

In the High Court of Punjab and Haryana at Chandigarh

1. Crl. Appeal No. S-94-SB of 2004 (O&M)
Date of Decision: 19.01.2015

Mithu KhanAppellant

Versus

State of PunjabRespondent

2. Crl. Appeal No. S-1100-SB of 2004 (O&M)

Kewal KhanAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.S.Salar, Advocate
for the appellants.

Mr. K.S.Aulakh, AAG, Punjab.

SABINA, J.

Vide this order above mentioned two appeals would be disposed of.

Appellant Mithu Khan had faced trial in FIR No. 367 dated 11.12.2001, registered at Police Station Dhuri.

Prosecution story, in brief, is that Inspector Sardara Singh along with other police officials were present at T-point village Kanjhla/Changal road in connection with patrolling/*nakabandi*. Pohla Singh was joined with the police party. At about 1.30 P.M., a Tata Sumo was seen coming from the

side of village Kanjhla. The said vehicle was signaled to stop. The driver of the vehicle disclosed his name as Mithu Khan. The number of the vehicle was CH-03-7740. Five bags were lying in the back portion of the car. Mithu Khan was apprised of his right that he could get the bags searched in the presence of a Magistrate or a gazetted officer as it was suspected that there was some intoxicant substance in the bags. Mithu Khan opted to get the search effected in the presence of a gazetted officer. Harjit Singh Pannu, Deputy Superintendent of Police ('DSP' for short) was requested to reach the spot. On his arrival, DSP Harjit Singh Pannu introduced himself to Mithu Khan. Mithu Khan reposed faith in the DSP. When the bags were searched, it was found that they contained poppy husk. Out of the five bags, two samples of 250 grams each, were separated. The remaining poppy husk on weighment from each bag, came 34 kilograms and 500 grams. The bags were made into parcels and the samples were also made into parcels. The samples as well as the bags were sealed with seals bearing impressions 'SS' and 'HSP'. Sample seal was prepared. Case property was taken in possession. Ruqa was sent to the police station for registration of the case. On return to the police station, case property was produced before Station House Officer Joginder Singh who verified the same and affixed his own seal on the case property bearing impression 'JS'. He also attested the sample seal chit. After completion of investigation and necessary formalities, challan was presented against appellant Mithu Khan.

Charge was framed against appellant Mithu Khan under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('Act' for short) vide order dated 15.3.2002.

In order to prove its case, prosecution examined six

witnesses during trial.

Appellant Mithu Khan when examined under Section 313 of the Code of Criminal Procedure, 1973, after the close of prosecution evidence, prayed as under:-

“I am working as a Mistri. In June 2001 I had completed the Kothi of HC Jagdev Singh at Dasmesh Nagar, Street No. 1 Sangrur and Rs. 40,000/- were outstanding against him regarding my labour and I demanded this money from him several times but he flatly refused to pay the same to me. I was arrested by the police of CIA Bahadur Singh Wala at the instance of HC Jagdev Singh on 10.12.2001 in the presence of Sukhdev Singh Numberdar son of Bakhsish Singh. Jeet Singh son of Dalip Singh, Sukhdev Singh son of Jang Singh, Amrik Singh son of Sarwan Singh, Magher Singh son of Gurdial Singh at my brother Kewal Khan from my house at V. Gharachon and vehicle of my brother Kewal Khan was also taken into possession by police on 10.12.2001 bearing registration No. CH-03-7740. I am innocent. This case is false against me. My brother Kewal Khan had given an application to the SSP Sangrur and enquiry was marked by the SSP to the DSP Harjit Singh Pannu. Police recorded the statements of Sukhdev Singh Numberdar, Jeet Singh, Sukhdev Singh, Amrik Singh, Maghar Singh and my brother Kewal Khan and the enquiry was decided by the DSP. The report of enquiry was not shown by DSP Harjit Singh Pannu because he was a Gaz. officer and a recovery witness in my this case. My old aged parents

are depends upon me. I never involved in any case of NDPS Act or any criminal case even till today. This false case has been planted by police at the instance of HC Jagdev Singh because he wanted to grave my labour amount.”

Appellant examined eight witnesses in his defence.

