

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

CRA-S-869-SB of 2004

Date of decision : 21.08.2015

Sukhdev Singh @ Sukha

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. G.K.Mann, Advocate
for the appellant.

Mr. Sandeep Bansal, AAG, Punjab.

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

DARSHAN SINGH,J

1. The present appeal has been preferred against the judgment of conviction dated 19.03.2004, vide which appellant-accused Sukhdev Singh @ Sukha along with his co-accused Kulwant Singh @ Kanta have been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'Act') and the order on the quantum of sentence of the even dated, vide which the appellant was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. One lac, in default of payment of fine he was ordered to further undergo

rigorous imprisonment for a period of one year.

2. The brief facts of the prosecution case are that on on 16.03.2001, PW-5 ASI Bakhshish Singh along with the fellow police officials was present at bus stand village Markhai in-connection with checking of the suspected persons. PW-2 D.S.P Hardev Singh along with his staff also arrived at that bus stand and thereafter, on the directions of D.S.P Hardev Singh a 'Naka' was held under his supervision on the Kucha path leading to village Mehar Singh Wala in the area of Village Mian Singh Wala. At about 7.15.p.m, a truck was seen coming from the side of village Markhai. PW-5 ASI Bakhshish Singh signaled the truck to stop with a torch. The driver of the truck stopped the truck bearing registration No. MP-09-K-5442 at a distance from the 'Naka' party and then the driver of the truck along with the persons sitting in the body of the truck tried to escape on seeing the police party. But, they were apprehended at the spot by the Investigating Officer with the help of other police officials. The driver of the truck disclosed his name as Kulwant Singh @ Kanta. The person who was sitting on the backside of the truck was the present accused-appellant Sukhdev Singh @ Sukha. The Investigating Officer suspected some intoxicant material in the truck bearing registration No. MP-09-K-5442. D.S.P Hardev Singh

disclosed to the accused that he is a Gazetted Officer of the Police department and whether they want to give search of the truck in his presence or some other Magistrate. The accused opted to give the search in the presence of D.S.P. Hardev Singh vide consent memo Ex.P-4. Thereafter, the Investigating Officer carried out the search of the truck under the supervision of PW-2 D.S.P Hardev Singh. 20 gunny bags containing poppy husk were found loaded in the truck under 80 plastic bags of powder. All the bags were unloaded from the truck. The Investigating Officer separated 250 gms of poppy husk from each bag as sample. The remaining poppy husk was weighed, which was found to be 35 kg in each bag. The separate sealed parcels of the samples and the residue poppy husk were prepared. The Investigating Officer affixed his seal bearing impression 'BS' on all the parcels. PW-2 D.S.P Hardev Singh also applied his seal bearing impression 'HS'. The specimen seal impressions were prepared. The articles of the contraband were taken into possession vide memo Ex.P-5. The Investigating Officer sent ruqa Ex.P-11 to the police station. On the basis of which the FIR Ex.P-12 was registered. Investigating Officer also prepared the rough site plan of the place of recovery Ex.P-13. The accused were arrested vide memos Ex.P-9 and Ex.P-10.

3. On return to the police station, Investigating Officer produced the case property and the accused before PW-1 SI Darshan Singh, S.H.O, Police Station Mallanwala, who also affixed his seal bearing impression 'DS' on all the parcels of the case property and took the case property in his possession vide memo Ex.P-2. On the same day, he produced the accused as well as the case property before learned Illaqa Magistrate, Zira vide application Ex.P-3. The Illaqa Magistrate passed the requisite order Ex.P-4. The sample parcels were sent to the office of Chemical Examiner, Jalandhar, which were found to be of Poppy Head Choora and on completion of the investigation, the report under Section 173 Cr.P.C was presented in the Court.

4. The present appellant along with his co-accused Kulwant Singh @ Kanta was charge sheeted for the offence punishable under Section 15 of the Act vide order dated 09.07.2001, to which they pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined as many as five witnesses in all.

6. When examined under Section 313 Cr.P.C, the accused pleaded that he is innocent. Nothing was recovered from his possession and has been falsely implicated in this

case.

7. In the defence evidence, accused examined Harbhajan Singh as DW-1. Thereafter, the defence evidence was closed.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused-appellant and his co-accused Kulwant Singh @ Kanta were held guilty and convicted for the offence punishable under Section 15 of the Act by the learned trial Court vide impugned judgment of conviction dated 19.03.2004 and were 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 Ms. G.K.Mann, learned counsel for the appellant, Mr. Sandeep Bansal, learned Assistant Advocate General, Punjab and have meticulously gone through the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that though the recovery is alleged to have been effected at a public place i.e. bus stand. But, no independent witness has been associated, which renders the prosecution case doubtful.

