

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

**CRA-S-795-SB of 2008 (O & M)
Date of decision : 19.2.2015**

Raja Ram and another

.....Appellants

v.

State of Punjab

.....Respondent

CORAM : HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present : Mr. H.S. Rakhra, Advocate with
Ms. Aditi Girdhar, Amicus Curiae, for the appellants

Ms. Minakshi Goyal, AAG, Punjab

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

Raj Rahul Garg, J.

This appeal is directed against judgment dated 20.2.2008, rendered by Judge, Special Court, Bathinda under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the NDPS Act'), whereby the appellants were convicted for keeping in their possession 8 bags, containing 35 Kgs. of poppy husk in each bag, without any permit or licence, thus, committing an offence punishable under Section 15 of the NDPS Act. By passing order on sentence of even date, the appellants were sentenced to undergo rigorous imprisonment for a period of 10 years each and to pay a fine of ₹ one lakh each. In default of payment of fine to further undergo rigorous imprisonment for a period of one year.

In brief, facts of the prosecution case are; that on 27.5.2006 Inspector Harbans Singh along with other police officials in Government Vehicle bearing Registration No. PB 05 K 1089, were present at the culvert of minor, in the area of Village Sekhu in connection with nakabandi. There, one Baljinder Singh son of Jang Singh, resident of Village Sekhu met the police party. He was joined in the police party. At about 8.00 A.M. a Jeep bearing Registration No. HR 24A 3959 came from Village Desu side. When Inspector Harbans Singh signaled the jeep to stop, passengers of the car, three in numbers, tried to ran away from the jeep. Police party apprehended two of them, at the spot, whose names, they came to know as Raja Ram and Sadhu Ram. The third person absconded was Neela, who is still a proclaimed offender. Inspector Harbans Singh told the accused persons that he was suspecting some contraband in the jeep, as such, they have got a right to get their personal search as well the search of the jeep conducted in the presence of a Magistrate or some gazetted officer. Notices issued to the accused in this regard are Ex.PA and Ex. PB. Both the accused exercised their option in favour of a Gazetted officer. Thereafter, DSP Jaspal, Circle Talwandi Sabo was called at the spot. On reaching the spot, personal search of the appellants as well of the Jeep was conducted in the presence of DSP. Notices issued by DSP regarding search of the accused are Ex.PC and Ex. PD. From Jeep, 8 bags of poppy husk were recovered without any licence from the possession of the accused. Investigating Officer Inspector Harbans Singh took sample of 250 grams from each bag, made separate parcels thereof, and sealed them with the seal of 'HS'. Residue of the bags were weighed and it came out 34.750 Kgs. of poppy husk in each bag. Thereafter, bags were numbered as 1 to 8 and sealed with the seal of 'HS'. Sample seal Ex.P1 after use was handed over to ASI Surjit Singh. All the

aforesaid parcels, bags and jeep were taken into police possession vide recovery memo Ex.PE. From personal search of accused Raja Ram, currency notes of ₹ 270/-and from Sadhu Ram currency notes of ₹ 120/-were recovered. Same were also taken into police possession vide memos Ex.PF and Ex. PG. Ruka Ex.PH was sent to the police station for registration of the case, whereupon, ASI Jasvir Singh made his endorsement and recorded the formal FIR Ex. PH/1. The accused were arrested vide memos Ex. PK and Ex. PL. Rough site plan of the spot Ex.PM was prepared with correct marginal notes. Statements of witnesses were recorded. The case property and the accused persons were produced before SI/SHO Gurpreet Singh in the police station, who after verifying the facts put his seal 'GS' on all the samples and bags and also on sample seal and took into possession vide memo Ex.PN. Special report Ex.PU was also sent to the senior police officers. After obtaining the report from FSL as Ex.PT, whereby the contents of sample sent for examination, were reported as that of poppy husk; and after completion of necessary investigation, the challan was put in Court against the accused.

Finding prima-facie case against the accused persons for committing offence punishable under Section 15 of the NDPS Act, they were charge sheeted accordingly, to which they pleaded not guilty and claimed trial.

