

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

CRA-S-2256-SB of 2005

Date of decision : 05.02.2015

Jeeta Singh and another

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashok Khichi, Advocate
Ld. counsel for the appellant.

Mr. Surjeet Singh Chaudhary, Ld.DAG, Punjab.

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

DARSHAN SINGH,J

1. The present appeal has been preferred against the judgment of conviction dated 07.11.2005, vide which both the appellants were held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'Act') and the order of sentence dated 08.11.2005, vide which both the appellants were sentenced

to undergo rigorous imprisonment for a period of ten years each and to pay a fine of Rs. One lac each, in default of payment of fine they were ordered to further undergo rigorous imprisonment for a period of one year each.

2. The brief facts of the prosecution case are that on 22.05.2003, PW-3 ASI Manjit Singh alongwith other police employees was returning from village Danewala, Satkossi and Bakainwala and when the police party was present at bus stand of village Danewala, Baljinder Singh (DW-2), the private witness met them. He was also joined in the police party. The police party held Naka at Chowk of village Danewala and started checking of the vehicles. At about 8.30 a.m., one Tata Sumo jeep bearing registration no. DL-6-CA-2625 came from the side of Hindu Mall Kot. It was signaled to stop. The appellants, who were traveling in the said jeep tried to escape. But, they were nabbed by the police officials. Appellant-accused Jeeta Singh was driving the jeep and appellant Sodhi Singh was sitting by his side. ASI Manjit Singh told them that he suspected some intoxicant material in their jeep and it was to be searched. He apprised them of their legal right for the search in the presence of some Gazetted Officer or a Magistrate. But, the appellants reposed confidence in ASI Manjit Singh and opted their search by him regarding which the consent

memo was prepared, which was duly signed by both the accused and the witnesses. ASI Manjit Singh carried out the search of Tata Sumo, from which two bags containing Poppy Straw was recovered. One sample of 250 gm was separated from each bag and the remainder poppy husk came to 30 kg in each bag. The sample parcels and the remaining bulk contained in the bags were sealed by ASI Manjit Singh with his seal bearing impression 'MS'. He also prepared the sample of the seal. The seal after use was handed over to HC Hardev Singh. The aforesaid case property was taken into possession by the Investigating Officer vide separate recovery memo. The accused were arrested. The Investigating Officer prepared the site plan of recovery. He sent the ruqa/written information to the Police Station. On the basis of which formal FIR was registered.

3. On returning to the police station, ASI Manjit Singh produced the appellants and the case property before ASI Sucha Ram, the officiating SHO. ASI Sucha Ram also affixed his seal on all the parcels bearing impression 'SR' and took into possession the entire case property vide separate memo. The accused and the case property was produced by ASI Sucha Ram before the learned Judicial Magistrate. The sample parcels were sent to the Chemical Examiner. On receipt of the report of Chemical Examiner

and on completion of formalities of the investigation, the report under Section 173 Code of Criminal Procedure (for short 'Cr.P.C') was presented in the Court.

4. Both the appellants were charge sheeted for the offence punishable under Section 15 of the Act, to which they pleaded not guilty and claimed trial.

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

6. After the closure of the prosecution evidence, the accused were examined separately under Section 313 Cr.P.C. They pleaded that on 21.05.2003, both of them were going from Ganga Nagar to Rajowali by Tata Sumo jeep bearing registration no. DL-6-CA-2625 and when they reached at Danewala Chowk, SHO Jagroop Singh, P.S. Khuian Sarwar stopped their vehicle. Their vehicle was searched and nothing was recovered from it. In the meanwhile one Matador came from behind and police signaled it to stop, but the driver of the Matador sped away. SHO, Jagroop Singh acquired the keys of Tata Sumo and chased that Matador. Due to recent overhauling of the engine of their Tata Sumo, it seized after covering some distance. Their vehicle was taken to police station Khuian Sarwar. They told the police to get their vehicle repaired. A mechanic was called. After checking the vehicle said

mechanic assessed the expenses of the repair to the tune of Rs. 20,000/- and in case the crank was found broken, the expenses will be to the tune of Rs.50,000/-. Both the appellants shouted at the police officials and asked them to make them the payments for repair of the vehicle. Instead of doing so, they were falsely implicated on the next day by planting two bags of the poppy straw.

