

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-689-SB of 2004 (O&M)
Date of Decision : January 8, 2015

Sucha Singh @ Kala

..... Appellant

Vs.

State of Punjab

..... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Argued by :Mr. G.S.Sandhu, Advocate
for the appellant.

Ms. Minakshi Goyal, AAG, Punjab.

RAJ RAHUL GARG, J

This is a criminal appeal instituted by Sucha Singh @ Kala-appellant. Appellant was booked for committing an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter to be called as 'NDPS Act'), for keeping in his possession 40 kg. of churra poppy heads without any permit or license. The learned Judge Special Court, Patiala vide judgment dated 10.03.2004 convicted the appellant for the aforesaid offence and by passing order of sentence of even date, sentenced the appellant to undergo rigorous imprisonment for two years and to pay a fine of ₹5,000/- with default clause to further undergo rigorous imprisonment for five months.

As per prosecution case, on 01.09.2001, SI Jagrup Singh along

with police officials was present at bus stand village Bhanra in connection with checking of suspected persons. PW Subegh Singh had come across them who was joined in the police party. While they were going to village Langdoi and 1 k.m. ahead of village Bhanra, the appellant was seen coming by scooter No. PCI 2478, carrying a bag on the rear seat of the scooter. On seeing the police party, he tried to retreat but was apprehended on the basis of suspicion. SI Jagrup Singh, told the appellant that he was having a suspicion that the appellant was in possession of some narcotic substance and as such apprised him about his right to get the search conducted before some Gazetted Officer or Magistrate, to which accused exercised his option in favour of a Gazetted Officer. Consent memo. Ex.PC was prepared in this regard. Information was sent to Bhupinderjit Singh Virk, DSP (R), Patiala through wireless who reached the spot. The DSP disclosed his identity to the accused and offered him that the search of his bag could be conducted before any other Gazetted Officer or Magistrate but the appellant reposed confidence in the DSP and his consent statement Ex.PA was recorded to that effect. Thereafter, on the directions of the DSP, search of the bag was conducted by SI Jagrup Singh and poppy husk was found in that bag. Two samples of 250 grams each were taken out from the recovered poppy husk, whereas, the remainder was weighed to 39 kg 500 gms. It was put in the same bag. The samples and the bag were separately sealed with the seal 'JS' and that of DSP bearing impression BS. Samples and recovered poppy husk were taken into possession vide memo. Ex.PB. From personal search of the accused-appellant ₹20/- currency notes were recovered and the same were taken into possession vide memo Ex.PD. Ruqa Ex.PE was sent to the police

station for registration of the case whereupon formal FIR Ex.PE/1 was recorded by SI Gurdeep Singh. Rough site plan Ex.PF of the place of recovery was prepared. Special report EX.PH was sent from the spot.

On reaching the police station; the case property, accused-appellant and Pws were produced before the SHO Inspector Sewa Singh, who verified the facts of the case and affixed his seal bearing impression 'SS' on the parcels and then on his direction SI Jagrup Singh deposited the case property with MHC of the police station with seals intact.

On the next day, SI Jagrup Singh took the case property and the accused-appellant; and produced the same before the Illaqa Magistrate with the request Ex.PJ. After verification of the samples, the learned Magistrate ordered that the case property be kept in the Malkhana with the police at the responsibility of Investigating Officer by passing order Ex. PJ/1.

The sample was sent to the Forensic Science Laboratory for chemical examination vide report Ex.PK. It was found to be that of chura poppy heads and on completion of investigation, challan was filed against the appellant.

Finding a prima facie case against the appellant, he was charge sheeted by Sh. P.S.Virk, the then Judge, Special Court, Patiala vide order dated 10.01.2002 for committing an offence punishable under Section 15 of the NDPS Act to which accused did not plead guilty but claimed trial.

After taking prosecution evidence, statement of accused recorded under Section 313 Cr.P.C. wherein he denied each prosecution allegation and pleaded his innocence. In defence, it was pleaded that he is

innocent; false case has been planted upon him after arresting him from the village; and in fact no recovery was effected from him.

