

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

CRA-S-2159-SB of 2010 (O&M)

Date of decision: 04.02.2015

Satpal @ Pala

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. P.K. Hooda, Advocate for the appellant.

Mr. Pawan Garg, AAG, Haryana
for the State.

Jitendra Chauhan, J.

Convict Satpal @ Pala has filed this criminal appeal assailing his judgment of conviction dated 20.02.2010 and order of sentence dated 22.02.2010, passed by the Additional Sessions Judge, Sirsa, thereby convicting the appellant under Section 15 r/w Section 31 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'Act') and sentencing him to undergo rigorous imprisonment for four years and to pay a fine of ₹1,50,000/- and in default of payment thereof, to undergo further simple imprisonment for six months.

The brief facts as set out in para No.2 of the judgment of trial Court, is reproduced as under:-

“On 08.06.2006, a police party, including PW5 Gurmail Singh Head constable and PW6 Ramesh Chander EHC, headed by Ishwar Singh SI from P.S. Ellenabad, boarded on a government vehicle No.HR-24-G/5600, for patrolling and carrying out the government orders, was present at village Budhi Mairi. In the meantime, a person, on a scooter without registration number, having a gunny bag tied upon its pillion, was noticed going towards Budhi Mairi Circle (chowk) from the village Abadi of the said village on the metalled road. On the basis of suspicion, he was signalled to stop but upon seeing the police party, he sped the scooter towards the said circle. His scooter was got stopped by the police party on a turn leading from the village to the said circle. However, the said person left his scooter and tried to flee away in the fields. He was overpowered at some distance. He disclosed himself to be Sat Pal @ Pala son of Mastan Singh, Jat Sikh, resident of village Jiwan Nagar, P.S. Rania, District Sirsa (for brevity 'accused'). When Ishwar Singh got suspicion that the said bag contained some contraband like poppy straw, he served a notice Ex.PD under Section 50 of the Act upon the accused that he had a legal right to give the search of the said bag in the presence of either a Gazetted officer or a Magistrate and if he wanted to do so, any of the said authorities could be called at the spot or he alongwith the said bag/case property could be taken to them for search. The accused gave a reply Ex.PE that he did not intend to give the search of the said bag before any of

the said authorities. In fact, he had reposed faith in the police party. The notice Ex.PD and reply Ex.PE thereof, were signed by PW5 Gurmail Singh ASI and PW6 EHC Ramesh Chander. The said bag, then, was searched by Ishwar Singh SI, from which poppy straw was recovered. Two samples of 50 grams each were drawn from it and were converted into parcels. The residue, on weighment, came out to be 35 kgs. With the bag. It was put into that very bag and was converted into a parcel. The said parcels were then sealed with a seal 'IS' and then alongwith the above stated without number gray coloured scooter bearing Engine No. E05BI 080842 and Chasis No. 4082 were taken into police possession vide a recovery memo Ex.PF which was signed by the above stated Pws. The seal after use and retaining the specimen seal impression, was handed over to Gurmail Singh PW6. Then, Ishwar Singh SI sent ruqa Ex.PG to the Police Station for registration of a case and upon its receipt therein, ASI Ram Kumar registered a formal FIR Ex.PH. Thereafter, the Investigating Officer prepared the rough site plan Ex.PI at the spot, recorded statements of the witnesses under Section 161 Cr.P.C., prepared his report Ex.PA U/s 57 of the Act and formally arrested the accused vide arrest memo Ex.PJ. Upon completion of investigation at the spot, the I.O. Took the entire case property along with the accused and witnesses to the Police Station, Ellenabad and presented them before PW2 Inspector/SHO Madan Lal therein. The said PW, on turn, verified the facts from all concerned and upon finding the facts mentioned by Ishwar Singh SI to be correct, sealed each parcel of the case property with a seal 'ML'. He also endorsed the report Ex.PA with his endorsement Ex.PA/1, which was

subsequently sent to Dy. S.P. Ellenabad, who, on turn, saw and signed it vide its endorsement Ex.PA/2. PW2 then directed the SI to deposit the case property with the concerned MHC and to lodge the accused at police lock-up. On turn, the SI, as is evident from the affidavit Ex.PB and PW3 Krishan Chander, deposited the entire case property with the said witness on that very date and lodged the accused at police lock-up. On 9.6.2006, Ishwar Singh SI took the said case property from PW3 for production in the Court and then along with an application and the accused, presented the same before Sh. Jarnail Singh, the then learned JMIC, Sirsa for attestation of inventory. The SI also summoned PW1 Kuldeep Kumar, govt. photographer in the Court of the said Magistrate and directed the said PW to snap the case property therein. Upon such direction, PW1 snapped photographs Ex.P7 to Ex.P12 in the said Court, the negatives whereof are Ex.P1 to Ex.P6. Then the said Magistrate passed an order Ex.PK of that very date, thereby attesting the inventory of the case property. The said SI was accordingly directed to deposit the case property to the concerned quarters. Then the SI deposited one sample parcel along with one specimen seal impression with PW3 Krishan Chander for safe custody and the remaining case property with the Judicial Malkhana, Sirsa. On 22.06.2006, as is evident from the affidavit Ex.PC of PW4 Rajinder Singh ASI, PW3 Krishan Chander took the said case property from the Malkhana of the Police Station in question and vide R.C. No. 228 of that date, sent it to FSL, Madhuban for analysis through PW4 Rajinder Singh in an intact condition. The said PW, on his turn, deposited the said case property to the said laboratory and upon

return, handed over the receipt thereof to PW3 Krishan Chander. As per the said Pws, till the case property remained in their respective possession, the same not tampered with. The concerned examiner, vide its report Ex.PL, opined the sample to be poppy straw. After completion of investigation, PW Madan Lal prepared the challan and laid the charge sheet before the Court.”