After taking prosecution evidence, statements of accused under Section 313 Cr.P.C. recorded. Each and every incriminating allegation was put to the accused persons to which, they denied each allegation and pleaded their innocence. Their defence in the statement was only that they were falsely implicated in the present case at the instance of Brij Lal, Sarpanch of Congress Party, who is having strained relations with them.

In defence, accused persons have also examined Constable Jagdev

Singh as DW1, HC Dhani Ram as DW2, Ex. Namberdar-Sushil Kumar as DW 3 and Paramjit Singh as DW 4 and, thereafter, closed their evidence.

After hearing learned counsel for both the parties and appraisal of entire evidence and material coming on record, the judgment of conviction dated 20.2.2008 was recorded and as per order of even date, the appellants were suitably sentenced, as mentioned in earlier part of this judgment.

I have heard Ms. Aditi Girdhar, Amicus Curiae, Mr. H.S. Rakhra, Advocate, for the appellants and Ms. Minakshi Goyal, AAG, Punjab, for the State, and have appraised the entire material coming on record.

Learned counsel for the appellants contended that Baljinder Singh was the independent witness of this case. Seal, after use, was not handed over to him. It was handed over to ASI Surjit Singh (PW6). When independent witness was joined in the investigation of this case, it was incumbent upon the Investigating Officer to hand over the seal to independent witness and not to police official. Not only this, but the independent witness was not examined in the Court as prosecution witness. He has been given up as having been won over by the accused. Had he been examined in the Court, he would have disclosed the prosecution story. In that manner, the genuineness of the prosecution case would have become known. Thus, on account of these facts, prosecution case cannot be said to be free from doubt.

The above contention of learned counsel for the appellants is devoid of any merit as it is nowhere the requirement of law to hand over the seal, after use, to an independent witness nor it is mandatory for the prosecution to examine that witness in the Court. Full Bench of our own High Court is on this point i.e. **Piara Singh v. State of Punjab, 1982 (2) CLR 447**". Now-a-days, nobody from the public likes to assist the Investigating Officer. It is also

the settled proposition of law that the statements of the police witnesses are at par with the statements of non official witnesses. In case the statements of police officials are consistent, inspires confidence in the mind of the Court regarding guilt of the accused, Court cannot leave the fate of the case in the hands of a particular person, may be an independent witness. Simply, because an independent witness has been given up as having been won over by the accused, would not make the entire prosecution case unbelievable, which otherwise is consistent and inspires confidence in the mind of the Court regarding guilt of the accused. When a police officer gives evidence in Court that certain articles were recovered by him on the strength of statement made by accused, it is open to the Court to believe that version to be correct, if it is not otherwise shown to be unreliable. Burden is on accused through cross examination of witnesses or through other materials, to show that evidence of police officer is unreliable. It is not permissible that police action is unreliable to start with.

It was next argued by learned counsel for the appellants that it is a case in which, as per prosecution story, the appellants were carrying contraband by a jeep. As such, recovery of contraband from the jeep would not establish the conscious possession of contraband as that of the appellants. Hence, they are entitled to acquittal.

On the above point, there is a judgment from Hon'ble Supreme Court of India i.e. **“Gian Chand and others v. State of Haryana, AIR 2013 SC 3395”** In this judgment the Hon'ble Supreme Court has held that once possession of the contraband article is established, the burden shifts on the accused to establish that he has no knowledge of the same. It is impossible for the prosecution to prove certain facts, particularly within special knowledge of

accused, and therefore, the case falls within the ambit of the provisions of Section 106 of the Indian Evidence Act, 1872. Accused has to establish how he came to be in possession of the same. The appellants were found travelling in a jeep at odd hours and also tried to speed away the jeep when police tried to stop them, shows the culpable mental state of the appellants. In the case in hand as well, when Inspector Harbans Singh (PW1) was holding nakabandi along with police officials, at the culvert of minor, in the area of Sekhu, jeep bearing Registration No. HR 24A 3959 was seen coming from the side of Village Desu and when Investigating Officer signalled the jeep to stop, three young persons tried to run away from the jeep. However, out of them two were apprehended on the spot by Inspector Harbans Singh. Those persons are the appellants of this case whereas the third one, who succeeded in absconding, is still a proclaimed offender. The appellants were carrying 8 bags of poppy husk containing 35 Kgs. each by the aforesaid jeep. It is a commercial quantity. It could not escape notice of the appellants sitting in jeep. Even Raju was the driver of the jeep. They were having special means of knowledge with regard to bags lying in jeep. Culpable mental state is also revealed by the fact that in case there was no contraband in jeep and accused were not in the knowledge of the same, then what was the necessity of running away or absconding. Under these circumstances, it could be said that the appellants were in possession and in control over the poppy husk bags lying in the jeep. They were in conscious possession of 8 bags of poppy husk.

