

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal No.-S-3308-SB of 2014(O & M)

Date of Decision: *August 19, 2015*

Harpreet Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

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?

. . .

PRESENT: - Mr. Vipul Jindal, Advocate, for the appellant.

Ms. Priyanka Sadar, Assistant Advocate
General, Punjab.

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Jaspal Singh, J

1. The instant appeal is directed by Harpreet Singh –

appellant aggrieved against judgment of conviction and order of

sentence dated July 30, 2014 whereby he has been convicted

and sentenced under Section 21 of the Narcotics Drugs &

Psychotropic Substances Act, 1985 (hereinafter, referred to as

‘NDPS Act’) in case FIR No.6 dated February 2, 2010 registered at Police Station, State Special Operation Cell, Amritsar, allegedly for having been found in illegal possession of 1 kg of Heroin on February 2, 2010 in the area of Pingalwara, opposite City Centre, Amritsar, without any permit or license.

2. Shortly put, the case as projected by prosecution against the appellant is that on February 2, 2010, Inspector Balbir Singh, Police Station, State Special Operation Cell, Amritsar, received a secret information that Suba Singh son of Jarnail Singh, his son Manriasat Singh alongwith Harpreet Singh used to indulge in smuggling of Heroin from Pakistan and deliver the same in various cities of Punjab, especially, in Delhi, and that, Harpreet Singh is standing nearby Pingalwara near City Centre Market, in light golden Maruti Esteem car. The informer told that he is having major consignment of Heroin and if immediate raid is conducted, he can be apprehended. The said information was brought into the notice of Mr. P.K. Rai, Senior Superintendent of Police, State Operation Cell, Amritsar. Raiding party was constituted in the supervision of Inspector Sukhdev Singh. It was headed by Inspector Balbir Singh, SI Harjinder Singh, C – Dilbagh Singh and some other police

officials. SI – Kamalpreet Singh, SHO, Police Station Killa Lal Singh was also joined with police party.

3. Thereafter, police party raided the disclosed place i.e. Pingalwara, in front of City Centre, Amritsar, where a person was sitting in Maruti Esteem car of golden colour. The police party encircled the said vehicle. Investigating Officer asked the person to come out from car and asked his antecedents. He disclosed his name as Harpreet Singh son of Tarlochan Singh, resident of Bahad, District Hoshiarpur, presently residing at Village Tharial, Shahpur Kandi. Investigating Officer gave his introduction to Harpreet Singh and expressed his apprehension that there might be some objectionable substance in his possession. The accused was apprised of his legal right to get his personal search conducted either in presence of a gazetted officer or a Magistrate. Accused expressed his willingness to get his search conducted in presence of a gazetted officer. Accordingly, DSP Rajpal Singh was informed who reached the spot. One Malkiat Singh son of Mohinder Singh, resident of Pritam Nagar was joined as an independent witness. DSP Rajpal Singh gave his introduction to accused and suspected and he is in possession of some narcotic substance, so he was authorized to search him and his Maruti

Esteem car bearing No.DL-9C-8018. Accused Harpreet Singh reposed his faith in DSP – Rajpal Singh. His consent memo was recorded which was attested by him and witnesses.

4. On the direction of DSP, Investigating Officer conducted personal search of accused Harpreet Singh but nothing incriminating was found. Thereafter, Investigating Officer conducted search of aforesaid car which led to recovery of one packet of Heroin which was kept in a glazed paper under a piece of cloth beneath the steepiny (extra wheel) lying in the dickey of car. On weighing, it came out 1 kg Heroin, out of which, two samples of 5 grams each were separated and put into different plastic containers, marked as 'S1A', 'S1B' while remaining bulk came to 990 grams which was put into a different plastic container mark 'I'. Both the sample parcels as well as bulk parcel were duly sealed with seal impression 'BS' and 'RS'. Separate recovery memos were prepared. On further search of car, one mobile phone, make Nokia was recovered from the dashboard. Same was taken into possession vide separate recovery memo. Further personal search of accused Harpreet Singh resulted in recovery of ₹ 560/- and another mobile phone, make Nokia which were also taken into possession vide separate recovery memo. Form M29 was

prepared on the spot. The seal after use was handed over to SI Harjinder Singh, by the Investigating Officer. DSP Rajpal Singh retained his seal with him. Ruqa was recorded and dispatched to police station, on the basis of which, a formal FIR was registered. Statements of witnesses were recorded.

