

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

(1) **CRA-S-1130-SB-2011**
Date of decision: 01.10.2015

Raj Kumar @ Raj Appellant
Versus

State of Punjab Respondent

(2) **CRA-S-633-SB-2009**

Balbir Kaur @ Biro Appellant
Versus

State of Punjab Respondent

(3) **CRA-S-688-SB-2009**

Sukhwinder Kaur Appellant
Versus

State of Punjab Respondent

(4) **CRA-S-775-SB-2009**

Sukhwinder Singh Appellant
Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the 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

Present: Mr.Sameer Sachdeva, Advocate
for the appellant in CRA-S-1130-SB-2011.

Mr.B.S. Kathuria, Advocate
for the appellants in CRA-S-633-SB-2009,
CRA-S-668-SB-2009 and CRA-S-775-SB-2009.

Mr. Ajaib Singh, Additional Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

This judgment of mine shall dispose of all the four appeals mentioned above, which have been presented by appellants Raj Kumar alias Raj, Balbir Kaur alias Biro, Sukhwinder Kaur and Sukhwinder Singh against the same judgment of conviction dated 16.01.2009, passed by the learned Judge, Special Court, Ludhiana, vide which all the four appellants were held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred as the 'Act') and the order of sentence of the even dated, vide which all the appellants were sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹ 1,00,000/-, each and in default of payment of fine, they were ordered to further undergo rigorous imprisonment for a period of six months, each.

2. The brief facts, giving rise to this prosecution, are that on

02.05.2007, PW3 Sub Inspector Rajesh Kumar (the Investigating Officer of the case), who was posted in Anti Narcotic Staff, CIA Staff, Ludhiana, under supervision of Inspector Devinder Singh, along with other police officials was present at the canal bridge of village Jaspal Bangar in government and private vehicles in connection with patrolling and checking. Inspector Devidner Singh held Naka on the road leading from Ludhiana to Doraha, whereas the Investigating Officer along with other police officials was present on the road, other side of the canal, going to village Jaspal Bangar. In the meantime, an Ambassador car bearing registration No.HR-03C-1611 came from the side of village Jaspal Bangar. The car was intercepted. It was being driven by accused-appellant Sukhwinder Singh. Accused-appellant Raj Kumar alias Raj was sitting by side of Sukhwinder Singh, the driver. Accused-appellants Balbir Kaur alias Biro and Sukhwinder Kaur were sitting on the rear seat. In the meantime, one person namely Jaspinder Singh son of Santokh Singh, resident of Pakhowal Road came there. He was joined as a witness in the police party. The Investigating Officer suspected some contraband in the car and wanted to search the car. He gave option to the accused-appellants as to whether they want to get their search conducted in the presence of some gazetted officer or a magistrate, who can be called. But the accused-appellants reposed confidence in SI Rajesh Kumar and opted to be searched by him. Their consent memos Ex.PB, Ex.PC, Ex.PD and Ex.PE were prepared. Then the search of the car was conducted. On the

back seat near the feet of the ladies, 20 packets were lying. When head-lights were opened, 14 packets were found lying from the cavity under each head-light and from the cabin in the dicky, 60 packets were recovered. Total 108 packets were recovered. The packets were opened and they were found containing poppy husk. All the packets were opened and the contents thereof were made homogenous. Out of the bulk, two samples of 250 grams each were taken out and remaining poppy husk was put into four bags weighing 35 kilograms each. The samples as well as the residue were converted into parcels and sealed with seal bearing impression 'RK'. Sample seal Ex.P1 was separately prepared. The case property was taken into police possession vide memo Ex.PF. Parcel of empty bags was also prepared and sealed with seal of 'RK'. This parcel along with the car, registration certificate and driving licence were taken into possession vide memo Ex.PG. The accused were arrested. Ruqqa Ex.PS was sent to the police station. On the basis of which, FIR Ex.PS/1 was registered. The Investigating Officer also prepared the site plan Ex.PT of the place of recovery.

