

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

CRA-S-1952-SB of 2003
Date of Decision : 01.09.2015

Ram Piara and another

.....Appellants

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether reporters of local newspaper may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the digest?

Present: Mr. B.S. Kathuria, Advocate
for the appellants.

Mr. J.S. Brar, Astd. Advocate General, Punjab.

FATEH DEEP SINGH, J.

Initially three accused Ram Piara (since deceased), Kuldeep Singh @ Deepa (present contesting appellant) and Jasbir Singh (since acquitted) were put up for trial in case bearing FIR No.159 dated 1st August, 2000, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short “the Act”) pertaining to Police Station Nawan Shahr.

The Court of learned Special Judge, Nawan Shahr through impugned judgment dated 7th October, 2003 acquitted

Jasbir Singh whereas found guilty both Ram Piara and Kuldeep Singh @ Deepa present appellants for the commission of offence under Section 15 of the Act and sentenced them to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1.00 lac each and in default to further undergo rigorous imprisonment for one year. The same is subject matter of challenge before this Court. The appeal qua Ram Piara has since abated and the lone contestent is appellant-Kuldeep Singh @ Deepa.

Heard Mr. B.S. Kathuria, Advocate for the appellants and Mr. J.S. Brar, Asstt. Advocate General, Punjab and perused the records of the case.

The brief allegations are that during the intervening night of 31st July, 2000 and 1st August, 2000, Police Party headed by S.I. Sohan Lal during patrolling came across in the area of village Mohallon and found three persons sitting on a heap of bags. When the Police Party tried to apprehend them one of them, later identified as Jasbir Singh and who stood acquitted, escaped whereas two Ram Piara and Kuldeep Singh @ Deepa were apprehended. From the bags numbering 31, each containing 40 kilograms of poppy husk in all totalling to 1240 kilograms poppy husk, was recovered. After necessary formalities the accused were put to trial leading to their conviction.

The contentions of learned counsel for the appellants

that there is non-compliance of provisions of Section 42 of the Act has been well countered by the State Counsel and certainly being a recovery from an open public place, provisions of Section 42 are inapplicable. Section 43 of the Act invest a duly authorized person in terms of Section 42 of the Act to search and detain any person against whom reasonable apprehension is there of being in possession of contraband and can arrest him as per law. The next contention of the appellants counsel that the very story of the prosecution is implausible as it is unacceptable that at dead of the night the accused would be sitting on the heap of bags, though, is sought to be refuted with much elance on behalf of the State. However, having regard to the fact that the prosecution allegations are that a commercial quantity of contraband has been recovered which invites heavy sentence and penalty, the Court is under obligation to scrutinize the case with more care and caution. The appellants counsel has drawn the attention of this Court to the rough site plan Ex. PL, to argue that it depicts that the alleged place of recovery is situated in between the agricultural fields.

To the very query of the Court, the learned State counsel was purely at loss of words as to what evidence has come as to the very ownership of this land or its possession and nothing tangible has even come during investigations qua this aspect and

the very cross-examination of the Investigating Officer PW4-SI Sohan Lal shows that he has shown total ignorance over the very ownership or possession of the place in question and admits that he did not conduct any enquiry qua this aspect of the matter. He even admits that the *Mohtim* of the Dargah in the vicinity was also not joined in the investigations are certainly matters which have a debilitating effect on the case of the prosecution.

In his second line of contention the counsel for the appellants has sought to forcibly attack the very presence of Ramji Lal, Superintendent of Police who has been examined as PW-3. It has been pointed out that the witness states in the examination-in-chief that he sealed all the gunny bags and the sample bags with his seal **RL** and also prepared specimen of his seal. As has been pointed out most crucial document to reflect on the same by way of Form 27 Ex.PQ shows that it carries the seal of impression RL and, thus, the claim of the Investigating Officer in his statement as PW-3 shows that the SHO/Investigating Officer never affixed his seal on any document/article and which is also the stand of Investigating Officer-Sohal Lal as PW-4, thus, the very presence of Investigating Officer throughout the investigations is doubtful. The averments of the prosecution that the Superintendent of Police handed over these articles to SI-Sohan Lal, also stands under a cloud of doubt. Thus, it is apparant as has

been contended by the appellants counsel that there has been total violation of the provisions of Section 55 of the Act. Though, these provisions are only directory but since he is an Investigating Officer associated with the recovery, his presence is nowhere corroborated by any of his conduct which were necessary in terms of provisions of the Act. To further add to the woes of the prosecution the fact that the seal remained with the Superintendent of Police are matters which certainly raise doubt over the authenticity of the prosecution version and what is baffling to this Court as has come in the statement of the Superintendent of Police PW3-Ramji Lal in examination-in-chief that no statement of his under Section 161 Cr.P.C. has been recorded makes his presence wholly impregnated with doubt and falsehood. Moreover, the learned State Counsel could not bring to the notice of this Court any steps that have been taken in compliance of provisions of Section 57 of the Act which is also an essential pre-requisite to safeguard against false implications and to ensure genuineness and credibility to the allegations of the prosecution. Merely, because the accused were sitting on the heap of gunny bags in a vicinity of Dargah unless or until there is a tangible evidence that they were in conscious possession of the same, a creeping doubt comes to the mind of the Court over the veracity of the prosecution story, together with the fact that there

is no independent corroboration to the prosecution story which has become all the more important in view of these suspicious surrounding circumstances and the fact that it is the categorical stand of the accused that they had initially prior to the present case had filed contempt petition against the Police of Police Station, Nawan Shahr, which has been proved as Ex.DA which was filed in the year 1999 and one of the accused-Piara Ram was found to be in illegal custody of the Police of Police Station, Nawan Shahr when the Warrant Officer on 16th October, 1998 conducted a raid on the direction of the Court in a habeas corpus petition, are matters which have an over-bearing effect on the case of the prosecution and instills an unrebutted suspicion that the present case is more of an outcome of vengeance and vendetta by the Police and which arguments of the appellans' counsel could not be controverted on behalf of the State.

Thus, in the totality of what has been detailed and discussed above, learned trial Court has certainly fell into an error in taking a pure lackdiasical approach into the matter, misconstrued the evidence and the defence. The impugned judgment as such suffers from illegality and perversity and needs to be set aside by way of acceptance of the instant appeal thereby

setting aside the impugned judgment of conviction dated
07.10.2013. Records be sent back.

September 01, 2015
Dpr

(FATEH DEEP SINGH)
JUDGE