

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

CRA-S-1605-SB-2011

Date of decision: 14.12.2015

Gurbhej Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. R.S. Rai, Senior Advocate with
Mr. D.S. Brar, Advocate for the appellant.

Mr. Manjit Singh Naryal, Additional Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 06.06.2011, passed by the learned Judge, Special Court, Hoshiarpur, vide which accused-appellant Gurbhej Singh has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and the order on quantum of sentence of the even

dated, vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹ 5000/-, in default of payment of fine to further undergo rigorous imprisonment for one month.

2- As per the prosecution case, on 21.03.2008 PW1 SI Onkar Dutt, (the Investigating Officer of the case) along with other police personnels was on patrolling and they were going towards Dera Radha Swami Colony. When they reached near railway crossing Dasuya, they noticed that the accused-appellant was coming on a scooter without registration number. The Investigating Officer intercepted him. On seeing the police party, he got perplexed. The Investigating Officer asked him that he was suspected of carrying some narcotics and his person was to be searched. Accused-appellant was apprised of his right to be searched before some gazetted officer or a magistrate. Vide memo Ex.PA, the accused-appellant reposed confidence in the Investigating Officer. The Investigating Officer tried to join independent witnesses but no one was ready to join the police party. From the search of the scooter, a bag containing poppy husk was recovered from the dickey of the scooter. Two samples of 250 grams each were taken out and the residue came to be 2 kilograms. The sample as well as residue were sealed in separate parcels with seal bearing impression 'OD' of the Investigating Officer. Sample seal impression was also prepared. All these articles were taken into possession vide recovery memo Ex.PD. The accused-appellant was arrested vide memo Ex.PG. Ruqqa Ex.PB was sent to the police station,

on the basis of which, formal FIR Ex.PC was registered. The Investigating Officer prepared the site plan of the place of recovery Ex.PF.

3- On return to the Police Station, the accused-appellant and case property were produced before SI Manjit Singh, the then SHO, Police Station - Dasuya, who verified the facts and put his seal bearing impression 'MS' on the parcels of the case property. Case property was deposited with the Moharir Head Constable. On the next day, the Investigating Officer, took the case property and produced the same before the Illaqa Magistrate. The case property was again produced before the Illaqa Magistrate on 31.03.2008 and one representative sample was separated which was sealed with seal bearing impression 'DSR'. Then the case property was again deposited with the Moharir Head Constable. One sample parcel was sent to the Chemical Examiner, Chandigarh for examination. On receipt of the report of the Chemical Examiner Ex.PJ and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (hereinafter referred as to the 'Cr.P.C.') was presented in the Court.

4- The accused appellant was charge sheeted for the offence punishable under Section 15 of the Act vide order dated 08.10.2008 by the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

5- In order to substantiate its case, prosecution examined as many as five witnesses.

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication. He pleaded that this false case was planted upon him by the police only to oblige the superior officers.

7- In the defence evidence, accused examined Kewal Singh as DW1.

8- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused appellant was held guilty and convicted for the offence punishable under Section 15 of the Act and was awarded the sentence as mentioned in the upper part of the judgment.

9- Aggrieved with the aforesaid judgment of conviction and order of sentence the present appeal has been preferred.

10- I have heard Mr. R.S. Rai, learned Senior Advocate assisted by Mr. D.S. Brar, Advocate, learned counsel for the appellant, Mr. Manjit Singh Naryal, learned Additional Advocate General for the State of Punjab and have meticulously examined the record of the case.

11- Initiating the arguments, Mr. R.S. Rai, learned Senior Advocate contended that the accused-appellant was serving in Post Office. On the day of Holi festival, some police officials misbehaved with him. He objected to the said misbehaviour of the police officials. Due to this reason an altercation had taken place between the police officials and the appellant. Due to which, he was taken to the police station and was falsely implicated in this case. He contended that the

entire story of the prosecution is based on the statements of two police officials with respect to the apprehension of the appellant, search and seizure. He contended that the recovery is alleged to have been effected at a public place, situated near busy locality but no independent witness has been associated, which renders the prosecution case doubtful. He further contended that there are material contradictions in the statements of the prosecution witnesses and the presence of PW2 HC Ranvir Singh, the witness of recovery, is extremely doubtful.

12- He further contended that the papers have been fabricated later on while sitting in the police station as even in the consent memo Ex.PA, which has admittedly been prepared even before the search of the appellant, Section 15 of the Act is mentioned, which renders the whole story of the prosecution doubtful.

