

In the High Court of Punjab and Haryana at Chandigarh

Crl. Appeal No. S-669-SB of 2004

Date of Decision: 25.02.2015

Jasvir Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

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

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

SABINA, J.

Appellant had faced the trial in FIR No. 116 dated 13.11.2002, registered at Police Station Sadar Kotakpura.

Prosecution story, in brief, is that on 13.11.2002, Sub Inspector Nachhattar Singh along with other police officials, were travelling from village Panjgrain Kalan towards village Ghaniawala. When the police party reached village Panjgrain Kalan, they saw a person coming on foot from the side of village Panjgrain. The said person was apprehended on the basis of suspicious and he disclosed his name as Jasvir Singh. Sub Inspector Nachhattar Singh apprised the appellant that the bag carried by him was to be searched as he suspected that the same contained some intoxicant substance and he could get the bag searched in the presence of a gazetted officer or a Magistrate. Appellant opted that the search be got effected in the presence of a gazetted officer. Deputy Superintendent of Police ('DSP' for short) Jagir Lal was requested to

reach the spot by Sub Inspector Nachhattar Singh. Appellant reposed confidence in DSP Jagir Lal. The bag carried by the appellant, was searched and following articles were recovered:-

<u>Sr. No.</u>	<u>Container</u>	<u>Name of contraband</u>	<u>Quantity</u>
1.	Dabi Plastic	Tablets of Buta Proxyvon	32 tablets
2.	Dabi Plastic	Dexovon Capsules	200 capsules
3.	Dabi Plastic	Capsules of Hyphodek	200 capsules
4.	Dabi Plastic	Tablets of Lomotil	425 tablets
5.	Dabi Plastic	Tablets of Mictrotil	1190 tablets
6.	Dabi Plastic	Tablets of phenotil	130 tablets
7.	Dabi Plastic	Tablets of without brand	175 tablets
8.	Cardboard box	Corex Syrup	25 bottles

Out of the recovered articles, sample parcels were prepared and were sealed with seals bearing impressions 'NS' (seal of Sub Inspector Nachhattar Singh) and 'JL' (seal of DSP Jagir Lal). The remaining contraband was also made into sealed parcels and the parcels were sealed with seals bearing impressions 'NS' and 'JL'. The sample parcels as well as the residual parcels were taken in possession. Personal search memo of the appellant was prepared. Rough site plan of the place of recovery was prepared. On return to the police station, Sub Inspector Nachhattar Singh kept the case property in his custody. Appellant was produced before the Magistrate along with the contraband on 14.11.2002. Thereafter, the articles were handed over to MHC Jaspal Singh. After completion of investigation and necessary formalities, challan was presented against the appellant.

Charge was framed against the accused under Section 21, 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('Act' for short).

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

Appellant when examined under Section 313 of the Code of Criminal Procedure, 1973, after the close of prosecution evidence, pleaded that he was innocent. Nothing was recovered from him and he had been falsely involved in this case due to party faction in his village.

Appellant examined one witness in his defence.

Trial Court vide judgment/order dated 5.3.2004 ordered the conviction and sentence of the appellant under Section 21, 22 of the Act. Hence, the present appeal by appellant.

Learned counsel for the appellant has submitted that the appellant had been falsely involved in this case. In fact, DSP Jagir Lal appeared in the witness box as PW-6 and had failed to describe the contraband/recovered articles from the appellant. Further, link evidence was missing in this case. As per PW-3 Constable Ranjit Singh, he had taken the sample parcels to the Forensic Science Laboratory on 26.11.2002 but the same were returned to him by the laboratory on account of some objections. As per this witness, the objections had been written by the laboratory on the CFSL forms but a perusal of the said forms Ex. P-9 to Ex. P-16 reveal that no such objections were mentioned on the said forms. Even PW-4 Sub Inspector Nachhattar Singh, in his cross-examination, had stated that he did not remember if any objection had been raised by the laboratory or if he had removed the same. He had further stated that he could not tell if the CFSL

forms had been prepared under his signatures.

Learned State counsel, on the other hand, has opposed the appeal and has submitted that prosecution had been successful in proving its case.

Sub Inspector Nachhattar Singh appeared in the witness box as PW-4 and deposed as per the prosecution story. PW-5 Assistant Sub Inspector Kuldeep Singh corroborated the statement of PW-4. However, DSP Jagir Lal, while appearing in the witness box as PW-6, failed to describe the contraband/articles recovered from the appellant. Since heavy punishment has been provided under the Act qua commission of offence punishable under the Act, therefore, certain safeguards have also been provided under the Act to be followed at the time of recovery. In the present case, DSP Jagir Lal PW-6 was called to the spot on an option made by the appellant. Thus, recovery of the alleged contraband was effected from the appellant in the presence of DSP Jagir Lal PW-6. However, when PW-6 Jagir Lal appeared in the witness box, he could not give the description of the articles recovered from the appellant. This renders the prosecution story doubtful qua the alleged recovery from the appellant.

It is a settled proposition of law that prosecution has to prove its case beyond the shadow of reasonable doubt and in case there is some doubt in the prosecution story, the benefit of the same has to be extended to the accused.

In the present case, prosecution case is rendered doubtful as PW-6 DSP Jagir Lal could not disclose the articles of the contraband recovered from the appellant. Hence, appellant is liable to be acquitted of the charge framed against him by giving him benefit of doubt.

Accordingly, this appeal is allowed. Appellant is ordered to be acquitted of the charges framed against him by giving him benefit of doubt. Consequently, judgment/ order of his conviction and sentence dated 5.3.2004, are set aside.

**(SABINA)
JUDGE**

February 25, 2015

Gurpreet