7. In the defence evidence, the accused examined Puran Singh, the brother of appellant Jeeta Singh as DW-1, Baljinder Singh, the witness of recovery cited by the prosecution appeared as DW-2 and supported the defence plea raised by the appellants, Raj Kumar Mechanic Shahkot appeared as DW-3 and supported the version of the accused with respect to the overhauling of the Tata Sumo and proved the bills Ex.D-2 to Ex.D-5.

8. On appreciating the evidence on record and contentions raised by both the parties, learned trial Court, held guilty and convicted both the appellants for offence punishable under Section 15 (c) of the Act and they were awarded the sentence as mentioned in the upper part of the judgment.

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

10. I have heard Mr.Ashok Khichi, learned counsel for the appellant, Mr. Surjeet Singh Chaudhary, learned Deputy Advocate General, Punjab and have meticulously gone through the record of the case.

11. Initiating the arguments, learned counsel for the appellants contended that entire case of the prosecution is based on the statements of the official witnesses. Independent witness Baljinder Singh has not been examined by the prosecution. Rather he has appeared in the defence evidence, which renders the prosecution case doubtful.

12. He further contended that even the presence of the independent witnesses at the place of recovery is extremely doubtful as the seal after use was not entrusted to him and was entrusted to PW-4 HC Hardev Singh an official witness. To support his contentions he relied upon case **Sukhdev Singh @ Sukha Vs. State of Punjab 2006(1) RCR (Criminal) 4.**

13. He further contended that as per the instructions issued by the Government of India, two samples from each bag should have been separated. But, only one sample has been separated from each bag in this case. The violation of the instructions is fatal to the prosecution case. To support his contentions he relied upon case **Gurmit and others Vs.**

State of Haryana 2008 (4) RCR (Criminal) 412.

14. He further contended that there is a deliberate and intentional violation of the provisions of Section 55 of the Act. It is the admitted case that SI Jagroop Singh was the SHO of Police Station Khuian Sarwar at the relevant time. The accused and the case property have not been produced before him. Rather they have been produced before PW-1 ASI Sucha Ram. No material has been placed on file to show that SI Jagroop Singh was on leave, rather it is an admitted fact that he was very much on duty even the FIR was registered by him. This deliberate violation of Section 55 of the Act creates doubt about the genuineness of the prosecution version and is fatal to the prosecution case.

15. He further contended that there is no evidence to establish that the accused were in the conscious possession of the contraband. No specific question to this affect has been put to the accused in their statements recorded under Section 313 Cr.P.C. In the absence thereof even the conscious possession of the contraband by the appellants is not proved. To support his contentions he relied upon case **Jasbir Singh @ Jassa Vs. State of Haryana 2008(3) RCR (Criminal) 42.**

16. He further contended that infact the appellants

have been falsely implicated, because SHO Jagroop Singh has taken the vehicle of appellant Jeeta Singh in order to chase a Matador which did not stop despite the signal by the police officials. The Tata Sumo was recently overhauled. Its engine seized due to over speeding by the police officials. The vehicle was taken to the police station. A mechanic was called, who assessed the repair charges to be Rs. 20,000/- and in case the crank was found broken to be Rs.50,000/-. When the appellants demanded money, they were falsely implicated in this case on the next day. The defence plea is fully proved from the defence evidence adduced by the appellants. Thus, he pleaded that the appellants have been falsely implicated.

