

In the High Court of Punjab and Haryana at Chandigarh

Crl. Appeal No. S-1312-SB of 2005

Date of Decision: 14.01.2015

Lakhwinder Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

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

Mr. K.S.Aulakh, AAG, Punjab.

SABINA, J.

Appellant along with his co-accused had faced the trial in FIR No. 45 dated 24.3.2001, registered at Police Station Jhabal.

Prosecution story, in brief, is that on 24.3.2001 Inspector Nagour Singh along with other police officials were travelling from Abohar towards Matili road in connection with checking of suspicious persons in a government vehicle. When the police party reached the drain in the area of village Ramsaran, they saw that a truck was parked on the left side of the road. When the police party reached near the truck, a person lying under the truck started running towards fields. The said person was apprehended and he disclosed his name as Avtar Singh. Two more persons sitting in the truck, were apprehended and they disclosed their names as Jasbir Singh and Lakhwinder Singh. Inspector Nagour Singh asked all the three persons turn by turn that he suspected that some intoxicant material was available in the truck and the

same had to be searched. The said persons had a right to get the search effected from Inspector Nagour Singh or in the presence of some gazetted officer or a Magistrate. The accused opted that the search be got effected in the presence of a gazetted officer. In this regard, separate memos of the accused were prepared. Gurmit Singh Randhawa, Deputy Superintendent of Police ('DSP' for short) was called to the spot. On reaching the spot, DSP introduced himself to the accused. Accused reposed confidence in the DSP and said that they had no objection if the search of the truck was conducted in his presence. Separate consent memos of the accused, in this regard, were prepared. Truck bearing No. PB-02-T-9971 was searched. The truck was loaded with bananas. One small iron box was found lying under the bananas. The iron box was locked and Inspector Nagour Singh demanded the key of the box. Accused Jasbir Singh took out the key from his right pant pocket and opened the iron box. Opium wrapped in a glazed paper was recovered in the iron box. Two samples weighing 20 grams each were separated from the recovered opium and the same were made into sealed parcels. The remaining opium on weighment came to 56 kilograms and 960 grams. The said opium was again kept in the iron box and was locked with the same lock. The said box was made into a sealed parcel. The parcels were sealed by Inspector Nagour Singh with seal bearing impression 'NS'. DSP Gurmit Singh Randhawa also affixed his seal on the parcels bearing impression 'GS'. Seal after use was handed over by Inspector Nagour Singh to Banta Singh, Assistant Sub Inspector ('ASI' for short) whereas DSP retained the seal with him. Case property was taken in possession and memo in this regard was prepared. Personal search memos of the accused were prepared

and rough site plan of the place of recovery was prepared by Inspector Nagour Singh. Ruqa was sent to the police station for registration of FIR. On return to the police station, Inspector Nagour Singh kept the case property under his supervision and accused were locked in police lock-up. On 25.3.2001, accused were produced before the Area Magistrate along with the case property. On 2.4.2001, one sample parcel along with sample seal were handed over to Constable Jagpal Singh for depositing the same in the office of chemical examiner. After deposit of the sample with the chemical examiner, Constable Jagpal Singh handed over the receipt to Inspector Nagour Singh. After receipt of report of chemical examiner and after completion of investigation and necessary formalities, challan was presented against the accused.

Charge was framed against the accused under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('Act' for short) vide order dated 15.6.2001.

During trial, accused Jasbir Singh absented and was declared a proclaimed offender vide order dated 4.6.2004.

In order to prove its case, prosecution examined five witnesses during trial.

Appellant Lakhwinder Singh when examined under Section 313 of the Code of Criminal Procedure, 1973, after the close of prosecution evidence, prayed as under:-

"I am innocent. Truck No. PB-02-T-9971 is owned by my brother. Jasbir Singh and Avtar Singh co-accused used to ply this truck. On the night between 23/24.3.2001 Avtar Singh driver made a telephone call from Abohar to my brother which was attended to by me as my brother was

not present. Avtar Singh told me that truck has become out of order and is lying parked by the side of Abohar-Matili road in the area of village Ramsaran and asked me to reach Abohar. Accordingly I reached Abohar in morning on 24.3.2001 and myself and Avtar Singh contracted a mechanic at Abohar who was already repairing a truck. He agreed to reach at the spot in the area of Ramsra where the truck was lying parked after completing the repair of the truck to which he was already attending. Myself and Avtar Singh came to the place where truck was lying parked and Jasbir Singh was already present in the truck. After some time police came there and apprehended all three of us. I had no knowledge about the contents of the truck. I told SHO Nagour Singh that I have shortly earlier reached there from Amritsar to arrange the repair of the truck on receipt of telephone from Avtar Singh driver. Avtar Singh also told SHO about calling me by him from Amritsar to arrange the repair. After sometime the said mechanic of Abohar also reached there but he was made to return by the police. Later on the truck was temporarily made moveable by driver of police vehicle and was brought to Abohar by him."