12. She further contended that there is four days delay in sending the sample to the Chemical Examiner, which has not been explained. The sample parcels have remained in custody of PW-3 Constable Sudesh Kumar for one day. So, the tampering with of the sample parcels is not ruled out and delay in depositing the samples with the Chemical Examiner renders the prosecution case doubtful. To support her contentions, she relied upon cases **Balkar Singh Vs. State of Punjab 2006 (3) R.C.R (Criminal) 16 and Karnail Singh Vs. State of Haryana 2010 (2) R.C.R (Criminal) 32.**

13. She further contended that the Investigating Officer has not complied with the provisions of Section 57 of the Act, which is also fatal to the prosecution case.

14. She further contended that as per the prosecution allegations, the appellant was merely traveling in the truck. He is not connected in any manner with the said truck. So, he can not stated to be in possession of the contraband being transported in the truck. Mere presence of the appellant in the truck will not establish that he was in possession of the poppy husk loaded in the truck. She further contended that no question has been put to the appellant in his statement under Section 313 Cr.P.C that he was in conscious possession of the contraband. Thus, she

contended that the possession and conscious possession of the contraband by the accused-appellant is not established. To support her contentions, she relied upon cases **Dalbir Singh @ Beera Vs. State of Punjab 2008(1) R.C.R (Criminal) 1050, Jaswinder Singh @ Binder Vs. State of Punjab 2011(1) R.C.R (Criminal) 678, Surinder @ Sudama Vs. State of Haryana 2010(3) R.C.R (Criminal) 86, Sukhdev Singh @ Sukha Vs. State of Punjab 2006(1) R.C.R (Criminal) 4, Dayal Singh and another Vs. State of Punjab 2007(2) R.C.R (Criminal) 596, Joga Singh Vs. State of Punjab 2006(3) R.C.R (Criminal) 480 and Ajit Singh and another Vs. State of Punjab 2010(6) R.C.R (Criminal) 1857.**

15. She further contended that very stringent punishment is provided for the offence punishable under the provisions of the Act. The prosecution is required to strictly complied with the procedural safeguards and strict proof is necessary to base the conviction. To support her contentions, she relied upon case **Ritesh Chakarvarti Versus State of Madhya Pradesh, 2006(4) R.C.R. (Criminal) 480 (S.C).** She contended that in the instant case, the prosecution has not been able to fulfill the aforesaid requirements. Thus, she pleaded that learned trial Court has wrongly recorded the conviction of the appellant.

16. On the other hand, learned State counsel contended that 705 kg poppy husk has been recovered in this case. The search and seizure was conducted under the supervision of a Gazetted Police Officer namely PW-2 D.S.P. Hardev Singh. The recovery of the contraband from the possession of the accused-appellant and his co-accused is fully established from the statements of PW-2 D.S.P Hardev Singh, PW-4 ASI Balbir Singh and PW-5 ASI Bakhshish Singh, the Investigating Officer of the case. He contended that learned counsel for the appellant has not been able to point out any material contradiction in their statements. Mere non-joining of the independent witnesses is no ground to discard their testimonies. The provisions of Section 57 of the Act are only directory in nature. Moreover, D.S.P. Hardev Singh was himself present at the spot. He further contended that from the conduct of the appellant, it is established that he was in conscious possession of the contraband. He was present in the body of the truck and on seeing the police party, he tried to flee away. He has not given any explanation as to how he happens to be present in the truck. He further contended that there is no material to establish any tampering with of the case property. So, mere delay of four days in depositing the sample parcels with the Chemical Examiner will not adversely effect the veracity of

the prosecution case. Thus, he contended that there is no legal infirmity in the conviction of the appellant recorded by the learned trial Court.

17. I have duly considered the aforesaid contentions.

18. No doubt, recovery in this case has been effected as a result of 'Nakabandi' on the link road leading from village Markhai to Mian Singh Wala. But, no independent witness has been associated. The Investigating Officer PW-5 ASI Bakhshish Singh has stated in the cross-examination that village Mian Singh Wala was at a distance of 1 km and village Markhai was at a distance of 2- 2/ ½ km from the place of recovery. He also deposed that it had already become dark. There was no prior secret information with the Investigating Officer against the accused. PW-4 ASI Bablir Singh also deposed that the sun had set by that time, but it was not yet dark. However, the lights were on. He further disclosed that the writing work was conducted at the spot within about seven hours, which is a link road and none-else passed that way during the investigation of the case. PW-2 DSP Hardev Singh has not been questioned about the presence of any independent witness at the spot at the time of apprehension of the accused. In these circumstances, when no independent witnesses were available at the spot, there is no reason to disbelieve the testimonies of the official

