

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

CRA-S-3739-SB of 2014

Date of decision : 13.08.2015

Shinderpal Kaur

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Satish Sabharwal, Advocate
for the appellant.

Ms. Rimplejeet Kaur, AAG, 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 16.07.2014, vide which appellant-accused Shinderpal Kaur was held guilty and convicted for the offence punishable under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'Act') and the order on the quantum of sentence of the even dated, vide which the

appellant was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 30,000/-, in default of payment of fine she was ordered to further undergo rigorous imprisonment for a period of three months.

2. The brief facts of the prosecution case are that on on 04.06.2013, PW-3 ASI Malkit Singh along with other police employees was on patrolling duty from Range Narcotic Control Cell, Ferozepur to village Setiewala, Kulgarhi etc. When the police party reached near dry canal in the area of village Valoor, accused-appellant was seen coming from the eastern side of the dry canal carrying a polythene bag in her hand. On seeing the police party, she perplexed and sat in the pits. She was apprehended on the basis of suspicion by the Investigating Officer with the help of his companions police officials. The Investigating Officer tried to associate the independent witnesses, but nobody agreed. He introduced himself and other police officials to the accused-appellant and asked that he suspected some narcotic substance in the polythene bag in her possession and her search is to be conducted. The Investigating Officer made her aware that she has a legal right to get her as well as the search of her polythene bag conducted in the presence of a Magistrate or a Gazetted Officer. The

Investigating Officer served the notice Ex.P-2 to this effect. Accused opted for her search in the presence of a Gazetted Officer. PW-5 DSP Ajmer Singh was informed and he came at the spot. He also introduced himself to the appellant and he again gave option to the accused-appellant for her search in the presence of any Magistrate or any Gazetted Officer, but, she reposed confidence in D.S.P Ajmer Singh. The consent memo Ex.P-3 to this effect was prepared. Thereafter, on the instructions of DSP Ajmer Singh, the search of polythene bag in the hand of accused-appellant was got conducted through lady constable Mandeep Kaur no. 1163, which led to the recovery of opium. Two samples of 5 gms each were separated and residue opium came to 990 gms. The separate sealed parcels of the sample parcels and the residue opium were prepared and were sealed by the Investigating Officer with his seal bearing impression 'MS'. DSP Ajmer Singh also affixed his seal bearing impression 'AS'. The sealed parcels of the contraband were taken into possession vide memo Ex.P-5. The Investigating Officer sent ruqa Ex.P-7 to the police station on the basis of which First Information Report Ex.P-8 was registered. Accused-appellant was arrested.

3. Thereafter, the accused-appellant along with contraband was produced before PW-4 SI Satnam Singh ,

the officiating SHO, Police Station Kulgarhi. He took into possession the contraband vide memo EX.P-14 and also affixed his seal bearing impression 'SS' on the parcels and the case property.

4. On the next date, the accused-appellant along with parcels of the case property were produced before the learned Judicial Magistrate Ist Class, Ferozepur, who certified the inventory vide order dated 05.06.2013 Ex.P-18. Thereafter, SI Satnam Singh sent the sample parcels to Chemical Examiner, Kharar for examination, which was identified to be of opium vide report Ex.P-13 and on completion of the formalities of investigation, the report under Section 173 Cr.P.C was presented in the Court.

5. After compliance of the provisions of Section 207 Cr.P.C., the accused-appellant was charge sheeted for the offence punishable under Section 18 of the Act by the learned trial Court vide order dated 07.11.2013, to which she pleaded not guilty and claimed trial.

6. In order to prove its case, prosecution examined as many as five witnesses in all.

7. When examined under Section 313 Cr.P.C, the accused pleaded false implication and that no recovery was effected from her possession. However, she did not lead any evidence in her defence.

