

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

CRA-S-365-SB-2004 (O&M)

Naib Singh

....Appellant(s)

Versus

State of Punjab

Respondent (s)

Date of decision: 05.02.2015

CORAM: HON'BLE MRS JUSTICE RAJ RAHUL GARG

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

Argued by: Mr. Ram Darshan Yadav, Legal Aid Counsel for the appellant.

Ms. Minakshi Goyal, Assistant Advocate General, Punjab.

RAJ RAHUL GARG, J.

Challenge in the instant appeal has been laid to the judgment and order of sentence dated 17.11.2003 respectively passed by the learned Judge, Special Court, Mansa whereby the appellant has been convicted for the offence under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act”) and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.one lac and in default of payment of fine, he was to further undergo RI for a period of one year.

The case set up by the prosecution is this that on the basis of ruqa (Ex.PK) prepared by Gurdev Singh, ASI, Police Station, Joga, Investigating Officer of this case on 20.8.2002 at 5.50 pm in the area of

Village Ubha, FIR (Ex.PB) has been recorded in Police Station, Joga against the accused. The Investigating Officer along with ASI Nachhattar Singh, HC Raj Singh 350, C-Gurtej Singh 472 on government Canter No.PB-03B/8526 driven by C-Harwinder Singh in connection with patrol duty was going towards Village Burj Jhabbar, Ubha etc from Police Station, Joga. When the police party reached near the turning of the road leading to Village Burj Jhabbar then Buta Singh son of Dhanna Singh resident of Joga met him per chance. He was joined in the police party. Police party on the pavement of canal minor was going towards village Ubha. When the police party reached near the bridge of pacca water course in the area of village Ubha then on the right side of the pavement of canal minor near the Kikkar tree one person was seen sitting on three bags by lowering himself down, who was apprehended by the Investigating Officer under suspicious circumstances with the help of police officials. On being asked about his whereabouts, he disclosed his name to be Naib Singh son of Harnam Singh, Majbi Sikh, resident of Burj Dhillwan, Police Station, Sadar Mansa. The Investigating Officer told him that the bags lying underneath are suspected to be having some intoxicating substance and he had a full right of his search. Search of the bags, which were in his possession, could be got conducted in the presence of any Magistrate or Gazetted Officer. Upon which, he desired to be searched in the presence of any Gazetted Officer. Consent memo was prepared which was thumb marked by the accused and attested by ASI Nachhattar Singh and Buta Singh. Through wireless set DSP, Sub Division, Mansa, was requested to reach at the spot. After 45 minutes Shri Mukhtiar Singh, DSP, Sub Division, Mansa along with his gunmen in official gypsy reached at the spot. DSP disclosed his identity to

the accused and told the accused that he had full right to get his search and search of the bags conducted in presence of any Magistrate or any other Gazetted Officer. He gave consent about search in presence of DSP. Separate consent memo was prepared. Accused affixed his thumb impression. Witnesses attested the same. On the directions of DSP, mouths of the three bags were opened. These were marked as Ex.P1 to P3. Thereafter, from bag no.Ex.P1 two samples of 100 grams each were taken. From bag No.Ex.P2, two samples of 100 grams each were taken. From bag no.3, two samples of 100 grams each were taken. Two samples were drawn from each recovered bag. One sample was of 100 grams. The samples were marked as A.B in respect of bag No.1, C,D in respect of bag No.Ex.P2 and E.F in respect of bag no.3. Each of the bags after weighment came to be 34 kgs 800 grams. All the bags and the samples were reduced into parcels and sealed with the seal bearing impression of letters GS. Sample seal was prepared separately. Seal after use was handed over to Buta Singh independent witness. The case property was taken into possession of the police vide separate recovery memo Ex.PK, which was attested by the witnesses. Ruqa was sent to the Police Station through Constable Gurtej Singh 472 on the basis of which formal FIR against the accused was registered. The accused and the case property were produced before Bhupinder Singh SI/SHO on the same day. After verifying the facts of the case from the accused and the witnesses, he put his seal BS on each sample as well on the case property. The case property was retained by him in the safe custody. On 21.8.2002, he prepared the inventory memo Ex.PC and moved application (Ex.PD) before the learned JMIC, Mansa and then produced the case property, samples and the accused before him.

LearnedJMIC found all the seal of the case property in intact condition and then ordered for depositing the same in the concerned judicial Malkhana, Mansa. As there was no space in the judicial Malkhana, he kept the case property in his safe custody. On the same day, he filled Form No.29 (Ex.PE) and handed over the samples along with the sample seal to Head Constable Avtar Singh for depositing the same with the FSL, who got issued docket from the office of SSP, Mansa and deposited the same with the FSL, obtained receipt and then produced the same before SI Bhupinder Singh. Report of FSL (Ex.PF) was obtained. Thereafter, after investigation of the case, the challan was presented in the Court.

Finding a prima facie case against the appellant for committing offence punishable under Section 15 of the Act, he was charge sheeted accordingly to which he pleaded not guilty and claimed trial.

After taking prosecution evidence, statement of accused under Section 313 Cr.P.C was recorded putting all incriminating circumstances appearing against the accused to him to which he pleaded his innocence and false implication.

