

Harpal Singh @ Happy @ Hazara versus State of Punjab

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

**CRA-S No.1321-SB of 2012 (O&M)
Date of decision: 26.08.2015.**

Harpal Singh @ Happy @ Hazara Appellant.

Versus

State of Punjab Respondent.

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

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?

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

Mr. S.K. Bansal, AAG, Punjab, for the respondent.

NAVITA SINGH, J.

The present appeal has been directed against the judgment of conviction and order of sentence, both passed on 13.04.2010, whereby the appellant was held guilty and convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act for short) and was sentenced to undergo rigorous imprisonment for ten months and to pay fine of Rs.2,000/- (Two thousand only). In default of payment of fine, he was to undergo further rigorous imprisonment for one month.

2. The prosecution filed charge-sheet against the appellant on the allegations that on 08.12.2005, SI Paramjit Singh, who was posted as Station House Officer, Police Station Khalra, was present at the bridge of drain Sidhwan where a secret information was received against the

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appellant that he along with other persons, who were named by the witnesses, were dealing in the smuggling of opium, smack and heroin. Accordingly, ruqa was sent for registration of a case and FIR was registered. Thereafter, investigation was handed over to SI Balkar Singh, who had actually apprehended the appellant and made the recovery, but he later on died and could not step in the witness box.

3. This witness, i.e. SI Paramjit Singh, identified the signatures of SI Balkar Singh on the relevant documents, as he was in a position to do so on account of SI Balkar Singh having worked under him when the latter was in-charge of the police station concerned.

4. The only recovery witness examined by the prosecution, who was allegedly present with SI Balkar Singh, was ASI Pargat Singh (PW-1) who stated that on 09.12.2005 he was along with the police party headed by SI Balkar Singh when the appellant was apprehended at a Nakka on the turning of Punjabi Palace Marri Megha Road. The appellant was one of the persons travelling in a 'Ghuarka' and was apprehended on suspicion. He was holding a 'Jhola' in his right hand. On interrogation, he disclosed his identity. The bag, which he was carrying, was searched by SI Balkar Singh as the appellant had reposed confidence in him and consent memo was prepared. The appellant was found in possession of opium, out of which two samples of five grams each were separated and sealed. Remaining contraband weighing 240 grams was also sealed separately.

5. The prosecution could not conclude its evidence and, therefore, the trial Court proceeded further and recorded the statement of the appellant

under Section 313 of the Code of Criminal Procedure (Code for short).

6. No particular defence was taken by the appellant in his statement under Section 313 of the Code and he simply stated that he was falsely implicated and the witnesses had deposed falsely. He just added that the case was registered against him due to party faction. No details were given, nor any evidence in defence was led.

7. Counsel for the appellant urged only one point here and that was that the provisions of Section 42 of the Act were not complied with. He relied on the case **Karnail Singh vs. State of Haryana, 2010 (88) AIC 28 (SC)** where it was held that secret information was required to be reduced into writing immediately after it was received. In cases where it could not be reduced into writing due to paucity of time with risk of the culprit escaping, it was required to be written down and sent to the superior officers later on. This was argued in relation to Section 42 of the Act which could not be applicable as the information is to be taken down in writing where the police has to make an entry, search and seizure of any building, conveyance or enclosed place. Regarding seizure at public place, the police can act under Section 43 of the Act where the officer concerned has a reason to believe that any offence punishable under the Act was committed. Since the police did not have to make any entry, search and seizure as given in Section 42 of the Act, the reported case relied on by counsel for the appellant, i.e. Karnail Singh's case (**supra**), would not be of any avail.

8. It would be seen that the investigating officer SI Balkar Singh had died, but the recovery was proved by ASI Pargat Singh (PW-1), who

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was not cross-examined by the appellant. His statement, therefore, went totally unchallenged. The account of the witness in the examination-in-chief stood admitted. In spite of the fact that the appellant did not cross-examine the recovery witness, though he was given an opportunity, he did not bother to bring any evidence in defence in order to show that he was innocent.

9. No other point was urged before me.

10. As a sequel to the discussion made above, the appeal is dismissed.

**(NAVITA SINGH)
JUDGE**

26.08.2015

Ramesh

Whether to be referred to reporter: Yes/No