

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

CRA-S-2148-SB of 2005

Date of decision : 14.01.2015

Jagjit Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. H.S.Dhindsa, Advocate
for the appellant.

Ms.Shivali, AAG, Punjab.

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

DARSHAN SINGH,J

1. The present appeal has been preferred against the judgment dated 22.09.2005 vide which accused-appellant Jagjit Singh has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (hereinafter to be referred as 'Act') and the order of sentence dated

24.09.2005, 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 to further undergo rigorous imprisonment for a period of one year.

2. The brief facts of the prosecution case are that on 26.12.2001, PW-4 SI Major Singh, the then Incharge CIA Staff, Ferozepur along with other police employees was holding a Naka at the bridge of canal in the area of village Katora under the jurisdiction of Police Station Zira. An oil tanker bearing registration no. PB-10-G-9902 came from the side of village Katora. The Investigating Officer signalled it to stop. Accused Gurjit Singh (since Proclaimed Offender) was driving the tanker, whereas appellant-Jagjit Singh was sitting by his side in the tanker. Both of them were nabbed by the police officials. SI Major Singh apprised the accused that he suspected some intoxicant in the aforesaid tanker, which was to be searched. They have legal right to opt their search either in the presence of some Magistrate or some Gazetted Officer. The accused opted their search in the presence of some Gazetted Officer. The memo to this effect Ex.P-9 and Ex.P-10 were reduced into writing, which were signed by the accused and attested by the witnesses. Thereafter, SI Major Singh informed PW-1 DSP, Hardev

Singh, Ferozepur to reach at the spot through wireless message. DSP Hardev Singh reached at the spot. He also questioned the accused and apprised them about their legal right for their search in his presence or in the presence of some Magistrate. Both the accused opted for their search in the presence of PW-1 DSP, Hardev Singh. For which the consent memos Ex.P1 and Ex.P-2 were reduced into writing and were also signed by the accused. Thereafter, under the directions of DSP Hardev Singh, SI Major Singh carried out the search of the tanker, which led to the recovery of 140 bags of glazed paper in three different compartments of the tanker from which the poppy husk was recovered. SI Major Singh separated 2 samples of 200 gms each from each bag. The remaining poppy husk in each bag was found to be 19 kg 600 gms. The sample parcels and remainder poppy husk in those very bags were sealed with the seal bearing impression 'MS' by the Investigating Officer. DSP Hardev Singh also affixed his seal bearing impression 'HS'. The specimen seal impressions were prepared. SI Major Singh handed over his seal after use to PW-5 ASI Jaswant Rai. DSP Hardev Singh retained his seal with him. The entire case property along with the tanker bearing registration no. PB-10-G-9902 was taken into possession by SI Major Singh. The registration certificate of the tanker in question was also

recovered from the cabin of the tanker. The same was also taken into possession by the Investigating Officer. The Investigating Officer sent the ruqa Ex.P-14 to the police station. On the basis of which formal FIR Ex.P-15 was registered. He also prepared the site plan of the place of recovery Ex.P-16. The accused was arrested as per law.

3. By going to the Police Station, the Investigating Officer handed over the custody of the accused and the case property to PW-3 SI Rajvir Singh, SHO, Police Station Zira, who verified the facts of the case and on satisfaction sealed the case property with his own seal bearing impression 'RS'. He also prepared the specimen impression of his seal. On the next day SI Rajvir Singh produced the case property before the learned Judicial Magistrate, Zira who passed the authentication order Ex.P-10 and directed the police to keep the case property in safe custody. 140 sample parcels were sent to the office of Chemical Examiner. On receipt of the report of the Chemical Examiner and on completion of the investigation, the report under Section 173 Code of Criminal Procedure (for short 'Cr.P.C') was presented in the Court.

4. Appellant Jagjit Singh and his co-accused Gurjit Singh were charge sheeted for the offence punishable under Section 15 of the Act, to which both of them pleaded not guilty and claimed trial.

5. During the trial co-accused Gurjit Singh absconded and was ultimately declared proclaimed offender by the learned trial Court vide order dated 11.08.2004.

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

7. When examined under Section 313 Cr.P.C, accused-appellant pleaded that he has been falsely implicated. He further deposed that his brother Gurjit Singh co-accused who is also owner of the oil tanker bearing registration no. PB-10-G-9902 was illegally detained by the police of CIA Staff, Ferozepur much earlier to 26.12.2001. Thereafter, he was brought from his house in the presence of his family members and respectable by the police of CIA Staff, Ferozepur on 25.11.2001 and thereafter, both the brothers were falsely implicated.

