

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

CRA-S-262-SB-2005

Date of decision: 11.02.2015

Parmod Kumar and another

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

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

Mr.Dilsher S. Mann, Assistant Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment dated 21.01.2005 passed by the learned Judge, Special Court, Sangrur, vide which accused-appellants Parmod Kumar and Shammi Singh have been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the 'Act') and the order on quantum of sentence of the

even dated, vide which both the appellants have been sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/-, each, in default of payment of fine, to further undergo rigorous imprisonment for one year each.

2- As per the prosecution case, on 25.09.2003 PW9 SI Deepak Rai, (the Investigating Officer) along with police employees was present in a private vehicle on the bridge of minor canal link road, Neelowal (Sunam) in connection with patrolling and checking of vehicles. Jagmail Singh son of Pritam Singh, met the police party. S.I. Deepak Rai was talking with him, in the meantime an esteem car bearing registration No.DL-3 CC 3974 colour white came there from the side of village Neelowal. The Investigating Officer signalled the driver of the car. The driver of the car stopped the car. Two persons were occupying the said car. On asking, driver of the said car disclosed his name as Shammi Singh son of Sohan Singh, resident of Lohara, P.S. Lambi, Distt. Mukastar. The person, who was sitting on the rear seat of the car disclosed his name as Parmod Kumar son of Mool Chand, resident of Ansasar, P.S. Jhunjhunu (Rajasthan). The Investigating Officer asked them one after the other that he was suspecting some intoxicant in the car, so search was to be conducted. If they wanted, a Magistrate or a Gazetted Officer could be called at the spot for the purpose of search. Vide their consent memo Ex.PG and Ex.PH, they opted their search in the presence of some Gazetted Officer. PW8 Kuldeep Singh Deputy Superintendent of Police, Sunam was called at the spot. In his presence, the dicky of the car

was searched and four bags containing poppy husk were recovered. Two samples of 250 grams each out of each bag were separated. The remaining poppy husk was weighed and found to be 32 Kg. All the sample parcels and four bulk parcels were sealed by the Investigating Officer bearing seal impression 'DR'. All the sealed parcels, sample seal chit and esteem car bearing No.DL-3CC-3974 were taken into possession vide separate recovery memo Ex.PL. Seal after use was handed over to ASI Kirpal Singh. All the parcels and recovery memo were attested by the DSP. Ruqqa Ex.PO was sent to police station. On the basis of which, formal FIR Ex.PO/1 was registered. The Investigating Officer prepared the site plan of the place of recovery Ex.PQ.

3- On return to the police Station, accused, witnesses and the case property were produced before Inspector Harinder Singh the SHO, P.S. Sunam, who verified the recovery. He put his seal on the parcels of the case property and sample seal chit. Case property was deposited with the Moharir Head Constable. The accused were arrested. Sample parcels were sent to the Chemical Examiner, Punjab for examination. On receipt of the report of the FSL Ex.PD and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C.') was presented in the Court.

4- The accused appellants were charge sheeted for the offence punishable under Section 15 of the Act vide order dated 24.12.2003 by the learned trial Court, to which the appellants pleaded not guilty and claimed trial.

5- In order to substantiate its case, prosecution examined as many as nine witnesses.

6- When examined under Section 313 Cr.P.C., both accused-appellants pleaded innocence and false implication. Accused-appellant Parmod Kumar pleaded that he is a Barber and was going to Chandigarh for purchasing goods and he was arrested from Bus Stand Sunam. He was having a total sum of Rs.16,850/-, a wrist watch and a Panasonic mobile phone, two silver rings and the same were taken over by ASI Kirpal Singh. When he resisted, this false case was planted upon him. Accused-appellant Shammi Singh pleaded that he was going to visit Mandir Shri Kali Devi at Patiala but he was arrested from Bus Stand, Sunam. Rs.2500/- were snatched from him and this false case was planted upon him. Both the accused-appellants pleaded that nothing incriminating article was recovered from them.

