

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1970-SB-2010

Date of Decision: October 21, 2015

Balbir Singh

..... Appellant

Vs.

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr. C.S. Jattana, Advocate,
for the appellant.

Ms. P.S. Bajwa, Addl. Advocate General, Punjab.

AMOL RATTAN SINGH, J.

1. The appellant is in appeal against the judgment of the learned Judge, Special Court, Shaheed Bhagat Singh Nagar (Nawanshahr), dated 30.07.2010 by which he has been convicted for the commission of an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after to be referred as 'the Act') and sentenced to undergo 10 years' rigorous imprisonment and also to pay a fine of Rs.1,00,000/-, in default of which he is to further undergo rigorous imprisonment for 2 years.

2. The facts leading up to the trial of the appellant are that on

27.06.2005, SI/SHO Police Station Behram, while on night duty, was present at Village Jasso Majara, along with Constable Satpal No. 940/HPR and PHG Kamal No.27156 on Government 'Gypsy' bearing registration No. PB-08-J-3870, driven by Constable Saudagar Singh No. 411, when a special informer is stated to have come and informed him that Balbir Singh alias Bobby, son of Jit Singh, resident of village Rori, Police Station Jodherwal Basti, District Ludhiana (appellant), Avtar Singh, son of Dhram Singh, resident of Jagjit Pura Colony Phagwara, District Kapurthala and Jugraj Singh @ Joga, son of Harbans, resident of Megali Tada, Police Station Kumkalan, District Ludhiana, were travelling in Truck No. DL-1-G-2919, carrying with them poppy husk to be supplied to village Munna and Pharala etc. and if checking is conducted, the said persons can be caught. The English version of the above shows the vehicle to be a Tractor whereas the original Punjabi version, carrying the stamp of the police station, describes the aforesaid vehicle as a Truck.

Upon receiving this information, the complainant-SHO sent a 'Ruqa' through Constable Satpal, to the Chief Officer/SHO Police Station, Banga, for registration of a case, making out the commission of an offence punishable under Section 15 of the Act.

3. The aforesaid statement of the SHO (Exhibit PA before the trial Court) also reads to say that the Area DSP, Dilbagh Singh Pannu, was requested on telephone to reach at Munna Road police post (the English version does not say police post though the Punjabi version does).

It further reads to say that the MHC of Police Station Behram was also informed by telephone to send ASI Gurmukh Singh, HC Amrik Singh and Constable Manoj Kumar, to Munna Road.

4. Thereafter, the said SHO, SI Gurdeep Singh and the others are stated to have proceeded to Munna Road, where they saw the aforesaid Truck No. DL-1-G-2919 parked and are stated to have seen three persons, of whom two are stated to have escaped along with the truck, upon seeing the police party. One person was left behind and apprehended, who disclosed his identity to be Balbir Singh @ Bobby, son of Jit Singh, resident of village Rori, Police Station Jodhewal Basti, District Ludhiana, and who was carrying on his head one bag of poppy husk and had three bags stacked on the ground next to him.

While testifying as PW-3 SI, Gurdeep Singh further stated that DSP Dilbag Singh Pannu had also reached the spot and had informed the said person of his rank, place of posting and had given him the option of being searched either by himself, as a Gazetted Officer, or by a Magistrate, to which the appellant is stated to have reposed faith in him and signed a memo of consent (Exhibit PC), which was recorded by the DSP and attested by SI Gurdeep Singh.

5. Upon opening the bags, poppy husk is stated to have been recovered and samples of 250 grams are stated to have been taken, after which the packets were sealed with the seal bearing the impression GS and the case property was taken into possession vide a separate recovery memo, Exhibit PD. Samples of the seals were also prepared and a memo of arrest of the appellant was also recorded, later exhibited as Exhibit PG. Samples of the seals were also stated to have been prepared and sealed with a seal bearing the impressions GS and DS, which were handed over to ASI Gurmukh Singh. The statements of the witnesses were also recorded and a memo of information of arrest of the appellant on the spot was prepared

(Exhibit PH), after which the case property is stated to have been produced before Inspector Gurchetan Singh, SHO of PS Banga, who verified the facts of the investigation and interrogated the accused. He is also stated to have put his seal, bearing the impression GS, on the samples and the case property, after which it was produced before the Area Magistrate, who 'initialed' the case property and remanded the accused to police custody.

The case property is, thereafter, stated to have been deposited with the MHC and the accused locked up in the police lockup.

6. The matter having been investigated, a report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was filed in the Court and eventually a charge was framed against the appellant on 06.12.2005, charging him of being in conscious possession of 120 kilograms of poppy husk contained in four bags with 30 kilograms in each bag, for which he possessed neither a licence nor a permit.

The appellant having pleaded to not being guilty, he was put to trial.

Subsequently, Jugraj Singh alias Joga (initially named in the complaint along with the appellant and Avtar Singh), was also arrested and put to trial, after which the same charge was again framed against the appellant as also Jugraj Singh alias Joga, on 31.08.2007.

7. Avtar Singh, the third named accused was tried separately as he is shown to have been arrested only in the year 2011, by which time the trial against the appellant and Jugraj Singh alias Joga was already over.

8. In that trial, Avtar Singh was acquitted and in the case from which the present appeal arises, the co-accused of the appellant, Jugraj Singh alias Joga, was also acquitted, though the appellant was convicted

and sentenced, as recorded earlier in this judgment.

