

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2109-SB-2003

Date of Pronouncement: 03.08.2015

1. Gurcharan Singh son of Bahal Singh

2. Sukhdev Singh alias Sukha Singh son of Harmel Singh

...Appellants

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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

Argued By: Mr. Manpreet Singh, Advocate for the appellants.

Mr. Surjeet Singh Chaudhary, DAG, Punjab.

Raj Rahul Garg, J.

By way of this appeal, appellants-accused assailed the judgment of conviction dated 28.10.2003 and order on sentence of the even date, rendered by Sh. A. K. Mehta, the then Special Judge, Ferozepur, whereby both the appellants-accused were convicted for keeping in their possession 25 bags of poppy husk, each bag containing 40 KG and 100 grams of poppy husk, without any permission or licence, thereby committing offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

As per prosecution case, on 07.06.1995, SI/SHO Major Singh along with police officials, under the supervision of Hoshiar Singh, DSP,

Zira was holding a Nakabandi at Bridge Canal Minor in the area of village Cheema on mettaled road leading from Jalalabad (East) to Kot Isse Khan. At about 2.15 AM, a truck bearing No. DIG 5445 was seen coming from the Jalalabad side which was signalled to stop. It was being driven by appellant-accused Gurcharan Singh alias Jalour Singh whereas appellant-accused Sukha Singh was sitting on the bags loaded in truck. He tried to escape but was apprehended. Both the appellants-accused gave their identities to the Investigating Officer. The truck was loaded with gunny bags. Suspecting poppy husk in the bags, Investigating Officer took the search of the aforesaid gunny bags in the presence of DSP Hoshiar Singh and recovered 25 bags of poppy husk. 100 grams of poppy husk was separated as samples from each bag. Remainder was weighed to 40 KG. All the samples and remainder poppy husk in each bag were separately sealed with the seal of 'MS' and then the same was taken into police possession, vide memo Ex. P2/A. This memo was attested by DSP Hoshiar Singh and sample Ex. P1/A was separately prepared. Seal, after use, was handed over to ASI Sanjeev Singla. Ruqa, Ex. P6, was sent to police station for registration of the case whereupon formal FIR, Ex. P7, was recorded. Appellants-accused were arrested. Rought site plan of the place of recovery was prepared as Ex. P8. Statements of witnesses were recorded. On the same day, the accused were produced in the court along with case property before the Ilaqa Magistrate by moving an application, Ex. P9, whereupon Ilaqa Magistrate passed the order, Ex. P10, directing the Investigating Officer to keep the case property in safe custody in the police station. On return to the police station, he kept the case property in safe custody in Malkhana of the police station. Report of the Chemical Examiner was

obtained, as Ex. P11, whereby contents of samples were reported as containing poppy head.

Finding a prima-facie case against the appellants-accused for committing offence punishable under Sections 15 and 25 of NDPS Act, appellant-accused Gurcharan Singh was charge-sheeted accordingly whereas appellant-accused Sukha Singh was charge-sheeted for committing offence punishable under Section 15 of NDPS Act, only, vide order dated 11.03.1997, to which appellants-accused did not plead guilty but claimed trial.

After taking entire prosecution evidence, statements of appellants-accused, under Section 313 Cr.P.C., were recorded, whereby they denied each prosecution allegation appearing against them and pleaded their innocence. The defence of the appellants-accused were that they along with their brother Gurbachan Singh, Harmail Singh and Malkiat Singh, all residents of village Dolewala, picked up by the police of the Police Station-Dharamkot from their houses, were illegally detained. On 07.06.1995, false case was planted against appellants-accused Gurcharan Singh and Sukha Singh whereas others were released. In their defence they examined Raghu Kumar as DW-1, an official from the office of District & Sessions Judge, Ferozepur. He proved the receipt of telegram dated 06.06.1995 in the office of Learned Sessions Judge, Ferozepur. Copy of which is Ex. D2. Satish Kumar, Senior Section Supervisor, Telegraph Office, Ferozepur was examined as DW-2. He deposed that the record regarding telegram is destroyed after every two months. However, he deposed that the attested copies of telegrams are issued by their office. He proved attested copy of telegram, Ex. D3, which was given to the Learned Sessions Judge,

Ferozepur and Ex. D4 attested copy of telegram given to DGP, Chandigarh. He also proved receipts of Ex. D5 and Ex. D6 whereby payment regarding aforesaid telegrams was made to the Telegraph Office. Gurbachan Singh son of Narain Singh, who gave the aforesaid telegrams, was examined as DW-3.

