

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

Crl. Appeal D-836-DB of 2003
Date of Decision : March 27, 2015

Kulwant Singh

.....Appellant

VERSUS

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

Present : Mr. S.S.Siao, Advocate
for the appellant.

Mr. S.S.Dhaliwal, Addl. A.G. Punjab.

T.P.S. MANN, J.

This appeal has been filed by accused-Kulwant Singh for challenging the judgment and order dated 3.6.2003 passed by the Judge, Special Court, Mansa whereby he was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, here-in-after referred to as “**the Act**”, and sentenced to undergo rigorous imprisonment for a period of 14 years and to pay a fine of Rs.1,00,000/-. In default of payment of fine, he was ordered to further undergo rigorous imprisonment for a period of one year.

The facts leading to the filing of the appeal are that on the basis of ruqa Ex. PJ sent by Inspector Gurjeet Singh on 29.7.1998 at 10.30 p.m. from village Meerpur Khurd, FIR Ex. PC

under Section 15 of the Act was registered at Police Station Sardulgarh against the appellant and one Harcharan Singh. It was mentioned therein that he alongwith SI Balwinder Singh, HC Gurcharan Singh, C-Jaspal Singh, C-Kamaljit Singh, SPO Jaswinder Singh and PHG Ranjit Singh was proceeding on a Government vehicle driven by Constable Harmander Singh towards villages Meerpur Khurd, Tibbi Hari Singh and Meerpur Kalan in connection with patrolling and checking of suspicious persons. When they reached near the bridge of Ghagar drain, he came across Malkit Khan son of Ram Sui, resident of village Sardulgarh, who was joined in the police party. After reaching the bridge, the police party put up a picket on the metalled road. At about 7.30 p.m., a truck came on a link road from the side of village Meerpur. Inspector Gurjeet Singh instructed the police party to stop the truck. SPO Jaswinder Singh gave a signal to the truck driver to stop the truck. It was noticed that the truck was being driven by a young person and one more young person was sitting on the conductor's seat. When the truck stopped, its driver tried to run away. SPO Jaswinder Singh, however, managed to apprehend him at some distance. When asked by Inspector Gurjeet Singh the driver disclosed that he was Harcharan Singh son of Jangir Singh, caste Jat, resident of village Meerpur Khurd. The person, who was sitting on the conductor's seat was also apprehended and on enquiry he disclosed that he was Kulwant

Singh @ Manak son of Jeet Singh, caste Rai Sikh, resident of Ranjitgarh Bandran. Inspector Gurjeet Singh told them that he had a suspicion about some narcotic substance being carried in the truck and, therefore, they had a right of their truck being searched by a Magistrate or a Gazetted Officer. Both of them stated that they wanted the search of their truck to be conducted by a Gazetted Officer. Their consent memos. were prepared, accordingly. A wireless message was, thereafter, sent with a request to Shri Mander Singh Sandhu DSP Halqa, Sardulgarh to reach the spot. After some time, DSP Mander Singh Sandhu reached the spot in an official vehicle. In his presence and in the presence of Malkit Khan, Inspector Gurjeet Singh conducted search of the truck bearing registration No. PB-03/2977 and noticed 48 gunny bags lying in its body and covered with polythene. The search of the bags revealed that they contained poppy straw. From each of the 48 bags which were kept in the truck, 100 grams of poppy straw was taken out as sample. On weighing the remainder, each of the 48 bags was found to contain 30 kgs of poppy straw. The sample parcels were sealed with the seal bearing inscription 'GS'. Separate impression of the seal was prepared. The sealed sample parcels and the 48 gunny bags containing poppy straw were taken into possession. The witnesses appended their signatures on the recovery memo. DSP Mander Singh Sandhu also signed the same. The seal after

use was handed over to SI Balwinder Singh. Personal search of Harcharan Singh and Kulwant Singh was separately conducted. As the two accused had kept poppy straw in their truck without any permit, they had committed an offence punishable under Section 15 of the Act. Accordingly, ruqa was prepared and sent to the Police Station.

During the investigation of the case, registration certificate of truck bearing No. PB-03/2977 in which the contraband was being carried was taken into possession. Besides, another forged registration certificate bearing No. RJ-31G-0668 issued by the D.T.O., Hanumangarh showing Jagsir Singh son of Darshan Singh as its owner was also recovered. The chassis and engine number of this registration certificate tallied with the registration certificate of truck bearing No. PB-03/2977. These registration certificates were taken into possession vide separate recovery memos. Both the accused were formally arrested. Statements of the witnesses were recorded. The samples were later on sent to the office of the Chemical Examiner, Patiala through Constable Gurtej Singh. After receipt of report of the Chemical Examiner and also the report from the D.T.O., Hanumangarh, final report under Section 173 Cr.P.C. was submitted. Both the accused were charged for committing the offence punishable under Section 15 of the Act to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Des Raj, Junior Assistant, D.T.O., Bathinda, PW2 Shri Vikas Chowdhari, L.D.C., D.T.O., Hanumangarh, PW3 Constable Gurtej Singh, PW4 ASI Rajinder Singh, PW5 SI Balwinder Singh, PW6 Inspector Gurjeet Singh and PW7 Mander Singh Sandhu, DSP. Report Ex. PO of the Chemical Examiner was brought on record by Inspector Gurjeet Singh during his deposition before the trial Court.