9. The prosecution in this case produced 10 witnesses, though the serial number of the first witness is wrongly given as PW-2 and the last one as PW-10, with Sr. No.PW5 being assigned to two witnesses.

The following documents and case property were exhibited before the trial Court:-

Ex. PA	Ruqa
Ex. PB	FIR
Ex. PC	Consent Memo
Exs. PD, PH, P1 to P4	Recovery memo/case property
Exs. PE and PJ	Site Plan
Exs. PF and PK	Jama Talasi
Ex. PG	Arrest memo
Ex. PH	Affidavit and information regarding arrest.
Ex.P5	Chemical Report
Ex.PK	Affidavit of HC Jagdish Singh
Ex.PL	Police Remand
Exs.PM & PX	Order dated 27.06.2005
Ex. PY	Order dated 27.08.2005
Ex. D1	Judgment

10. The first witness, PW-2, was Inspector Gurchetan Singh, who deposed that on 27.06.2005, he was posted as SHO, P.S. Banga, on which date SI Gurdeep Singh produced before him the appellant Balbir Singh and the case property, along with samples duly sealed with a seal bearing the impression GS. After verifying the facts of the investigation and interrogating the accused, this witness stated that he sealed the samples and the case property. That seal, also bore the initial GS, of which he also took a

sample separately, after which he directed the Investigating Officer to produce the case property and the accused before the Area Magistrate.

On cross-examination, PW-2 stated that the case property was produced before him at 10:30 A.M. when he was standing outside the police station. The police officials who brought the case property, were stated to have travelled on a Government 'Tempo Traveller'. He further stated that he had checked the case property from the outside but no 'Fard' (memo) regarding 'Hawalgi' (description) was prepared. This witness further stated in cross-examination that the case property remained with him for about 20-25 minutes and he had come to know about the recovery at 5:00 or 6:00 A.M. He, of course, denied the suggestion that no case property was produced before him and further denied as incorrect that he had deposed falsely.

11. The complainant-cum-Investigating Officer, SI Gurdeep Singh, appeared as PW-3 and in his examination-in-chief testified as already reproduced earlier.

On cross-examination he stated that he got information from the special informer at 2:45 A.M. while the police party was going in a Government 'Gypsy' and that he sent information on the telephone to the DSP but did not send the secret information in writing to senior police officers. He admitted that no person from the public was joined with the police party, as they met no one.

PW-3 further stated that they reached the spot at 3:15/3:30 A.M. He further admitted that he was the Investigating Officer as also the complainant in the case. He denied knowing the accused prior to the recovery and stated that he came to know the name of the accused only at

the spot. This witness further stated in cross-examination that he and DSP Dilbagh Singh Pannu both reached the spot together and that in the DSPs' presence he tried to call witnesses but none was available. PW-3 further stated that the police party had seen two persons "fleeing" from the spot in the truck (taken from the Punjabi version).

This witness further stated that before coming to know the number of the FIR, he had prepared some documents on the spot, which he described to be the recovery memo, consent memo, rough site plan, statements under Section 161 Cr.P.C., docket, memos and samples seals etc. He further stated that he had not arrested accused Jugraj Singh. He also stated that at the time of investigation he was not called to identify the accused.

This witness further testified in cross-examination that the police party remained at the spot for about 3 to 4 hours and that police officials had brought weighing measures.

PW-3 next stated that he had not seen the vehicle in question in the Court though he had seen the case property and the samples. He also admitted that the place of recovery was in a Military area but that he did not "take any revenue record" of the place of recovery.

Lastly, of course, he denied that no recovery had been made from the accused.

12. PW-4 was a formal witness, Head Constable Ashok Kumar, who tendered his affidavit, Exhibit PH, in evidence, to the effect that on 27.06.2005, SI Gurdeep Singh, SHO Police Station Behram, had deposited with him, as MHC, after presenting before the Area Magistrate, the case property, i.e. four packets of poppy husk weighing 250 grams each, sealed

with the seal GS/DS/GS, along with sample seals.

The affidavit further states that on 29.06.2005 the aforesaid case property was handed over by him under docket No. RC403.21.05 to HC Jagdish Singh for depositing with the Assistant Chemical Examiner, Amritsar, for examination of the samples and that the aforesaid HC Jagdish Singh on that day itself, after depositing the said case property with the Assistant Chemical Examiner, Amritsar, deposited the receipt thereof.

In cross examination, this witness stated that he did not know the name of the officer before whom the sample parcel was deposited.

13. PW-5 (1) was Head Constable Amrik Singh, who testified that he was posted at PS Behram on 27.06.2005 and on that day, on getting a message, he joined the police party at village Jasso Majara, where SI Gurdeep Singh and other police officials were already present. On reaching the spot, he further testified that Balbir Singh @ Bobby was apprehended for the possession of 120 kilograms of poppy husk, contained in four bags. After that this witness deposed in the same manner as PW-3, SI Gurdeep Singh, with regard to weighing of the poppy husk, sealing it and thereafter, producing it before SHO/Inspector Gurchetan Singh, (P.S. Banga), who 'verified the facts of the investigation' and put his seal on the case property.

