

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

**DECIDED ON : 27.05.2015
CRA No.S-1880-SB of 2006**

Gurinder Singh

...Appellant

versus

State of Punjab

...Respondent

2nd

CRA No.S-1551-SB of 2006

Shashi Dhar

...Appellant

versus

The State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Argued By:Mr. K.S. Boparai, Advocate for the appellant
(in CRA No.S-1880-SB of 2006)

Mr. A.P.S.Sandhu, Advocate as amicus curiae
for the appellant (in CRA No.S-1551-SB of 2006)

Ms. Shivali, AAG, Punjab.

1. Whether Reporters of Local Newspapers 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?

RAJ RAHUL GARG, J.

These appeals are directed against the impugned judgment dated 18.05.2006 rendered by Sh.Kuldip Singh, the then Judge, Special Court, Patiala, whereby both the aforementioned appellants were convicted for committing offence punishable under Section 15 of

the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter to be called 'NDPS Act'). They were also sentenced for undergoing rigorous imprisonment for a period of ten years each and to pay a fine of ₹ 1,00,000/- each, and in default thereof, further rigorous imprisonment for a period of two years each, for committing offence punishable under Section 15 of the NDPS Act, vide order of the even date.

Brief facts of the case are like this; that on 26.05.2000, S.I Harbhajan Singh, Incharge E.O. Wing Staff, Patiala along with police officials were going on Devigarh side towards Masigan. When they reached T-Point Bust Stand, Murad Majra, Darshan Singh son of Ganga Singh of Julkan had come across policy party, who joined in the party. S.I. Harbhajan Singh was talking to Darshan Singh and when in the meanwhile, truck bearing No.H.R-37-4570 came from the side of Masigan. SI Harbhajan Singh gave a signal to stop the truck. The driver of the truck brought the truck to a halt. The driver and cleaner/assistant driver of the truck got down from the truck. The driver of the truck gave documents to the cleaner telling him to get the documents checked whereas, he himself had gone for passing urine. When the driver of the truck did not come back, SI Swaran Singh and HC Gian Singh were sent for him but he could not be traced anywhere. SI Harbhajan Singh inquired about the name and address of the cleaner, who disclosed his name as Shashi Dhar Karkrait son of Bachi Ram, resident of Rawat, P.S. Kotgawar, Distt. Paudi Garhwal (UP), at present residing at village Nanhera, Police Station Ambala Cantt. Shsashi Dhar further told the police that Gurinder Singh son of Darshan Singh, resident of Ashok Nagar, Ambala Cantt. was the owner

of the truck who was driving the same. SI Harbhajan Singh told the accused Shashi Dhar that he suspects some contraband in the truck and wanted to conduct the search of the same. Accused was also informed about his right of search asking him as to if he wanted search of the truck to be taken before a Gazetted Officer or a Magistrate. The accused exercised his option in favour of Gazetted Officer. Memo Ex.PM was prepared in this regard. S.I. Harbhajan Singh sent message to Sh. Nau Nihal Singh, ASP (HQ), Patiala on mobile phone asking him to reach the spot. ASP Nau Nihal Singh along with police staff reached this spot. After coming to the spot he disclosed his identity to accused Shashi Dhar and asked him if he wanted to get the search of the truck conducted in his presence. The accused reposed confidence in the ASP. Consent memo Ex.PB was recorded in this regard. Thereafter, search of the truck was conducted. Eight bags containing poppy husk were recovered. Same were lying concealed underneath the bags of cement. Two samples of 250 gram each were separated from each bag whereas, the remaining poppy husk on weighment came to 36.5 Kg. in each bag. Sixteen samples and aforesaid eight bags were separately sealed with the seal of 'HS' and the seal of ASP bearing impression NNS. Sample seal chit, Ex.P1 was separately prepared. Seal after use was handed over to PW Darshan Singh. The entire case property along with truck and its duplicate R.C. and driving licence from Gurinder Singh accused and 130 bags of cement were taken in possession through recovery memo Ex.PC. Ruqa Ex.PA was sent to the police Station for registration of the FIR whereupon, formal FIR Ex.PA/2 was recorded. Intimation regarding arrest of accused Shashi Dhar was sent to his relations vide memo

Ex.PQ. Site plan of the spot Ex.PP was prepared.

On coming to the police station, the case property along with the accused and witnesses were produced before SI/SHO Bhag Singh who verified the factum of recovery and affixed his seal 'BS' on all the parcels, as well as the sample seal chit Ex.P1. Thereafter, the case property was deposited with MHC of the police station.

On the following date, the case property was obtained from MHC of the police station and the same produced before the Ilqa Magistrate along with accused Shashi Dhar by moving an application Ex.PR, on which Magistrate passed an order Ex.PR/1. Accused Gurinder Singh was arrested on 4.7.2000 after obtaining his production warrants from the Court and the grounds of arrest were made known to accused Gurinder Singh vide memo Ex.PH. His personal search was also conducted vide memo Ex.PJ, report FSL Ex.PL was obtained. After completion of necessary investigation, the challan was presented in Court.