8. On appreciating the evidence on record and the pleas raised by learned counsel for the parties, the accused-appellant was held guilty and convicted for the offence punishable under Section 18 of the Act by the learned trial Court vide impugned judgment of conviction dated 16.07.2014 and was 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.Satish Sabharwal, learned counsel for the appellant, Ms. Rimplejeet Kaur, learned Assistant Advocate General, Punjab and have meticulously gone through the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that as admitted by the prosecution witnesses, the place of recovery is a thoroughfare, but no independent witness has been associated in investigation of the case. The explanation given by the Investigating Officer as well as DSP Ajmer Singh that nobody agreed to join the investigation is merely an excuse as they have not narrated the names of the persons, who were requested to join the investigation nor any action has been taken against them for non joining the investigation.

12. He further contended that lady constable Mandeep Kaur was the most material witness in this case as she has carried out the search of the appellant. But, she was not examined and has been given up as unnecessary. It shows that actually she was not present at the spot and no search of the appellant was carried out as alleged by the prosecution, which renders the entire case of the prosecution doubtful. To support his contentions, he relied upon cases **Balwinder Kaur Vs. State of Punjab 2011(2) R.C.R (Criminal) 465 and Gejo Vs. Punjab State 1999(1) R.C.R (Criminal) 559.**

13. He further contended that there is delay of 7 days in sending the sample to the office of Chemical Examiner, Kharar. There is serious doubt as to whether the case property remained intact or not. As per the prosecution version, the case property was also sealed by DSP, Ajmer Singh with his seal bearing impression 'AS'. But, SI Satnam Singh, the officiating SHO has not mentioned in his testimony that the parcels were also bearing the seal of the DSP. SI Satnam Singh also stated that he handed over both the sample parcels to the constable Gursimrandeep Singh for taking those to the Chemical Examiner. But, as per report of the Chemical Examiner, Kharar and affidavit of the constable Gursimrandeep Singh, only one sample was sent.

Hr further contended that as per report of the Chemical Examiner Kharar, the sample parcel was received on 11.06.2013. But, constable Gursimrandeep Singh has stated in the cross-examination that the sample was deposited by him on 10.06.2013. These contradictions caused dent in the chain of link evidence and in these circumstances, the delay in sending the sample assumes significance and renders the prosecution case doubtful.

14. He further contended that there is a serious doubt about the alleged time of recovery. The ruqa Ex.P-7 has been sent to the Police Station at 8.00 p.m. He contended that the words “at 8.00 p.m” mentioned at the bottom of the ruqa Ex.P-7, is in different hand. But, PW-5 SI Satnam Singh has stated that he has received the ruqa at 4.30.p.m and even the FIR was registered after one hour of receiving the ruqa. Whereas, the version of Investigating Officer is totally different. It renders the prosecution case serious doubtful about the alleged recovery itself.

15. He further contended that presence of DSP Ajmer Singh at the spot is extremely doubtful. The Investigating Officer has also totally violated the provisions of Section 57 of the Act. Thus, he contended that the case of prosecution is extremely doubtful and the conviction recorded by the learned trial Court is not sustainable.

16. On the other hand, Ms. Rimplejeet Kaur, learned Assistant Advocate General, Punjab has contended that satisfactory explanation has been given by PW-3 ASI Malkit Singh, the Investigating Officer of the case and PW-5 DSP Ajmer Singh for non joining the independent witnesses. She further contended that mere delay of 7 days in sending the sample to the Chemical Examiner is not fatal, as there is no material to show that any prejudice has been caused to the appellant. She further contended that the provisions of Section 50 of the Act were not applicable in the present case. So, the non-examination of lady constable Mandeep Kaur is also no ground to draw any adverse inference as the recovery is fully supported from the statements of PW-2 ASI Sukhchain Singh, PW-3 ASI Malkit Singh and PW-5 DSP Ajmer Singh. She further contended that case of the prosecution is consistent with respect to the time of recovery and the seal impressions used to seal the parcels of the contraband. There is no omission in the chain of link evidence. The non-mentioning of the seal of the DSP by PW-4 SI Satnam Singh is merely an omission, because in the documents available on record all the three seals i.e. 'MS', 'AS' and 'SS' are clearly mentioned to have been affixed on the parcels of the case property. This fact is even mentioned in the order Ex.P-18 of the Judicial Magistrate. Thus, she

contended that there is no infirmity in the conviction of the appellant recorded by the learned trial Court.