7- In the defence evidence, accused Parmod Kumar tendered documents Mark-A to Mark-D (copies of complaint No.2594/18/04) and copy of order dated 23.8.2004 Ex.D1. Thereafter, the defence evidence was closed.

8- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused appellants were held guilty and convicted for the offence punishable under Section 15 of the Act and 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.S.S. Gill, Advocate, learned counsel for the appellants, Mr.Dilsher S. Mann, learned Assistant Advocate General for the State of Punjab and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellants contended that Jagmail Singh, the alleged independent witness, has not been examined. In the absence of his testimony, there is no corroboration to the statements of the official witnesses. Even the presence of Jagmail Singh at the time of alleged recovery is doubtful as the seal after use, has not been entrusted to him and has been entrusted to ASI Kirpal Singh, another police official.

12- He further contended that the presence of PW8 DSP Kuldeep Singh at the place of recovery is extremely doubtful. He has not been able to answer various questions on the material aspects of the case and had pleaded failure of memory. He further contended that it is an admitted fact that the appellants were not the owner of the car No.DL-3 CC-3974. As per the statement of PW5 Udam Singh UDC, Transport Authority, New Delhi, Nachhatar Singh was the registered owner of the car in question but there is no evidence to establish any connection between said Nachhatar Singh and the appellants. Said Nachhatar Singh has not been joined in the investigation. He further contended that the provisions of Sections 55 and 57 of the Act have been violated. No special report has been sent to the superior officer. PW3 Inspector

Harinder Singh, SHO, P.S. Sunam has also not taken over the control of the case property. There is no evidence as to who authorised ASI Kirpal Singh to receive the case property and to produce the same before the Magistrate. He contended that the total non-compliance of Section 57 of the Act is fatal to the prosecution case.

13- He further contended that there are number of material contradictions in the statements of the official witnesses, which render the prosecution version entire doubtful. He also pleaded that the CFSL form has not been prepared at spot nor deposited with the MHC. There is also no evidence to establish the conscious possession of the appellants. The Investigating Officer SI Deepak Rai has not prepared even a single document in his hand. His signature on the documents is in different ink, which shows that the documents have been fabricated later on. Thus, he pleaded that the conviction of the appellants have been wrongly recorded by the learned trial Court.

14- On the other hand, learned State counsel contended that the story of the prosecution is fully established from the testimonies of PW6 ASI Kirpal Singh, the witness of recovery and PW9 SI Deepak Rai with respect to the apprehension of the accused. Their testimonies on the point of recovery is further corroborated by PW8 DSP Kuldeep Singh, on whose direction and supervision the search and seizure was carried out. The case of the prosecution is further corroborated from the testimony of PW3 Inspector Harinder Singh before whom both the accused, witnesses and case property were produced immediately on reaching the police

station. He contended that the appellants were apprehended along with contraband from the car so the lapse on the part of the Investigating Officer to collect the evidence about any connection between the registered owner of the car and the appellants is immaterial. They are also proved to be in conscious possession of the contraband. He further contended that minor contradictions in the testimonies of the official witnesses is no ground to discard their statements. He further contended that Jagmail Singh was not examined as he was won over by the accused. Thus, he pleaded that there is no legal infirmity in the conviction of the appellants recorded by the learned trial Court.

15- I have duly considered the aforesaid contentions.

16- It is settled principle of law that prosecution is required to establish its case in the manner alleged by it by leading cogent, convincing and reliable evidence. Even if the defence plea raised by the accused may not be convincing, the onus of the prosecution does not shift. In the instant case, as per the prosecution version one Jagmail Singh son of Pritam Singh, resident of Sunam was associated as a public witness in the investigation of the case and the search and seizure was alleged to have been effected in his presence but said Jagmail Singh has not been examined by the prosecution, nor the seal after use was entrusted to him. He was given up as having been won over by the accused by the learned Public Prosecutor vide statement dated 15.09.2004. In absence of Jagmail Singh, the public witness, the entire case of the prosecution is based on the testimonies of the official

witnesses alone and in that eventuality, the Court is required to scrutinise the prosecution evidence carefully, consciously and minutely. Even the minor circumstance may assume significance.