5. On further interrogation of accused, he disclosed to Investigating Officer that he was working as Deputy Commandant and that, earlier also 23 kgs of Heroin was recovered from him at New Delhi by DRI officials in the year 1995.

6. After completion of all formalities, report under Section 173(2) Cr.P.C. was presented. Copies of documents, as required under Section 207 Cr.P.C., were supplied to accused free of cost. Accused Harpreet Singh was chargesheeted to face trial under Section 21 of NDPS Act. Accused did not plead guilty to the charge and claimed trial.

7. In order to prove the charge, prosecution examined as many as 5 PWs. Thereafter, prosecution closed its evidence.

8. When incriminating circumstances appearing in prosecution evidence were put to accused, in question-answer form, for eliciting his explanation as required under Section 313

Cr.P.C., he pleaded innocence, complained of false implication in the instant case and denied all the allegations. Appellant – Harpreet Singh took up a specific plea that reads as under:-

“I am innocent and have been falsely implicated in this case. No such recovery was effected as alleged as I was in the illegal custody of Punjab police since 30.1.2010. Everything starting from the secret information is false and fabricated in order to show compliance of the NDPS procedure and Act and to fabricate evidence against me. The case was fabricated by the SSOC when SI Kamalpreet Singh the then SHO Police Station Killa Lal Singh handed over my custody to some officers of SOC on 2.2.2010 whom I now know as Harvinderpal Singh, and Balbir Singh, both inspectors. In fact, I was abducted by SI Kamalpreet Singh the then SHO Police Station Killa Lal Singh Batala and his team of 10-15 police men in plain clothes on 30.1.2010 around 7.00 pm from premises belonging to me in village Tharoyal now in District Pathankot. I was abducted in a white Bolero jeep bearing no.PB-02-BB-0220. My mobile phone make Micromax having Sim no.97803-11288 of Vodafone registered in the name of my father S. Tarlochan Singh Bahad resident of 748, Phase-I, Urban Estate, Jalandhar was also taken away by these police men. After abduction, I was taken to CIA, Punjab Police, Batala, where third degree torture including baton beating, spreading of legs and electric shock was given to me on the night of 30.1.2010. During the torture, I had fainted and the police arranged some anti traumatic medicine and injections to me. Later, I was thrown in the lock up of CIA Batala. Next morning, one Inspector Kashmir Singh the then In charge CIA, Batala, also joined the interrogators and I was again tortured by Kamalpreet Singh SI, his team and Inspector Kashmir Singh. During this torture, due to hanging from the legs, my left knee had got dislocated which was set right by calling a Pehalwan in CIA. On 31.1.2010, Kamalpreet Singh SI alongwith his team went to the same premises from where he had kidnapped me on 30.1.2010 and after using criminal force and threat he brought my wife and two minor children to above CIA. My family was mentally tortured and harassed, the children were separated from their mother and I was also not allowed to communicate with my family. I was threatened by SI Kamalpreet Singh and company regarding abusing, beating and dishonouring my wife and my children. My