3. On returned to the police station, the Investigating Officer produced the accused and case property before ASI Rajinder Parshad, the SHO Police Station Shimlapuri, who verified the facts of the case and affixed his seal bearing impression 'RP' on all the parcels and sample seal chit Ex.P1. Then the case property was deposited with the Moharir Head Constable Ram Pal. On the next day, SI Rajesh Kumar took the case

property from the MHC and produced before the Magistrate vide application Ex.PU. The case property was seen by the Magistrate and it was deposited with Nazir Judicial Malkhana. One sample parcel and specimen seal was deposited with MHC Ram Pal. On 04.05.2007, the Investigating Officer took the case property from the District Nazir and produced the same before the Magistrate vide application Ex.PV and the Magistrate passed his order Ex.PV/1. One of the sample taken at the place of recovery was sent to the Chemical Examiner, who vide his report Ex.PX, opined that the contents of the sample parcels are of chura poppy heads. On completion of the investigation, the report under Section 173 Code of Criminal Procedure, 1973 (here-in-after referred as the 'Cr.P.C.') was presented in the Court.

4. The accused-appellants were charge-sheeted for the offence punishable under Section 15 of the Act vide order dated 12.01.2008, to which, they pleaded not guilty and claimed trial.

5. In order to establish its case, the prosecution examined as many as six witnesses.

6. When examined under Section 313 Cr.P.C., accused-appellant Sukhwinder Singh pleaded that he is innocent and has been falsely implicated due to his dispute with Charanjit Kaur widow of SI Harbans Singh as result of the sale of a car to her, who was insisting for the return of money as the papers were not being transferred in her favour. He pleaded he was dealing in sale and purchase of motor vehicles

on commission basis.

7. In his statement under Section 313 Cr.P.C., accused-appellants Raj Kumar alias Raju and Sukhwinder Kaur alleged innocence and false implication at the instance of PW Jaspinder Singh, who is the stock witness of the Police Station Shimlapuri and they were picked up by the police prior to the recovery shown in this case.

8. In her statement under Section 313 Cr.P.C., accused-appellant Balbir Kaur alias Biro pleaded innocence. She pleaded that she was picked up by the police at the instance of SI Rajesh Kumar prior to the recovery as shown by the police. Her husband Gurtej Singh sent applications before the Senior Police officials and Human Rights Commission, Punjab regarding her false implication. Panchayat of their village also passed a resolution in this regard.

9. In the defence evidence, accused-appellants examined HC Malkiat Singh as DW1, HC Balwinder Singh as DW2, HC Sukhdev Singh as DW3 and HC Ashwani Kumar as DW4.

10. On appreciating the evidence on record and contentions raised by learned counsel for the parties, learned trial Court held guilty and convicted all the appellants for the offence punishable under Section 15 of the Act and they were awarded the sentence as mentioned in the upper part of the judgment. The separate proceedings under Section 60 (3) of the Act were also ordered to be initiated.

11. Aggrieved with the aforesaid judgment of conviction and

order of sentence, the present appeals have been preferred separately by all the four appellants.

12. I have heard Mr. Sameer Sachdeva, Advocate, learned counsel for appellant Raj Kumar alias Raj in CRA-S-1130-SB-2011, Mr. B.S. Kathuria, Advocate, learned counsel for appellants Balbir Kaur alias Biro, Sukhwinder Kaur and Sukhwinder Singh in CRA-S-633-SB-2009, CRA-S-668-SB-2009 and CRA-S-775-SB-2009 respectively, Mr. Ajaib Singh, learned Additional Advocate General for the State of Punjab and have carefully gone through the record.