Trial Court vide judgment/order dated 4.12.2003 ordered the conviction and sentence of appellant Mithu Khan under Section 15 of the Act. Trial Court vide order dated 12.5.2004 ordered the confiscation of the vehicle i.e. Tata Sumo bearing No. CH-03-7740 belonging to appellant Kewal Khan. Hence, the present appeals by the appellants.

Learned counsel for appellant Mithu Khan has submitted that the said appellant had been falsely involved in this case as he had been demanding his labour from Head Constable Jagdev Singh after completion of his house. Appellant Mithu Khan was working as a mason and had constructed the house of Head Constable Jagdev Singh in June 2001. The said Head Constable was working with DSP Harjit Singh Pannu. The case property was not produced before the Magistrate. Appellant Mithu Khan had examined co-villagers to establish that he was falsely involved in this case. Independent witness had also been examined as DW-7 who deposed that his thumb impressions had been obtained on memos without disclosing to him the contents of the same. Head Constable Jagdev Singh had admitted, when he was examined as DW-8, that appellant Mithu Khan had constructed his house in the year 2001.

Learned State counsel, on the other hand, has

submitted that appellant Mithu Khan was apprehended with five bags of poppy husk without any permit or licence. The defence put-forth by appellant Mithu Khan, was an afterthought.

Inspector Sardara Singh appeared in the witness box as PW-6 and deposed as per the prosecution case. Statement of the said witness was corroborated by PW-1 Inspector Joginder Singh, PW-4 Sub Inspector Baldev Singh and PW-5 DSP Harjit Singh Pannu on material aspects. However, in the facts and circumstances of the present case, defence put-forth by appellant Mithu Khan appears to be probable. The case of appellant Mithu Khan is that he was working as a mason and had constructed the house of Head Constable Jagdev Singh in the year 2001. Head Constable Jagdev Singh was examined as DW-8 and he has admitted the fact that appellant Mithu Khan was working as a mason and had constructed his house in the year 2001. Though, the said witness stated that he had made the entire payment, but the said witness in his cross-examination admitted that he was working as a Steno/Reader with DSP Harjit Singh Pannu in the year 2001. PW-5 DSP Harjit Singh Pannu also admitted in his cross-examination that DW-8 was working with him as a Steno on the day of recovery.

PW-6 Inspector Sardara Singh, in his cross-examination admitted that the case property was not produced before the Area Magistrate. A perusal of the interim order passed by the Area Magistrate dated 12.12.2001 also does not reveal that the case property was produced before the Magistrate. A perusal of the said order reveals that accused was remanded to police custody till 13.12.2001 on the request made by Inspector Sardara Singh that the police remand of the accused was necessary. However, the said

order does not reveal that the accused had been produced before the Area Magistrate with the case property. The case property was exhibited in the Court by PW-4 but the fact remains that the same was not produced before the Area Magistrate. The said fact makes the defence version, put-forth by the accused, plausible.

Pohla Singh was joined as an independent witness. The said witness was examined by the accused as DW-7 and he deposed that accused Mithu Khan had never been arrested in his presence nor any recovery was made from him in his presence. He was illiterate and had thumb marked the memos without knowing the contents of the same.

From the above facts, the defence put-forth by appellant Mithu Khan appears to be probable.

It is a settled preposition of law that an accused is presumed to be innocent till proved guilty and in case of doubt in the prosecution case, the benefit of the same has to be extended to the accused. Since in the present case, prosecution had failed to prove its case beyond the shadow of reasonable doubt, appellant Mithu Khan is liable to be acquitted of the charge framed against him.

Accordingly, Criminal Appeal No. S-94-SB of 2004 is allowed. Appellant Mithu Khan is ordered to be acquitted of the charge framed against him. Consequently, judgment/ order of his conviction and sentence dated 4.12.2003, are set aside.

Since appellant Mithu Khan is acquitted of the charge framed against him, appeal filed by Kewal Khan, brother of appellant Mithu Khan challenging the order dated 12.5.2004 whereby his vehicle was ordered to be confiscated to the State, is liable to be allowed.

Accordingly, Criminal Appeal No. S-1100-SB of 2004 is allowed. Impugned order dated 12.5.2004 is set aside.

**(SABINA)
JUDGE**

January 19, 2015

Gurpreet