

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

Criminal Appeal No. S. 1233 SB of 2005
Date of decision : 09.02.2015.

Dharamvir @ Dharmi Appellant.

versus

State of Punjab Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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. Amaninderpreet Singh, Advocate,
Legal Aid Counsel for the appellant.
Mr. K.D.Sachdeva, Addl. AG, Punjab.

K.C.PURI, J.

Challenge in this appeal is the judgment and order dated 27.05.2005 passed by Shri Gurbir Singh, Judge, Special Court, Ludhiana vide which the accused-appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short – the Act) and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- and in default thereof to further undergo rigorous imprisonment for a period of two years.

2. Briefly stated, prosecution story is that on 31.03.2003 SI Arvind Puri along with ASI Jarnail Singh, Incharge Police Post Kaunke Kalan and other police officials on Government Vehicle Allwyn Nissan were

patrolling from the culvert of Canal Bardeke on the bank of the canal in connection with patrolling. When the police party reached 100 yards ahead of the said culvert of the canal, they noticed one person sitting on the bags in the ditches on the left side of the bank on the canal. A motor cycle was also parked nearby the said person. He on seeing the police party immediately tried to start the motor cycle. He was apprehended on suspicion. On asking he disclosed his name as Dharamvir alias Dharmi. SI introduced himself to Dharamvir alias Dharmi and stated that he suspected some contraband in the bags and search of the bags has to be conducted and further offered the accused that if he so desired then some Gazetted Officer or Magistrate could be called at the spot. Dharamvir alias Dharmi asked for calling some Gazetted Officer for the purpose of search. His statement to that effect was recorded. SI sent the wireless message to District Control Room for sending some Gazetted Officer at the spot. Accordingly, DSP Jasdev Singh Sidhu, was called at the spot. On his reaching there he introduced himself to accused and stated that his bags were to be searched and if he wanted them some other Gazetted officer or Magistrate could be called at the spot. He reposed confidence in DSP and his statement to this effect was recorded. Then on the direction of DSP Jasdev Singh Sidhu, SI Arvind Puri conducted search of the said bags from which poppy husk were recovered. He took out two samples of 250grams each from each of the recovered bags and converted them into separate sample parcels. The remaining poppy husk was weighed in the bags. Each of the bags was found to have contained 36kgs of poppy husk. All the sample parcels and the bulk

parcels were sealed by him with his seal bearing impression 'AP'. Sample seal was separately prepared. Seal after use was handed over to ASI Baldev Singh. Accused was arrested. He also prepared rough site plan of place of recovery with correct marginal notes and further recorded statements of the witnesses. After receipt of report of FSL, and completion of formal investigation, challan against the accused was presented in Court for his trial.

3. On presentation of challan, copies of documents were supplied to accused free of costs as required under section 207 Cr.P.C. Charge under Section 15 of the Act, was framed against the accused. Accused pleaded not guilty and claimed trial.

4. In support of its case prosecution examined PW1 ASI Baldev Singh, PW2 SI Arvind Puri, PW3 ASI Gurnam Singh, PW4 ASI Jarnail Singh, PW-5 HC Baljit Singh, PW-6 Constable Mohinder Singh and thereafter learned Additional Public Prosecutor for the State closed the prosecution evidence.

5. After the closure of prosecution evidence, all the incriminating circumstances appearing against the accused were put to accused in his statement recorded under section 313 Cr.P.C., to which he denied the prosecution allegations and pleaded his innocence. However, accused examined Sukhdev Singh, Clerk Municipal Council, Kurali as DW-1 in his defence.

6. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused vide judgment and order dated

27.05.2005, as aforesaid.