In cross-examination, PW-5 stated that he (and other police officials) received a telephone message at PS Behram, after which he went on a 'Canter' vehicle, along with ASI Gurmukh Singh and Constable Manoj Kumar, to Village Munna, on the main road and reached there at 3:05 A.M. He stated that the police party saw accused Balbir Singh @ Bobby with the bag on his head and that they stayed at the spot for about three hours. He too admitted that no witness from the public had been joined in the proceedings

and that two accused had run away from the spot.

This witness stated that the weight and scales were arranged by SI Gurdeep Singh (who, in fact, as already noticed, had stated that the scales were arranged by the police officials).

PW-5 identified the appellant in Court and stated that he had not seen the case property (on the date of the deposition in Court), though he had seen vehicle No. DL-14-7919 (as recorded before the trial Court) on that date, which he identified to be the same vehicle in which the two other accused had 'run away'.

He further stated that he did not know who had brought the weighing scales and the weights and he too admitted that the Investigating Officer did not 'take any revenue record' of the property from where the recovery was effected. This witness next stated in cross-examination that nobody passed by the road at the time of recovery, right till the finishing of the writing work. He denied knowledge of who had given secret information to the Investigating Officer but knew that the Investigating Officer had sent the information to PS Banga.

He denied that nothing was recovered from the possession of the accused, or that the paper work was actually done at the police station. Lastly he stated that he had not been called by the Investigating Officer at the time of arrest of accused Jugraj Singh.

14. The next witness (again number wrongly as PW-5), HC Jagdish Singh, who had retired on the date of his deposition and tendered his affidavit, Exhibit PK, into evidence. The essence of the said affidavit is to the effect that he had been handed over the case property, i.e. four packets containing samples of poppy husk, weighing 250 grams each, bearing the

seals GS/DS/GS, by MHC Ashok Kumar of PS Banga, on 29.06.2005, which he took to the Assistant Chemical Examiner, Amritsar, on road receipt No. 403/21/05 and that he deposited the case property with the Chemical Examiner, after which he deposited the receipt with MHC Ashok Kumar at PS Banga.

15. PW-6 was one Ram Pal, son of Karam Chand, 'Nambardar' of Village Jandiali, PS Behram, who testified that on 30.06.2005 two persons came to him in his house and gave their names as Avtar Singh, son of Karam Singh, resident of Jagjit Pur Colony, Phagwara, District Kapurthala and Jugraj Singh @ Joga, son of Harbans resident of Mangali Tanda, District Ludhiana, the latter of whom this witness identified in Court.

The witness testified that both these persons requested him to produce them before the police and to save them as he had "gained respect in the police department" and they, on 27.06.2005, along with Balbir Singh alias Bobby, were supplying poppy husk in truck bearing registration No. DL-1G-2919 and that Balbir Singh alias Bobby had been apprehended at the spot by the police, though both these persons had succeeded in fleeing away in the truck.

PW-6 further testified that though these two persons had requested him to produce them before the police, but thereafter, they did not come with him. He had, however, informed the police about the same and his statement was recorded by the police.

On cross-examination, PW-6 stated that his statement was recorded by the police at PS Behram at about 4:00 P.M. and that other than being the 'Nambardar' of the village, he was also a shopkeeper. He further stated that he was on visiting terms with the police officials, being the

'Nambardar'. This witness denied being a witness in any other case, or even being cited as a witness in any other case. He further stated that he did not remember as to which police official had recorded his statement and then stated that he did not know either Balbir Singh or Jugraj Singh personally, though they had given their names to him and that Jugraj Singh and Avtar Singh had asked him to produce them before the police.

Further in cross-examination, PW-6 stated that when Jugraj Singh was arrested, he (PW-6) was not called by the police. He also stated that he did not have any personal relations with any police officials.

He gave the time of arrival of Jugraj Singh and Avtar Singh at his house to be 9:30 A.M., when he was alone at home and further stated that they came on foot.

PW-6, thereafter stated that he knew Avtar Singh prior to the occurrence, as he was a resident of Phagwara and identified him as a clean shaven person, at the time of the incident.

This witness then identified Jugraj Singh in Court and again repeated that he (PW6) had not appeared as a witness in any other case and further stated that no case had been registered or was pending against him and his family members.

The witness further stated that the recovery had not been effected before him, in the case, nor was the investigation done in his presence.

He yet again denied the suggestion that he was a witness in many cases. He admitted to possession of a mobile phone when the accused came to him but stated that he did not inform the police on phone and instead went to the police station himself. He admitted receiving

Government salary as a 'Nambardar' and lastly denied the suggestion that his statement was recorded only to register a false case against the accused.

16. The last witness, PW-7, was DSP Dilbagh Singh Pannu, who stated that on 27.06.2005 he was posted as DSP, Banga and received information on mobile phone from SHO PS Behram, SI Gurdeep Singh, who requested him to reach the spot in the area of Munna, near the bridge, upon which he reached the spot with his staff, on his Government 'Gypsy' and found SI Gurdeep Singh, along with other police officials, present, and a 'Truck' bearing No. DL-1-G-2919 standing on the road, near the bridge. He stated that he read the number of the truck with the help of a torch and that on the right side of the 'Pulli' two or three persons were seen, of whom one had a plastic bag on his head and that two persons "ran away" with the Truck, on seeing the police party.