wife and children were released late in the night when my father in law S. Jagmohan Singh Waraich and other relatives reached CIA and raised hue and cry. The police men promised to release on the next morning under the pretext that I was having injuries and they could land them in thick soup. I was again lodged in CIA lock up on the night of 31.1.2010. On 1.2.2010, I was shifted from CIA Batala to Police Station Killa Lal Singh and in the afternoon I was taken to Amritsar from Police Station Killa Lal Singh via Kotli Majitha route. After reaching Amritsar, SI Kamalpreet Singh drove the vehicle to one HDFC ATM located on Fatehgarh Churrian road on Amritsar Bye-pass and withdrew an amount of Rs.15000/- using an ATM card. Later, they drove to some area on the bye pass and waited there till dark. After dark, they drove back to CIA Batala via Jaintipur route and further I was taken to PS Killa Lal Singh. Here some of my relatives and friends had come to take me from the police but again police refused to give my custody and promised to hand over me to my relatives on the next morning. This night I was not lodged in the lock up of the police station and made to sleep in a barrack. Next morning again, I was brought to Amritsar via Jaintipur route and I was taken to one office of Punjab Police which I now know as office of SSOC, Amritsar. Here, I was made to sit in a room on the right hand side corner. I did not see Kamalpreet and his team afterwards. On my enquiry, I was told that my relatives had approached to some senior police officers and authorities, so my custody would be handed over to my relatives upon their reaching the office. Later in the night, I was informed that I had been booked in a NDPS case. Regarding Suba Singh and Manriasat Singh, I state that I have never met any person by this name nor do I have any connection of any sort with these persons. Regarding my abduction, my father in law and wife had informed DGP and C.M. Punjab through telegrams sent on 31.1.2010, 1.2.2010 and 2.2.2010. I had made a statement before the media called to cover the alleged recovery case in SSOC office on 3.2.2010. One ASI Sukhbir Singh had forcibly taken my thumb impressions on few papers scribed in Punjabi, on 3.2.2010. My medical was stopped as the doctor was inclined on mentioning the torture injuries on my person. Later on, after managing the doctor the SSOC obtained a no injury certificate which was challenged by me at the first available opportunity on 3.2.2010. My father-in-law had also moved a application before the Court of JMIC, Amritsar, regarding submission of facts on 3.2.2010. Re-medical was ordered but same not conducted in order to

allow injuries to heal. However, in subsequent medical examination conducted in Civil hospital and in jail, multiple torture injuries have been mentioned and the duration of the injuries also matches the time of my abduction and torture. I made petitions to the trial Court, NHRC, PSHRC, President of India, Home Minister, CM, Punjab, DG BSF, DC Gurdaspur, SSP Gurdaspur, SP Pathankot and others. My wife also made a petition to Punjab State Women Commission. I have been falsely implicated in this case. I am totally innocent. A complaint case against police officers who abducted and falsely implicated me, is pending in the Court of JMIC, Batala. I approached all forums in sight and knowledge for investigation into the case planted on me.”

9. In order to prove his defence plea, accused examined as many as 28 witnesses in defence.

10. After analyzing evidence adduced by the prosecution as well as accused, and hearing learned counsel for the parties, Harpreet Singh was held guilty, convicted and sentenced, under Section 21 of NDPS Act, to undergo RI for a period of 10 years, fine to the tune of ₹ 1,00,000/- and in default of payment of fine, to further undergo RI for one year.

11. Feeling dis-satisfied, Harpreet Singh preferred the instant appeal which was admitted for hearing vide order dated August 13, 2014.

12. While assailing the impugned judgment of conviction and order of sentence, it has been ebulliently argued by learned counsel for the appellant that the same are absolutely against evidence available on file and settled canons of law.

Infact, a false recovery of 1 kg Heroin has been foisted upon the

appellant by the police officials in connivance with each other. There is ample record in the testimony of PWs, especially, in the cross examination as well as defence evidence adduced by the appellant that he was taken into illegal custody on January 30, 2010 at around 7.00 PM from his village Tharial, District Pathankot, by SI Kamalpreet Singh, Police Station, Killa Lal Singh, Batala. He was tortured and thereafter he was handed over by SI Kamalpreet Singh to Inspector Balbir Singh and Inspector Harvinderpal Singh, SHO, Police Station, SSOC, Amritsar on February 2, 2010. Learned counsel for the appellant has reiterated the entire defence version during the course of his arguments. False implication of the appellant is reflected from oral as well as documentary evidence available on file. Even otherwise, case of the prosecution cannot be said to be proved beyond reasonable doubt as there are large number of infirmities, illegalities and serious contradictions in the statements of the witnesses examined by the prosecution.