13- He further contended that the Investigating Officer has not collected any evidence to connect the appellant with the scooter allegedly taken into possession. Only a mobile phone is alleged to have been recovered from the personal search of the appellant. It is not probable that he will be roaming on a scooter away from his house without having even a single penny in his pocket. These facts shows the concoction of the prosecution story.

14- He further contended that the tampering with of the sample parcel also cannot be ruled out. It is alleged that the case property was produced before the Magistrate on 22.03.2008 but there is no proof of that. If that was so, there was no need to again produce the case

property before the Magistrate on 31.03.2008 i.e. after 10 days of the recovery. He further contended that the docket for sending the sample has been got prepared on 25.03.2008 i.e. even before the compliance of Section 52-A of the Act. He further contended that no report under Section 57 of the Act has been sent to the superior police officers and no inventory as required under Section 52-A of the Act has been prepared and the said provisions have been deliberately and intentionally violated by the Investigating Officer, which is fatal to the prosecution case. He relied upon cases *Gurbax Singh Vs. State of Haryana 2001 Supreme Court Cases (Criminal) 426*. He also pleaded that there is 13 day's delay in sending the sample to the Chemical Examiner, which is also fatal to the prosecution case. Thus, he pleaded that the conviction of the appellant has been wrongly recorded.

15- On the other hand, learned State counsel contended that from the statements of PW1 SI Onkar Dutt, the Investigating Officer of the case and PW2 HC Ranvir Singh, the witness of recovery, which are further corroborated from the testimony of PW5 Inspector Manjit Singh, the then SHO Police Station - Dasuya, it is established that 2½ kilograms poppy husk has been recovered from the possession of the appellant. He contended that the provisions of Sections 52-A and 57 of the Act are not mandatory. He further contended that the Investigating Officer has tried to associate the independent witnesses but none of them came forward. Minor discrepancies are bound to occur in the statements of the prosecution witnesses with the lapse of time. Thus, he pleaded that there

is no infirmity in the conviction of the appellant recorded by learned trial Court.

16- I have duly considered the aforesaid contentions.

17- This fact is not disputed that the entire case of the prosecution is based on the testimonies of the police officials. The place of recovery is admittedly a public place i.e. a public road in the area of Dasuya Town. PW2 HC Ranvir Singh has admitted that the place of recovery is a thoroughfare. The market is at a distance of 50/100 yards. Even the residential area is about 50/100 yards from that place. But no independent witness has been associated. The Investigating Officer has come forward with the explanation that he has requested the independent persons but they did not come forward to join the investigation. However, he has not been able to tell their names and particulars and no action has been initiated against them for refusing to join the investigation. Thus, the fact remains that as place of recovery was a public place, situated near the busy locality, the Investigating Officer had ample opportunity to associate the independent witnesses. In these circumstances, when no independent witness has been associated inspite of ample opportunity and there are clear allegations of false implication, the Court, as a rule of caution, is required to scrutinise the prosecution evidence carefully, closely and minutely. In such circumstances, even the minor circumstance assumes significance.

18- There are certain discrepancies in the statements of the prosecution witnesses, which cannot be brushed aside classifying them as

minor discrepancies. According to PW1 SI Onkar Dutt, the police party remained at the railway crossing from 11:00 A.M. till 02:30 P.M. So, as per him, the police party remained at the place of recovery till 02:30 P.M. whereas PW2 HC Ranbir Singh stated that the police party had remained at the spot till 12:15 P.M. According to PW1 nobody was sent to bring the independent witnesses from the nearby area but PW2 categorically stated that PHG Prem Singh was sent by the Investigating Officer to bring some public witnesses from the nearby shops and the residential area at 11:30 A.M. and he returned after 10/15 minutes but no public witness was accompanied him and he disclosed to the Investigating Officer that no public witness was ready to join the investigation. According to PW1, the scooter of the accused was brought to the Police Station by PHG Prem Kumar but PW2 stated that the scooter of the accused was brought to the police station by HC Suminder Singh. PW2 HC Ranvir Singh stated that PGH Prem Kumar had taken the ruqqa to the police station at 12:10 P.M. and he came back to the spot at 01:00/1:30 P.M. In the cross-examination HC Ranvir Singh has repeatedly stated that the police party has remained at the spot only till 12:15 P.M. At other place in the cross-examination he has given the self-contradictory statement that PHG Prem Kumar had returned to the spot at 01:00/01:30 P.M. The FIR Ex.PC shows that the recording of the FIR has started at 12:30 P.M. If as per the statement of HC Ranvir Singh, the police party has left the spot for police station at 12:15 P.M., then how he can depose that PHG Prem Kumar had returned to the spot at 01:00/1:30 P.M. after

getting the case registered.