Finding a *prima facie* case against both the accused for committing offence punishable under Section 15 of the NDPS Act. They were charge sheeted accordingly. To the charge, they did not plead guilty, who claimed trial.

After taking the prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded. Accused denied each prosecution allegation appearing against them and pleaded their innocence. The defence taken by the accused is that the case is false and they have been falsely involved in this case. The truck in question was stolen from Ambala on 24.05.2000 and FIR was also got registered in this regard at Police Station Ambala.

HC Dharam Pal Singh was examined in defence. Ex.D1, copy of FIR regarding theft of truck in question was also produced on record by HC Dharam Pal Singh by bringing the record before the Court.

After hearing both the learned counsel for the parties and appraising the entire evidence and material coming on record the learned Judge, Special Court, Patiala convicted both the accused persons for committing offence punishable under Section 15 of the NDPS Act by recording the judgment of conviction dated 18.05.2006 and they were also suitably sentenced vide order of the even date, as mentioned in the earlier part of the judgment.

I have heard Mr. A.P.S. Sandhu, Advocate as amicus curiae for accused Shashi Dhar and Mr. K.S.Boparai, Advocate for the appellant-Gurinder Singh besides Ms. Shivali, AAG, Punjab and also appraised the entire material coming on record.

Mr. A.P.S.Sandhu, Advocate, as amicus curiae for the appellant Shashi Dhar argued that as per prosecution case appellant Shashi Dhar was cleaner on the truck in question. The driver of the truck had run away from the spot telling him to get the documents of the truck checked to the police who had got the truck stopped. Cleaner cannot be said to be knowing about the contents of bags loaded in the truck. Nobody would accompany the truck if the same is carrying narcotic substance and at least would run away from the spot when police intercepted the truck. On stopping of truck as driver of the truck was knowing about the contraband lying in the truck therefore only he had run away from the spot under the pretext to pass urine. It was also contended by counsel for the appellant Shashi

Dhar that even other cases of the similar nature have also been registered against the co-accused Gurinder Singh as such since Shashi Dhar was not found in conscious possession of the contraband, therefore, he cannot be convicted for keeping in his possession eight bags of poppy husk.

Of course, for convicting an accused for keeping in his possession eight bags of poppy husk without having any permit or licence, prosecution has to establish beyond reasonable doubt that the same were recovered from the possession of the accused and further that the accused was in conscious possession of the contraband. In the case in hand, Shashi Dhar appellant was arrested at the spot. Truck in question was also taken into possession by the police at the spot and even the contraband was also recovered lying beneath two layers of the cement bags loaded in the aforesaid truck. Nau Nihal Singh, S.P. Vigilance PW2 was called at the spot who disclosed his identity to the accused and in his presence search of the truck in question was got conducted from PW6-Harbhajan Singh Inspector Investigating Officer of the case and then eight bags of poppy husk were recovered lying beneath two layers of cement bags loaded in the aforesaid truck. Harbhajan Singh Inspector as PW6, Investigating Officer of the case fully corroborated the prosecution version as mentioned above and SI Gurcharan Singh PW8 also followed suit. This Shashi Dhar appellant cannot be said to be person of tender age or an innocent one knowing nothing about presence of contraband in the truck in question. FIR, copy of which is Ex.D1 which the defence has produced on record so as to show that the truck in question was in fact stolen away on 24.05.2000 along with the cement bags. In that FIR

Shashi Dhar has been shown as driver of truck which shows that Shashi Dhar is the active participant and thus it cannot be said that he was having no knowledge about the presence of contraband in the truck. In the FIR in question Shashi Dhar appellant was found occupying the truck in question who was arrested at the spot along with the truck and on search of the truck eight bags of poppy husk were also recovered. As Shashi Dhar was occupying the truck in question from which the contraband was recovered, he is proved to be in conscious possession of the contraband unless reverse is shown. Nau Nihal Singh, ASP (HQ), Patiala is the person in whose presence search of the truck was conducted and contraband was recovered. The commercial quantity of poppy husk was recovered from the possession of the appellant Shashi Dhar. Under these circumstances, the argument of learned defence counsel that the case is planted one or that he has been falsely implicated in this case are not sustainable.

It was also argued by learned counsel for the appellants, that the learned trial Court has erred in brushing aside FIR Ex.D1, by simply observing that the smuggler used to resort to these tactics. They lodge the FIR in the first instance regarding theft of vehicle etc. and then smuggle the contraband by that vehicle. It was also contended that in fact truck in question was stolen away while the same was carrying cement bags on 24.05.2000. Balbir Singh, cleaner on that truck got the FIR recorded copy of which is Ex.D1. As such since truck in question was stolen away on 24.05.2000, therefore contraband if any recovered from the truck in question, both the appellants are not responsible for the same. In fact, Gurvinder Singh appellant owner of the truck cannot be held liable for the same. He

was not knowing as to what were the thieves doing with the truck? whether they were smuggling some contraband or are misusing the same in any other manner?