After hearing learned Public Prosecutor for the State and defence counsel and appraising the entire material coming on record, the learned Judge, Special Court, Mansa convicted the accused-appellant and sentenced as aforesaid.

I have heard Sh. Ram Darshan Yadav, Legal Aid Counsel for the appellant as well as Ms. Minakshi Goyal, AAG, Punjab for the State and have also gone through the entire material coming on record.

It was contended by learned counsel for the appellant that the case is false. Appellant was arrested from his house. He has been

implicated falsely in this case at the instance of Veera Singh. Appellant had no male issue. Veera Singh is having two sons. Veera Singh was having an eye on the property of the appellant as he wanted to grab the same. Referring to the statements of DW1-Babu Singh, Member Panchayat of Village Burj Dhilwan and that of Hamir Singh, Lambardar of Village as DW2, it was contended that both these witnesses deposed that the appellant was arrested by the police from his house and on their asking about the cause of arrest of the appellant, they were told that he was being taken to the police station in connection with the complaint of Veera Singh. However, later on they came to know about the false implication of the appellant in this case.

Appellant is having his family. Besides these two Dws, other members of the Panchayat and Villager were also there. Nobody ever made a complaint with the senior officers of the police regarding false implication of accused in this case. Even otherwise, merely on the basis of statements of DW1 and DW2, the statements of ASI-Gurdev Singh (PW3), Investigating Officer of the case, Mukhtiar Singh, DSP (PW5), SI Nachhatar Singh (PW4), which are consistent and inspire confidence in the mind of the Court regarding the guilt of the accused cannot be brushed aside. There is nothing on record to show that the afore-discussed witnesses in any way were inimical to the appellant. Simply because the appellant was not having a male issue, it cannot be said that Veera Singh, who is not related to the appellant even remotely would get the appellant implicated falsely in this case. It is also not believable that Mukhtiar Singh (PW5), Police Officer of the rank of DSP would indulge in activities like false implication of the accused, as such the above contention of learned counsel for the appellant is

not sustainable.

It was next argued by learned counsel for the appellant that in this case, Buta Singh was joined as independent witness but he was not examined in the Court. He was not even summoned to appear as witness in spite of giving last opportunity to the prosecution to lead its evidence. Prosecution has failed to examine Buta Singh for the reasons best known to it. Had Buta Singh appeared as witness, the prosecution case would have been disclosed. Present case is the one, which entails stringent punishment, as such before awarding stringent punishment, strict proof is required against the appellant. On the basis of statements of police officials, conviction cannot be based as such the appellant is entitled to benefit of doubt.

The above contention of learned counsel for the appellant is again not sustainable. Though, there is no rule of law to make it obligatory for the Investigating Officer to join independent witnesses in the investigation of the case yet keeping in view the stringent punishment provided in the cases of the like nature, the rule of prudence requires the joining of independent witness in the investigation of the case. In the present case, the prosecution joined Buta Singh, an independent witness in the investigation. In spite of issuance of summons to this witness, he did not appear in the Court. The prosecution evidence was closed by the order of the Court. Under these circumstances, it cannot be said that non-appearance of Buta Singh as witness in this case, in any way, prejudice the right of accused. Accused-appellant could well examine him as his defence witness but he has not chosen to do so. Apart from it, even if the independent witness is not examined in the Court, it cannot be said that only

for this reason, the entire prosecution case, which is otherwise fully proved, goes. If the non-examination of independent witness is made fatal for the prosecution case, then it would certainly have effect on the statements of gazetted officers. It is never the intention of the law that the police officers are not worthy of becoming as witnesses. The only requirement in such like cases is this that the Court has to scrutinize the testimonies of police officers/officials with great care and caution. In case, their testimonies are consistent and inspire confidence in the mind of the court regarding guilt of the accused, then conviction can well be based on the testimonies of police officials. Statements of police officials are at par with the statement of non-official witnesses.

Even, PW3-Gurdev Singh, Investigating Officer has deposed as per the prosecution story. PW4-SI Nachhattar Singh as well as PW5-Mukhtiar Singh, DSP, Sub Division, Mansa have fully corroborated the statement of PW3. These official witnesses were acting in discharge of their official duty and had no ill will or enmity against the appellant to have falsely involved him in this case. Moreover, recovery of the contraband was effected from the appellant in the presence of a gazetted officer, which itself proves the contraband to be in conscious possession of the appellant.

Lastly, though learned counsel for the appellant has argued that appellant is 75 years of age and has already undergone five years and 2 months of sentence, yet this argument has no bearing in reducing the sentence of the appellant. Appellant was found in possession of 105 kg poppy husk, which is a commercial quantity. The minimum punishment provided for the offence has been awarded to the accused-appellant as such this Court cannot give any relief to the appellant in the matter of sentence.

No other point was urged before this Court.

For the above said reasons, maintaining the judgment of conviction and order of sentence dated 17.11.2003, this appeal is ordered to be dismissed. If the appellant is on bail, his bail bonds, shall stand cancelled and he be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, 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, Mansa 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 report, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

05.02.2015
manoj

(RAJ RAHUL GARG)
JUDGE