19- As per the prosecution story, the seal after use was entrusted to PW2 HC Ranvir Singh by the Investigating Officer but he stated in the cross-examination that he does not remember as to when and to whom the seal of the Investigating Officer was handed over by him, so he could not tell as to when and to whom the seal was returned by him. It shows that in fact no seal was entrusted to him. If the seal would have been entrusted to this witness, he must have been able to tell at least approximately when he returned the seal and to whom it was handed over. PW2 HC Ranvir Singh has also nowhere stated that on reaching the police station, the accused, case property and the witnesses were produced before the SHO, whereas as per the prosecution version, on reaching the police station, the case property and witnesses were produced before PW5 Inspector Manjit Singh, the then SHO, Police Station Dasuya. This omission in his statement further renders his presence doubtful, as if he would had joined the investigation, he must have deposed that he was produced before the SHO by the Investigating Officer for the verification of the facts. Thus, the cumulative effect of all the discrepancies and circumstances mentioned above, particularly in the absence of any independent corroboration, are sufficient to render the prosecution version doubtful.

20- There is no dispute with the proposition of law that Section 57 of the Act is not mandatory and is only a directory. But the Hon'ble Apex Court in case *Gurbax Vs. State of Haryana* (supra) has

laid down that the Investigating Officer cannot totally ignore these provisions and such failure will have bearing on the appreciation of the evidence regarding arrest of the accused or seizure of the articles. But in the instant case, these provisions have been totally ignored by the Investigating Officer as well as PW5 Inspector Manjit Singh, the SHO of the police station. Similarly, the provision of Section 52A of the Act have also not been complied with. There is no material on record to show that the Officer Incharge of Police Station Dasuya has prepared any inventory of the articles of the case property and moved any application for certifying its correctness. Inspector Manjit Singh, Officer Incharge of the Police Station, appeared as PW5 and has nowhere deposed about the preparation of the Inventory and getting it certified from the magistrate. The deliberate non-compliance of these provisions, coupled with the non-joining of the independent witnesses, will certainly have a bearing on the appreciation of the evidence i.e. the testimonies of the official witnesses with respect to the arrest of the accused, search and seizure of the contraband from his possession. Thus, the discrepancies and circumstances discussed above will further assume significance to render their testimonies unworthy of credence.

21- As per the prosecution story, it was a chance recovery. There was no secret information with the Investigating Officer that the accused-appellant was carrying the poppy husk in his scooter. It is alleged that before conducting the search of the accused, he was given an option for his search in the presence of any gazette officer or a magistrate

but he reposed confidence in the Investigating Officer. The consent memo Ex.PA was reduced into writing in this regard. Admittedly, when the consent memo Ex.PA was prepared, even the search of the appellant and his scooter was not taken. The case was also not yet registered. It is very surprisingly to note that in the consent memo Ex.PA, what to talk of FIR number and date, even the offence under Section 15 of the Act has been categorically mentioned in the same sequence, ink and handwriting. It is not known as to how even before taking the search, the Investigating Officer came to know that only the poppy husk has been kept in his possession by the appellant. In the ruqqa Ex.PB, it has been mentioned that the Investigating Officer suspected some narcotics substance in the possession of the appellant. But in the consent memo Ex.PA he has clearly mentioned Section 15 of the Act, which shows that the Investigating Officer was determined to get the case registered against the appellant under Section 15 of the Act for possessing the poppy husk even before taking his search and having any knowledge about the nature of the narcotics substance in his possession, which shows that the documents have only been manipulated later on in order to complete the paper formality. Thus, the proceedings conducted by the Investigating Officer are not genuine which render the prosecution version extremely doubtful.

22- Thus, keeping in view the totality of the circumstances discussed above, the prosecution case is rendered extremely doubtful and it had failed to establish beyond shadow of reasonable doubt the charges

leveled against the appellant. Consequently, the conviction of the appellant as recorded by the learned trial Court and the sentence awarded to him cannot be sustained in the eye of law.

23- Resultantly, the present appeal is hereby allowed. The conviction and sentence of the appellant are hereby set aside. As a result of benefit of doubt, the accused-appellant stands acquitted of the charges. The amount of the fine, if deposited by him with the learned trial Court, be refunded to him in accordance with rules.

Dated: 14.12.2015
sunil yadav

(DARSHAN SINGH)
JUDGE