17- In the instant case, the recovery is alleged to have been effected while the appellants were travelling in a car bearing registration number DL-3CC-3974 make Esteem. The recovery is alleged to have been effected from the dicky of the said car, wherein the contraband was kept in four bags. The Investigating Officer has not collected any evidence to establish any connection between the appellants and the said car. PW9 SI Deepak Rai, the Investigating Officer of the case has stated that as far as the investigation of the case remained with him, he did not trace out the owner of the said car. He further deposed that he did not take into possession any document pertaining to the car. He also did not take into possession the driving licence of the accused. However, the prosecution has examined PW5 Udam Singh Dogra UDC, Transport Authority, Saikh Sarai, New Delhi. His statement shows that one Nachhatar Singh son of Kartar Singh, resident of 316 Sant Nagar, Delhi was the registered owner of the car in question. The Investigating Officer has not collected any evidence to establish any connection between the appellants and the said Nachhatar Singh. Said Nachhatar Singh has also not been examined by the prosecution to establish how his car came to be in possession of the appellants. The examination of said Nachhatar Singh was very material to corroborate the prosecution version. Hence, that is a serious lacuna in the prosecution case.

18- PW6 ASI Kirpal Singh, the witness of recovery, who is even the subsequent Investigating Officer, has stated that no special report was sent from the spot. PW3 Inspector Harinder Singh, the then SHO, has also stated that no special report was sent from the spot by him. Surprisingly PW9 SI Deepak Rai, the Investigating Officer of the case has stated that the special report was sent from the spot but he does not remember the name of the person and time. But no such special report has been placed on record. Section 57 of the Act reads as under:-

“57. Report of arrest and seizure. - Whenever any person makes any arrest or seizure, under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.”

19- The aforesaid provisions of law requires that whenever any person makes any arrest or seizure, under this Act, he shall within 48 hours make a full report of such arrest or seizure to his immediate superior officer.

20- But in the instant case, admittedly no such report has been sent either by PW9 SI Deepak Rai or by PW3 Inspector Harinder Singh to the superior officer. The Hon'ble Supreme Court in case **Gurbax Vs. State of Haryana 2001(1) RCR (Criminal) 702** has laid down that though the provisions of Section 57 of the Act are directory and violation of these provisions would not *ipso facto* violate the trial or conviction however, the Investigating Officer cannot totally ignore these provisions

and such failure will have a bearing on the appreciation of evidence regarding arrest of the accused or seizure of the articles. The same legal position has been reiterated by this Court in case **Malkiat Singh alias Kala Vs. State of Punjab 2009(1) RCR (Criminal) 353.**

21- PW9 SI Deepak Rai had produced the accused, witnesses and the case property before PW3 Inspector Harinder Singh, the SHO, Police Station Sunam. PW3 Inspector Harinder Singh has also deposed that he verified the recovery and interrogated the accused and on his satisfaction, he put his seal 'HS' on the case property. He further deposed that on his direction, the Investigating Officer deposited the case property with Moharir Head Constable Kashmir Singh. From the affidavit of Moharir Head Constable Kashmir Singh Ex.PE, it comes out that on 26.9.2003 he handed over the case property to PW6 ASI Kirpal Singh for producing the same before the Magistrate and for getting the inventory certified. There is no evidence on record as to who authorised ASI Kirpal Singh to receive the case property from the Malkhana and to produce the same before the Magistrate. The inventory memo Ex.PA and application for depositing the case property in the Judicial Malkhana Ex.PB are signed by SI Deepak Rai and not by ASI Kirpal Singh. Once the control of the case property was taken over by PW3 SI Harinder Singh, his authorisation was required for taking out the case property from the Malkhana and to the Court. But that evidence is entirely missing in which capacity and on whose authorisation, PW6 ASI Kirpal Singh handled the case property.