It may be worthwhile to mention here that while the evidence of the prosecution was being recorded, Harcharan Singh-accused died and a wireless message in this regard was received by the trial Court on 1.6.2001. The trial proceeded, thereafter, against Kulwant Singh-accused and after the prosecution closed its evidence, he was examined under Section 313 Cr.P.C. wherein he claimed that he was innocent and falsely implicated in the case. No incriminating article was recovered from him. He further stated that he was only working as a cleaner on the truck which was owned by Harcharan Singh. However, he did not produce any evidence in respect of his plea.

After hearing learned counsel for the parties and going through the evidence brought on the record, the trial Court held that the prosecution had established the guilt of Kulwant Singh-accused beyond reasonable doubt by leading corroborative and unimpeachable character of evidence. Accordingly, he was

convicted and sentenced, as mentioned above. Hence, the present appeal.

We have heard Mr. S.S.Siao, Advocate for the appellant and Mr. S.S.Dhaliwal, Addl. A.G., Punjab and scanned the evidence with their able assistance.

Learned counsel for appellant-Kulwant Singh has submitted that the prosecution did not comply with the provisions of Section 50 of the Act while conducting the search of the truck. According to the prosecution, Inspector Gurjeet Singh had a suspicion against the accused carrying some contraband in their truck. Accordingly, he offered to both of them that search of the truck was required to be conducted and they had a right of getting search of their truck conducted either from a Magistrate or a Gazetted Officer. However, no separate consent memos. in respect of each of the two accused were prepared. Only one joint consent memo. Ex. PD was prepared. It is also submitted that though one Malkit Khan was said to be accompanying the police party at the relevant time and he had also signed the various memos. prepared at the spot yet he was not examined by the prosecution as its witness. It is further submitted that even the seal used for sealing the sample parcels was not handed over to aforementioned Malkit Khan. Instead, it was entrusted to SI Balwinder Singh. Said Balwinder Singh while appearing before the trial Court as PW5 testified that he had returned the seal to

the Investigating Officer on the next day. According to the material available on the file, the sample parcels were sent by PW6 Inspector Gurjeet Singh through Constable Gurtej Singh to the office of the Chemical Examiner, Patiala on 6.8.1998 i.e. about a week after the recovery of the contraband. When Inspector Gurjeet Singh had already been handed over his official seal by SI Balwinder Singh a day after the recovery, possibility cannot be ruled out of Inspector Gurjeet Singh tampering with the sample parcels. It is also submitted that the appellant was present in the truck alongwith its owner-cum-driver Harcharan Singh as its cleaner and, therefore, it cannot be said that the appellant was in possession of the contraband. It is finally submitted that the appellant is not a previous convict and is a married person. He is required to look after his children and old parents. The sentence of 14 years imposed upon the appellant is excessive and deserves to be reduced.

Learned State counsel has submitted that the prosecution has been able to establish its case against the appellant beyond reasonable doubt and, thus, the appellant has been rightly convicted by the trial Court. Even the sentence of imprisonment of 14 years is commensurate with the crime committed by the appellant.

It is the prosecution case that Inspector Gurjeet Singh had asked both the accused that he suspected about the

transportation of the contraband in the truck by them as after the truck was stopped, its driver-cum-owner, namely, Harcharan Singh had tried to run away. Accordingly, he told the accused that they had a right to get search of the truck conducted in the presence of a Magistrate or a Gazetted Officer and in reply thereto both the accused stated that the search be conducted in the presence of a Gazetted Officer. In this regard a joint consent memo. was prepared but that is not sufficient to reject the prosecution version. The reason for the same is that the provisions of Section 50 of the Act are not at all applicable to the facts and circumstances of the case. At the relevant time, Inspector Gurjeet Singh had a suspicion of some contraband being carried in the truck and, therefore, the search of the truck was to be conducted. The search of any of the two accused was not required to be conducted and, thus, the provisions of Section 50 of the Act were not required to be complied with. Therefore, no benefit of the non-compliance of the provisions of Section 50 of the Act can be extended to the appellant.

It is the prosecution case that when the police party headed by Inspector Gurjeet Singh was going on patrol duty, it came across Malkit Khan, who was joined in the police party. A police picket was then set up and the police party started conducting search of the persons and the vehicles moving on the road. After some time when the truck belonging to and driven by