This witness also further testified to the appellant identifying himself as Balbir Singh and about himself (PW-7) disclosing his own identify and rank and stating the rights of the accused to get himself either searched in the presence of him (DSP) or in the presence of a Magistrate, upon which the accused reposed confidence in him and signed the consent memo, Exhibit PC, which PW-7 stated was attested by SI Gurdeep Singh and ASI Gurmukh Singh.

Thereafter, the testimony runs on similar lines as that of SI Gurdeep Singh (PW-3) and Head Constable Amrik Singh (PW-5).

In cross-examination, PW-7 stated that he received the information at 3:00/3:15 AM from SI Gurdeep Singh and that he reached the spot at 3:40 AM. He further stated that he did not remember the colour of the truck and that the truck in question was not recovered from the spot.

He further stated that the SHO (PW-3) tried to chase the truck and that it was early morning time. He next stated that the police party came to know about (the names of) the persons who had run away from the spot, later on.

This witness also repeated what the others had, to the effect that no other person had passed by at that time.

He further testified in cross-examination that the SHO had arranged the weighing measures by sending one police official and that the case property was weighed with weighing scales ('Takri Watta'). He also stated that he remained at the spot for about two or two and half hours and that the place of recovery was adjacent to the road and was not in agricultural fields. He further stated that there were bushes at the place of recovery and though the Investigating Officer "tried to join the independent witnesses", however, nobody arrived at the spot.

PW-7 then stated that no identification parade was conducted when Jugraj Singh was arrested and further stated that he did not know anything about Jugraj Singh being arrested.

The DSP further denied knowing 'Nambardar' Ram Pal (PW-6) personally. He also denied knowledge as to whether PW6 was a police witness in many cases or whether he had cordial relations with the police.

Lastly, he, while denying that no recovery had actually been effected from the accused, also denied the suggestion that the appellant was actually arrested earlier.

17. While closing the prosecution evidence, the Public Prosecutor had tendered into evidence orders dated 27.06.2005 (Exhibit PX) and 27.08.2005 (Exhibit PY). The order Exhibit PX, dated 27.06.2005, is an order passed by the Duty Magistrate (Sub-Divisional Magistrate),

remanding the accused to police custody and further stating with regard to the case property as follows:-

“....Along with the accused, case property and sample parcels allegedly containing poppy husk bearing seal impression 'GS, DS, GS' also seen intact and returned to the SI for further proceedings.”

The order Exhibit PY, dated 27.08.2005, was passed by the JMIC, Nawanshahr (factually the same Judicial Officer as had passed the order dated 27.06.2005). The said order reads as further:-

“Request along with inventory of the case property prepared in FIR No.164 dated 27.06.2005, has been produced with their request to take representative sample thereof. Heard. After hearing and perusing the case property, it has been found that the seals mentioned in the request and weight on the alleged case property is found intact. The case property is stated to be poppy husk weighing 29 kg. 750 gms each, four bags, out of which representative sample of 250 gm has ordered to be drawn. Afterwards, the case property and sample parcels has been sealed with seal of the Court bearing impression 'DP' and also seen and signed. The concerned SHO is also ordered to get photographs of each sample along with case property. As per details in the inventory and after drawn of 'Representative sample', the same are certified as per the provisions of Section 52-A of NDPS Act. Regarding disposal of the case property involved in NDPS Act cases, a standing order has been issued by the Central Government and in view of recent judgment of the Hon'ble High Court, case property is ordered to be produced before Drug Disposal Committee, which have been constituted for carrying out destruction of the seized drugs in the manner provided therein. Accordingly, the case property and sample are now handed over to concerned SHO to produce the case property only before Drug Disposal Committee for the purpose of destruction as per procedure and rules enshrined in the Act and in letter and spirit. The representative sample be kept in Judicial Malkhanna. The Drug Disposal Committee may also compare the seal of the undersigned on the case property before destruction and may also give certificate to this effect. Specimen seal impression of the seal of this Court, as affixed on the case property and representative sample has also been affixed on the margin of this order.”

18. In his statement under Section 313, Cr.P.C., the appellant stated

that nothing had been recovered from him and that the police had actually picked him up from his house and planted a false case upon him.

Though the appellant had stated that he wish to lead evidence in defence, no defence witness was produced by him. However, the judgment of the learned Judge of the Special Court constituted under the Prevention of Corruption Act, in Sessions Case No.3 of 2005, instituted on 18.10.2005 and decided on 21.04.2009, was exhibited as Ex.D1.

A perusal of the same shows that in an FIR registered under Section 12 of Prevention of Corruption Act on 01.01.2001 at Police Station Banga (the same Police Station where the FIR in the present case was registered), Ram Pal, Numberdar, was shown as a witness by the prosecution and testified before the Court as PW4. Thus, obviously, it was projected before the trial Court that the testimony of Ram Pal, Numberdar (PW6 before the trial Court in the proceedings out of which the present appeal arises), was a wholly unbelievable testimony, because despite having earlier appeared as a prosecution witness, in another case, he stated in cross-examination that he had never been a witness in any case.

It is pertinent to note that the date of testimony of PW6 in the case out of which the present proceedings arise, is seen to be 20.05.2010, whereas the judgment relied upon, Ex.D1, is dated 21.04.2009.