17. I have duly considered the aforesaid contentions.

18. The case of the prosecution is based on the statements of official witnesses alone. No doubt, the prosecution case can not be thrown away merely on this ground that the independent witnesses have not been associated and the official designation of the witnesses is itself no ground to reject their testimonies. But, at the same time when the Investigating Officer had an opportunity to associate the independent witnesses in the investigation but none of them is joined. The Court is always required to scrutinize the prosecution evidence carefully, consciously and minutely and in those circumstances, even the minor circumstances assumes significance. The Investigating Officer PW-3 ASI Malkit Singh and PW-5 DSP Ajmer Singh have stated that the Investigating Officer has tried to join the independent witnesses, but none was ready to join. But, their statement has been contradicted by PW-2 ASI Sukhchian Singh, the witness of recovery who has deposed that the Investigating Officer tried to join the independent witnesses, but nobody met them. Whereas, the presence of independent persons have been admitted by PW-5 DSP Ajmer Singh. Thus, in these circumstances, we are to closely

scrutinize the prosecution evidence.

19. Lady constable Mandeep Kaur was the star witness of the prosecution. The accused-appellant is a female and as per the consistent testimonies of the prosecution witnesses namely PW-2 ASI Sukhchain Singh, PW-3 ASI Malkit Singh and PW-5 DSP Ajmer Singh. The search of accused-appellant was got conducted through lady constable Mandeep Kaur. So, it was lady constable Mandeep Kaur, who carried out search of the accused-appellant and recovered the contraband. But, she has not been examined by the prosecution and was given up being unnecessary by the learned Public Prosecutor vide his statement dated 17.04.2014. It is very surprising that how such a material witness can be given up being unnecessary. The giving up of lady constable Mandeep Kaur in this manner rather makes even her presence at the spot doubtful. Thus, the most material witness of the prosecution has been withheld by the prosecution without assigning any reason and stating her to be an unnecessary witness. In fact, she was the most material witness, which raises the adverse inference against the prosecution.

20. The time of recovery in this case is extremely doubtful. As per the statement of PW-3 ASI Malkit Singh, the accused-appellant was apprehended at about 6.15.p.m

at the spot. The D.S.P has arrived at the spot at 7.00.p.m and after completing the formalities of search etc, the ruqa was sent to the police station at 8.00.p.m. The Investigating Officer received the FIR number at 9.30.p.m. But, this whole prosecution version has been materially contradicted by PW-4 SI Satnam Singh, the than Officiating S.H.O, Police Station Kulgarhi who has registered the First Information Report Ex.P-8. He has categorically stated in the cross-examination that ruqa was received by him at 4.30.p.m from the Head Constable. He further stated that the FIR was received after one hour of receiving the ruqa. He further deposed that case property was handed over to him at 8.00.p.m in the police station. If, the version of this witness is taken into consideration, the recovery was effected much before 4.30.p.m. Whereas, the case of the prosecution is that the appellant was apprehended at 06.15.p.m. So, the time of apprehension of the appellant and recovery is not established and is extremely doubtful.

21. There is delay of seven days in sending the sample to the office of Chemical Examiner, Kharar. There is no dispute with the proposition of law that mere delay in sending the sample to the office of Chemical Examiner, where there is no scope of tampering with the case property, is of no significance. But, here in this case, there are some

material contradictions/omissions qua the chain of link evidence. As per the prosecution story, the sample parcels and the residue parcels was sealed with the seal bearing impression 'MS' of the Investigating Officer and 'AS' of the DSP Ajmer Singh. But, SI Satnam Singh, the officiating SHO has stated that two sample parcels and one bulk parcel sealed with seal 'MS' were produced before him. He has not stated that when the parcels were produced before him were also bearing the seal impression 'AS' belonging to the DSP. No doubt, in the documents and the order of learned Magistrate, the sample parcels and the residue parcel are mentioned to be bearing seal impression 'AS' also. The parcels of the case property have been produced before the Magistrate on the next date i.e. 05.06.2013. But, what was the state of affairs on 04.06.2013 i.e. on the date of recovery are doubtful with respect to the presence of seal impression 'AS' on the parcels of the case property in view of the statement of SI Satnam Singh. As per report of the Chemical Examiner, Kharar Ex.P-13, the sample parcel was received on 11.06.2013. In the affidavit of PW-1 Gursimrandeep Singh Ex.P-1 also it is mentioned that the sample parcel was deposited with the office of Chemical Examiner on 11.06.2013. But, in the cross-examination, PW-1 Constable Gursimrandeep Singh stated that the sample was deposited