13. Initiating the arguments, learned counsel for the appellants contended that as per the Standing Instructions No.1/88, issued by the Narcotics Control Bureau, the sample should have been separated from each packet but in the instant case only two samples have been separated from the entire lot. So, it cannot be stated that the poppy husk was stored in all the packets and it cannot be stated that the recovery of the contraband falls in commercial quantity. To support their contentions, they relied upon cases *Net Ram Vs. State of Rajasthan - SB Criminal Appeal No.673/2008* decided on 18.10.2003 by the Hon'ble Rajasthan High Court and *Union of India Vs. Bal Mukund & Ors. 2009(2) RCR (Criminal) 574*.

14. They further contended that the alleged independent witness Jaspinder Singh has not been examined. In the absence of his testimony, there is no independent corroboration to the testimonies of the

official witnesses.

15. They further contended that even no gazetted officer was called at the spot by the Investigating Officer in order to supervise the search and seizure. The Investigating Officer has also admitted in the cross-examination that the signatures of Jaspinder Singh were different on the material documents, which shows that in fact Jaspinder Singh was not present at the spot and his signatures were forged, that is why he was not produced in the witness-box. They contended that thus, the entire case of the prosecution is rendered doubtful. To support their view, they relied upon case *Sukhdev Singh alias Sukha Vs. State of Punjab 2006(1) RCR (Criminal) 4*.

16. They further contended that the link evidence in this case is also missing. The recovery is alleged to have been effected on 02.05.2007. No sample seal was deposited with the Mohrir Head Constable. The specimen seal impression/sample seal of SHO was not prepared. PW1 HC Rampal Singh, the then MHC stated that only one sample was deposited with him, whereas two samples are alleged to have been separated and one sample was separated in the presence of the Magistrate. No explanation about the remaining two samples was given. PW2 ASI Harbhajan Singh has stated that three seals were affixed on the specimen sheet but there was only one seal. All these circumstances shows that the case property was tampered with.

17. They further contended that there are material

contradictions in the statements of the prosecution witnesses. The prosecution was not even sure about the number of the packets alleged to have been recovered from the car. In the recovery memo, the number of packets is mentioned as 88, whereas in the ruqqa, the number of packets is mentioned as 108. These material contradictions renders the entire case of the prosecution doubtful.

18. They further contended that entire documents have been fabricated. In the notice under Section 50 of the Act, the entire particulars of the case have been mentioned, which shows that these documents have been fabricated later on only to complete the paper work.

19. They further contended that Lady Constable Baljit Kaur, who has been alleged to carry out the search of appellant Balbir Kaur and Sukhwinder Kaur, has not been examined. Even her place of posting is contrary. In the statements of the prosecution witnesses, it is nowhere mentioned that she had accompanied the raiding party. This fact again shows the fabrication in the prosecution story. They further contended that there is no evidence to establish the conscious possession of the appellants. No specific question has been put to them in their statements under Section 313 Cr.P.C. with respect to the conscious possession, which is also fatal to the prosecution. To support their contentions, they relied upon cases *Avtar Singh Vs. State of Punjab 2002 (4) RCR (Criminal) 180*, *Sukhdev Singh alias Sukha* (supra) and *Gurdip Singh Vs. State of Punjab 2003(4) RCR (Criminal) 407*.

20. They further contended that the Investigating Officer has not collected any evidence to establish the connection of the accused-appellants with the car in question. There is no evidence to establish any *inter se* relation between the accused. As per the registration certificate, the car has been registered in favour of the Director Public Relation, Haryana. The Investigating Officer has not investigated as to how this government vehicle was involved. Thus, they contended that the case of the prosecution is extremely doubtful and the learned trial Court has wrongly recorded the conviction of the appellants.

