

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

CRA-S-339-SB of 2004
Date of Decision: April 22, 2015

Karam Singh ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. G.S. Sidhu, Advocate
for the appellant.

Mr. J.S. Brar, AAG, Punjab.

FATEH DEEP SINGH, J.

It is upon his conviction through judgment and order of sentence dated 8.1.2004 by the learned Judge Special Court, Bathinda under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') whereby, he was sentenced to undergo rigorous imprisonment for 10 years and fine of ₹1 lac and in default thereof to under further rigorous imprisonment for one and a half years, the convict-appellant has challenged the same through this appeal.

Heard, learned counsel for the parties and perused the records of the case.

The prosecution's story is that it was on 27.6.1996 police party headed by S.I. Dinesh Kumar from Police Station, Raman (Bathinda) had laid a *naka* in the revenue estate of

village Tarkhanwala when they accosted a jeep bearing No.PUO-9130 (for short, 'Jeep') coming from the side of village Norang via katcha path. On stopping the vehicle, accused Karam Singh @ Ganga Singh resident of village Jhorarohi, District Sirsa was apprehended and on the basis of consent memo Ex.PD, a Gazatted Officer DSP Jaswant Singh was called in whose presence upon search of the jeep led to the recovery of plastic *jhola* (polythene bag) from a box beneath the driver's seat opium wrapped in glaze paper was recovered. After drawing necessary samples and undergoing usual formalities the contraband on weighing came to 5 kgs., 980 grams which was taken into police possession by way of memo Ex.PA. Personal search memo Ex.PB was prepared and upon ruqa Ex.PE being sent to the Police Station formal FIR Ex.PE/1 was recorded. The Investigating Officer recorded statements of the witnesses and prepared rough site plan Ex.PF. Accused was formally arrested through memo Ex.PC. It is consequent upon completion of formalities and submission of challan on receipt of report of Chemical Examiner Ex.PL the accused was charged under Section 18 of the Act and on his denial to the same led to the trial.

The prosecution to prove its case examined PW1 Jaswant Singh, DSP, PW2 S.I. Dinesh Kumar, Investigating Officer, PW3 Constable, Karnail Singh, PW4 Om Parkash, Clerk of SDM, Sirsa and PW5 Jaswant Singh, Clerk of SDO Sirsa.

The accused denied the allegations of the prosecution in his stand under Section 313 Cr.P.C. took the plea that it was due to the fact that the personal jeep of the DSP Amritsar was stolen and it was on suspicion he and his family

members including his minor son Jaskaran Singh, brother-in-law Ujaggar Singh and the appellant himself were illegally taken away from their house in the presence of respectables and subsequently all of them have been falsely implicated in different cases on the same very date and in his defence to substantiate the same had examined DW1 Major Singh, DW2 Gurcharan Singh, DW3 Ajaib Singh and DW4 HC Ramesh Kumar and after proving documents Ex. D3 to Ex.D8 closed the evidence.

Learned State counsel has readily accepted the fact that under the criminal jurisprudence the onus is upon the prosecution to establish its case beyond the shadow of doubt and can by no means take the advantage of the weaknesses of the defence. The contentions of the counsel for the appellant that PW1 Jaswant Singh, DSP has sought to evade most of the questions pertaining to his being a witness in cases registered against the minor son Jaskaran Singh and brother-in-law Ujaggar Singh of the present appellant got registered by way of FIR No.44 dated 27.6.1996 and FIR No.45 dated 27.6.1996, wherein, it is stated that opium weighing 2kg and 4kg respectively have been falsely implanted. However, to the contrary, the Investigating Officer S.I. Dinesh Kumar PW2 in his cross-examination could not escape this fact what has been sought to be taken up in the defence of the accused that on that very day while he was SHO, Police Station Raman, 2-3 other cases under the Act were registered on the same very day and, thereafter, has sought to evade the *inter se* relationship of the accused in the other case Ujaggar Singh to be brother-in-law of the present appellant are matters which show that even the Investigating Officer of the

search conducted is not above board and he is trying to hide the truth from the Court and which argument of the learned counsel for the appellant could not be controverted on behalf of the State and which defence has been materially corroborated by DW1 Major Singh, Sarpanch of the village of which the appellant belongs as well as DW2 Gurcharan Singh, a Lambardar of the same very village, who have in no uncertain terms corroborated the material fact of taking away of the minor son and brother-in-law of the present appellant by the police in their presence and nothing adverse could be pointed out in their cross-examinations by the State which could be a distressing feature for the defence and even another witness DW3 Ajaib Singh, who was claimed to be an independent witness of the recovery by the prosecution has belied the prosecution's version and has supported the defence by stating that his signatures on documents Ex.PA to Ex.PD were obtained by the police on blank papers by using coercion are matters which leaves an indelible mark of highhandedness of the police. Own official witness HC Ramesh Kumar, DW4 has proved the defence of the accused by means of documents, log book of police Gypsy vehicle bearing No.PB08F-1261, entry dated 27.6.1996 by way of Ex.D1, roznamcha of Police Station, Raman dated 27.6.1996, entries No.2, 10,11,12,18,20,21,22 and 25 by way of Ex.D2 all dated 27.6.1996 inches towards the establishment of defence of the accused and the irrefutable documents of the police proved by way of Ex.D3 to Ex.D8 shows and proves to the hilt the factum that the present Investigating Officer and Gazetted Officer, the DSP were also present and witnesses who framed Jaskaran Singh minor son and Ujagar