19. The trial Court, after considering the entire evidence, acquitted the co-accused of the appellant, Jugraj Singh @ Joga, on the ground that the poppy husk recovered from the appellant could not be linked in any manner to the said Jugraj Singh. He and Avtar Singh having escaped from the spot in truck bearing registration No.DL-1G-2919 (mentioned as DL-1J-2919 in the trial Court judgment), was not believed by that Court, in view of the fact

that despite a police vehicle, i.e. a 'Gypsy', being present on the spot, the truck was allowed to escape. It was also held that there were material contradictions in the statements of Dilbagh Singh Pannu, DSP (PW7) and SI Gurdeep Singh (PW3), inasmuch as, Gurdeep Singh did not depose in his testimony that he had chased the truck, whereas, on the other hand, DSP Dilbagh Singh Pannu testified that SI Gurdeep Singh had tried to chase the truck.

Though the trial Court had also observed that PW5(1), Head Constable Amrik Singh, in his examination-in-chief, did not depose that two persons had run away from the spot, it, however, did not discuss the fact that in his cross-examination, on a query being put to him, PW5 had stated that two persons had ran away from the spot and that he identified the truck in the Court premises, in which the other accused had run away.

20. Though, normally, this Court, in appeal, would not refer to the judgment of the trial Court, however, learned counsel for the appellant had specifically pointed to the judgment to argue that Jugraj Singh had been acquitted on the ground that it was not possible that despite police vehicles being present at the spot, with adequate number of police officials, the other two accused persons were allowed to escape with the truck.

21. Other than the above, Mr. Jattana, learned counsel appearing for the appellant, submitted that none of the prosecution witnesses even made an attempt to testify that after the escape of the co-accused in the truck, they had tried to trace down its owner.

Learned counsel further submitted that only one sample of poppy husk was drawn from each bag, as admitted by the witnesses, whereas, two samples must mandatorily be drawn. In this regard, he relied

upon two judgments of a co-ordinate Bench in **Pappu Singh and others v. State of Haryana** (and connected cases) 2013(4) RCR (Criminal) 402 and **Jaswinder Singh and another v. State of Punjab** 2013(1) RCR (Criminal) 257.

22. Mr.Jattana next contended that though secret information is stated to have been received by PW3, SI Gurdeep Singh, no secret information was reduced into writing and therefore, the entire story of the prosecution is wholly unbelievable.

He next contended that whereas the Investigating Officer (PW3) testified that he had apprehended the appellant and thereafter DSP Dilbagh Singh Pannu (PW7) reached the spot and disclosed his rank and posting to the appellant, in cross-examination, PW3 stated that he and DSP Dilbagh Singh Pannu both reached the spot together. Further, PW7 (the DSP) also stated in his examination-in-chief that when he reached the spot with his staff, in his Government 'Gypsy', SI Gurdeep Singh, alongwith other police officials, was already present and a truck bearing registration No.DL-1G-2919 was standing on the road near the "Bridge Pulli Munna".

23. Mr. Jattana then contended that the entire story, of secret information having been received by the SHO of a Police Station other than the Police Station in the jurisdiction of which the contraband was allegedly recovered, leading to setting up of a check post by the complainant SHO, seen with contradictory statements by the witnesses, shows that the story was, in fact, was a wholly concocted one.

He, thus, submitted that the part about the truck being present there and having been taken away by the other two co-accused, was not believed by the trial Court itself, thereby leading to the acquittal of Jugraj

Singh and and later, (in a separate trial), of Avtar Singh. Hence, once the prosecution story with regard to the recovery, in the manner that it was projected, with secret information being allegedly received about the poppy husk being carried in a truck, and the part about the truck being present at the spot, itself being found to be false by the trial Court, the appellant too had deserved acquittal and not conviction by that Court.

He, therefore, prayed that the appeal be allowed and the appellant be acquitted and payed compensation for a false case having been foisted upon him.

24. Mr.Pardeep Singh Bajwa, learned Additional Advocate General, Punjab, on the other hand, submitted that as regards only one sample having been drawn from each bag of poppy husk, nothing devolved upon that, as the complete case property, i.e. the poppy husk, alongwith the samples, was produced before the learned Sub Divisional Judicial Magistrate, as can be seen from his order dated 27.06.2005 (Ex.PX/PM), as also from the order dated 28.06.2005 (Ex.PY/PY/1).

Similarly, learned State counsel submitted, that the Chemical Examiner having confirmed vide his report, Ex.PJ, that the contraband seized was indeed poppy husk, whether or not two samples were taken, was wholly immaterial. Learned State counsel also cited a judgment of a Division Bench of this Court in Jarnail Singh v. State of Haryana 2013(2) RCR (Criminal) 580, to submit that though as per Standing Order No.1/89 issued by the Government of India on 13.06.1989, two samples are required to be drawn from each bag of contraband, however, the standing order is not mandatory, in the absence of any provision in the Act itself, to that effect.

Learned State counsel, therefore, prayed for dismissal of the

appeal.

25. Having considered the rival arguments and having gone through the evidence in detail, I find considerable weight in the arguments raised by the learned counsel for the appellant.

However, first coming to the arguments of learned counsel for the appellant which actually deserve rejection.

First, coming to the argument that the secret information stated to have been received by PW6, on 27.06.2005, was not reduced into writing. Factually, a 'ruqa'/note, in writing, with regard to the receipt of secret information allegedly received, was sent by PW6, to the SHO, Police Station Banga, leading to the registration of the FIR, prior to the alleged apprehension of the appellant, and the DSP is stated to have been informed of the same. Obviously, if the prosecution story is to be otherwise believed, then there is no strength in this argument, because the 'ruqa' sent to the SHO, with information also immediately given to the DSP, i.e. a gazetted officer superior to PW6, would, in the opinion of this Court, suffice to satisfy the provisions of Section 42 of the Act.