After hearing learned defence counsel as well learned Addl. Public Prosecutor for the state, the learned trial court recorded the impugned judgment of conviction whereby appellants-accused were held guilty only under Section 15 of the NDPS Act. As the prosecution failed to prove that appellant-accused Gurcharan Singh was owner of the truck in question, he was acquitted of the charge under Section 25 of the NDPS Act. Vide order on sentence dated 28.10.2003, both the appellants-accused were sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1,00,000/- each. In default of payment of fine, the appellants accused were ordered to further undergo rigorous imprisonment for 06 months.

I have heard Mr. Manpreet Singh, Advocate for appellants-accused Gurcharan Singh and Sukha Singh; and Mr. Surjeet Singh Chaudhary, DAG, Punjab for the state of Punjab besides appraising the entire material coming on record.

This is a case of commercial quantity. As per prosecution case, 25 bags of poppy husk were recovered from the truck in question. Those were kept in between other bags loaded in the truck in question. In the presence of DSP Hoshiar Singh, search of the truck was conducted whereupon aforesaid 25 bags of poppy husk were recovered. Sukha Singh, appellant-accused, was found sitting on the bags at the relevant time, whereas, appellant-accused Gurcharan Singh was driving the truck in

question. Sukha Singh had tried to escape but was apprehended. Each recovered bag of poppy husk was containing 40 KG and 100 Grams of poppy husk. The report of FSL, Ex. P11, proves that the contents of samples sent to the FSL were that of poppy husk. Major Singh, Investigating Officer of the case, as PW-5, DSP Hoshiar Singh as PW-4 and ASI Sanjeev Singla as PW-1 deposed in conformity with the prosecution case. Their statements are consistent regarding recovery of 25 bags of poppy husk from the truck bearing No. DIG-5445. They faced lengthy cross-examination but nothing material could be extracted from them. The very day case property was produced before Ilaqa Magistrate, Ferozepur, who passed order Ex. P10. As such prosecution has succeeded in bringing home guilt against the appellants-accused.

Learned counsel for the appellants-accused vehemently contended that the appellants-accused have been falsely implicated in this case. They along with Gurbachan Singh, Harmail Singh and Malkiat Singh were picked from their houses and were taken to the police station Dharamkot on 04.06.1995. They were illegally detained up till 07.06.1995 when the appellants-accused were falsely implicated in this case whereas others were released. It was contended that the telegrams, Ex. D2 to Ex. D4, are dated 06.06.1995 and Ex. D5 and Ex. D6 prove that the same were given by Gurbachan Singh to the learned Sessions Judge, Ferozepur and to the DGP, Chandigarh. Gurbachan Singh son of Narain Singh, who gave the aforesaid telegrams, appeared as DW-3 and proved the factum of giving of aforesaid telegrams by him to the aforesaid authorities. Thus, as per learned counsel for the appellants-accused, thereafter, police made out the case against the appellants-accused on 07.06.1995. Case is thus false against

them and the appellants-accused are entitled to acquittal.

On the other hand learned stated counsel contended that the aforesaid evidence is fabricated one. It is the modus operandi of the criminals now-a-days to first give the telegrams to the authorities and then commit crime so that they may get scot free. Big smugglers of narcotics use this method. They usually get issued such type of telegrams from their associates immediately before departing with the narcotic material. These telegrams have been got sent through Gurbachan Singh son of Narain Singh, who was their associate, only in order to create defence in their favour.