witnesses. Accused-appellant has simply pleaded false implication in this case. In the defence evidence, accused have examined Harbhajan Singh as DW-1. He has deposed that co-accused Kulwant Singh @ Kanta had a dispute with his uncle Mahan Singh regarding some land and due to that reason, he got Kulwant Singh involved in this case in connivance with ASI Bakhshish Singh of Police Station Mallanwala. Appellant Sukhdev Singh @ Sukha has also been involved in the case being friend of Kulwant Singh @ Kanta. But, this defence evidence does not inspire any confidence as PW-2 D.S.P Hardev Singh, a Gazetted Police Officer was already present at the spot. The 'Nakabandi' was started on his direction, which led to the apprehension of the accused-appellant. The search and seizure leading to the recovery of the contraband was also conducted under the directions and supervision of PW-2 D.S.P Hardev Singh. The accused has not alleged any animosity or ill will on the part of PW-2 D.S.P. Hardev Singh. It is also very surprising to note that defence plea as put-forward in the defence evidence has not been put to PW-5 ASI Bakhshish Singh in his cross-examination. It seems that the defence plea as projected in the defence evidence is the result of an afterthought. Thus, ASI Bakhshish Singh, the Investigating Officer, who was acting under the direct supervision and

direction of PW-2 D.S.P Hardev Singh, a Gazetted Police Officer cannot be stated to be having any opportunity for the false implication of the accused. It is well settled principle of law by this time that testimonies of the police officials cannot be discarded simply on account of their official designation. In the absence of any animosity towards the accused, there is no absolute rule that their depositions should be treated with the suspicion. The police witnesses cannot be viewed by the distrust every time. To support this view reference can be made to cases **Ram Swaroop Vs. State (Government of NCT of Delhi) (2013)14, Supreme Court cases 235 and Kashmiri Lal Vs. State of Haryana 2013(6) Supreme Court Cases 595.** The Hon'ble Supreme Court in case **Akmal Ahmed Vs. State of Delhi, 1999(2) R.C.R (Criminal) 265** has laid down that the evidence of search or seizure made by the police will not become vitiated solely for the reason that same was not supported by any independent witness. The same ratio of law has been by the Hon'ble Apex Court in cases **State of NCT of Delhi Vs. Sunil (2000) 1 Supreme Court Cases 748, Rohtash Vs. State of Haryana, 2013(3) R.C.R (Criminal) 355, M. Prabhulal Vs. Assistant Director, Directorate of Revenue Intelligence, 2004(1) R.C.R (Criminal) 160 and Ravinderan @ John Vs. Superintendent of Customs,**

2007(3) R.C.R (Criminal) 80. Thus, the non-joining of independent witness is no ground to discredit the prosecution version.

19. The recovery in this case has been effected on 16.03.2001. As per report of the Chemical Examiner Ex.P-1, the sample parcels have been received in the office of Chemical Examiner on 20.03.2001. There is delay of only four days in deposit of the sample. In case **Mohan Singh Vs. State of Punjab 2007(4) RCR (Criminal) 705**, there was delay of 10 days in sending the samples to the Laboratory. The Division Bench of this Court held that same was not fatal to the prosecution case as the seized articles were kept in proper and safe custody. The Hon'ble Supreme Court in case **State of Orrisa vs. Kanduri Sahoo 2004(1) RCR (Criminal) 196** has also laid down that mere delay in sending the samples to the Laboratory is not fatal where there is evidence that seized articles were kept in proper and safe custody. The same ratio of law has been reiterated in cases **Baggar Singh @ Gaggi Vs. State of Haryana 2009 (4) RCR (Criminal) 183**, **Raju Vs. State of Haryana 2009 (1) RCR (Criminal) 778** and **Pritam Singh and another Vs. State of Punjab 2013(2) RCR (Criminal) 801**. In view of the aforesaid authorities, the cases relied upon by learned counsel for the appellant on this aspect of the case are of no

help to him.