Similarly, as regards allegedly only one sample having been drawn from each bag of poppy husk, alleged to have been recovered from the appellant, the judgments cited on behalf of the appellant (*Pappu Singh* and others (supra) and *Jaswinder Singh* (supra), would not come to his rescue, in view of a Division Bench judgment to the contrary in **Jarnail Singh v. State of Haryana** 2013(2) RCR (Criminal) 580, wherein Jaswinder Singhs' case was noticed. It was held that the Standing Order dated 13.06.1989, by which it had been directed that two samples be taken from each bag of contraband, was not mandatory in nature.

Hence, this argument on behalf of the appellant, is to be rejected in view of the aforesaid judgment of a larger bench, noticing at least one of the single bench judgments holding to the contrary.

26. Now, coming to the arguments of Mr. Jattana which, in the opinion of this Court, deserve acceptance.

First, of course, is the fact that, admittedly, there were three vehicles of the police present at the spot, including two 'Gypsys' and one 'Canter'/'Tempo Traveller', which are stated to have been used by the three different police parties, to arrive at the spot, i.e. one 'Gypsy' used by the Investigating Officer-cum-complainant, SI Gurdeep Singh with Constables Satpal and Saudagar Singh; and PHG Kamal Netar; the second 'Gypsy' stated to have been used by the DSP (PW7) and his staff to reach the spot and the third vehicle, i.e. a 'Canter' as per PW5(1), HC Amrik Singh, used by himself, ASI Gurmukh Singh and Constable Manoj Kumar, to reach the spot (though described as a 'Tempo Traveller' by PW2, Inspector Gurchetan Singh, who stated that the police officials brought the case property in that vehicle).

Therefore, with at least 9 police officers/officials present at the spot in three vehicles, two of which were admittedly 'Gypsys' with generally a higher speed than a truck, it is indeed very strange that the co-accused of the appellant, i.e. Jugraj Singh and Avtar Singh, were allowed to escape in the truck.

Further, as also noticed by the trial Court, though PW7 DSP Dilbagh Singh Pannu stated that PW3 SI Gurdeep Singh chased the truck, none of the other witness, including PW3 himself, made any such statement, though of course, they do not seem to have been cross-examined in that

regard. Still, the prosecution story, on the escape of the co-accused with the truck, is not believable.

27. Next, even accepting that it is possible that secret information was received earlier in the morning by the SHO of a Police Station with regard to a crime to be committed in the jurisdiction of another Police Station and in order to ensure apprehension of the culprits, he himself set-up a check post in a different jurisdiction, under intimation to the SHO of the Police Station concerned, the statements of the police officials are also not entirely in consonance with each other, with regard to the time of reaching the spot and the manner of apprehension of the appellant. Whereas PW3 stated that he got the information at 2:45 AM and reached the spot 3:15/3:30 AM, PW5(1) Head Constable Amrik Singh testified that they reached the spot at 3:05 AM after having been summoned there by SI Gurdeep Singh, who he stated was present at the spot alongwith the other police officials. Thus, as per this witness, SI Gurdeep Singh and the other police officials were already present before 3:05 AM. Even though the exact timing can differ within the same half hour period, it does not stand to reason that after having received information at 2:45 AM, SI Gurdeep Singh sent written information to PW2, i.e. SHO Banga, and to his own Police Station seeking back up force and thereafter, reached the spot prior to 3:05 AM.

Then, as per DSP Dilbagh Singh, he reached the spot at 3:40 AM. PW3 SI Gurdeep Singh first stated that he and the DSP reached the spot together, then in cross-examination stated that the DSP came after him.

It is not possible to accept all the above as minor discrepancies, further in view of the fact, that all the prosecution witnesses who testified

with regard to the happenings on the spot, i.e. PWs3, 5(1) and 7, all stated that three persons were present alongwith the truck and that on seeing the police party, two of the suspects/accused fled away in the truck. It needs to be noticed that even the DSP, who as per his own admission, came on the spot at 3:40 am, i.e. at least 10 to 25 minutes after the arrival of SI Gurdeep Singh (who stated that he came between 3:15 and 3:30 am) stated that even he (the DSP) saw the truck and three persons standing on the spot, who then ran away seeing the police party. The same was stated by PW5(1) Head Constable Amrik Singh, who in cross-examination stated that he had also seen vehicle bearing registration No.DL-14-7919 on that day, in which the accused ran away from the spot. Hence, it is strange all three stated that the two co-accused ran away on seeing the police party, when all three police parties arrived at at least slightly different timings to each other. The possibility of all three accused continuing to stand there and fleeing away when they got a chance to do so, obviously cannot be ruled out, but that is not coming forth anywhere in the testimony of any of the witnesses, with at least two of the witnesses, i.e. PWs3 and 7, stating that they ran away on just seeing the police party.

Thus, the discrepancies in timing as discussed, and the factum of the truck not having been chased, except in the version testified to by the DSP and the truck not being caught at the spot despite 3 police vehicles being present at the spot, with no explanation that the truck was too fast for them, definitely raises a large doubt on the correctness of the prosecution story. It rather makes it quite unbelievable.

