

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

CRR No.744 of 2005

Date of decision : 09.09.2015

Sultan Singh

...Petitioner

Versus

State of Haryana

...Respondents

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Harish Nain, Advocate,
for the petitioner.

Mr. Arun Luthra, AAG, Haryana.

JITENDRA CHAUHAN, J.

The instant revision petition is directed against the judgment dated 22.03.2005, passed by the learned Additional Sessions Judge, Gurgaon (for short, 'the Appellate Court), whereby the appeal preferred by the petitioner has been dismissed and the judgment of conviction dated 23.12.2004, and the order of sentence dated 24.12.2004, passed by the learned Chief Judicial Magistrate, Gurgaon, (hereinafter referred to as 'the trial Court'), have been upheld. The petitioner has been convicted by the trial Court under Sections 472 and 465 of the Indian Penal Code (for short, 'the IPC') and sentenced as under:-

<i>Conviction</i>	<i>Sentence</i>	<i>In default</i>
Section 472 IPC	Rigorous imprisonment for a period of 05 years and to pay a fine of Rs.1,000/-	To further undergo simple imprisonment for a period of 02 months
Section 465 IPC	Rigorous imprisonment for a period of 02 years.	--

However, the substantive sentences were ordered to run concurrently.

The brief facts of the case as reflected in the trial Court judgment, are reproduced as under:-

“2. On 10-11-2003 when Rampal, ASI and his official companions were present in the area of old Delhi Road, Katarpuri crossing, in connecting with official duty, a secret information was received that Sultan and Multan, residents of Sisar were running a tea khoka in the parking area of Raj Kumar Yadav on Katarpuri road and both of them were involved in preparing forged driving licences. They were in possession of all the articles required for forging the driving licences. If raid be conducted they both could be caught red handed along with forged driving licences and seals etc. Efforts were made to join witnesses from the public in the raiding party but none was willing to join. Thereafter, the police party raided the khoka of the accused where two persons

were found present along with articles used for preparation of the forged driving licences. They were apprehended. One of them was found in possession of round seals and driving licence No.1343555N dated 15-7-2002 of Kishan Mukund Mishra. He disclosed his name to be Sultan son of Rati Ram R/o Sisar. The other was found in possession of a cloth bag containing seals, stamp pads, and blank forms of driving licence. On query, he disclosed his name to be Multan son of Rati Ram R/o Sisar. 170 blank driving licence cards, 155 Driving Licences of Haryana, 160 driving licences of Assam, 188 driving licences of Calcutta, Ball-point pens, stamp pads, seals of Motor Vehicle authority, RTA Guhati, RTA Hisar Licencing authority, Pass-port size photographs of 11 persons and even forged driving licences of Vinod Nayar, Vijay Pal, Sonu Malik, Sunil, Sultan Singh, Hosiar were recovered from their possession. These articles were taken into possession of police. Ruka was sent for registration of the case against the accused. After usual formalities, challan was put in the court for trial.”

In the first instance, the accused were challaned under Section 420, 468, 471 IPC, to which they pleaded not guilty and claimed trial.

Vide order dated 20.02.2004, Multan, co-accused, was declared juvenile by the learned Additional Sessions Judge, Gurgaon and his case was separated from the main file and sent to Juvenile Justice Board, Gurgaon.

In order to prove its case, the prosecution examined Ismail as PW-1; HC Mahipal as PW-2; Deepak as PW-3; Vijay Pal as PW-4; Rohtash Singh as PW-5; Sukantpal as PW-6; Rampal as PW-7; Partap Singh, Assistant Secretary as PW-8; and Shri Gian Singh as PW-9. The prosecution evidence was closed by order on 10.11.2004 as despite availing numerous opportunities, it could not exhaust the entire list of witnesses.

On 2.12.2004, it was observed that in spite of the allegations of possessing counterfeit seals and other instruments for making impressions intending that they shall be used for the purpose of committing forgery, charge under Section 472 IPC was not framed. Accordingly the charge-sheet was ordered to be amended and fresh charge-sheet under Sections 420, 468 and 472 IPC was filed against the accused to which the accused-petitioner pleaded not guilty. Thereafter, on the request of the APP, ASI Inder Singh, was re-examined as PW-10 and the evidence was closed by Court order on 07.12.2004.