17. On the other hand, learned Deputy Advocate General, Punjab contended that the prosecution version is fully supported from the statements of PW-3 ASI Manjit Singh, the Investigating Officer of the case and PW-4 HC Hardev Singh on the point of recovery. On return to the police station, the case property was produced before PW-1 ASI Sucha Ram, the officiating SHO in compliance of Section 55 of the Act. The link evidence is also complete. It is not necessary that the seal must have been handed over to the independent witness. He further contended that Baljinder Singh, the independent witness was the resident

of that area and he was won over by the accused and that is why he appeared in the defence evidence. The defence plea raised by the appellants is not proved and is an afterthought version. Thus, he pleaded that there is no infirmity in conviction of the appellants recorded by the learned trial Court.

18. I have duly considered the aforesaid contentions.

19. As per the prosecution version PW-3 ASI Manjit Singh along with other police employees was present at bus stand of village Danewala, when the public witness Baljinder Singh son of Jagnandan Singh had met them. He was also joined in the police party and thereafter the Nakabandi was held at Danewala Chowk. Then the Tata Sumo in which the appellants were traveling was intercepted and recovery was affected. The documents prepared by the Investigating Officer have also been attested by said Baljinder Singh. Said Baljinder Singh has not been examined by the prosecution and he has appeared as DW-2 to support the defence plea of the appellants. It shows that DW-2 Baljinder Singh has sided with the appellants and that may be the reason for his non examination by the prosecution. In the cross-examination, he has admitted that the documents Ex.P-9 to Ex.P-11, Ex.P-12, Ex.P-15, Ex.P-16 and Ex.P-17 bears his signatures. He has deposed that

he had gone to the police station on 20/21.05.2003 in context of some dispute with relatives and ASI Manjit Singh got his signatures on many blank papers on the pretext that the compromise is to be recorded regarding the settlement of dispute. His statement is very vague. He has not narrated that what type of dispute was and with whom. He has not even stated specific date of his visit to the police station. He has stated that he has visited the police station on 20/21.05.2003, whereas the recovery in this case has been affected on 22.05.2003. In these circumstances, when Baljinder Singh had colluded with the accused-appellants, his non-examination by the prosecution will not create any dent in the prosecution case.

20. The seal after use in this case has been handed over by the Investigating Officer to PW-4 HC Hardev Singh and not to the independent witness. But, that is also not a ground to discard the prosecution version. A full bench of this Court in case **Piara Singh Vs. State of Punjab 1982**

Criminal Law Journal 1176 has laid down as under:-

“there is neither a statutory requirement nor precedential mandate for handing over the seal used by the police officer in the course of an investigation to a third witness forthwith. It was further held that it necessarily follows therefrom that even where it has been so done, the non-

production of such a witness cannot by itself affect the merits of the trial.”

21. A Division Bench of this Court in case **Jeet Singh Gohli and others Vs. State of Punjab 2013 (3) RCR (Criminal) 204** has also laid down that where the seal was not handed over to the independent witness, this has no bearing on the case especially when no circumstance has come on record to show that the case property was tampered with during investigation. In view of the aforesaid ratio of law laid down by the Full Bench and Division Bench of this Court, the fact that the seal in this case was entrusted to PW-4 HC Hardev Singh instead of Baljinder Singh, the public witness is also no ground to discredit the prosecution version, because there is no material on record to establish that the case property was tampered with during the investigation. PW-1 ASI Sucha Ram, the officiating SHO has moved an application Ex.P-5 to the learned Judicial Magistrate under Section 52-A of the Act. The case property was also produced before him. The Magistrate has passed the order that two sample parcels and two gunny bags with seals intact seen and signed. This order passed by the learned Judicial Magistrate also depicts that the seals affixed by the Investigating Officer as well as the SHO were found intact.