8. In the defence evidence accused examined DW-1 Rashpal Singh, Sarpanch of their village, Nahar Singh their co-villager appeared as DW-2. They supported the defence plea raised by the appellant.

9. Appreciating the evidence on record and the contentions raised by learned counsel for the parties, learned trial Court held guilty and convicted the appellant for the offence punishable under Section 15 (c) of the Act and was ordered to undergo sentence as mentioned in the

upper part of the judgment.

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

11. I have heard Mr. H.S.Dhindsa, learned counsel for the appellant, Ms. Shivali, learned Assistant Advocate General, Punjab and have carefully examined the record of the case.

12. Initiating the arguments, learned counsel for the appellant contended that the appellant has been falsely implicated in this case. He along with his brother was already detained by the police officials of CIA Staff, Ferozepur and thereafter, the poppy husk was planted upon them. He contended that the place of recovery is a busy public place. The people were crossing over, but even then no independent witness has been associated, which renders the case of the prosecution doubtful. To support his contentions he relied upon cases **Nachattar Singh vs. State of Haryana 2014(1) RCR (Criminal) 490.**

13. He further contended that the recovery is alleged to have been effected on 26.12.2001, but the samples have been sent to the Chemical Examiner on 01.01.2002. As per the rules, the samples should have been sent to the Chemical Examiner within 72 hours. There is no

explanation for this delay, which further renders the prosecution case doubtful. To support his contentions he relied upon cases **Kaku Singh and others Vs. State of Punjab 2008(3) RCR (Criminal) 37, Ramji Singh Vs. State of Haryana 2007 (3) RCR (Criminal) 452.**

14. He further contended that there was every possibility of tampering with the sample parcels. The seal after use was handed over to ASI Jaswant Rai, but the same was not entrusted to any independent witness. He further contended that PW-2 Constable Parmar Singh has simply stated that he had carried two samples, whereas the number of the sample parcels is 140. he further contended that PW-3 SI Rajvir Singh has admitted that the seal on the bags were broken. It shows that the case property and the sample parcels were tampered with,. Which totally demolishes the case of prosecution. To support his contentions he relied upon case **Gurnam Singh vs. State of Haryana 2014 (1) RCR (Criminal) 699** and case **Hakam Singh Vs. State of Punjab 2008(4) RCR (Criminal) 489.**

15. He further contended that story of the prosecution is also highly improbable. PW-1 DSP Hardev Singh has stated that the tanker was having 6 feet height. There was no ladder available with the police officials. So, it is not known as to how they climbed over the tanker. DSP

Hardev Singh has stated that the police officials remained standing at the top of the tanker and did not enter therein. In that position it is not explained as to how the bags were taken out. Thus, he contended that the prosecution version is entirely doubtful and conviction of the appellant has been wrongly recorded.

16. On the other hand learned State counsel contended that from the consistent testimonies of PW-5 ASI Jaswant Rai, the witness of recovery, PW-1 DSP Hardev Singh, under whose supervision the search and seizure carried out and PW-4 SI Major Singh, the Investigating Officer of the case, it is established that 2800 kgs of Poppy Husk has been recovered from the possession of the appellant. She contended that there was no reason for the false implication of the accused. So much quantity of the poppy husk cannot be planted from their own sources by the police officials. It was a chance recovery, so the non association of the independent witness is no ground to ignore the cogent and consistent testimonies of the police officials. She further contended that the link evidence is also complete. Even the Magistrate has certified the intactness of the sample parcels. There is nothing to show that sample parcels were tampered with. She further contended that some delay in sending the sample parcels to the Chemical

Examiner cannot be considered to be fatal when there is no evidence to show that the sample parcels were tampered with. Thus, she contended that the conviction of the appellant has been rightly recorded by the learned trial Court.