When examined under Section 313 of the Code of Criminal Procedure, the accused-petitioner denied all incriminating evidence as false and pleaded innocence.

The learned trial Court, after hearing learned counsel for the parties and analysing the evidence on record, convicted and sentenced the petitioner as detailed at the outset of this judgment. Feeling aggrieved, the petitioner preferred an appeal before the learned Appellate Court, which was also dismissed. Hence, the present revision petition, which was admitted by this Court on 04.07.2005.

The learned counsel for the petitioner has vehemently argued that in the present case, there is complete non-compliance of the provisions of Section 100(5) Cr.P.C. He refers to the testimony of PW-6, Constable Sukand Pal, who had admitted that the recovery memo was signed at the CIA Police Station. Similarly, HC Mahipal, PW-2, had admitted that the recovered articles were not sealed at the spot. He further submits that as per the prosecution case, despite the fact the raid was conducted on the basis of some secret information, no independent witness was joined at the time of conducting the raid. He cites 2014(1) R.C.R. (CrI.) 424 and 2004(2) R.C.R. (CrI.) 745. It is further contended that Krishan Mohan Misra, whose licence was allegedly recovered from the petitioner, was not examined by the prosecution. PW-3, Deepak, Steno Typist and PW-4 Vijay Pal Yadav, also did not

support the case of the prosecution. There are material contradictions in the statements of the prosecution witnesses.

On the other hand, the learned State counsel has opposed the present revision petition on the ground that concurrent findings against the petitioner have been recorded by the learned Courts below.

I have heard learned counsel for the parties and perused the record.

Section 100(5) Cr.P.C. reads as under:-

“100. Persons in charge of closed place to allow search.

(1)XXX

(2)XXX

(3)XXX

(4)XXX

(5)The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.”

PW-6, Constable Sukand Pal, had admitted that he had signed the recovery memo at the CIA Police Station. Similarly, PW-2, HC Mahipal, had admitted that the recovered articles were

not sealed on the spot. Therefore, there is a violation of the mandatory provisions of Section 100(5) Cr.P.C., in the present case.

In ***Bhuptej Pal Singh Vs. State of Punjab, 2014(1)***

R.C.R. (Criminal) 24, it has been held as under:-

“18. There is substance in the submissions of learned counsel for the appellant. The revolver (Ex.P1) and the cartridges (Exs. P2 to P5) were concededly not sealed on the spot. There was every opportunity for the Investigating Officer or the members of his investigating team to tamper with the recovered articles and the benefit of the same has to be extended to the appellant. The fact assumes importance when the learned counsel for the appellant submitted that in spite of the availability, no independent witness was joined. It has come in evidence of PW4, Constable Harjinder Singh, that so many people were present on the spot. The alleged raid was conducted at around 6:30 p.m. and the place of occurrence was Rajinder Park and the said area is situate in the thickly populated area of Moga City. In such a scenario, it was expected from the Investigating Officer to have joined one or more witnesses from the public to witness the recovery....”

The raid was conducted on a secret information received by ASI Rampal. The alleged place of occurrence is a parking area where, number of trucks were already parked and

good number of people were present. In spite of this fact, no independent witness was joined.

It is further to be noticed that while appearing in the witness box, PW-2, HC Mahipal has stated that the raiding party went in a jeep to reach the place of occurrence. On the contrary, PW-6 Sukant Pal, has stated that they reached there in a private three-wheeler.

The co-accused, Multan Singh, who faced trial before the Juvenile Justice Board, stands acquitted vide order dated 12.11.2010, on the same set of evidence.

Keeping in view the totality of the facts and circumstances of the present case, the present petition is allowed and the petitioner is acquitted of the charges framed against him by giving him benefit of doubt. He is stated to be on bail. His bail bonds shall stand discharged.

09.09.2015
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Note : Whether to be referred to the Reporter : Yes / No.