

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

CRA-S-1318-SB of 2011
Date of Decision: 19.08.2015

Sikander Singh

....Appellant

Versus

State of Punjab

....Respondent

CRA-S-1144-SB of 2011

Darshan Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. H.S.Hundal, Sr. Advocate with
Mr.Dinesh Trehan, Advocate
for the appellant (CRA-S-1318-SB of 2011)
Mr.S.S.Sidhu, Advocate
for the appellant (in CRA-S-1144-SB of 2011)

Mr.Deepak Garg, AAG, Punjab.

MAHAVIR S. CHAUHAN, J. (ORAL)

On 06.08.2007, Inspector Mukhtiar Singh (PW5),
accompanying by other police officials, was holding nakabandi in the
area of village Warra Bhai Ka, on the terminal of link road Maur
Ghania. PW Jand Singh was also joined with the police party. At
about 4.30 p.m., two vehicles including a motorcycle were seen

coming from the side of village Ghania. They were signalled to stop. Sikander Singh was driving the motorcycle and Darshan Singh was riding the pillion. When signalled to stop, they tried to slip away after throwing the motorcycle there. When they tried to run away, a bag containing something which was being carried by appellant Darshan Singh in his hands, fell on the ground. Both the appellants were apprehended on the spot and were told by the Investigating Officer that he intended to frisk the bag carried by them but they had a right to have it frisked in the presence of a Gazetted Officer or a Magistrate. Both the appellants opted to get the bag searched in the presence of a Gazetted Officer. A memorandum Exhibit PD was, accordingly, recorded and DSP Satwant Singh (PW3) was requested to reach the spot. Said DSP Satwant Singh (PW3) reached there, disclosed his identity before the appellants and told them that they were free to get the bag searched in his presence or in the presence of another Gazetted Officer or before a Magistrate. However, both the appellants expressed faith in him and opted to have the bag searched in his presence. Investigating Officer searched the bag in the presence of DSP Satwant Singh (PW3). It was found to contain poppy husk weighing 40 kgs. From the contraband so recovered Investigating Officer separated two samples of 250 gms each, and sealed the sample parcels and the remainder with his seal bearing impression 'MS'. DSP Satwant Singh (PW3) also affixed his seal bearing impression 'SS' on the parcels of samples and remainder.

Sample seals Exhibit P1 was separately prepared and seal of the Investigating Officer after use was handed over to ASI Balvir Singh (PW4). The sealed sample parcels and parcel of remainder along with motorcycle were taken in possession vide memorandum Exhibit PC. As possession of poppy husk without a permit or licence amounts to an offence within the meaning of Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act'), Investigating Officer wrote a note (Exhibit PX) and based thereupon a formal First information report, Exhibit PX/1, was recorded at Police Station Jaitu.

Investigating Officer drew a visual site plan, Exhibit PG, of the place of recovery and recorded statements of witnesses. The case property was produced before SI Harbans Singh (PW6) and was kept in safe custody. One sample parcel was sent to Chemical Examiner from whom a report (Exhibit PK) was received according to which contents of the sample parcel contained poppy husk.

On completion of investigation, a report in terms of sub section (2) of Section 173 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') was prepared and was presented before the learned Judge, Special Court, Faridkot (hereinafter referred to as the 'trial Court').

Learned trial Court, on appraisal of the report and its enclosures and after hearing the prosecutor and defence, formed an opinion that there were grounds for presuming commission of an

offence punishable under Section 15 of the Act by the appellants. Accordingly, appellants were charged under Section 15 of the Act to which they pleaded not guilty and claimed to be tried.

In order to prove the guilt of the accused, prosecution examined Dev Raj Clerk-PW1, HC Jagmail Singh-PW2, DSP Satwant Singh-PW3, ASI Balvir Singh-PW4, Inspector Mukhtiar Singh-PW5 and SI Harbans Singh-PW6.

All the inculcating circumstances appearing in the evidence of the prosecution when put to the appellants in terms of Section 313, Cr.P.C., were denied by them. The appellants reiterated plea of their innocence and false implication.

Appellants examined Manjit Kaur-DW1 and Darshan Singh-DW2 as witnesses in their defence.

Learned trial Court on hearing the prosecutor and the defence and appraisal of evidence available on record, concluded that the prosecution was able to prove guilt of the appellants beyond reasonable doubt and, accordingly, vide judgment of conviction and order of sentence dated 15.03.2011 convicted and sentenced the appellants to rigorous imprisonment for a period of 7 years with fine amounting to Rs.50,000/- and in default of payment of fine to further imprisonment for one year under Section 15 of the Act.

To challenge judgment of conviction and order of sentence dated 15.03.2011 appellants have brought the instant two appeals i.e. CRA-S-1318-SB of 2011 and CRA-S-1144-SB of 2011.

As both the aforesaid appeals have arisen from a common judgment/order and involve common questions of fact and law, are proposed to be disposed of by this common judgment being recorded in CRA-S-1318-SB of 2011.

I have heard learned counsel for the parties and have also examined the record.