17. I have duly considered the aforesaid contentions.

18. Admittedly no independent witness has been associated in the present case by the Investigating Officer. It is a case of chance recovery. No doubt the place of occurrence is a busy road as admitted by PW-1 DSP Hardev Singh. The prosecution witnesses have not been questioned specifically as to whether the independent witnesses were available or not at the time of initial apprehension of the accused. Moreover, it is well settled principle of law by this time that mere non joining of the independent witness is not a ground to throw away the prosecution case. Mere this fact that no independent witness has been joined is itself not sufficient to derive the conclusion about the false implication of the accused. The testimonies of the official witnesses also carries the same evidentiary value as that of any other witness. Mere official designation of a witness cannot be made a ground to distress or disbelieve him. The Hon'ble Supreme Court in case **Akmal Ahmed Vs. State of Delhi 1999(2) RCC 297** has laid down that it is now well

settled principle of law that evidence of search of seizure made by the police will not become vitiated solely for the reason that the same was not supported by an independent witness. The same legal position has been reiterated by the Hon'ble Apex Court in case of **NCT of Delhi Vs. Sunil, (2000) I S.C.C 478**, wherein it has been laid down as under:-

“It is an archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature.”

19. In a latest judgment in case **Jagdish and another Vs. State of Haryana 2014 (4) RCR (Criminal) 540**, a Division Bench of this Court has also laid down that it has been seen that no one would like to depose against their own people on account of social pressure. In the absence of any animus on the part of the police officials their statement cannot be rejected solely on account of their official status. As a rule of caution, where the case of prosecution is based

only on the testimonies of the official witnesses, the Court is required to scrutinize the prosecution evidence minutely and if the testimonies of the official witnesses are found cogent, consistent and reliable, the non association of the independent witnesses is not a ground to discard their testimonies. Case **Nachhatar Singh Vs. State of Haryana (Supra)** relied upon by the appellant is entirely on different footing as in this case the recovery was effected from the house search and the provisions of **Section 100 (4) Cr.P.C** were violated. Whereas the case in hand is a case of chance recovery. Thus, non-joining of the independent witness is no ground to adversely affect the veracity of the prosecution case.

20. No doubt there is delay of six days in sending the sample to the Chemical Examiner. The recovery has been effected on 26.12.2001, whereas the sample parcels have been sent to the Chemical Examiner on 01.01.2002. But, there is sufficient evidence on record to establish that the sample parcels remained intact till it reached the office of the Chemical Examiner for examination. PW-3 SI Rajvir Singh, the then SHO, Police Station Zira has categorically deposed that on 26.12.2001 SI Major Singh Incharge CIA Headquarter, Ferozepur produced before him both the accused alongwith the case property of this case i.e. 280

sample parcels weighing 200 gms each and 140 bulk parcels weighing 19 kg 600 gms each duly sealed with the seal impressions 'MS' and 'HS' along with canter bearing registration no. PB-10-G-9902. He further deposed that he affixed his seal bearing impression 'RS' on all the sample parcels and took into his possession the entire case property vide memo Ex.P-8. On the next day, he produced the accused and the case property before the learned Judicial Magistrate, Zira along with an application Ex.P-9. On the basis of this application, Duty Magistrate, Zira passed the order dated 27.12.2001 Ex.P-10 that 140 gunny bags and 280 sample parcels with seals intact seen and signed and thereafter, the case property was entrusted to SI Rajvir Singh, SHO, Police Station Zira to keep the same in the police Malkhana in the safe custody. So, the seals were intact when the parcels of the case property were produced before the Judicial Magistrate and he certified the intactness of the seals over all these parcels vide order Ex.P-10. Thereafter, the case property remained in the safe custody of PW-3 SI Rajvir Singh and was kept in the Malkhana under his supervision. He handed over the sample parcels to PW-2 Constable Parmar Singh for taking those to the office of Chemical Examiner. In his affidavit Ex.P-8, PW-2 Constable Parmar Singh has categorically

mentioned that he did not tamper with the sample parcels nor allowed anybody else to do so during the period those remained in his custody. Thus, PW-2 Constable Parmar Singh has deposited the sample parcels in intact condition in the office of Chemical Examiner.

21. Mere this fact that the seal has not been entrusted to some independent witness is no ground to conclude that the sample parcels were tampered with. In the absence of any positive proof, no such presumption can be drawn simply on this ground. To support this view reference can be made to a Division Bench judgment of this Court titled as **Jeet Singh Gohli and others Vs. State of Punjab 2013 (3) RCR (Criminal) 204**. In view of this Division Bench judgment, the accused cannot take the help of Single Bench Judgment titled as **Hakam Singh Vs. State of Punjab (Supra)**. Moreover, in that case the independent witness was joined in the investigation, even then the seal was entrusted to a police official.