21. On the other hand, learned State counsel pleaded that from the statements of PW3 SI Rajesh Kumar, Investigating Officer of the case and PW2 ASI Harbhajan Singh, the witness of recovery, it is established that 140 kilograms 500 grams poppy husk has been recovered from the possession of the appellants. The case of the prosecution is further corroborated from the testimony of PW6 ASI Rajinder Parshad, the then acting SHO, Police Station Shimlapuri, Distt. Ludhiana. He contended that PW Jaspinder Singh was won over by the accused and due to this reason, he was given up. He further contended that the car in question was originally registered in the name of the Director, Public Relation, Haryana but later on, the same was transferred in favour of Sukhwinder Singh son of Bhajan Singh, resident of Barnala and then to Gurpreet Singh son of Sukhdev Singh resident of Sandhu Patti, Barnala. He further contended that from the statements of the prosecution

witnesses, it is established that the case property was not tampered with at any stage and remained intact. He further contended that the discrepancies pointed out by the learned counsel for the appellants do not go to the root of the case. All the witnesses have consistently deposed about the recovery of 140 kilograms and 500 grams poppy straw from the possession of the appellants. He further contended that all the accused were travelling in the car. The packets containing poppy husk were lying in the said car. So, all the appellants are proved to be in conscious possession of the contraband. Thus, he pleaded that there is no infirmity in the conviction of the appellants recorded by the learned trial Court.

22. I have duly considered the aforesaid contentions.

23. The provisions of the Act carry stringent punishments. So, the strict proof is required to hold a person guilty under the provisions of the Act. In order to establish the genuineness, credibility and reliability of the prosecution story, which is the basis for conviction, the prosecution should prove its case in the manner alleged by it. If any doubt arises about the version of the prosecution as projected by it, the benefit of doubt must go to the accused.

24. As per the prosecution story, the Investigating Officer along with his fellow police officials was holding the Naka on the road going to village Jaspal Bangar, adjoining to the canal. During the process of apprehension of the appellants by the police, one Jaspinder Singh son of Santokh Singh, resident of Pakhowal Road arrived at the spot and was

associated as a witness in the investigation of the case. But he was given up, as having been won-over by the accused, by the learned Public Prosecutor vide his statement dated 10.12.2008. So, now the story of the prosecution with respect the search and seizure is based on the statements of PW2 ASI Harbhajan Singh, the witness of recovery and PW3 SI Rajesh Kumar, the Investigating Officer of the case. There is no dispute with the proposition of law that mere non-examination of the independent witness is itself not a ground to discard the testimonies of the official prosecution witnesses, if those are found to be trustworthy and credible. But at the same time, in such cases where the independent witness is associated but is not examined, the Court, as a rule of caution, is required to closely scrutinise the prosecution case.

25. In the instant case, due to some admission in the cross-examination of PW3 Rajesh Kumar, the Investigating Officer, even the presence of Jaspinder Singh, the alleged independent witness, is rendered doubtful. The Investigating Officer has admitted in the cross-examination that there is difference of signatures of Jaspinder Singh on memos Ex.PB and Ex.PF. He further deposed that there is slight difference of Jaspinder Singh (*word signature is missing*) with the recovery memo and other memos. So, even the Investigating Officer himself is admitting that there is difference of signatures of Jaspinder Singh on different memos. He has specifically admitted that the signatures of Japinder Singh are different on memos Ex.PB and Ex.PF. Ex.PB is the consent memo with respect to

appellant Balbir Kaur alias Biro and Ex.PF is the most material document in the case i.e. the seizure memo of the contraband. If prosecution witness Jaspinder Singh would have been present at the spot and would have signed the memos during the period of the investigation of the case on the same day, there was no possibility/question of any such difference in his signatures on the different memos.

26. Prosecution witness Jaspinder Singh appears to be a convenient person to the police of that area. Ex.DW2/A and Ex.DW2/B are the copies of FIRs No.125/2006 and 97/2006 respectively under Section 15 of the Act, Police Station Salem Tawari. In both these cases, said Jaspinder Singh was cited as an independent witness of recovery, which shows that said Jaspinder Singh was a convenient person to the local police for being cited as a witness in such type of cases. Thus, the admission of Investigating Officer with respect to the difference of signatures of Jaspinder Singh on different memos and he being a convenient person to the police, clubbed with his non-production in the witness box by the prosecution, renders his presence at the spot extremely doubtful and adversely affects the genuineness of the prosecution version.