On presentation of challan, the trial Court finding prima facie charge against the accused-appellant, framed the charge for the offence under Section 15 of the Act. The accused pleaded not guilty to above charge and claimed trial.

In support of its case, the prosecution examined PW-1 Kuldeep Kumar, Photographer, who proved on record the negatives Ex.P1 to Ex.P6 and photos Ex.P7 to Ex.P12;

PW-2 Inspector Madan Lal, deposed regarding recovery of contraband from the accused and prepared challan under Section 173 Cr.P.C.;

PW-3 Head Constable Krishan Chander, tendered into evidence his sworn affidavit Ex.PB and deposed that the entire case property along with the scooter in question was deposited with him by the IO Ishwar Singh and further on 22.06.2006, the said case property was sent to FSL, Madhuban.

PW-4 ASI Rajinder Singh, had also tendered into evidence his sworn affidavit Ex.PC and stated that the case property

was deposited in FSL, Chandigarh in an intact condition;

PW-5 ASI Gurmail Singh, is the recovery witness and testified the whole investigation carried out under the supervision of SI Ishwar Singh.

PW-6 EHC Ramesh Chander is also a recovery witness and narrated about each and every details of the recovery in question.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication at the instance of Sarpanch of village Jiwan Nagar. He, however, did not lead any evidence in his defence.

After hearing the Public Prosecutor for the State, the Counsel for the accused, and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

Feeling aggrieved, against the judgment of conviction delivered by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 04.10.2010.

Learned counsel for the appellant has contended that the accused has been falsely implicated in the present case. There is unexplained delay of 12/13 days in sending the sample to the chemical examiner, so the possibility of tampering with contraband cannot be ruled out.

The alleged recovery was planted upon the accused. The

case of the prosecution solely rest upon the testimonies of the official witnesses, who are, interested in the conviction of the appellant. As per the prosecution story, the recovery was effected in an open place accessible to public, however, no independent witness was joined in the investigation. There are also some material contradictions in the testimony of the prosecution witnesses.

It is further submitted that as per the prosecution story the alleged recovery was effected from the gunny bag carried on scooter but there is no evidence regarding ownership of the said scooter. The said scooter was without registration number but the prosecution failed to produce any witness from DTO office, concerned to prove the registration number or owner of the vehicle in question. The scooter did not belong to the appellant.

It is further contended that ordinarily in cases, non examination of Investigating Officer by the prosecution is not fatal but in the present case, the investigating officer was the complainant as well and was to prove the entire prosecution version. The search of the accused/appellant was not conducted before a gazetted officer, rather, it was done before the Investigating Officer, who was not examined in this case, for the reasons best known to the prosecution.

Lastly, the learned counsel for the appellant has contended that the recovery effected from the appellant/accused was non-commercial quantity, therefore, a lenient view may be taken, if

this Court finds that this appeal has no merit.

On the other hand, the learned State counsel, has submitted that as apparent from the FSL report Ex.PL, the specimen seal impression tallied with the seal affixed on the sample parcel when it was received in the office of FSL, which nullifies the contention raised by learned counsel for the appellant regarding late sending of sample. There was no previous enmity of any of the official witnesses with the accused before registration of the present FIR. In fact, there were two more cases registered against the appellant/accused under the Act, in which, he was convicted. The appellant/accused has rightly been convicted by the trial Court. The appellant/accused was found in possession of the contraband and has rightly been convicted by the trial Court.

This Court has heard the arguments of the learned counsel for the appellant, the learned State counsel and has carefully gone through the record of the case.

The recovery was effected on 09.06.2006 and the sample parcel was sent to FSL Laboratory on 22.06.2006. Obviously, there is a delay of 13 days in sending the sample. As observed by the Division Bench of this Court in **Parminder Singh vs. State of Haryana**, 2006(4) *Recent Criminal Reports (Crl.)*, 495(DB), according to the Narcotic Control Bureau Instructions, the sample parcel should have been deposited within 72 hours with the

Chemical Examiner. Herein, the prosecution has not given any explanation for withholding the sample for such a long time.

As regards the non joining of the independent witness in the investigation at the time of recovery, a careful perusal of the prosecution evidence shows that there are certain loop holes which have not been plugged. The trial Court has convicted the appellant on the testimony of police officials. It is true that the testimonies of police officials cannot be brushed aside being interested witnesses but while considering its probative value, the Court must also be cautious against false implication. There must be some independent corroboration as far as possible. In the instant case, there is no record to suggest that any effort was made to join independent witness.

The next contention of learned counsel for the appellant is that the scooter was without registration number and the ownership of that scooter was not proved. A bare perusal of the record would reveal that the scooter to which the gunny bag had been tied was without registration number. The ownership of the scooter in question was not proved by the prosecution, therefore, the accused/appellant cannot be said to be the owner of the scooter. No document was procured by the prosecution from the DTO office regarding the ownership of the scooter. Thus, the prosecution has failed to prove the conscious possession of the case property.

The complainant and the investigating officer being the

same person in this case, thus, his non examination is fatal to the case of the prosecution. The aforementioned fact of the non examination of the investigating officer assumes further significance in the present case the as search was not conducted before any gazetted officer or the Magistrate and the same was conducted by the IO himself on the basis of alleged consent memo given by the accused.

In view of the foregoing discussion, this appeal is allowed. The judgment of conviction dated 20.02.2010 and order of sentence dated 22.02.2010, passed by the trial Court are set aside. The appellant is acquitted of the charge levelled against him. He be set at liberty if not required in any other case.

04.02.2015

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(JITENDRA CHAUHAN)
JUDGE

Note:- Whether to be referred to reporter or not – Yes / No