the said case. Due to this reason, appellant had been falsely involved in this case. DW-2 Katha Singh corroborated the statement of DW-1.

DW-3 Constable Kulwant Singh proved on record copies of FIR Ex. D-1 to Ex. D-13. He also proved Ex. D-14 entry made in register No. 19 and as per the same, the specimen seal impression and CFSL form were not deposited with the case property.

The case of the appellant was that he had been falsely involved in this case at the instance of ASI Vijay Kumar as he had tried to outrage the modesty of his sister. However, a perusal of the cross-examination of ASI Tirath Singh reveals that the only suggestion put to the said witness was that appellant had been challaned as ASI Vijay Kumar was inimical towards him. However, PW-4 ASI Tirath Singh was not cross-examined to the effect as to why ASI Vijay Kumar was inimical towards him. The judgment passed by the Court, in the trial faced by the appellant and his family members under Section 307 IPC, was not proved on record.

Therefore, the reason for acquittal of the appellant in the case registered against him under Section 307 IPC, is not available on the file. Although, appellant has examined two witnesses to support his plea that ASI Vijay Kumar was inimical towards him but the said witnesses are co-villagers of the appellant and it appears that due to this reason, they have deposed in favour of the appellant. Any application moved by the said witnesses against ASI Vijay Kumar to any higher authority, was not proved on record. Further, the said witnesses have not filed any application before any higher authority regarding false involvement of the appellant in this case.

So far as PW Gurbachan Singh is concerned, he was joined with the police party at the time of recovery. The said witness was not examined during trial as he had been won over by the accused. Hence, the fact that the said witness was not examined during trial, fails to advance the case of the appellant. PW-4 ASI Tirath Singh and the other official witnesses have duly proved the prosecution case. Initially two bags of poppy husk were recovered from the possession of the appellant. DSP Kulwinder Singh was called to the spot as per the request of the appellant. Thereafter, during interrogation, appellant again got recovered two bags of poppy husk. In this regard, disclosure statement of the appellant was recorded. The official witnesses were acting in discharge of their official duty and had no reason to falsely involve the appellant in this case. Further, the case property was produced before the Area Magistrate along with the appellant. The samples were drawn by the Magistrate out of the case property. As per the report of the Chemical Examiner, the contents of the samples were 'poppy head'. A perusal of form No. 29 (Ex. P-M) reveals that the seal impressions of the sample parcels had been duly depicted on

the same.

Although, as per Ex.D-14, it had not been mentioned in the register that CFSL form has also been deposited on the said date, however, Ex. D-14 fails to advance the case of the appellant as the CFSL form was not prepared at the spot. In fact, the CFSL form was prepared later after the samples were drawn by the Magistrate. The samples were received by the Chemical Examiner with seals in tact. Hence, Ex. D-14 fails to advance the case of the appellant.

Although, from Ex. D-1 to Ex. D-13, it is evident that PW Gurbachan Singh has been cited as a witness in number of cases but there is nothing on record to suggest that the said witness had been held to be not a trustworthy witness by the Court.

Thus, in the present case, prosecution had been successful in proving its case. Appellant was found in possession of poppy husk without any permit or licence. The learned Trial Court had, thus, rightly ordered the conviction and sentence of the appellant qua commission of offence punishable under Section 15 of the Act.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

February 25, 2015

Gurpreet