27. It is the admitted version of the prosecution that the Investigating Officer had no secret information with him against the appellants. The police party was holding the Naka, in the meanwhile the accused-appellants came there in a car. They were intercepted and as a

result of conducting the search of the car, the contraband is alleged to have been recovered. It is alleged that before conducting the search of the car and the appellants, the Investigating Officer served them with a notice under Section 50 of the Act and obtained their consents. The consent memos were reduced into writing which are Ex.PB, Ex.PC, Ex.PD and Ex.PF of appellants Balbir Kaur alias Biro, Sukhwinder Singh, Sukhwinder Kaur and Raj Kumar alias Raj, respectively. It is very surprising to note that in all these memos, all the particulars except the FIR number have been written at the same time in the same sequence and ink. Even the offence under Section 15 of the Act has been mentioned. It is further very surprising that the Investigating Officer has categorically mentioned in the consent memos Ex.PB, Ex.PC, Ex.PD and Ex.PE that he suspected the poppy husk to be present in their car. How could the Investigating Officer be so sure about the nature of the contraband in the car of the appellants even before taking the search, particularly when he had no secret information that the accused were transporting the poppy husk in their car? Thus, the mentioning of all the particulars except the FIR and specifically that he suspected the poppy husk being present in the car, shows that the consent memos Ex.PB to Ex.PE have been fabricated later on just to complete the paper work.

28. There is no dispute with the proposition of law that as the recovery was alleged to have been effected from the car, the provisions of Section 50 of the Act were not applicable. But as per the story projected

by the Investigating Officer the accused reposed confidence in him and waved their right to get their search conducted in the presence of a gazetted officer or a magistrate, also does not appeal to the reasons. It is not believable that in spite of the offer of having a safeguard of their search in the presence of a gazetted officer or a magistrate, they will prefer to get conducted their search by the Investigating Officer. At the cost of repetition, the provisions of Section 50 are not applicable in this case, as the recovery is alleged to have been effected from the search of the vehicle/car but the story put forwarded by the Investigating Officer that he gave option to the accused-appellants for conducting their search in the presence of a gazetted officer or a magistrate and they reposed confidence in him and offered to conduct their search by the Investigating Officer, appears to be a concocted version, in view of the circumstances discussed above.

29. It is alleged that the information with respect to the arrest of the appellants was conveyed to one Chamkaur Singh son of Gurtej Singh, resident of village Sehbajpura, Police Station Raikot and Gora alias Iqbal, resident of village Kewal Police Station Kalanwali, Distt. Sirsa, who had signed the information memos Ex.PN, Ex.PO, Ex.PP and Ex.PR with respect to the arrest. Chamkaur Singh had signed the information memo Ex.PN relating to arrest of Sukhwinder Kaur and the information memo Ex.PO relating to arrest of Balbir Kaur alias Biro. Gora alias Iqbal Singh had signed the information memo Ex.PP relating

to arrest of Sukhwinder Singh and information memo Ex.PR relating to arrest of Raj Kumar alias Raj. PW3 SI Rajesh Kumar has stated in the cross-examination that the ruqqa carrier had taken the lift on some person's carrier. After his return, the police party remained at the spot for 2 ½ hours. After his arrival, the memos of arrest and memo of information was prepared. He further deposed that he does not remember as to who had called for Chamkaur Singh and Gora alias Iqbal Singh. Village Sehbajpura was at the distance of 25 kilometres from the place of recovery. He does not know the distance of residence of Gora alias Iqbal from the place of recovery. He further deposed that he does not remember as to whether Gora and Chamkaur Singh had come of their own or some official was sent to call them. They had come at about 04:30 P.M. and after 25 minutes, they had gone from there. PW2 ASI Harbhajan Singh has stated that they reached back at the police station at 5:00 P.M. Meaning thereby, said Chamkaur Singh and Gora alias Iqbal Singh had arrived at the spot itself and attested the information memos with respect to the arrest of the appellants. It is a mystery as to who had called these persons and how they came to be present at the spot. Gora alias Iqbal, who is shown to have signed the information memos Ex.PP and Ex.PR, is resident of village Kewal, Police Station Kalanwali, Distt. Sirsa, Haryana, a far away place. His presence at the spot to sign the information memo with respect to the arrest of appellant Sukhwinder Singh and Raj Kumar alias Raj within short span of time is highly improbable, keeping in view