13. While developing his arguments, learned counsel for the appellant has contended that though as per case of the prosecution, secret information was received against Suba Singh, Manriasat Singh and Harpreet Singh but no enquiry was conducted against Suba Singh and Manriasat Singh as is evident

from Ex.DW-24/A-17. Further, secret information is alleged to have also been received by SI Kamalpreet Singh who was also an empowered officer under Section 42 of the NDPS Act but there is nothing to show the compliance of Section 42 on his part. SI Kamalpreet Singh has not even been examined as prosecution witness. Similarly, PW-1, Inspector Balbir Singh, who conducted the investigation of this case, during his cross examination, also admitted that secret information was not reduced into writing which is a clear-cut violation of Section 42 of the NDPS Act. Not only this, even prosecution has miserably failed to examine the so-called independent witness namely Malkiat Singh, who was closely related to SI Harjinder Singh (PW-3) i.e. Saddu. He was allegedly associated at the time of search as well as recovery of the alleged recovery of Heroin from the car possessed by the appellant. Even SI Kamalpreet Singh who had shared the secret information with Inspector Balbir Singh and Inspector Harvinderpal Singh has also been with-held from the witness box, by the prosecution for the reasons best known to it which is fatal to the case of prosecution.

14. It was next argued by learned counsel that Form M-29 was not filled in at the spot which is an admitted fact and

non-filling or preparation of Form M-29 goes to the root of the case and it can be said that link evidence is missing. Even either Form M-29 or its copy was not annexed with the challan. Even the seal was also not produced by Inspector Balbir Singh before Inspector Harvinderpal Singh (PW-5) at the time of alleged production of the case property for inspection by him.

15. The next contention raised by the learned counsel is that even there is non compliance of Section 50 of the NDPS Act as no valid offer was given to the accused while preparing non-consent and consent memos and the violation of the aforesaid mandatory provision makes the entire case of prosecution doubtful and suspicious. DSP – Rajpal Singh (PW-4) has categorically admitted while subjecting to cross examination that memos Ex.P-1 to P-9 were prepared in his presence at the spot, meaning thereby that at the time of preparing non-consent and consent memos Ex.P-1 to P-9, respectively, DSP – Rajpal Singh was present at the spot, and was a part of the raiding party. In these circumstances, he cannot be termed to an independent gazetted officer. It destroys the entire sanctity of consent memo Ex.P2 which is otherwise stated to be dictated by DSP – Rajpal Singh to Inspector Balbir

Singh who further dictated the same to the scribe whose name has not been unfolded by any of the prosecution witnesses.

16. It was then argued by learned counsel for the appellant that from the statement of PW-5, SI Harvinderpal Singh, false implication of the appellant comes to fore who has categorically stated that SI Kamalpreet Singh took Harpreet Singh back to Police Station, Killa Lal Singh, in the late night as SSP – Mr. P.K. Rai had refused to take custody of Harpreet Singh from Batala police and on return to Police Station, Killa Lal Singh, Harpreet Singh was lodged in a Barrack instead of lock-up due to fear of his recovery in case of raid from the High Court etc. The said admission depicts his active connivance with SI Kamalpreet Singh so as to save the skin of Inspector Harvinderpal Singh who is his batch-mate. It rather fortifies the defence version. Not only this, the appellant was not got subjected to medico-legal examination on February 3, 2010 in compliance of directions given by the JMIC, Amtirsar and he was only got subjected to medico-legal examination on February 4, 2010 i.e. on next day just to get time to allow the swellings, bruises and injuries to subside and heal.

17. It was next argued by learned counsel for the appellant that none of the memos allegedly prepared at the spot

bears the signatures of appellant and the same were forged and fabricated by the police. It was only due to said reason, the thumb impressions of appellant were taken on various memos by use of force. The report of the Expert in this regard fortifies that signatures appearing on the consent memo and other memos are not the signatures of appellant Harpreet Singh.