22. The cross-examination of PW-2 Constable Parmar Singh is being misinterpreted by the learned counsel for the appellant to plead that he has deposed about only two samples, whereas the number of samples was 140. PW-2 Constable Parmar Singh has stated in the cross-examination that the samples were in cardboard packets

numbering two. So, he has deposed about the number of cardboard packets containing the samples and not the samples itself.

23. If the seals on some of the packets of the remainder poppy husk were found broken when produced in the Court during trial is also no ground to conclude that the seals on the sample parcels were also tampered with. Thus, there is absolutely no evidence to establish that the sample parcels were tampered with at any stage till it reached in the hands of the Chemical Examiner for examination and the chain of link evidence is fully complete. In these circumstances, some delay in sending the sample parcels to the Chemical Examiner cannot be considered to be fatal to the prosecution case. The Hon'ble Supreme Court in case **State of Orissa vs. Kanduri Sahu 2004(1) RCR (Criminal) 196** has authentatively laid down that some delay in sending the sample to the laboratory is not fatal where there is evidence that seized articles were kept in proper and safe custody. The same legal position has been reiterated in cases **Mohan Singh vs. State of Punjab 2007(4) RCR (Criminal) 705(DB)**, **Baggar Singh @ Gaggi Vs. State of Haryana 2009(4) RCR (Criminal) 183 (DB)** and **Raju Vs. State of Haryana 2009 (1) RCR (Criminal) 778.**

24. In view of the aforesaid consistent role of law laid down in the cases referred above, the Single Bench Judgment **Kaku Singh and others Vs. State of Punjab (Supra), Ramji Singh Vs. State of Haryana (Supra)** relied upon by learned counsel for the appellant is of no help to him.

25. The plea raised by learned counsel for the appellant that story of the prosecution is highly improbable also carries no substance. PW-1 DSP Hardev Singh has deposed that the bags were taken out by the police officials after standing over the top of the tanker and no person had entered inside the tanker to take out the bag of poppy husk. He also deposed that the tanker was about six feet deep from its opening. No ladder was used to go on the top of the tanker and to open its covers to take out the bags. This version of PW-1 DSP Hardev Singh simply shows in which manner the police officials climbed over the tanker. It is a fact of common knowledge that the police officials are given the physical training to meet out such eventualities. It is not impossible for such physically trained police officials to climb over the top of vehicle even without the help of any ladder. The prosecution witnesses have not been specifically questioned in which manner bags were taken out from the compartments of the tanker. Thus, it cannot be stated that

the story of prosecution is improbable or unreliable.

26. The defence plea raised by the appellant also does not appeal to the reasons. Both the defence witnesses are the co-villagers of the appellant. In his statement under Section 313 Cr.P.C, the appellant has pleaded that he was brought from his house in the presence of his family members and respectable by the police party of CIA Staff, Ferozepur on 25.11.2001, whereas the present case was registered on 26.12.2001. It is not believable if the accused would have been detained illegally for such a long period no legal action would have been taken by his family members. DW-1 Rashpal Singh, Sarpanch and DW-2 Nahar Singh, the co-villager of the accused have stated that they have met the Senior Superintendent of Police, Ferozepur and moved the application against the false implication of the accused, but copy of any such application has not been produced in the Court. In the cross-examination, DW-1 Rashpal Singh has deposed that he has not brought any copy of that application. He further deposed that the accused belongs to his opposite group in the village. It shows that this witness is not honest and truthful. On the one hand he is approaching the Senior Superintendent of Police against the false implication of the appellant and even appearing in the Court to support his defence plea, but at the same time he

alleged that the appellant belongs to his opposite group. It appears that both these witnesses have come forward to support the plea raised by the accused being his co-villagers. The testimony of such type of witnesses cannot be relied upon to create any dent in the cogent, consistent and reliable evidence of the prosecution. In the instant case, 2800 kg of poppy husk has been recovered. Such huge quantity cannot be planted by the police officials from their own sources. If the purpose of the police officials would have been only to falsely implicate the appellant and his brother that could have been achieved by planting even much lesser quantity.

27. Thus, keeping in view of my aforesaid discussion, there is no illegality or infirmity in the impugned judgment holding the appellant guilty for the offence punishable under Section 15 (c) of the Act and the same is hereby upheld and affirmed. The appellant has been awarded the minimum sentence by the learned trial Court. So, there is no scope for any interference in the impugned order of sentence.

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.

January 14, 2014**s.khan****(DARSHAN SINGH)
JUDGE**