22- As already mentioned, the independent witness of recovery Jagmail Singh has not been examined by the prosecution. The case of the prosecution is entirely based on the statement of police officials. In that eventuality, the Court is required to scrutinise the prosecution case minutely. The presence of PW8 DSP Kirpal Singh under whose supervision, the search and seizure has been carried out seems to be extremely doubtful. He has not affixed his seal on the articles of the case property. If he would have been present at the spot in order to supervise the search and seizure, he must have affixed his seal on the parcels of the case property. He has pleaded failure of knowledge on various material aspects of the case. He did not remember whether Investigating Officer write any document in his presence or not. He did not remember who has brought the scale and weights and from which village. He did not remember the mode of conveyance used for bringing the weighing material. He does not remember the time when the person who had brought the weights and scale, left the spot and returned at the spot. He did not remember in whose hand his own statement was recorded. He did not remember whether the driving licence with any accused was found or not. He did not remember the names of the official who took out the bags from the car. He did not remember the name of the official who put the bags on the scale. So, PW8 DSP Kuldeep Singh has pleaded failure of memory on various material aspects of the case and he even did not seal the case property, which makes his presence at the spot doubtful.

23- In the instant case there are number of glaring discrepancies on the material aspects of the case in the statements of the prosecution witnesses. According to PW6 ASI Kirpal Singh, Jagmail Singh met them at 06:10 a.m. but PW9 SI Deepak Rai the Investigating Officer of the case states that PW Jagmail Singh met him at 08:00 a.m. According to PW6 ASI Kirpal Singh they were on three scooters and he further deposed that Constable Lakhwinder Singh has carried the Rukka to the police station on his scooter. But PW9 SI Deepak Rai states that they were in a private car, which was being driven by Constable Gurbej Singh, but he cannot tell the name of the owner of the car. The petrol was already in the said car. According to PW6, they were manning the Naka, which started at 06:35 a.m. but as per the statement of PW9 even PW Jagmail Singh met them at 08:00 a.m. So, obviously the Nakabandi has started after 08:00 a.m. According to PW6 ASI Kirpal Singh the Esteem car in question came after 2/3 minutes of their starting the Nakabandi and which according to him started at 06:35 a.m. As per the statement of this witness, the accused were intercepted 2/3 minutes after 06:30 a.m. but as per statement of the Investigating Officer PW9 SI Deepak Rai even the independent witness was joined at 08:00 a.m. and thereafter, the accused were spotted. This contradiction goes to the root of the case and makes even the time of recovery doubtful. According to PW6 no other vehicle came prior to the said car but PW9 SI Deepak Rai states that few other vehicles were also checked before the alleged recovery. According to PW6 the DSP came at the spot at about 07:15 a.m. and he left the spot at

about 10:00 a.m. but PW9 SI Deepak Rai deposed that the message was flashed to the police station who informed the DSP and the same was sent at about 08:30 a.m. and DSP was freed from the spot after one hour. According to PW6 ASI Kirpal Singh, the seal used by the Investigating Officer was in round shape but PW9 SI Deepak Rai states that his seal was square in shape. According to PW6, the bags were taken out by the accused from the dicky of the car and were again kept in the dicky of the car by the accused but PW9 SI Deepak Rai, the Investigating Officer of the case states that the bags were taken out by the police officials but he cannot tell their names. According to PW6 the poppy husk was weighed in 12 lots but PW9 SI Deepak Rai deposed that the poppy husk was weighed in 4 lots. According to PW6 ASI Kirpal Singh the spring balance was available with the Investigating Officer but PW9 SI Deepak Rai deposed that the spring balance was brought by Constable Gurbej Singh from the nearby village. But the version of PW8 DSP Kuldeep Singh is entirely different. He states that the scale was with iron pans and iron chains. The said scale was hooked on the branch of the tree. The weights were of 20 Kgs., 10 Kgs., 2 Kgs. 200 grams and 50 grams, whereas PW6 ASI Kirpal Singh and PW9 SI Deepak Rai have stated that it was spring balance. PW6 ASI Kirpal Singh has stated that he and Om Parkash held the rods where spring balance was hanged for weighment. So, the prosecution witnesses are entirely discrepant about the kind of the weighing scale used and the manner of measurement of the contraband. This discrepancy goes to the very foundation of the case and renders the