20. In the instant case also there is no material on record to show that the sample parcels were tampered with at any stage. From the statement of PW-2 D.S.P Hardev Singh, PW-4 ASI Balbir Singh and PW-5 Bakhshish Singh, the Investigating Officer of the case, it comes out that parcels of the case property were sealed at the spot with the seals bearing impressions 'BS' and 'HS'. The articles of the case property were handed over to PW-1 SI Darshan Singh, the then SHO of Police Station Mallanwala. He also affixed his seal bearing impression 'DS' on all the parcels of the case property. PW-1 SI Darshan Singh has produced articles of the case property before the learned Illaqa Magistrate vide application Ex.P-3 and learned Illaqa Magistrate has passed the order dated 17.03.2001 Ex.P-4 categorically mentioning therein that the sample parcels were bearing the seal impressions 'BS' 'HS' and 'DS'. PW-1 SI Darshan Singh has categorically deposed that he has handed over the sample parcels to PW-3 Constable Sudesh Kumar to deposit the same in the office of Chemical Examiner. Ex.P-6 is the affidavit of PW-3 Constable Sudesh Kumar, wherein he has categorically mentioned that the sample parcels remained intact during transit. Report of the Chemical Examiner Ex.P-1 also depicts that seals on all the sample parcels

remained intact. So, there is a complete chain of link evidence and there is no material on record to infer that the sample parcels were tampered with at any stage. In these circumstances, mere delay of four days in deposit of the sample with the Chemical Examiner will not cause any prejudice to the accused.

21. Admittedly, no report under Section 57 of the Act has been send by the Investigating Officer to his officer superior. But, the facts of the case are peculiar. In the instant case, the 'Nakabandi' was held on the directions of the D.S.P, who was himself present at the spot. The accused were apprehended in his presence. He also supervised the search and seizure. The object of Section 57 of the Act is that the superior police officials should be aware about the apprehension, search and seizure in order to vouch safe the genuineness of the investigation leading to recovery. In the instant case, D.S.P Hardev Singh was himself present at the spot. The investigating Officer has also produced the case property and accused before SI Darshan Singh, the then S.H.O Police Station Mallanwala immediately after recovery. Thus, the non-compliance of Section 57 of the Act has also not resulted into any prejudice to the appellant. Moreover, Section 57 of the Act is not mandatory and is only directory in nature. The violations thereof will not vitiate the trial. To

support this view reference can be made to case **Rangi Ram Vs. State of Haryana 2002(2) R.C.R (Criminal) 811(S.C).**

22. From the consistent testimonies of PW-2 D.S.P Hardev Singh, PW-4 ASI Balbir Singh, the witness of recovery, PW-5 ASI Bakhshish Singh, the Investigating Officer of the case, it comes out that the truck bearing registration no. MP-09-K-5442 came from the side of Markhai. ASI Bakhshish Singh signaled the said truck to stop with a torch. Driver of the truck stopped the truck at a distance. The present appellant was sitting in the body of the truck. They tried to slip away, but were apprehended at the spot. Thereafter, search of the truck was conducted in accordance with law. 20 gunny bags containing poppy husk were found concealed under 80 other plastic bags and the present appellant was sitting thereon. The expression 'possession' is polymorphous term, which assumes different colours in different context. It may carry different meanings in contextually different backgrounds. So, it is impossible to work out a completely logical and precise definition of possession uni-formally applicable to all the situations. It is not necessary that the possession must be physical, it can also be a constructive possession. The conduct of the accused is also very material to determine the question of possession. In the instant case, only two persons were

traveling in the truck i.e. the present appellant and co-accused Kulwant Singh @ Kanta, who was driving the truck. Both of them are residents of the same village. DW-1 Harbhajan Singh has categorically deposed that present appellant was the friend of Kulwant Singh @ Kanta. The statement of DW-1 Harbhajan Singh further stated that on 16.03.2001, police of police station Mallanwala has taken away accused Kulwant Singh @ kanta and Sukhdev Singh @ Sukha along with their truck from their house and they belongs to his village Thathian Mahantan. This statement of DW-1 Harbhajan Singh shows the *interse* connection of appellant Sukhdev Singh @ Sukha and Kulwant Singh @ Kanta, who was driving the truck and their connection with the truck in question. Thus, only the present appellant and his co-accused Kulwant Singh @ Kanta were traveling in this truck. The truck was being driven by Kulwant Singh @ Kanta and the present appellant was sitting in the body of the truck at the backside. Accused-appellant has not given any explanation as to how he was traveling in the truck being driven by his friend Kulwant Singh @ Kanta, which was not a public vehicle. Thus, the present appellant is proved to be in possession of the contraband loaded in the truck.