18. The case of prosecution also suffers from material infirmities and contradictions. DSP – Rajpal Singh had stated that at the time of recovery of the contraband, the kit for testing Heroin was with Inspector Balbir Singh and the Heroin was tested at the spot by Inspector Balbir Singh whereas Inspector Balbir Singh, while subjected to cross examination has stated that he was not possessing any such kit at the time when recovery was effected.

19. While concluding his arguments, it has been contended by learned counsel for the appellant that all the factors coupled with each other clearly prove that appellant was arrested from his house by SI Kamalpreet Singh and other police officials. He was detained in CIA Batala where he was subjected to torture. Thereafter, he was handed over by SI Kamalpreet Singh to Inspector Harvinderpal Singh and Inspector Balbir Singh who foisted upon him Heroin in

connivance with DSP – Rajpal Singh and others. The presence of SI Kamalpreet Singh on February 2, 2010 is established even from the fact that he withdrew some amount from ATM of HDFC at Amritsar. The defence evidence adduced by the appellant further clearly proves his false implication in the instant case. Thus, conviction and sentence imposed by learned Special Judge, Amritsar, are not sustainable in the eyes of law and deserve to be set aside by way of acceptance of the instant appeal.

20. Per contra, learned State counsel has supported the impugned judgment of conviction and order of sentence. She submitted that there is no infirmity or illegality in the impugned judgment of conviction and order of sentence. The recovery of Heroin is fully established from the statements of prosecution witnesses and there is compliance of all the mandatory provisions. The witnesses examined in defence by the accused – appellant are not reliable and trustworthy and they have supported the case of appellant being his either relations or his friends. The well-reasoned judgment passed by learned Special Judge calls for no interference by this Court and the appeal being devoid of any merits is liable to be dismissed.

21. After bestowing due consideration to the rival submissions made by learned counsel for the parties and scanning the impugned judgment and order of sentence as well as going through the material available on file, this Court is of the considered view that case of prosecution is not beyond any reasonable doubt, rather, this Court is of the considered view that false implication of appellant in the instant case cannot be ruled out, especially, in the circumstances that his abduction from his house on January 30, 2010 by SI Kamalpreet Singh and other police officials of Police Station, Killa Lal Singh, Batala and further handing over his person to Inspector Harvinderpal Singh and Inspector Balbir Singh at Amritsar, is prima facie proved on the record not only by oral evidence but by way of documentary evidence also.

22. It is well settled that the defence witnesses are entitled to equal treatment with those of the prosecution and their testimony cannot be ignored and disbelieved just on the ground that they have been examined by defence or that they are often untrustworthy. It is also equally settled that if two conclusions are possible from the established facts, then the view favourable to the accused must be taken as was reiterated by their Lordships in Anne Nageswara Rao vs Public

Prosecutor, Andhra Pradesh, AIR 1975 SC 1387 and Rajendra Rai & others vs. State of Bihar & another, AIR 1974 SC 2145.

There is yet another basic rule of criminal jurisprudence is that If two views are possible on the evidence adduced in a case of one pointing to the guilt of the accused and the other to his innocence, the Court should adopt a latter view favourable to the accused. Reference in this context can be made to the case Harendra Narain Singh & others vs. State of Bihar, AIR 1991 SC 1842.

23. Reverting to the case in hand, it can be said that the entire case of the prosecution solely rests upon the testimony of the official witnesses and the only alleged independent witness namely Malkiat Singh who is none else but ‘Saddu’ of SI Harjinder Singh, has been given up by the prosecution. A specific suggestion was put to PW-1 Balbir Singh, Investigating Officer, that prosecution is not going to examine Malkiat Singh, independent witness, in this case regarding which he refuted but actually at a subsequent stage, he was given up as having been won over by the accused. However, his wife has appeared in the witness box in defence and deposed about his relationship with SI Harjinder Singh. Non examination of independent witness Malkiat Singh without any valid reason has made the case of

prosecution doubtful. The evidence of Malkiat Singh, independent witness, was very much essential to unearth the truth, especially, in view of defence set up by the accused regarding mis-behaviour with him and subjecting him to torture by the police officials resulting into his false implication.