After hearing both the sides and appraising the evidence available on the file, the learned Judge, Special Court, Patiala convicted the appellant for committing an offence punishable under Section 15 of the NDPS Act and also sentenced him to undergo rigorous imprisonment for two years and to pay a fine of ₹5,000/-. In default of payment of fine to further undergo rigorous imprisonment for five months for the aforesaid offence.

Against this judgment of conviction and order of sentence, the appellant has come up before this Court.

I have heard learned counsel for the appellant and learned State counsel, and appraising the entire material and evidence coming on record.

Learned counsel for the appellant has assailed the impugned judgment of conviction before this Court only on two counts. Firstly, there was delay in sending the sample to FSL and secondly that Subegh Singh independent witness was given up as having been won over by the accused and thus not examined.

It was contended by learned counsel for the appellant that in this case Subegh Singh was joined as independent witness but he was not examined as witness in the Court. He was given up as having been won over by the accused without assigning any valid reason. Simple statement of the Public Prosecutor in this regard is not enough. Only on the uncorroborated statements of the official witnesses, no conviction can be based. Had Subegh Singh been examined as a witness, the genuineness of the

prosecution case would have become known. As such, on this count, prosecution case cannot be said to be free from doubt and benefit of doubt has to be given to the accused.

The above contention of learned counsel for the appellant is not sustainable. It is true that rule of prudence demands that there should be some corroboration through independent source of the statements of the official witnesses but if the independent witness though joined by the prosecution, should be given up as having been won over by the accused, would not be fatal for the prosecution case as in that eventuality, the liability of a Magistrate or that of a Gazetted Officer would always be affected.

It was contended by learned State counsel that in this case recovery was effected by the DSP, the possibility of false implication of accused is not there. There is no material on the file to show that the Investigating Officer of this case or any other police official was inimical to accused-appellant. In support of her contention, learned counsel for the State has cited the judgment titled as **Darshan Khan Vs. State of Punjab, 1999 (1) R.C.R.(Criminal) 269**. She also cited the judgment titled as **Shera Singh Vs. State of Punjab, 1996 (2) R.C.R.(Criminal) 128**, in which it has been held that there is no rule of law that evidence of Police Officer cannot be accepted unless it is corroborated by panch witness if Police Officer is otherwise dependable.

By citing another judgment titled as **Roop Chand Vs. State of Punjab, 1999 (4) R.C.R.(Criminal) 127**, it was argued by the State counsel that in the aforecited judgment, independent witness was joined but not examined. As such it was held that it is *per se* not fatal. Accused also not

examined the said witness in defence. Conviction can be based on evidence of official witnesses when investigation is honest.

Thus, from the above discussion, it can be safely concluded that conviction can well be based on the testimonies of the official witnesses if the same inspire confidence in the mind of the Court regarding the guilt of the accused; if the same are consistent, cogent, convincing, reliable and trustworthy. It is also settled proposition of law that the testimonies of the official witnesses are at par with the testimonies of the non-official witnesses. If only on account of non-examination of independent witnesses accused is acquitted then the reliability of the statements of a Gazetted Officer and a Magistrate would always be affected, thus, it cannot be said that if the independent witnesses are not examined then the testimonies of a Gazetted Officer or a Magistrate or the consistent statements of official witnesses would not be believed.

In the case in hand, learned counsel for the appellant has failed to point out even a single discrepancy in the statements of Bhupinderjit Singh Virk (PW-1), SI Jagrup Singh (PW-4) and Inspector Sewa Singh (PW-6). The testimonies are consistent on the point that 40 kg. of poppy husk was recovered from the bag which appellant was carrying on the rear seat of his scooter bearing No. PCI 2478. PW-2 proved on record that the aforesaid scooter was owned by the accused-appellant Sucha Singh. Copy of R.C. Ex.P-1 was proved in this regard.

As such if the learned Judge Special Court, Patiala has recorded the judgment of conviction on the basis of testimonies of the official witnesses out of whom one is a Gazetted Officer of the rank of DSP, this

Court finds no illegality.