presence of PW8 DSP Kirpal Singh extremely doubtful at the spot. According to PW6 ASI Kirpal Singh no special report was sent from the spot and copy of grounds of arrest was supplied to the accused but PW9 SI Deepak Rai, the Investigating Officer of the case, states that special report was sent from the spot but he does not remember the name of the person and time. He further stated that copy of grounds of arrest was not supplied to the accused. According to PW6 many persons crossed them after recovery but PW9 SI Deepak Rai deposed that no person crossed them from the spot. According to PW6, the writing work was done while sitting on the ground after spreading cloth-sheet, which was in his scooter. But PW8 DSP Kuldeep Singh stated that writing work was done while sitting on the raised boundary of the minor canal. Thus, there are number of material contradictions in the statements of the official witnesses, which cannot be stated to be normal and minor discrepancies. Such material contradictions would not have occurred had these witnesses witnessed the recovery. The cumulative effect of all the discrepancies discussed above, particularly in the absence of any independent corroboration, is sufficient to render the entire case of the prosecution extremely doubtful.

24- Even the presence of the Investigating Officer is rendered doubtful. PW6 ASI Kirpal Singh has stated that the Investigating Officer did not write any document in his own hand. PW9 SI Deepak Rai the Investigating Officer of the case has also admitted that it is correct that not even a single document of this file was written by him but it was

written by ASI Kirpal Singh and HC Om Parkash on his dictation. The Investigating Officer could not tell the name of the scribe of the statement of the Deputy Superintendent of Police and Jagmail Singh. He also could not tell who held the spring balance. He also did not remember who weighed the bags with the spring balance. He also could not tell who recorded the statement of the SHO. He also did not remember whether CFSL form was prepared at the spot or deposited with the MHC. This type of statement is not expected from the Investigating Officer of the case in such a serious offence.

25- PW9 SI Deepak Rai has stated that he had flashed the message to the DSP at 08:30 a.m. Obviously, the arrival of the DSP also might have taken minimum 5 to 10 minutes. PW9 SI Deepak Rai further stated that the Rukka was sent to the police station at 09:00 a.m. So, the Rukka has been sent to the police station just after 20 minutes of the arrival of the DSP, which is highly impossible as before sending the Rukka, the consent memos were prepared, the search was conducted, eight samples were separated. The samples and remaining poppy husk were weighed. The sealed parcels of the samples and remainder poppy husk were prepared. The seizure memo of the case property was prepared and then the Rukka was scribed. All these proceedings cannot be completed just within 20 minutes, which shows that the proceedings have not been conducted in the manner projected by the prosecution. The learned counsel for the appellant has rightly pointed out that even the signature of the Investigating Officer on the documents Ex.PG, Ex.PH,

Ex.PJ, Ex.PK, Ex.PM, Ex.PN, Ex.PO and Ex.PQ alleged to have been prepared at the spot are in different ink, which renders the documentation of the aforesaid exhibit at the spot and in the sequence shown by the prosecution, extremely doubtful.

26- Thus, keeping in view my aforesaid discussion, the prosecution has not been able to establish beyond shadow of reasonable doubt the recovery of the contraband from the possession of the appellant in the manner alleged by it. So, the appellant deserve the benefit of doubt.

27- Consequently, the present appeal is hereby allowed. The impugned judgment of conviction and order of sentence are hereby reversed. The appellants, as a result of benefit of doubt, are hereby acquitted of the charges. Their bail bonds stand discharged.

Dated: 11.02.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**