24. In case State of Punjab vs. Nachhattar Singh @ Bania, 2007(3) RCR (Criminal) 1040, Division Bench of this Court has observed that when an independent witness was joined but was not examined without any reason, the case of prosecution becomes doubtful. The said judgment was further relied upon by this Court in case Balbair Kaur vs. State of Punjab, 2009(4) RCR (Criminal) 504.

25. It has also emerged during the course of arguments as well as from the evidence available on the file that Form M-29 was neither prepared at the spot nor it was deposited with Malkhana. Neither Form M-29 nor its copy was annexed with the challan. Even sample seal was handed over to police officials who were a part of investigation. It was not handed over to the independent witness, though, available at the spot. So, in such circumstances, tampering with the case property cannot be ruled out and case of the prosecution becomes doubtful on this score also. This observation finds support from

judgment of Hon'ble Apex Court in State by CBI Vs. Dilbagh, 2006(2) RCR (Criminal) 76 which has been subsequently relied upon by Division Bench of this Court in Didar Singh @ Dara Vs. The State of Punjab, 2010(3) RCR (Criminal) 337.

26. As far as contention of learned counsel for the appellant with regard to non compliance of Section 50 of NDPS Act is concerned, PW-4, DSP – Rajpal Singh, while subjecting to cross examination has categorically deposed that memos Ex.P-1 to P-9 were prepared in his presence at the spot. The said admission is suggestive of the fact that even at the time of preparation of non-consent memo, he was present. In this situation, said DSP cannot be termed to be an independent gazette officer in terms of Section 50 of the NDPS Act. The categoric admission by DSP – Rajpal Singh can be narrated as under:-

“It is correct that memos Ex.P-1 to P-9 were prepared in my presence at the spot”.

27. Here it would also be pertinent to mention that DSP has failed to bring on record the log book of his official vehicle to show that he visited at the spot on a call received from Inspector Harvinderpal Singh or Inspector Balbir Singh. The non furnishing of log book also casts a serious doubt regarding his presence.

28. There is another aspect of the case which also falsifies the recovery of Heroin at the spot. PW-4, DSP – Rajpal Singh has stated that e-mail has been issued from the office of Police Station, SSOC requesting CDRs to Noddle Officer, Vodafone and Airtel with regard to the alleged mobile phone of the accused under the signatures of Superintendent of Police Ex.P-13 on February 2, 2010 at about 2.00 PM whereas as per the case of prosecution, accused – appellant was arrested at 4.00 PM and was brought to the police station at about 10.00 PM. The e-mail was sent much prior to the registration of FIR which shows that the accused was already in the custody of police officials.

29. To show the false implication and illegal detention of the appellant much prior to the date and time of his alleged arrest in this case, the testimony of PW-5, Harvinderpal Singh is relevant who has categorically stated during his cross examination with regard to custody of accused with SI Kamalpreet Singh who brought him to Amritsar from Batala. It would be relevant to reproduce the relevant portion:-

“SI Kamalpreet Singh took Harprit Singh back to PS Kila Lal Singh in late night as our SSP Sh. P.K. Rai had refused to take custody of Harprit Singh from Batala Police and on return to PS Kila Lal Singh, Harprit Singh was lodged in a barrack instead of lockup due to fear of his recovery in case of raid from High Court etc.”

The aforesaid admission on the part of PW-5, Harvinderpal Singh fortifies the defence version and reflects his active connivance with SI Kamalpreet Singh of Batala Police.