Accused examined two witnesses in their defence.

Accused Avtar Singh himself appeared in the witness box as DW-3.

The Trial Court vide judgment/order dated 5.7.2005 ordered the conviction and sentence of the appellant and his co-accused Avtar Singh under Section 18 (b) of the Act. Hence, the present appeal by appellant-accused Lakhwinder Singh.

Learned counsel for the appellant has submitted that appellant had been falsely involved in this case. In fact, the truck in question was owned by the brother of the appellant. Jasbir Singh and Avtar Singh accused used to ply the truck. The truck had developed some defect and due to this reason, appellant had been called by Avtar Singh to the spot. Appellant had contacted a mechanic at Abohar and the said mechanic had agreed to reach the spot after repairing the truck which was already under repair with him. When the appellant reached the spot, he was falsely involved in this case. The independent witness had been examined during trial as DW-2 and he has stated that his signatures had been obtained in the police station on the relevant memos. There was no evidence on record that the appellant was in conscious possession of the contraband.

Learned State counsel, on the other hand, has submitted that prosecution witnesses had been successful in proving its case. The truck in question belonged to the brother of the appellant. Appellant was arrested at the spot with the contraband.

Inspector Nagour Singh while appearing in the witness box as PW-1 has deposed as per the prosecution witness. His statement was duly corroborated by PW-2 DSP Gurmeet Singh and PW-3 ASI Banta Singh on material aspects. PW-4 Surinder Singh, Clerk proved the registration cover of the truck in question and as per the same, the truck in question was registered in the name of Baljinder Singh. PW-5 Constable Jaspal Singh corroborated the statement of PW-1 to the effect that on 2.4.2001, he was handed over sample parcel weighing 20 grams by Inspector Nagour Singh, to be deposited in the office of chemical examiner. After depositing

the sample in the office of chemical examiner, he had handed over the receipt to Inspector Nagour Singh. He further stated that till the sample parcel as well as the sample seal remained in his custody, he did not allow anyone to tamper with the same.

Thus, in the present case, from the statements of the official witnesses, it is evident that the appellant was arrested at the spot and the contraband was recovered from the truck in question. Admittedly, the truck in question is owned by the brother of the appellant. The 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.

The case of the appellant is that he had no concern with the truck in question and the same was owned by his brother. It is further the case of the appellant that his co-accused used to ply the truck and he had gone to the spot as the truck required repair work. In support of his plea, appellant has examined DW-1 Chhinda Singh, who deposed that on 24.3.2001, at about 8.00 A.M., appellant and Avtar Singh had come to his workshop and had asked him to repair the truck which was parked in the area of Ramsaran. He had told the accused that he was already repairing a truck and would reach the spot after he had repaired the truck which was under repair. At about 10.00/11.00 A.M., he reached the spot but he was not allowed to repair the truck by the police and he returned to his workshop.

The plea put-forth by the appellant fails to inspire confidence. In fact, at the time of personal search of accused Jasbir Singh ₹ 1207/- were recovered whereas from the personal search of accused Avtar Singh ₹ 150/- were recovered. So far as appellant is concerned, on his personal search ₹ 750/- were

recovered. In case the truck had actually developed some defect, then Jasbir Singh and Avtar Singh could have got the same repaired by calling a mechanic from Abohar. There was no reason for the said persons to have called the appellant to the spot from Amritsar. As per the case of the appellant, he had received a phone call from Avtar Singh that the truck had developed some defect and was parked by the side of Abohar-Matili road in the area of village Ramsaran and thereafter appellant had gone to Abohar. There was no occasion for Avtar Singh to have travelled along with the appellant to contact a mechanic as the said job could have been done by the appellant himself. Moreover, there was no occasion for the appellant to have again gone to the spot with Avtar Singh as the truck could have been got repaired by accused Jasbir Singh and Avtar Singh with the help of the mechanic. It appears that the plea that the truck in question had developed some defect and the appellant had reached the spot after contacting a mechanic, is an after-though and has been falsely concocted by the appellant to save himself from conviction.

Moreover, at the time of personal search of the appellant, one key of the iron box, from which the contraband was recovered, was taken in possession from the appellant. This shows that the appellant was also in conscious possession of the contraband as he was also in possession of the key of the iron box which contained the contraband. Thus, there is no force in the argument raised by the learned counsel for the appellant that the appellant could not be said to be in conscious possession of the contraband.

The fact that the independent witness has not supported the prosecution case, is not fatal to the prosecution case

as apparently, the independent witness was won over by the accused during trial and, consequently, he deposed in favour of the accused when he appeared in the witness box as DW-2.

In these circumstances, the Trial Court had rightly ordered the conviction and sentence of the appellant under Section 18(b) of the Act.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

January 14, 2015

Gurpreet