It was next argued by learned counsel for the appellant that in this case, the alleged recovery was effected on 01.09.2001 whereas as per affidavit of H.C. Rupinder Singh Ex.PA, he sent the sample through Constable Fakir Chand to FSL for test on 12.09.2001. The aforesaid sample was received back by H.C. Rupinder Singh (PW-3) with some objection and, thereafter, the same was sent to FSL for test on 17.09.2001. As such there was considerable delay in sending the sample to FSL for test. As per standing instructions of Narcotic Control Bureau, New Delhi, the sample is required to be sent to FSL for chemical examination within 72 hours. On account of violation of the aforesaid instructions, the accused is entitled to acquittal. In support of his contention, he has cited the judgments titled as *Randhir Singh Vs. State of Haryana, 2010 (2) RCR (Criminal) 388,* *Parminder Singh Vs. State of Haryana, 2006 (4) RCR (Criminal) 495,* *Amrik Singh Vs. State of Punjab, 2010 (3) RCR (Criminal) 653 and Buta Singh Vs. State of Punjab, 2006 (1) RCR (Criminal) 835.*

The facts and circumstances of the aforesaid judgments are not similar to the facts of the present case. The present case is the one in which the following day of the recovery i.e. 02.09.2001, the case property as well the samples were produced before the Illaqa Magistrate vide application Ex. PJ on which Illaqa Magistrate also passed order Ex.PJ/1. FSL report Ex.PK, clearly shows that seal of the sample received in the FSL were intact. Even the affidavit of H.C Rupinder Singh, Ex.PA and that of Faquir Chand (PW-5), Ex.PL coupled with the statement of Jagrup Singh (PW-4), complete the link evidence. Of course on 12.09.2001 when the sample was sent to FSL

for test, it was returned with some objections but later on after removing the objection the sample was again sent to FSL for chemical examination on 17.09.2001 as is evident from the affidavit of H.C Rupinder Singh, Ex.PA. Of course the witnesses could not tell about the objection with which the sample was returned, yet the accused was well within his rights to get the roznamcha contained in the register No. 19, summon to the Court to know the objection but accused did not do that. In the absence of the same it cannot be said that there was no objection from the FSL or that the sample was never taken to FSL on 02.09.2001. If the sample was returned by FSL with objection on 12.09.2001 and when H.C.Rupinder Singh (PW-3) categorically deposed by way of affidavit Ex.PA that the sample was returned to him that very date i.e. on 12.09.2001 with the seals intact and further that so long as sample remained in his custody nobody tamper with the seals, it cannot be said that there was any possibility of tampering with the seals of the samples. **In *Parminder Singh's case (supra)*** ' the reason for delay in sending the sample was assailed by the prosecution due to VVIP duties' and then no evidence was led by the prosecution in that regard. In ***Amrik Singh's case (supra)***, the evidence of official witnesses was unreliable and untrustworthy and further entry for taking case property before Illaqa Magistrate or trial Court was not mentioned in Malkhana register and there was no explanation for not making such entry, whereas in the case in hand so is not the situation.

In *Buta Singh' case (supra)*, Investigating Officer of the case was not examined as he has died. Even two of the accused escaped from the spot but arrested later on for whom no identification parade was got

conducted, whereas, in the case in hand, the testimonies of the official witnesses are consistent, trustworthy and inspire confidence in the mind of the Court regarding guilt of the accused and even the case property was produced before the Illaqa Magistrate with the seals intact on the very next day of the recovery as such no benefit can be given to the accused on account of delay in sending the sample to FSL for test.

No other point was urged before me.

Short of repetition, this Court finds no illegality in the judgment of conviction and order of sentence recorded by learned Judge Special Court, Patiala as the prosecution has succeeded in bring home guilt against the appellant for keeping in his possession 40 kg of poppy husk without any permit or license thereby committing an offence punishable under Section 15 of the N.D.P.S.Act.

For the aforesaid reason, this appeal being without any merit, is ordered to be dismissed. If the appellant is on bail, his bail bonds, shall stand cancelled and he be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District & Sessions Judge, Patiala, shall ensure that the directions are complied with, within the time frame, and the

compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(RAJ RAHUL GARG)
JUDGE

January 8, 2015
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