It was next pointed out by learned counsel for the appellants that there is material contradiction in the statements of Investigating Officer Harbans Singh (PW1) and ASI Surjit Singh (PW6). PW 1 deposed that all the writing work was done by ASI Surjit Singh whereas PW 6 deposed that it was

done by Inspector Harbans Singh (PW 1). This shows that, in fact, ASI Surjit Singh was not present at the spot. This contradiction makes the entire prosecution case doubtful, benefit of which have to go to the appellants.

The above contention of learned counsel for the appellants is not sustainable as the above contradiction does not go to the root of the case. Under the given situation and time, Investigating Officers generally instructed their subordinates to prepare the papers. Under this eventuality, it is very hard to remember as to what paper was written by whom. Whatever proceedings are recorded at the spot, that is done by the Investigating Officers or under their directions by their subordinates. This contradiction cannot be termed as material contradiction and is not sufficient to doubt the testimonies of these two police officials. There is nothing on record to show that they were indisposed towards the accused-appellants or they wanted to implicate them falsely. The testimonies of aforesaid two officials are consistent on material aspects of the case and there is nothing on record to disbelieve their testimonies.

Both the accused had taken the defence that on 26.5.2006 accused Raja Ram had gone to accused Sadhu Ram to meet him. On that day, he stayed in the house of Sadhu Ram. Police had taken them from the house of Sadhu Ram at 4.00 A.M. in the presence of respectables, at the instance of Brij Lal, Sarpanch of Congress Party, who is having strained relations with Sadhu Ram. In order to prove the defence version, learned counsel for the appellants referred to the statement of DW 3-Sushil Kumar. He deposed that in the last week of May 2006, father of Sadhu Ram came to him and told that his son Sadhu Ram along with Raja Ram, was taken away by the police of Police Station Raman and he visited police station to enquire about the matter but the police refused to release them. He also deposed that SHO, Police Station Raman was having

intimacy with Ex-Sarpanch-Brij Lal, of their village and at his behest, accused/appellants have been falsely implicated in this case. This witness did not depose that in his presence, police had taken away the appellants to police station. The statement of DW 3 is nothing but a hearsay evidence, which is not admissible in law. There is no material on the file to show as to on what point accused Sadhu Ram was having strained relations with Brij Lal and further, that this Brij Lal belongs to Congress Party or was having intimacy with SHO of Police Station, Raman. No question was even put to the Investigating Officer of this case i.e. Harbans Singh (PW1).

In the light of this discussion, the argument of learned counsel for the appellants regarding false implication of the appellants, at the instance of Brij Lal, is not sustainable.

No other point was urged before me.

The case of the prosecution stands fully proved in view of the statements of prosecution witnesses as discussed in detail by the learned trial Court in the impugned judgment.

For the above said reasons, this appeal, having no merit, maintaining the judgment of conviction dated 20.2.2008 and order on sentence of even date, is ordered to be dismissed. If the appellants are already on bail, their bail bonds shall stand cancelled and they be taken in custody for serving the remaining period of their sentence. The Chief Judicial Magistrate concerned shall take necessary steps to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report to this Court, within a period of two months from the date of receipt of a copy thereof.

The District & Sessions Judge concerned shall ensure that the

directions are complied with, within the time frame and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports and put up the papers whether the reports are received or not within the time frame, immediately after the expiry thereof.

(RAJ RAHUL GARG)
JUDGE

19.2.2015
Ashwani