

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

430

CRA-S-654-SB of 2015

DATE OF DECISION: August 26, 2015.

Vinod Kumar

....Appellant.

VERSUS

State of Punjab

....Respondent.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Harsh Neyol, Advocate
for the appellant.

Mr. A.S. Kler, Deputy Advocate General, Punjab.

Shekher Dhawan, J. (Oral)

Appellant Vinod Kumar, who was convicted for commission of offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter mentioned as 'N.D.P.S.') for having possession of 60 kgs of poppy husk and as sentenced to 10 years rigorous imprisonment and fine of Rs.1,00,000/- vide judgment of conviction and order of sentence dated 15.12.2014, has preferred the present appeal.

Relevant facts of the case are that on 30.01.2011, SI Balbir Singh while posted at Anti Narcotic Cell, Bathinda was present in connection with checking of narcotics alongwith his supporting staff. Meanwhile, car bearing registration No.DL-6CE-0900 Opel Astra came to the spot and Investigating Officer gave signal to stop the vehicle. The driver

of the car tried to turn it back but Investigating Officer apprehended him with the help of the supporting team. One of the occupant disclosed his name as Gurdeep Singh @ Gaggu and the person who was sitting on the adjoining seat disclosed his name as Vinod Kumar (now appellant before this Court). Two gunny bags were lying on the back seat. Investigating Officer disclosed his identity, on suspicion of some narcotics in the car served notice for search and thereafter, took sample of 100g from two bags lying in the car. On weighing the remaining contraband was found to be 29.900kg. Each bag was converted into parcel and sealed with seal 'BS'. Seal was handed over to private person Bhinder Singh. Case property was taken into possession. F.I.R. was registered. Accused were arrested and other investigation proceedings were completed. Case property and sample deposited in the Malkhana and after completion of investigation, challan was presented in the Court.

During the process of the trial, learned trial Judge framed charge for commission of offence under Section 15/25 of N.D.P.S. Act, to which accused pleaded not guilty and claimed trial. To substantiate its case, the prosecution examined six witnesses in all including Investigating Officer and recovery witnesses apart from leading documentary evidence. Accused were examined under Section 313 Cr.P.C. thereby putting all incriminating evidence to them. Two witnesses Lal Chand and H.C. Jasvir Singh were examined in defence.

After considering the prosecution version and defence version, learned trial Judge held appellant Vinod Kumar guilty and convicted and sentenced him for the offence under Section 15 of N.D.P.S. Act, whereas Gurdeep Singh was being tried separately as he was juvenile and co-accused

Rup Singh died during the pendency of the trial on 06.10.2012. After conviction and sentence, appellant is in appeal before this Court.

Learned counsel for the appellant mainly took the plea that prosecution has not been able to prove guilt of the accused on the basis of reliable evidence. The main evidence against appellant was that he was found in possession of 60 Kgs poppy husk alongwith his co-accused and same was tested on the basis of representative sample from FSL. Evidence available on file is that samples were tampered with. In support of his arguments, learned counsel for the appellant mainly took the plea that FSL report Ex.P-11 established that seals were with impression of 'HS' but that is not the case of prosecution. If the entire prosecution case is taken to be as it is, seal impressions were used as 'BS' and 'GS'. It had come in the statement of Gurjit Singh PW5 that seal impression of 'GS' were actually used. PW4 Dalbir Singh, Investigating Officer of the case also admitted in the cross that seal impression 'GS' were actually used. These contradictions on material point cannot be brushed aside but the learned trial Judge has completely ignored this fact.

Learned counsel for the appellant also contended that form 29 was not filled on the spot and that is evident from document Ex.P-4/A on the file. Learned counsel for the appellant also took the plea that circumstances established that samples were actually tampered as the samples were taken from Malkhana on 02.03.2011. Same were handed over to Head Constable Gurdev Singh and the samples actually were received in FSL on 04.03.2011 as per FSL report Ex.P-11. There is no explanation as to why the samples were not handed over in FSL on 02.03.2011 itself. These aspects become more relevant when the seal impressions used and the seal

impressions examined by FSL Authorities are quite contrary on the point.

Learned State counsel took the plea that prosecution case has been otherwise proved on the file as the Investigating Officer and members of police party were not having any motive to falsely implicate the appellant or co-accused. Even nothing has been alleged on the point by the appellant. Moreso, there is no possibility of tampering of samples rather material recovered from the possession of the appellant and the samples were actually received in FSL in intact condition. The judgment of conviction and order of sentence do not require any interference and the appeal be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of considered view that the evidence available on file i.e. FSL report Ex.P-11 and statement of PW5 Gurjit Singh and PW4 Dalbir Singh, Investigating Officer established that seal impressions used at the time of recovery were 'BS' and 'GS' whereas the alleged representative samples received in FSL were with seal impression 'HS'. There is absolutely no explanation as to why there was such contradiction and what were the reasons for separate seal impressions being used at the time of recovery and at the time of receipt of samples in FSL. More so, samples were actually taken out from Malkhana on 02.03.2011 and the same remained in the custody of H.C. till 04.03.2011 when the samples finally reached its destination i.e. FSL. The delay could have been ignored, had there been no allegation of tampering of samples and case material supported by material evidence available on file that witnesses are making contradictory version on the point.

This point assumed much more significance as only one

independent witness Bhinder Singh was present at the time of alleged recovery and the seal was handed over to him after its use. The prosecution case suffers from legal infirmities and becomes doubtful on this point and the trial Court has not applied its mind at the time of decision of the case. Present appellant is certainly entitled to be acquitted giving him the benefit of doubt and the present appeal is accepted and appellant is acquitted of the charges levelled against him and judgment of conviction dated 15.12.2014 and order of sentence of even date are hereby set aside. Appellant be released from custody if not required in any other case.

(SHEKHER DHAWAN)
JUDGE

August 26, 2015.
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