The above arguments of both the learned counsel for the appellants is again not sustainable. It is no denying a fact that Shashi Dhar along with the truck was intercepted by the police he was arrested at the spot and on search of the truck eight bags of poppy husk were recovered from the aforesaid truck at the spot itself in the presence of Nau Nihal Singh ASP. The defence has examined Head Constable Dharampal Singh as DW1 for proving Ex.D1 which is FIR is of the year 2000. DW1 had brought record of this FIR to the Court during the Course of cross-examination. He told that if a case is decided in the Court then entry is being made in the FIR register but there is no such entry regarding disposal of this Case. There is in fact, nothing on record to show as to what had happened with this FIR. Whether case was investigated or not? Whether truck in question was taken in police possession or not? Whether the challan was put in the Court or not? Whether the case was decided by the Court of law or not? Under these circumstances no inference can be drawn in favour of accused with the presence of FIR copy of which is Ex.D1 and this Court finds no fault in the findings of the learned Special Court Patiala, when it says that the smugglers use such like tactics of getting the FIR recorded in the first instance and then to take up the smuggling business.

The contention of learned counsel for the appellant-accused Gurinder Singh that he was in fact not present at the spot nor was the driver of the truck nor had run away from the spot as such he cannot

be said to be in conscious possession of the contraband in any manner is devoid of any force as Gurinder Singh is the owner of truck in question. Apart from it, he was driving the truck in question. His driving licence was recovered from the truck which is Ex.P3 and it was taken into police possession on the spot vide memo Ex.PC. R.C. of the truck in question was also taken into police possession vide memo Ex.PC. RC is Ex.P2. Thus for the aforesaid reasons simply because Gurinder Singh appellant had run away from the spot would not mean that he was not involved in this case or was not found in conscious possession of the contraband.

Learned counsel for the appellant also pointed out that there are contradictions appearing in the statements of PW2 ASI Nau Nihal Singh and that of Gurcharan Singh PW8 and Harbhajan Singh Inspector PW6 regarding time of reaching of ASP at the spot and regarding scale with which the contraband was weighed. As per ASP he reached the spot at about 10.00 P.M. whereas, he received the telephonic message at about 9.00 P.M and the scale was with handle and two panes with which the contraband was weighed whereas as per PW6 and PW8 ASP reached at the spot at about 5.45 P.M and the scale was Farshi Kanda. ASP had gone back from the place of recovery at about 9.30/9.45 P.M. Of course, the aforesaid contradictions in the statement of police witnesses is there yet only on account of these two facts the entire prosecution case which is otherwise fully proved cannot be brushed aside. The Investigating Officer has also given the time when the ASP had gone back from the place of recovery at about 9.30/9.45 P.M. Thus it is evident that during night time the proceedings of the case continued and under those circumstances if

there is some discrepancy regarding time the same cannot be said to be fatal for the prosecution case. PW8 Gurcharan Singh had deposed that the samples were weighed with handle type scale whereas the remainder was weighed in Farshi Kanda. Under these circumstances, again contradictions regarding scale pales into insignificance and these contradictions cannot be said to be material one so as to through away the prosecution case.

It was also argued by learned counsel for the accused-appellant Gurvinder Singh that in fact he is got involved in connivance with police in false case of the like nature so as to usurp his 15 acres of land as that person had already encroached upon his land. This argument of learned defence counsel is not borne out from the record i.e. neither in the statement of the accused nor in defence evidence nor any suggestion was put to any of the prosecution witnesses in this regard. Even no enmity of the police has been pleaded with the accused. Under these circumstances, the aforesaid argument of learned defence counsel is of no help to the case of appellant.

It was also contended by learned counsel for the appellant Gurinder Singh that he has already been convicted in FIR No. 19 dated 11.03.1993 and was sentenced to undergo rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default to undergo rigorous imprisonment for one year. The sentence awarded in this case be made concurrent so that he may not languish in the jail for indefinite period. This argument of learned defence counsel again does not find favour with this Court as this very appellant has already been involved in four other cases of like nature. Of course, in two of the cases he has been reported to have been acquitted but in one case he is

convicted and now in this case as well eight bags of poppy husk (commercial quantity) was recovered by the police when the same were lying beneath two layers of cement bags being carried in the truck in question. A smuggler, under these circumstances, is not entitled to such like benefits. No other point was urged before me.

For the aforesaid reasons, finding no merit in these appeals, the same stand dismissed. Judgment of conviction and order of sentence dated 18.05.2006 rendered by Sh. Kuldip Singh, the then Judge, Special Court, are maintained and both the appeals are ordered to be dismissed. If the appellants are on bail, their bail bonds, shall stand cancelled and they be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate, Patiala 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.

May 27, 2015*Manoj Bhutani***(RAJ RAHUL GARG)
JUDGE**