7. Feeling dissatisfied with the aforesaid judgment and order dated 27.05.2005, accused had directed the present appeal.

8. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

9. Learned counsel for the appellant has submitted that memos Ex.PC, Ex.PD and Ex.PE do not bear the signatures of DSP Jasdev Singh Sidhu although it is alleged that DSP Jasdev Singh Sidhu has reached at the spot. In fact DSP Jasdev Singh Sidhu never reached at the spot and his signatures were obtained from his office. The prosecution has not examined the said DSP Jasdev Singh Sidhu nor his statement under Section 161 of the Cr.P.C. was recorded for the reasons best known to it.

10. Learned counsel for the appellant has further submitted that false case has been registered against the appellant on the basis of suspicion. Appellant has come to the spot to drop his wife. No independent person has been examined. The quantity of contraband is 10 bags and the said contraband cannot be transported on the motor cycle. The source of contraband and the mode of transportation have not been mentioned.

11. Learned counsel for the appellant has further submitted that conscious possession of the appellant is not proved by the prosecution. In support of his arguments, counsel for the appellant has relied upon the following authorities :-

- (i) **Gurmeet Singh vs. State of Punjab reported in 2009 (5) R.C.R. (Criminal) page 556 and**
- (ii) **State of Punjab vs. Balkar Singh reported in (2004) (3) Supreme Court Cases page 582.**

12. The State counsel has supported the judgment and order of the trial court.

13. I have carefully considered the submissions made by both the sides and have carefully gone through the records of the case with their able assistance.

14. The arguments advanced by the counsel for the appellant that DSP Jasdev Singh Sidhu was not present at the spot and on that account he has not signed the documents Ex.PC, Ex.PD and Ex.PE is concerned that submission is without any substance. Ex.PC is the recovery memo which has been attested by DSP Jasdev Singh Sidhu. There is no reason for DSP Jasdev Singh to falsely attest the recovery memo. Ex.PD relates to personal search memo and Ex.PE relates to grounds of arrest. So, the above arguments is without any substance. Non-examination of the DSP Jasdev Singh Sidhu is not fatal for the prosecution more-so, when the two other recovery witnesses have been examined. The non-recording of statement of DSP Jasdev Singh Sidhu is also not a ground to throw away the prosecution story.

15. It cannot be believed that false case in respect of recovery of 10 bags of poppy husk can be planted. No reasoning has been given by the appellant for falsely implicating the accused. On the basis of mere suspicion, a person cannot be involved in respect of recovery of such a huge quantity of contraband. Non-disclosing of manner of transport is not fatal to the prosecution case. The appellant might have not disclosed the source of contraband and as such, mere non-disclosing the source of

contraband does not create dent in the prosecution story. It cannot be said that conscious possession of the appellant is not proved. Section 35 and 54 of the Act came in operation when a person is in possession of contraband and the onus shifts upon him how he is in possession of that contraband. The possession of contraband of a person would be deemed to be conscious possession.

16. So far as authority **Gurmeet Singh's case (supra)** is concerned that relates to non-compliance of Section 50 of the Act. It is not argued by the counsel for the appellant that provisions of Section 50 of the Act are attracted as the counsel for the appellant knows Section 50 of the Act will apply in case of personal search. There were other reasons for acquittal of the accused in **Gurmeet Singh's case (supra)** as there was possibility of tampering with the contents of the case property.

17. Authority **State of Punjab vs. Balkar Singh's case (supra)** relates to appeal against acquittal heard by Hon'ble Apex Court as State of Punjab has preferred the appeal against acquittal of Balkar Singh. It is settled law that Appellate Court should be slow in interfering in case of a acquittal. So, the above said authority is also distinguishable to the facts of the present case.

18. So far as quantum of sentence is concerned, minimum sentence has been awarded and as such no scope for further reducing the sentence is made out.

19. Consequently, the judgment of conviction and order of the trial Court stand affirmed and the appeal stands dismissed.

20. The accused is stated to be on bail. He be taken into custody to undergo the remaining part of his sentence.

21. A copy of this order be conveyed to the trial Court for strict compliance.

February 09, 2015

SV

**(K. C. PURI)
JUDGE**