On behalf of the appellants, it has been argued that according to the case of the prosecution, the appellants came to the spot on a motorcycle bearing registration No.PB-40-4872 and when they were signalled to stop, a bag containing poppy husk had fallen on the ground. It has been so stated by Inspector (now DSP) Mukhtiar Singh (PW5) the Investigating Officer of the case but according to PW1-Dev Raj, the Registration No.PB-40-4872 pertained to a scooter and according to PW3 DSP Satwant Singh, when he reached the spot, the bag was lying on the motorcycle. It has also been argued that statements under Section 161, Cr.P.C., of PW3 DSP Satwant Singh and PW6 SI Harbans Singh were not recorded and as such their evidence before the Court cannot be relied upon. To support this contention, reliance has been placed upon the judgment of Madhya Pradesh High Court in **Gabbu and others Vs. State of M.P., 2004(1) RCR (Criminal) 859.**

Further, according to learned counsel for the appellants, though it is stated by PW4 ASI Balvir Singh that registration certificate of the motorcycle was taken in possession but no such

registration certificate has been proved on record and, similarly, no evidence has been led to prove ownership of the motorcycle.

It has also been argued that sample parcel was sent for chemical examination after considerable delay and on that account a grave prejudice has been caused to the appellants.

Learned State counsel, on the contrary, has defended the impugned judgment/order by submitting that there is sufficient evidence available on record to prove guilt of the appellants and the circumstances enumerated on behalf of the appellants are hardly of any assistance to them.

No other or further argument has been raised on either side.

DSP Mukhtiar Singh (PW5), the Investigating Officer of this case, DSP Satwant Singh (PW3), the Gazetted Officer summoned to the spot pursuant to the option of the appellants and ASI Balvir Singh (PW4) have proved recovery of a gunny bag containing poppy husk weighing 40 kgs from possession of the appellants. It has been stated by the Investigating Officer DSP Mukhtiar Singh (PW5) and has been re-asserted by ASI Balvir Singh (PW4) that appellant Sikander Singh was driving the motorcycle and appellant Darshan Singh was riding the pillion, while carrying the gunny bag containing poppy husk in his hands. The three witnesses have passed the litmus test of cross examination successfully as regards recovery of poppy husk from possession of the appellants.

It has remained undisputed that the sample parcel separated from the contraband recovered from the appellants, when chemically examined, was found to contain poppy husk as per report Exhibit PK.

In view of the above, the discrepancies with regard to the vehicle which the appellants used at the time of commission of offence, as also with regard to the position of the bag when noticed by DSP Mukhtiar Singh (PW5) and DSP Satwant Singh (PW3) pale into insignificance being minimal in nature. Same is true of failure of the prosecution to prove ownership of the motorcycle as also its registration certificate.

Delay in sending the sample parcel for chemical examination is hardly of any consequence because it is nobody's case that poppy husk has a shelf life and with the passage of time it loses its character or nature or is rendered unfit for chemical examination. In any case there is nothing on record to show that the chemical examiner exhibited his inability to conduct chemical examination of the contents of the sample parcel on account of delay in dispatch thereof.

It is true that PW3 DSP Satwant Singh has stated that his statement under Section 161, Cr.P.C., was not recorded and DSP Mukhtiar Singh (PW5) the Investigating Officer of this case has admitted that statement of SI Harbans Singh was not recorded under Section 161, Cr.P.C., but case of the prosecution cannot be thrown

away on that account, firstly, because recording of statements of witnesses under Section 161, Cr.P.C., is not mandatory and it has been so held even in the judgment (**Gabbu and others Vs. State of M.P.) (Supra)** cited on behalf of the appellants and secondly because the Investigating Officer, PW5 DSP Mukhtiar Singh, has not been called upon to explain the reasons for not recording statement of SI Harbans Singh under Section 161, Cr.P.C., whereas he has been very candid in stating that statement of DSP Satwant Singh (PW3) was recorded by him under Section 161, Cr.P.C., and that being so, statement made by DSP Satwant Singh (PW3) to the contrary is rendered inconsequential. In view of the position as aforesaid no benefit can be allowed to the appellants of the judgment **Gabbu and others Vs. State of M.P. (Supra)**.

Faced with the situation, learned counsel for the appellants have urged that the appellants be shown leniency in the matter of quantum of sentence in view of the quantity of the contraband being on the lower side, the appellants having faced the agony of tough investigation and trial for quite some time and they being the only bread winners for their respective families.

The submission seems to carry substance and deserves consideration.

As a consequence of what has been said and discussed in the foregoing paragraphs, judgment of conviction is maintained and is affirmed. However, order on quantum of sentence is modified

to the extent that sentence awarded to the appellants is reduced to rigorous imprisonment for two years with fine amounting to Rs.20,000/- and in default of payment of fine further imprisonment of two months, each, under Section 15 of the Act.

With above modification in the order on quantum of sentence, the appeals fail and are dismissed.

Appellant Sikander Singh, in Criminal Appeal No.S-1318-SB of 2011, is on bail vide order dated 23rd July, 2013, therefore, he is directed to surrender before the concerned jail authorities forthwith failing which Chief Judicial Magistrate, Faridkot, shall cause him to be arrested and forward to the concerned Jail to serve the unexpired portion of sentence awarded to him by the learned trial Court, as modified by this Court.

19.08.2015

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(Mahavir S. Chauhan)
Judge