Still further, the co-accused tried alongwith the appellant, Jugraj Singh, has been acquitted, as already discussed, on this very ground

by the trial Court. Subsequently, the other co-accused, Avtar Singh, was also acquitted in a separate trial.

The question then is, when that part of the story is not believed by the trial Court and is not at all believed by this Court also, can the conviction of the appellant be sustainable, when the entire version of the prosecution, rests on secret information having been received that the poppy husk was to be delivered to various villages in a truck bearing registration No.DL-1G-2919? The presence of that truck itself having been disbelieved, both, by the trial Court and this Court, I do not see how the prosecutions' case with regard to apprehension of the appellant at the spot, standing next to the truck with three bags of poppy husk and the two other co-accused, both of whom have been acquitted, can be a story which is to be believed.

28. Next, though nothing substantial may hinge upon the truck being described to have a slightly different registration number, by different persons, as these may also be only typographical or inadvertent errors, (the different numbers given, all being very similar numbers), however, it needs to be noted that whereas in the complaint (Ex.PA), the registration number is referred to as DL-1G-2919, in the testimony of PW3 it is referred to as DL-1J-2919 (both in the English and Punjabi versions), as DL-14-7919 in the testimony of PW5 (HC Amrik Singh) (English and Punjabi version) and again as DL-1G-2919 in the testimony of PW7. In the order of the trial Court dated 20.01.2006 ("zimni order"), by which notice was ordered to be given to the owner of the truck, as to why it should not be confiscated to the State, the truck registration number is referred as DL-1-4-2919.

Of course, as already said, these could be simply typographical mistakes also.

Yet, it is, therefore, necessary to examine as to how the truck came to be recovered, in view of the fact that PW5(1) HC Amrik Singh testified in Court that he had seen the truck in the Court premises on the day he testified and identified it to be the same truck that he had seen on the date when the appellant is stated to have been apprehended, i.e. on 27.06.2005.

A perusal of the trial Court record shows that, other than PW5 (1), HC Amrik Singh, having testified to having seen the truck in Court on the day he testified, the trial Court vide a “zimni” order dated 20.01.2006, also issued notice to the owner of the truck (describing the truck to be bearing registration No.DL-1-4-2919), as to why it should not be confiscated to the State. Thereafter, there is no reference that can be seen, on the fate of the notice issued and even as to how the vehicle came into possession of the police and was stationed in the Court premises on the date that HC Amrik Singh (PW5(1) testified in this case, i.e. on 27.02.2008. It needs to be noticed that the truck was not shown to be an exhibit in this case before the trial Court. However, a perusal of the case file connected with the trial Court record in the present case, throws some light on that. (That is the case file of the trial of the co-accused of the appellant, i.e. Avtar Singh, who was apprehended later and tried separately, after the trial against the appellant and Jugraj Singh had already concluded, as already noticed earlier).

Though, since the acquittal of Avtar Singh pursuant to the trial conducted against him, is not under challenge before this Court and consequently, documents on record of one trial, cannot be taken notice of, unless exhibited in the specific proceedings out of which the appeal under consideration arises, the factual position would still need to be noticed by

this Court, as regards the presence of the truck in question in the Court premises, as per the testimony of PW5(1), in the trial in question itself.

It is, thus, seen that, as a matter of fact, another FIR bearing No.94, was registered at Police Station Sadar Phagwara, District Kapurthala, on 27.06.2005 itself, at 5:20 AM, again with regard to the alleged commission of an offence punishable under Section 15 of the NDPS Act, on account of the alleged recovery of 245 Kg. of poppy husk, from truck bearing registration No.DL-1G-2919 which is stated to have been apprehended while coming from Behram towards Phagwara, upon information received by wireless from the SHO Police Station Behram.

A reading of the said FIR registered at Police Station Sadar Phagwara, further shows that the co-accused of the appellant in the present case, i.e. Jugraj Singh and Avtar Singh, are stated to have been present in that truck, with one of the two driving the same and the other sitting alongside, but yet again, they are stated to have run away, leaving the truck behind. Strangely, that FIR (FIR No.94 dated 27.06.2005, registered at Police Station Sadar Phagwara), was never exhibited before the trial Court that tried the present appellant and his co-accused Jugraj Singh. Further, as can be seen from the testimony of the witnesses (as reproduced in this judgment), no witness testified before the trial Court in the present case, with regard to any of the happenings either leading up to, or after, registration of the aforesaid FIR No.94 at Police Station Sadar Phagwara on 27.06.2005. Hence, obviously, no cognizance or notice, whatsoever, can be taken by this Court on the contents of that FIR.

The contents thereof have only been reproduced hereinabove, to deal with the issue of how the truck which is stated to have been occupied

by the appellant and his co-accused, and was allegedly used in transporting poppy husk by them, but which was not apprehended at the spot alongwith the appellant, came to be identified by PW5(1) in Court, while testifying in the trial out of which the present appeal arises.

That part having been dealt with, the contention made on behalf of the learned State counsel, now needs to be considered.