22. No doubt in the instant case, the Investigating Officer has separated only one sample of 250 gms from each bag. Learned counsel for the appellant has pleaded that as per the standing order No.1/89 dated 13.06.1989 issued by the Government of India, two samples should have been separated. But, the appellants have not been able to show as to what prejudice has been caused to them. A Division Bench of this Court in case **Jarnail Singh son of Jawara Ram Vs. State of Haryana 2013(2) R.C.R (Criminal) 580** while dealing with the aforesaid standing order has laid down as under:-

*“The learned counsel for the appellant also contended that only one sample was drawn from each bag against the mandatory requirement of drawing two sample, as per standing order No.1/89 dated 13.06.1989 issued by the Government of India. He also placed reliance upon **Jaswinder Singh and another v. State of Punjab, 2013(1) RCR (Criminal) 257**; passed by this Court. This standing order no. 1/89 (Supra) is not mandatory, as the same was not passed by the Parliament under a statute. In the Act, there is no such mandate that two samples from each bag of contraband should be taken. No prejudice has been caused to the appellant with the drawal of one sample from each bag, as he has no right to get the second sample analyzed from the Forensic Science Laboratory. When that was, so, no prejudice can be*

said to have been caused to the appellant.”

23. In view of the aforesaid ratio of law laid down by the Division Bench of this Court, the Single Bench Judgment titled as **Gurmit and others Vs. State of Haryana (Supra)** relied upon by learned counsel for appellant is of no help to him.

24. There is no dispute that the Provisions of Section 55 of the Act are only directory in nature and the non-compliance thereof will not *ipso facto* render the prosecution case doubtful. Moreover, in the instant case, there is no total intentional and deliberate non-compliance of Section 55 of the Act on the part of the Investigating Officer. The Investigating Officer has produced the case property along with the accused before PW-1 ASI Sucha Ram, who at the relevant time was officiating as SHO. Mere this fact that when the FIR was registered, the regular SHO, SI Jagroop Singh was present in the police station and had recorded the FIR will not make the case of the prosecution suspicious. PW-3 ASI Manjit Singh, the Investigating Officer of the case has categorically stated that SI Jagroop Singh was the regular SHO during those days. On that day, he was not present at the police station. So, when the regular SHO was not present in the police station, the Investigating Officer had produced the accused and the case property

before PW-1 ASI Sucha Ram, the officiating SHO. So, it can not be stated that there was total violation of Section 55 of the Act.

25. From the consistent statement of PW-3 ASI Manjit Singh and PW-4 HC Hardev Singh, it is established that 60 kg 500 gms of poppy husk stored in two bags was recovered from the possession of the appellants. PW-3 ASI Manjit Singh has categorically deposed that he conducted the search of the jeep of the accused and from the back seat of the jeep two bags of poppy husk were recovered. One sample of 250 gms each was drawn out from each bag in separate parcels. The remaining poppy husk was weighed. Each of the bag was containing 30 kg of poppy husk. This version of the Investigating Officer has been fully corroborated by PW-4 HC Hardev Singh, the witness of recovery. Learned counsel for the appellants has not been able to point out any material contradiction in their statements to render the recovery doubtful inspite of the fact that they have been cross-examined at length. Even then, there testimonies remained un-shattered. So, from the consistent, cogent and reliable testimonies of PW-3 ASI Manjit Singh, the Investigating Officer of the case and PW-4 HC Hardev Singh, the recovery of 60 kg and 500 gms of poppy husk from the possession of appellants is

established. Appellant Jeeta Singh is the registered owner of the Tata Sumo wherein the contraband was being transported. As per the application Ex.D-1 moved by DW-1 Puran Singh to SP, Vigilance, Ferozepur, appellant Sodhi Singh was the helper on the said Tata Sumo. In view of the aforesaid factual background, it can be culled out from the evidence on record that both the appellants were traveling in the vehicle. Appellant Jeeta Singh was the owner-cum-driver of the vehicle and appellant Sodhi Singh was his helper. It has not been explained by the appellants as to how they traveled together from the same destination carrying contraband in the Tata Sumo jeep which was not a public vehicle. The Hon'ble Apex Court in case **Madan Lal and another vs. State of Himachal Pradesh 2003(4) RCR (Criminal) 100**, has laid down as under:-

“Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

“In the factual scenario of the present case not only possession but conscious possession has been

established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.”