with the Chemical Examiner on 10.06.2013. So, the statement of Constable Gursimrandeep Singh is self contradictory. In view of the aforesaid contradictions in the prosecution case, the delay of seven days in sending the sample adversely effects the veracity of the prosecution case.

22. The Investigating Officer in this case is PW-3 ASI Malkit Singh, who was posted at that time at Range Narcotic Control Cell, Ferozepur. There is no material on file that PW-4 SI Satnam Singh or PW-5 DSP Ajmer Singh were the immediate officials superior to ASI Malkit Singh, who was posted in the Range Narcotic Control Cell, Ferozepur at that time. Section 57 of the Act provides that 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. PW-3 ASI Malkit Singh has categorically stated in the cross-examination that he had not made any report under Section 57 of the Act. He further deposed that he does not know whether any official of their department made any report under Section 57 of the Act. So, it is a case where there is a total, deliberate and intentional breach of Section 57 of the Act. There is no dispute with the proposition of law that Section 57 of the

Act is not mandatory and is only directory in nature. But, the Investigating Officer can not totally violated and ignore these provisions intentionally and deliberately. The Hon'ble Supreme Court in case **Gurbax Singh Vs. State of Haryana Law Finder Doc Id # 12911** has laid down as under:-

“It is true that provisions of Section 52 and 57 are directory. Violation of these provisions would not *ipso facto* violate the trial or conviction. However, I.O. 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 article.”

23. Similar ratio of law has been laid down by this Court in cases **Jaswant Singh Vs. State of Punjab 2008(4) R.C.R (Criminal) 28, Raj Bahadar Vs. State of Punjab 2008(4) R.C.R (Criminal) 34 and Kulwant Singh and another Vs. State of Punjab 2014(4) R.C.R (Criminal) 316**. The purpose of Section 57 of the Act is that the superior officer should be informed immediately after the alleged recovery of the contraband so that he must be aware of the genuineness of the proceedings conducted by his junior to ensure that no innocent person was implicated. But, that object in this case has been defeated due to non-compliance of Section 57 of the Act by the Investigating Officer. Thus, the violation of Section 57 of the Act in this

manner has a bearing on the appreciation of the evidence regarding the arrest of the accused and seizure of the article. As already discussed, there is a material contradiction in case of the prosecution with respect to the time of arrest of the accused-appellant and the seizure of the contraband which assumes significance due to violation of Section 57 of the Act and creates doubt about the genuineness of the proceedings and prosecution version.

24. Thus, keeping in view my aforesaid discussion, as the prosecution has withheld the star witness of the prosecution i.e. lady constable Mandeep Kaur, who had carried out the search, there is material contradiction about the time of apprehension and recovery of the contraband. There are serious contradictions with respect to the affixation of the seal of the D.S.P on the parcels of the case property and the date of deposit of the sample parcels with the chemical examiner with seven day's delay and there is total, deliberate and intentional violations of Section 57 of the Act. The cumulative effect of all the circumstances discussed above in the absence of the independent corroboration is sufficient to render the prosecution version doubtful and the accused-appellant deserves the benefit of doubt.

25. Consequently, the present appeal is hereby

allowed and the conviction of accused-appellant Shinderpal Kaur as recorded by the learned trial Court and the sentence awarded to her are hereby set aside. She stands acquitted of the charges as a result of benefit of doubt. She be released forthwith, if not detained in any other case.

August 13, 2015**s.khan****(DARSHAN SINGH)
JUDGE**