the distance of the place of recovery from his native village. The Investigating Officer has also not disclosed as to in which manner said Gora alias Iqbal and Chamkaur Singh were informed and at what point of time. The purpose of giving information about the arrest of an accused in criminal case is that his family members may be informed. But in the instant case, it is nowhere mentioned in information memos Ex.PN, Ex.PO, Ex.PP and Ex.PR as to what relation said Gora alias Iqbal Singh had with appellants Sukhwinder Singh and Raj Kumar alias Raj and similarly, Chamkaur Singh with appellant Sukhwinder Kaur. Thus, information memos Ex.PN, Ex.PO, Ex.PP and Ex.PR are also not proved to be prepared at the spot, as alleged by the Investigating Officer, rather they also appear to have been fabricated later on just to complete the paper formalities.

30. This is not the end of the fabrication of the documents by the Investigating Officer. He has himself admitted the difference in the signatures of Jaspinder Singh on the consent memo Ex.PB and the seizure memo Ex.PF. Meaning thereby, these memos are not signed by one and the same person, which further establishes that the documents have not been prepared in the manner projected by the prosecution and renders the entire proceedings doubtful.

31. The prosecution is not even sure as to how many packets containing poppy husk were recovered from the car and even the place of their concealment, which is a material contradiction in the case of the

prosecution. As per the seizure memo Ex.PF, which is the first document prepared by the Investigating Officer with respect to the search and seizure, 20 packets were recovered from the space in front of the rear seat meant for placing the feet, 30 packets were recovered from the space in between the rear seat and the dicky, 14 packets each i.e. total 28 packets were recovered from the cabins behind the head-lights and 10 packets are alleged to have been recovered from the place meant for stepney. In this manner, the total number of packets comes to 88 packets. Then there is the seizure memo Ex.PG with respect to the car bearing registration No.HR-03C-1611, the documents and empty polythene envelops. There is a clear fabrication in this memo Ex.PG. From the perusal of this memo it comes out that initially the memo was closed after mentioning 88 polythene envelops having been taken into possession and getting the memo attested by the witnesses, but after that two lines have been inserted mentioning the number of envelops having been taken into possession as 108. If this memo is taken into consideration, then 88+108 total 196 empty envelops were taken into possession. It also does not suits the prosecution story. In the ruqqa Ex.PS, it is mentioned that 20 packets were recovered from the place meant for placing the feet in front of the rear seat, 60 packets were recovered from the space in between the rear seat and the dicky and 14 packets each were recovered from the cabin of the head-lights. In the ruqqa Ex.PS, no recovery of packets has been shown from the place meant for keeping stepney. In the recovery

memo 30 packets are alleged to have been recovered from the space between rear seat and the dicky but in the ruqqa Ex.PS, the number of packets recovered from this place is mentioned as 60. So, there is a serious contradiction in the case of the prosecution about the total number of the packets recovered from the car as well as particular portion of the car leading to the recovery. This material contradiction in the documents of the prosecution renders the case of the prosecution extremely doubtful.