Singh brother-in-law of the present appellant in similar cases under the Act on the same very date i.e. 27.6.1996. The judgment of acquittal of both these relations of the appellant Ex.D7 and Ex.D8 leaves no scope to doubt that by virtue of this defence they were acquitted of these charges which were found to be false and fabricated and, thus, a substantial, reliable and cogent evidence to entirely demolish the prosecution's version and to leave no scope to doubt that the present case is pure and pure misuse of the powers by the police to achieve their sinister and evil design and which the learned trial Court as it stands reflected from the impugned judgment has intentionally failed to take cognizance of unimpeachable oral as well documentary evidence and has failed in its duties in even discussing this evidence and how the trial Court discarded this cogent defence are matters which impinges upon the judicial conscience.

As has been argued the first and the foremost contention of the material contradiction of the stand of PW1 Jaswant Singh, DSP that the accused had given his consent to be searched before him and when the own document of the police consisting of ruqa Ex.PE upon which FIR Ex.PE/1 was registered shows that a written consent memo by way of Ex.PD was obtained only before the Investigating Officer and in his cross-examination the Investigating Officer as PW2 accepts that the same was put to the accused orally are matters which clearly reflect the wholesome falsehood in the prosecution story. The own alleged private witness Ajaib Singh so claimed by the prosecution to be the witness of the recovery has rather testified against the prosecution by way of DW3 and rather has negated all the prosecution's

documents Ex.PA to Ex.PD rather are matters which demolish the case of the prosecution in its entirety leaving not even an iota of scope to have consideration of the prosecution story. The most astonishing thing as per the own version of the DSP that it was in his presence the recovery was effected but he has not put his seal impression on any of the parcels so prepared rather puts to doubt the very presence of the DSP at the time when this alleged recovery has been made and what is further astonishing is that the Investigating Officer has handed over his seal after its use to his subordinate Jaspal Singh and why not to a Gazetted Officer to ensure ruling out of the subsequent tampering rather are matters which further adds to the woes of the prosecution. Even the official who took the samples to the office of Chemical Examiner, C. Karnail Singh, PW3 was totally uncertain as to the numbers of samples taken by him and their deposit in the Laboratory. Sometimes he says one and sometimes three are matters which certainly become relevant in the present state of affairs. Even the official, who took the ruqa has not been examined nor there has been requisite compliance of provisions of Section 52 of the Act and, thus, renders even the detention to be invalid and unlawful. Besides, there has been further gross violation of the provisions of Section 52A of the Act which was inserted vide amendment w.e.f. 29.5.1989 much less resort to essential provisions by way of Section 57 of the Act which are purely for the purpose of ensuring prevention of false implication of a person and being a provisions to ward off such an eventuality necessitating due compliance which has not been followed in the present investigations.

Thus, from it all, it stands abundantly highlighted as to

the intentional and wilful colourable exercise of powers by these police officials, who for a sinister gain and aim have fabricated false evidence against an innocent person and, thus, as public servants have grossly transgressed the limits of their powers not only illegally detaining a citizen of this country but also putting him behind the bars for no fault of his and, thus, right to freedom which is the embodiment of our Constitution by this act of these officials has been invalidated . Since the empowered officer under Section 42 of the Act, the present Investigating Officer, has by his intentional conduct caused arrest of an innocent person, the present appellant, and without reasonable ground had arrested him and fabricated a false case and, therefore, needs to be dealt with for this dastardly intentional act and conduct in fabricating falsehood and thus undermine a judicial process needs to be prosecuted under the provisions of Section 58 of the Act which has been enacted by the wisdom of the Legislature in its endeavour to keep at bay such instances of false implication.

Thus, it would subserve the ends of justice, if directions are issued to the learned trial Court to proceed ahead under these and other relevant provisions of law against all these police officials who testified so before the court in this totally false case.

In the light of the foregoing discussions, the impugned judgment certainly is not only perverse in its approach but is also illegal in its findings and needs to be set aside by way of acceptance of the present appeal. Ordered accordingly.

Copy of this order be despatched to the trial Court/successor Court for necessary compliance through learned

District and Sessions Judge, Bathinda.

(FATEH DEEP SINGH)
JUDGE

April 22, 2015
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