

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

307

CRA-S-1337-SB-2002

DATE OF DECISION: February 25, 2015.

Gejo

....Appellant.

VERSUS

State of Punjab

....Respondent.

CORAM : HON'BLE MR. JUSTICE M. JEYAPPAUL

Present: Mr. C.S. Jattana, Advocate
for the appellant.

Mr. R.S. Randhawa, Addl. A.G., Punjab.

M.JEYAPPAUL, J.(Oral)

1. Accused Gejo has challenged in the present appeal the judgment of conviction and order of sentence passed by the learned trial Court under Section 15 of NDPS Act.

2. On 15.02.2000, PW3 Inspector Surinder Pal Singh, SHO of P.S., Barnala, received a secret information that accused Gejo was in possession of poppy husk. Report Ex.PA was prepared and the same was sent to the police station for registration of a case. The First Information Report Ex.PA was registered by HC Avtar Singh. PW3 along with PW4 ASI Gurcharan Singh proceeded to the house of accused Gejo having joined Paramjit Kaur as an independent witness, who was examined as DW2 and conducted raid at the house of the accused at Barnala. Gejo was found sitting on two bags containing some materials. PW3 informed accused Gejo

that he suspected that the bags contained illegal articles. He also informed the accused that she has a right to get herself searched either in the presence of a Gazetted Officer or a Magistrate. As per the wishes of the accused, a wireless message was sent to PW1 DSP Balwant Singh, who arrived at the house of accused Gejo. In the presence of PW1, search of the bags was conducted. Each bag was found to contain 35 Kgs of poppy husk. Two samples of 250g of poppy husk from each of the two bags were drawn. The samples as well as the remaining bulk quantity was separately parcelled and sealed. Personal search of the accused was conducted by DW2 Paramjit Kaur who recovered a sum of Rs.65/- from her possession vide memo Ex.PC. Disclosing the ground of arrest, accused was arrested. The accused as well as the case property was produced before PW2 MHC Avtar Singh. The accused was remanded to judicial custody. PW4 produced the case property along with the samples drawn therefrom before the Judicial Magistrate, Barnala and as per his directions, the case property along with samples was deposited with PW2 MHC Avtar Singh. The samples sent for examination by FSL, turned out to be poppy husk.

3. The accused took up a plea in her statement under Section 313 that she was innocent. No recovery was effected from her but unfortunately, a false case was registered against her.

4. The trial Court having adverted to the above evidence on record in the background of FSL report, came to a conclusion that the accused was found in conscious possession of 70 kgs of poppy husk.

5. The learned counsel appearing for the appellant would submit that there was a delay of 6 days in sending the samples to the Forensic Science Laboratory. Under such circumstances, there have been chances of

tampering with the samples. He would further submit that Constable Nirmal Singh, who carried the samples to the FSL, was not examined, nor was HC Gurcharan Singh, who carried the Ruka to the police station for registration of the case, examined. He would also submit that PW4 ASI Gurcharan Singh never spoke about the production of the case property before the learned Judicial Magistrate. It is his last submission that nothing is on record to show that the house in which the search was conducted belonged to the accused, therefore, it is his submission that conscious possession of the contraband was not established by the prosecution.

6. The secret information was received by PW3 Inspector Surender Pal Singh when he was engaged in Nakabandi. PW4 ASI Gurcharan Singh was also present along with PW3. PW3 had recorded the substance of the secret information he received in the form of ruka Ex.PE and sent the same for registration of the case. Further, the search was conducted only in the presence of PW1 DSP Balwant Singh. They have spoken in one voice that based on the secret information received by PW3, a raid was conducted in the house of the accused Gejo. Accused Gejo was found sitting on two bags containing poppy husk as noticed later during the search.

7. The very fact that the accused was sitting on the bags would disclose that she was in a conscious possession of the bags which contained poppy husk.

8. The accused has not set up a defence even in her statement under Section 313 of Cr.P.C. that the house which was subjected to search did not belong to her. The accused was found sitting on the bags in her house and therefore, in my view, conscious possession of the accused is

found established by the prosecution.

9. Of course, the recovery was effected on 15.02.2000 and the First Information Report there upon was registered on the very same day, but the sample had been sent only on 21.02.2000 to the Forensic Science Laboratory.

10. From a careful perusal of the record, I find that the MHC who received the samples along with bulk quantity found that the samples were in tact. The FSL report would also disclose that the seal on the samples were not tampered with. In such circumstances, the case of the prosecution cannot be thrown over board just because there was a delay of 6 days in dispatching the samples to the FSL.

11. It is true that Constable Nirmal Singh, who took the sample to the FSL and HC Gurcharan Singh, who carried the ruka as per the direction of PW3 to the police station, were not examined. In my considered view, neither Constable Nirmal Singh nor HC Gurcharan Singh were material witnesses to establish the conscious possession of contraband. Samples sent for examination and ruka sent for registration of the case have been independently proved by the prosecution and therefore, non examination of those two witnesses does not weaken the case of prosecution.

12. It was very without proper verification submitted that the case property was not produced before the Judicial Magistrate, but on a careful perusal of statement of PW4 Gurcharan Singh, it is found that it was he, who produced the samples as well as the bulk quantity of contraband before the learned Judicial Magistrate and on his direction, the case property was entrusted to the MHC. Therefore, I do not find any merit in the above argument of learned counsel for the appellant.

13. The FSL report would go to establish that the samples sent for examination were nothing but poppy husk. In my view, the trial Court has rightly come to the conclusion that the accused was found in conscious possession of 70 kgs of poppy husk.

14. Therefore confirming the judgment of conviction and order of sentence, the appeal stands dismissed. Accused, who is on bail, shall surrender within 15 days from the date of this judgment before the Chief Judicial Magistrate, Barnala. If she fails to surrender, the learned Chief Judicial Magistrate shall issue warrant of arrest and send the accused to jail to undergo the remaining period of sentence.

(M. JEYAPPAUL)
JUDGE

February 25, 2015.
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