26. The same legal position has been reiterated by the Division Bench of this Court in case **Jarnail Singh son of Jawara Ram Vs. State of Haryana(Supra)**. So, once it was established that the appellants were found in possession of 60 kg 500 gms of poppy husk, it was for them to prove that they were not in conscious possession of the contraband, which they were transporting in the vehicle as how they came to be in possession of the contraband was in their special knowledge. But, no such evidence has been adduced by the appellants.

27. Mere this fact that in the statement under Section 313 Cr.P.C word 'conscious possession' has not been specifically mentioned is immaterial as at the time of framing charges, it has been categorically mentioned that they were found in “conscious possession” of the contraband and the said fact has been proved from the statements of PW-3 ASI Manjit Singh and PW-4 HC Hardev Singh. The evidence coming on record on the basis of their statements have been put to the appellants in their statements recorded under Section 313 Cr.P.C. So, it can

not be stated that the appellants were not properly examined under Section 313 Cr.P.C and no benefit can be granted to the appellants. To support this view again reference can be made to the Division Bench Judgment of this Court titled as **Jarnail Singh son of Jawara Ram Vs. State of Haryana(Supra)**. In view of this Division Bench judgment, Single Bench Judgment titled as **Jasbir Singh @ Jassa Vs. State of Haryana (Supra)** relied upon by the appellant is of no help to him.

28. The defence plea raised by the appellants that they have been falsely implicated as they had demanded compensation for the damage caused to their vehicle by SHO Jagroop Singh does not inspire any confidence. In view of the consistent, cogent and reliable evidence adduced by the prosecution to prove the recovery of 60 kg 500 gms of poppy husk from the possession of the appellants. The appellants have examined DW-1 Puran Singh, who happens to be the brother of appellant Jeeta Singh. They have also examined DW-3 Raj Kumar, the motor mechanic. From their statements at the most it comes out that the vehicle of appellant Jeeta Singh was repaired few days ago from the date of the occurrence. But, there is absolutely no evidence on record that the engine of said Tata Sumo had seized due to its over speeding by the police officials. The appellants

have not taken any step to get their vehicle mechanically examined to prove this fact. They could have moved the application to the learned trial Court for getting their vehicle mechanically examined to prove their plea. Mere this fact that during the trial, Tata Sumo in question was produced in the Court by loading in a truck can not establish that the engine of the vehicle was seized. The said Tata Sumo was produced in the Court after more then two years of its seizure. Due to the lapse of so much time of the vehicle standing in the police station, it can not remain fit to be plied on the road. The appellants have also not disclosed the particulars of the mechanic, who was called by the police officials to examine the vehicle and had found that the engine of the vehicle had seized. So, the basic defence plea raised by the appellants is not established. Moreover, merely to falsely implicate the appellants there was no need to plant this much quantity of the poppy husk, when this object can be achieved even by much less quantity. The plantation of this much quantity from the own sources of the police officials is not possible.

29. Thus, keeping in view my aforesaid discussion, the prosecution has been able to establish beyond shadow of reasonable doubt that appellants were found in conscious possession of 60 kg 500 gms of poppy husk. Thus, there

was no illegality or impropriety in the impugned judgment of conviction and order of sentence and the same are hereby upheld and affirmed.

30. Resultantly, the present appeal has no merits and the same is hereby dismissed. The accused-appellants are on bail. Their bail stand cancelled. They shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Ferozepur, who shall send them to jail to undergo the remaining part of their sentence. If, they fails to surrender, the learned Chief Judicial Magistrate, Ferozepur, shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

February 05, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**