30. The illegal detention of the appellant also emerges from the testimony of PW-5, Harvinderpal Singh who has stated that he was informed by SI Kamalpreet Singh that he had given torture to Harpreet Singh by beating the joints of his body, soles of his feet and eagle separating his legs. The association of SI Kamalpreet Singh, Police Station, Killa Lal Singh, Batala, with the raiding party is also an admitted fact which itself raises doubts. The defence version regarding abduction of the appellant by SI Kamalpreet Singh is prima facie established by usage of ATM by him at Amritsar, as proved by Ex.DW-19 on February 2, 2010 much before the arrest of present accused in the instant case. The presence of SI Kamalpreet Singh at Amritsar demolishes the case of prosecution and establishes the defence version coupled with the factum of telegrams in which specific reference has been made to Batala Police on February 1, 2010, sent by wife of accused from Ludhiana, Ex.DW-24/A/54. Thereafter, next telegram dated February 2, 2010 was sent by wife of accused from Ludhiana at 2.00 PM giving

specific reference to Police Station, Killa Lal Singh, Ex.DW-24/A/56.

31. Here it would also not be out of place to mention that PW-5 Inspector Harvinderpal Singh has stated that case property was brought by Investigating Officer Balbir Singh before him for inspection in the police station but it is evident that Inspector Harvinderpal Singh was even present at the spot. From the report of Hand Writing Expert, DW-26, it is clear that seizure report which was annexed with the challan is in the hand writing of Investigating Officer Balbir Singh whereas the one supplied to the appellant – accused is in the hand writing of PW-5 Harvinderpal Singh which depicts their connivance with each other.

32. Not only this, a perusal of request Ex.P-11 moved by Investigating Officer Balbir Singh before the learned Magistrate reveals that he brought two parcels of Heroin i.e. Mark – I and Mark – II alongwith two sample parcels namely S-1A and S-1B. There is nothing on record to suggest from where the second parcel Mark – II has emerged, especially when only one parcel and two sample parcels were produced and deposited by Investigating Officer Balbir Singh before

Inspector Harvinderpal Singh. It also creates a serious doubt qua prosecution story.

33. There is also another vital snag in the prosecution case. Recovery of Heroin alleged to have been effected under stepney (spare wheel) of the car and not from the person of accused. To the utter surprise, at no point of time during investigation, no effect was made to verify the ownership of the car in question. There is nothing on record to suggest that car belongs to appellant – accused. The owner of car has also not been challaned. Non investigation by the police in this regard puts a serious dent in the case of prosecution. Similarly, as per recovery memo Ex.P-4, search of the car also led to recovery of Mobile phone make ‘Nokia’ but the phone number thereof was not investigation or mentioned. It also could not be connected with the appellant – accused.

34. Undoubtedly, all the memos prepared by the Investigating Officer at the spot bear the signatures and thumb impressions of the appellant – accused. But the accused has denied his signatures on the memos and alleged that when he did not append his signatures, the police officials by use of force obtained his thumb impressions. The report of Hand Writing Expert fortifies the defence version that the memos do not bear

the signatures of accused. Even otherwise, no reason has come forward as to what necessitated the police to obtain the thumb impressions in addition to the signatures if the accused had appended on the documents. The factum of obtaining/ appending of thumb impressions by the accused on any of the documents even does not find figure in any of the documents i.e. Ruqa, FIR and statements of various witnesses recorded under Section 161 Cr.P.C. This fact fortifies the stand taken by the accused that his signatures were forged and fabricated on the memos and the thumb impressions were obtained by the prosecution witnesses just to strengthen their case.

35. The various factors discussed above, coupled with each other, shatter the basic version of prosecution and make the case of prosecution highly doubtful and suspicious. The various facts and circumstances are suggestive of the fact that recovery of Heroin is highly doubtful and suspicious in the manner as has been put-forth by the prosecution. Similarly, in the facts and circumstances of the case as well as the evidence available on the file is also suggestive of the fact that false implication of accused cannot be ruled out. Thus, appellant – accused deserves the benefit of doubt. Impugned judgment of conviction and order of sentence dated July 30, 2014 are not sustainable in the

eyes of law and are liable to set aside. Accordingly, the appeal is allowed whereby the impugned judgment of is set aside and the appellant – accused stands acquitted of the charge.

August 19, 2015
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(Jaspal Singh)
Judge