32. There are also certain other discrepancies in the statements of the prosecution witnesses. According to PW2 ASI Harbhajan Singh, Lady PHC Baljit Kaur who is alleged to have taken the search of appellant Balbir Kaur alias Biro and Sukhwinder Kaur, was posted at Civil Lines at that time. Whereas, PW3 SI Rajesh Kumar the Investigating Officer of the case stated that Lady PHC Baljit Kaur was posted in CIA Staff, Ludhiana. Said Lady Constable has also not been produced in the witness box. PW2 ASI Harbhajan Singh stated that writing work was done by him, Raj Kumar and ASI Balkar Singh. But PW3 SI Rajesh Kumar stated that the writing work was partly done by him and partly by ASI Harbhajan Singh. According to PW2 the writing work was done by sitting in Sumo vehicle and at the platform near the place of recovery. But PW3 SI Rajesh Kumar stated that chair and tables were called for. PW2 ASI Harbhajan stated that his statement was recovered in the police station, whereas PW3 SI Rajesh Kumar stated that the statement of ASI Harbhajan Singh was recorded on his dictation by

ASI Balkar Singh at the spot at 4:00 P.M. PW2 stated that he did not recorded the statement of any witness. But PW3 SI Rajesh Kumar stated that ASI Harbhajan Singh and ASI Balkar Singh had recorded the statement of witnesses. When these discrepancies are taken up collectively and particularly in the absence of any independent corroboration, the case of the prosecution is further rendered doubtful.

33. The Investigating Officer has also not collected any evidence to show the *inter se* relations between the accused-appellants. Appellants Balbir Kaur alias Biro and Sukhwinder Kaur are ladies. It is not explained by the prosecution as to how they happened to be travelling with the male appellants namely Sukhwinder Singh and Raj Kumar alias Raj, that is also a missing link in the prosecution case.

34. As per seizure memo Ex.PG and registration certificate Ex.P2, the car in question was registered in the name of one Gurpreet Singh son of Sukhdev Singh, resident of Sandhu Patti, Barnala, Distt. Sangrur. The Investigating Officer has not associated said Gurpreet Singh in the investigation. No evidence has been collected by the Investigating Officer as to how the car belonging to Gurpreet Singh came into the possession of the accused-appellants, that is again a lapse in the prosecution case.

35. However, I do not find any substance in the contentions raised by learned counsel for the appellants that the taking of sample after mixing the contents of all the packets will be fatal to the prosecution case,

as the taking of the sample in that manner has not resulted into any prejudice to appellants. In case *Sumit Tomar Vs. State of Punjab 2012(4) RCR (Criminal) 948*, two bags containing poppy straw were recovered. The sample was taken by mixing the contents of both the bags. The contention was raised that the police should have taken two samples from each bag without mixing the contents thereof. The said contentions was repelled by the Hon'ble Apex Court on the ground that the same has not caused any prejudice to the appellants.

36. Similarly, the omission of any specific question in the statements of appellants under Section 313 Cr.P.C. with respect to the conscious possession also did not result into any prejudice to the appellant. Reference can be made to case *Gian Chand and others Vs. State of Haryana 2013(3) RCR (Criminal) 916*.

37. Thus, keeping in view the totality of the circumstances discussed above, there are glaring infirmities and contradictions in the prosecution case, in view thereof the testimonies of the official witnesses without any independent corroboration cannot be relied upon. Thus, the prosecution has failed to establish its case beyond shadow of reasonable doubt against the appellants. The conviction of the appellants as recorded by the learned trial Court and the sentence awarded to them cannot be sustained in the eye of law.

38. Consequently, all these four appeals are hereby allowed. The conviction and sentence of the appellants are hereby set aside. As a

result of benefit of doubt, all appellants namely Raj Kumar alias Raj, Balbir Kaur alias Biro, Sukhwinder Kaur and Sukhwinder Singh are hereby acquitted of the charges. Appellant Raj Kumar alias Raj is in custody. He be released from custody forthwith, if not detained in any other case.

Dated: 01.10.2015
sunil yadav

(DARSHAN SINGH)
JUDGE