Ex. D2, telegram is the photocopy of telegram Ex. D3. It is mentioned in the telegrams that Gurcharan Singh, Gurbachan Singh sons of Bahal Singh, Sukha Singh son of Harmail Singh and Malkiat Singh son of Karnail Singh, residents of village Dolewala, have been illegally detained by the police of the police station Dharamkot on 04.06.1995 and it was apprehended that they may be implicated in some false case for fake encounter. The aforesaid telegrams were given only on 06.06.1995 whereas they were picked up by the police on 04.06.1995. It is not understandable as to why the authorities were not informed about the aforesaid alleged illegal act of the police before 06.06.1995. What for they were waiting? In fact truck in question was apprehended on 07.06.1995 at 2.15 AM, as such in advance on 06.06.1995 at 2.30 PM the aforesaid telegrams were given which clearly shows that the telegrams were nothing but an endeavour to create evidence in their favour. More so, the appellants-accused, in their statements under Section 313 Cr.P.C., stated that Harmail Singh was picked up with them but name of Harmail Singh is not mentioned in the

aforesaid telegrams. Had there been truthfulness in the above discussed defence of the appellants-accused, the name of Harmail Singh would have been there in the telegrams. There is nothing on record to show that the police was in any way inimical to them or was having any motive to falsely implicate them. It is not believable that the police officers would be able to plant such a huge quantity of poppy husk on the appellants-accused. As such the above discussed stand of learned counsel for the appellant is not sustainable.

It was next argued by learned counsel for the appellants-accused that the presence of DSP at the spot is doubtful. Major Singh, Investigating Officer of the case, admitted that the DSP signed only recovery memo Ex. P2/A. He did not sign any other paper at the spot. Even the movement of DSP was not recorded anywhere in the police station. Had DSP been with the police party at the relevant day and relevant time, his movement must have been recorded in the police station or in some other record kept for the purpose. This clearly shows that the signatures of DSP on recovery memo were obtained only in order to show his presence at the spot. Even he did not put his seal on the recovered case property.

The above argument of learned counsel for the appellants-accused is again not sustainable as DSP Hoshiar Singh stated that a gazetted officer is not required to make entry regarding his movement in Rapat Roznamcha. Thus, for this reason, if no entry was incorporated at police station Dharamkot regarding arrival and departure of DSP in the police station, it does not matter. Likewise, DSP, being a gazetted officer, attested recovery memo Ex. P2/A. In the case in hand, recovery memo is the material document which was attested by DSP at the spot. If DSP has not

signed the arrest memo or jamatalashi memo, it hardly makes any difference. SI/SHO of the police station is the Investigating Officer of this case. Under these circumstances, no illegality can be said to there if DSP has attested the recovery memo alone. The Investigating Officer Major Singh PW-5 had produced the case property the very day before the Ilaqa Magistrate who passed order, Ex. P10. There is not even an iota of evidence available on record to show that the case property was, in any way, tampered with. Under these circumstances, if SI/SHO alone had put his seal 'MS' on the case property as well on the samples, it cannot be said to be an infirmity in the prosecution case.

It was further vehemently contended by learned counsel for the appellants-accused that in this case investigations are defective. The Investigating Officer did not inquire as to whom the truck in question belongs and further as to from where the huge quantity of poppy husk was brought by appellants-accused. In the absence of the same, the prosecution case cannot be said to be free from doubt and the appellants-accused are entitled to acquittal. Again this contention of learned counsel for the appellants-accused is not sustainable. It is the settled proposition of law that for defective investigations no benefit can be given to the accused. Moreover, it is a case where so far as the question of recovery of 25 bags of poppy husk from the possession of appellants-accused is concerned, the prosecution has succeeded in proving the same beyond reasonable doubt. Had Investigating Officer investigated the case and could collect the evidence on file regarding ownership of the truck and further as to from where the contraband was brought by the appellants-accused, the owner of the truck as well as others involved in this case would have been brought to

book but if the same has not been done by the Investigating Officer, for this reason alone appellants-accused cannot derive any benefit.

No other point was urged before me.

For the reasons recorded above, finding no merit in this appeal, maintaining the impugned judgment of conviction dated 28.10.2003 and order on sentence of the even date, this appeal is dismissed. Bail bonds of the appellants-accused are discharged. They be taken in custody for serving the remaining period of sentence.

Copy of this order be sent to concerned CJM for compliance and report.

(Raj Rahul Garg)
Judge

03.08.2015
Waseem