Harcharan Singh came to pass that site, it was stopped. After stopping the truck, its owner-cum-driver Harcharan Singh tried to run away but was apprehended at some distance. The consent of both the accused was obtained for search of their truck in the presence of a Magistrate or a Gazetted Officer. Both the accused wanted said search to be conducted by a Gazetted Officer. Their joint consent memo. was obtained in that regard. After the arrival of DSP Mander Singh Sandhu, the search of the truck was conducted which led to recovery of 48 bags of poppy straw. Samples weighing 100 grams each were taken from each of those 48 bags. Even the remainder poppy straw was also taken into possession. Various memos. were prepared in that regard. The same were duly signed by Malkit Khan. Said Malkit Khan was cited by the prosecution as one of its witnesses for supporting its case. He was served for 19.2.2003 but did not come present. On the adjourned dates i.e. 31.3.2003 and 19.4.2003 also, he did not come present in the trial Court. On 26.4.2003, learned Additional Public Prosecutor closed the prosecution evidence. Thus, for all intents and purposes, Malkit Khan, the only independent witness was not examined by the prosecution in support of its case. At the same time, from the statements of PW6 Inspector Gurjeet Singh, PW5 SI Balwinder Singh and PW7 DSP Mander Singh Sandhu, it is made out that none of them was inimically disposed towards the appellant. So

much so that none of them was even suggested that they had reasons to falsely implicate him. The only suggestion put to PW6 Inspector Gurjeet Singh and PW5 SI Balwinder Singh was that the appellant did not know as to what was contained in the truck and the case foisted upon him only because he was cleaner of the truck. Though these suggestions were denied by the said two witnesses but going by the tenor of the suggestions put by the defence, it is practically admitted that the contraband was recovered from the truck which was owned and driven by Harcharan Singh and at the relevant time, the appellant was also present in the truck, being its cleaner. It is not a case where small recovery of contraband was effected from the truck of which the appellant, being a cleaner, could not have known of the same. It was recovery of 48 bags of poppy straw from the truck in question and each bag weighed 30 kgs. It is a case of huge recovery of 1440 kgs of poppy straw and, therefore, the appellant being in possession of the same made himself liable for committing the offence under Section 15 of the Act. Section 54 of the Act enables the Court to draw presumption against the accused of committing the offence under the Act in respect of any narcotic drug for being in possession of the same unless he fails to account for it satisfactorily. Merely suggesting to the witnesses that the appellant was only a cleaner of the truck, would not be sufficient to dispel the presumption under Section 54 of the Act.

In such a situation, no benefit of non-examination of independent witness, namely, Malkit Khan can be extended to the appellant.

The recovery of the contraband was said to have been effected on 29.7.1998 at about 7.30 p.m. From each of the 48 bags, 100 grams of the contraband was taken as samples which were duly sealed with the seal inscription 'GS' of Inspector Gurjeet Singh. Separate specimen impression of the seal was prepared and the seal after use was handed over by PW6 Inspector Gurjeet Singh to PW5 SI Balwinder Singh. Further, from the evidence, it is made out that on the next day, PW5 SI Balwinder Singh had returned the seal to PW6 Inspector Gurjeet Singh. Samples and the seal impression were retained by PW6 Inspector Gurjeet Singh. On 5.8.1998 after preparing form-29 he handed over the samples with the seal impression to PW3 Constable Gutej Singh, who after getting the docket issued from the office of Senior Superintendent of Police, deposited the same in the office of the Chemical Examiner, Patiala on 6.8.1998. In his testimony before the trial Court, PW6 Inspector Gurjeet Singh testified that so long the case property and samples remained with him neither he nor any one else tampered with the same. No material was brought on record that the case property and the samples were tampered with before the samples were sent to the office of the Chemical Examiner. Only a suggestion was put to PW6 Inspector Gurjeet Singh that he had tampered with the case

property and the samples which suggestion was specifically denied by him. PW3 Constable Gurtej Singh in his affidavit Ex.PA, which was tendered before the trial Court, stated on oath that on 5.8.1998, as per the instructions of Inspector Gurjeet Singh, he obtained a docket from the office of Senior Superintendent of Police, Mansa and reached the office of the Chemical Examiner, Patiala where he deposited the samples alongwith the sample seal and other documents in intact condition on 6.8.1998 and obtained receipt in that regard. On 7.8.1998, he produced the receipt before Inspector Gurjeet Singh. He further stated that so long the case property and the samples remained with him, neither he nor any one else tampered with the same. Thus, the prosecution has been able to establish the sample parcels and the seal impression being received in an intact condition by the Chemical Examiner. Therefore, the link evidence is complete.

In view of the above, no case is made out for any interference in the conviction of the appellant under Section 15 of the Act.

As regards the quantum of sentence of imprisonment, it may be noticed that the appellant and his co-accused Harcharan Singh were found in possession of 1440 kgs of poppy straw at the time of the search of the truck in which they were transporting the same. At the same time, the appellant is not

shown to be a previous convict. He is required to look after his wife, children and parents being the sole earning member in the family. Taking into consideration the totality of the circumstances, this Court is of the view that the imprisonment of 14 years imposed upon the appellant is excessive. Ends of justice would be amply met if the same is reduced to rigorous imprisonment for 12 years.

Resultantly, the conviction of the appellant under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is upheld. His substantive sentence of imprisonment of 14 years is reduced to rigorous imprisonment for a period of 12 years. The sentence of fine alongwith its default clause is maintained.

The appeal is, accordingly, disposed of.

**(T.P.S. MANN)
JUDGE**

March 27, 2015
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**(MAHAVIR S. CHAUHAN)
JUDGE**