23. PW-2 D.S.P Hardev Singh, PW-4 ASI Balbir Singh

and PW-5 ASI Bakhshish Singh have categorically deposed that when the signal was given to stop the truck, co-accused Kulwant Singh stopped the truck at a distance. Both the occupants of the truck tried to slip away, but were apprehended at the spot. The conduct of the accused is very material to determine the question of the conscious possession. The word '*conscious*' means awareness about a particular fact. It is a state of mind which is deliberate or intended. In the instant case, the conduct of the appellant attempting to flee away from the spot when the truck was signaled to be stopped by the Investigating Officer shows that the appellant was fully aware and conscious to the nature of the substance loaded in the truck. Otherwise, there was no reason for him to try to flee away from the spot, which shows his conscious possession. In case **Madan Lal and another Vs. State of H.P 2003(3) R.C.R (Criminal) 100**, the Charas was being transported in a Maruti car. Five persons were traveling in the car. All were found guilty. The Hon'ble Apex Court taking into consideration the facts that all the accused were traveling in the vehicle. They were known to each other. It has not been explained or shown as to how they traveled together from the same destination in the vehicle which was not a public vehicle. They were held to be in conscious possession of the

Charas. The same rule of law has been laid down by the Hon'ble Apex Court in case **Megh Singh Vs. State of Punjab 2003(4) R.C.R (Criminal) 319**. In that case, three persons were found sitting on the bags containing poppy husk. On seeing the police party, two of them fled away from the spot and appellant Megh Singh was apprehended at the spot. The Hon'ble Apex Court held him to be in conscious possession of the contraband.

24. Moreover, once the possession is established, the person who claims that it is not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of the possession because of presumption available in law. Similar is the position in terms of Section 54, where the presumption is available to be drawn from the possession of illicit articles. As already mentioned, in the instant case the accused-appellant has not given any explanation at all as to how he came to be present in the truck loaded with the huge quantity of poppy husk. His conduct also establishes that he was fully aware about the nature of the substance loaded in the truck. So, there is no escape from the conclusion that the appellant was in conscious possession of the contraband.

25. The accused-appellant was fully aware of the

charges being faced by him. The entire evidence of the prosecution has been recorded in his presence. He was also aware of the nature of the evidence brought on record by the prosecution against him. Though, in his statement under Section 313 Cr.P.C, the question regarding the conscious possession has not been specifically put to him, but this omission of putting specific question to the accused-appellant in his statement under Section 313 Cr.P.C with respect to the conscious possession is no ground to conclude that he was not properly examined under Section 313 Cr.P.C and that has resulted into any prejudice to the appellant. To support this view reference can be made to case **Jarnail Singh son of Jwara Ram Vs. State of Haryana 2013 (2) R.C.R (Criminal) 580(D.B)**. The Hon'ble Apex Court also in case **Gian Chand & Ors. Vs. State of Haryana 2013(3) R.C.R (Criminal) 916** has laid down that every error or omission in the statement of the accused does not necessarily vitiate the trial unless the accused is able to show that the same has resulted in prejudice to him. In the instant case as already mentioned that the accused-appellant was fully aware from the very beginning that he is being prosecuted for having found in conscious possession of the contraband. Learned counsel for the appellant has not been able to show me as to what prejudice has been

caused to the appellant due to the omission of the question with respect to the conscious possession in the statement of the accused under Section 313 Cr.P.C. In view of these latest judgments of the Division Bench of this Court and that of the Hon'ble Apex Court cases relied upon by learned counsel for the appellant on this aspect of the case are of no help to her.

26. There is no dispute with the proposition of law that stringent punishments have been provided for the offences punishable under the Act and strict proof is required to establish the offence beyond shadow of reasonable doubt. In the instant case, PW-2 D.S.P Hardev Singh was present at the spot even before the apprehension of the accused. The 'Nakabandi' itself was being held under the direction and supervision of PW-2 D.S.P. Hardev Singh, a Gazetted Officer. The search and seizure was also conducted in his supervision and presence. PW-2 D.S.P Hardev Singh, PW-4 ASI Balbir Singh, the witness of recovery and PW-5 ASI Bakhshish Singh, the Investigating Officer of the case have given the consistent, cogent and reliable testimonies with respect to the search and seizure of the contraband from the possession of the appellant. Learned counsel for the appellant has not been able to point out any material contradiction in their statements. The case

of the prosecution is fully corroborated from the testimonies of PW-1 SI Darshan Singh, the then S.H.O. Police Station Mallanwala before whom the accused along with case property was produced immediately after the recovery. So, the aforesaid evidence adduced by the prosecution is sufficient to establish the charges beyond shadow of reasonable doubt against the accused-appellant.

27. Consequently, I do not find any illegality or impropriety in the conviction of the appellant for offence punishable under Section 15 of the Act, hence the conviction and sentence of the appellant as recorded by the learned trial Court are hereby upheld and affirmed.

28. Resultantly, the present appeal has no merits and the same is hereby dismissed. The accused-appellant is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Ferozepur, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Ferozepur, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

August 21, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**