29. The contention of learned counsel for the State, to the effect that the entire poppy husk that was stated to have been recovered, was produced before the Judicial Magistrate on two dates, as is obvious from the orders dated 27.06.2005 and 28.06.2005 (Ex.PX/PM and PY respectively), obviously needs serious consideration. The natural question is that, if the poppy husk was not recovered from the appellant, on 27.06.2005, then as to where it was procured from, by the police and produced before the Court. To my mind, only three possibilities exist:-

- i) that it was recovered from the appellant himself, but not in the manner projected by the prosecution;
- ii) that it was actually recovered from some other person and falsely foisted upon the appellant, or
- iii) that it was actually contraband recovered in some other case and not disposed of in time by the police and therefore, was lying with them in the 'malkhana', and foisted upon the appellant.

The question would be as to why the police would falsely implicate the appellant. Again, the answer would either be because someone else from whom it was recovered was being shielded, or, suspecting the appellant or having received information about the appellant, to be dealing in poppy husk, he was actually apprehended elsewhere with the contraband

or the contraband was foisted upon him as a “strong suspect,” as it was already present in the 'malkhana'.

Though, naturally, nothing can be imputed as being of any evidentiary value in that regard, however, reference by way of observation, still needs be made to the fact that, very unfortunately, it is seen even from reports received in this Court from Sessions Divisions, on the administrative side, with regard to contraband being present in 'malkhanas' of various Police Stations, because it is not disposed of in a timely manner by the committees ordered to be constituted vide Standing Order No.1/89, notified on 13.06.1989, by the Government of India, Ministry of Finance, Department of Revenue, Narcotics Control Bureau, (modified on 05.02.1996 and 07.08.2013). Hence, the chances of misuse of such contraband, can obviously not be ruled out.

In the present case, however, no comment is being made further on that, in the absence of any evidence in that regard. But definitely with a very large doubt created in the mind of this Court, on the prosecution story itself, as detailed earlier, the appellant, in my opinion, deserves the benefit of doubt, which is accordingly expressed by this Court.

30. Hence, giving him such benefit of doubt, the appellant is acquitted of the charge framed against him by the trial Court, of having been found in conscious possession of 120 kgs. of poppy husk and thereby having committed an offence punishable under Section 15 of the NDPS Act 1985.

Consequently, he is ordered to be released forthwith, if not required in any other criminal or civil proceedings, by which he has been ordered to be placed under arrest/custody.

This appeal, thus, is allowed.

31. As regards, the issue of non-disposal/destruction of contraband seized by the police, the issue needs to be followed up in terms of Standing Order dated 13.06.1989 (referred to earlier in this judgment), notified in terms of Section 52-A of the Act.

As per the said notification, poppy straw and other narcotic substances have to be disposed of under the supervision of Drug Disposal Committees which are to be constituted by the State Governments, in terms of the guidelines with regard to constitution of such Committees, given in the notification itself. As per clause 5.3 of the said notified Standing Order, the Committees are required to meet as frequently as possible, and at least once in two months. The Committees would examine the list of all drugs which are to be disposed of and after satisfying themselves that they are no longer required for legal proceedings and approval of the Court has been obtained for the purpose, necessary certificates are to be endorsed by the Committees for disposal of such drugs, in the manner given in clause 5.9 of the Standing Order.

The Hon'ble Supreme Court in Union of India v. Mohanlal and another (2012) 7 SCC 712, had issued directions to the Chief Secretaries of all the States to send their reports in terms of the questionnaire posed by the Apex Court, which was to be submitted through the Registrars General of the concerned High Courts.

A part of that questionnaire, also related to inspection reports submitted by the District & Sessions Judges to their Administrative Judges in each High Court, with regard to non-destruction of seized contraband in different districts.

That judgment is dated 03.07.2012 and, as already noticed, even after that date, as per the report received by this Court, from at least some Sessions Judges, (in my capacity as Administrative Judge), it has been seen that Drug Disposal Committees ordered to be framed under the aforesaid notification (and subsequent amendments issued thereto), are not meeting in time, i.e. at least once in 2 months, so as to ensure that drugs as are not required any further as case property, have been disposed of/destroyed.

Consequently, the Additional Chief Secretary/Principal Secretary, Home, Government of Punjab, is directed to file his personal affidavit, before the next date of hearing, after obtaining information on affidavit, from the Chairmen/Presiding Officers of the concerned Drug Disposal Committees, as to the current status of drugs as have not been disposed of till 15.11.2015, as were required to be disposed of in terms of the aforesaid notification. The affidavit to be sent by the concerned Chairmen/Presiding Authorities of the Drug Disposal Committees in the State of Punjab, would also state as to why there has been a delay, if any, in disposing of the drugs as are required to be disposed of/destroyed.

The Registrar General of this Court would also submit his report, after scrutinizing the latest reports received from the different Sessions Divisions in the State of Punjab, with regard to non-disposal of any contraband, as was required to be disposed of in terms of the Standing Order notified on 13.06.1989 (as amended upto date). It is made clear that in case the affidavit of Additional Chief Secretary/Principal Secretary, Home, Government of Punjab, is not submitted before the next date of hearing, the said Additional Chief Secretary/Principal Secretary shall remain present in

Court to explain as to why the affidavit, containing the information sought, has not been so submitted.

A copy of this order be given to Mr.P.S.Bajwa, learned State counsel appearing for the State of Punjab, under the signatures of the Court Secretary. A copy of this order be also given to the learned Registrar General of this Court.

Let this appeal be now listed for hearing on 02.12.2015, for this limited purpose.

October 21, 2015
vcgarg/dinesh

(AMOL RATTAN SINGH)
JUDGE