

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

CRA-S No.2159-SB of 2003

Date of decision: 1st December, 2015

Inderjit Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vivek Goyal, Advocate
for the appellant.

Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab.

FATEH DEEP SINGH, J.

Appellant/convict Inderjit Singh who was one of the three accused in case bearing FIR No.121 dated 22.10.2000 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as, 'the Act') pertaining to Police Station Kartarpur, was solely held guilty for commission of offence under Section 15 of the Act and was sentenced to undergo Rigorous imprisonment for 10 years and to pay a fine of ₹1,00,000 in default of payment of fine to further undergo rigorous imprisonment for 6 months vide impugned judgment of conviction and order of sentence dated 03.11.2003 of learned Judge, Special Court, Jalandhar; has challenged the same before this Court in this appeal.

Heard Mr. Vivek Goyal, Advocate on behalf of the appellant and Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab representing the respondent/State and perused the records of the case.

The brief facts that needs narration are that on 22.10.2000 police party headed by Inspector Gurmail Singh happened to be present for general patrolling at Bus Stand, Kartarpur, who received secret information that the appellant who is also known as Ghoga was indulging in illicit trade of poppy husk and if raid is conducted at his place, contraband can be recovered. The Investigating Officer sent intimation Ex.PD and ruqa Ex.PE was prepared, on the basis of which FIR Ex.PE/1 was registered. Independent witness Mangat Ram was joined in the police party and DSP Opinderjit Singh Ghuman was associated with the police party after the special report was sent. Thereafter, the police party conducted raid at the Dera of the accused situated amidst agricultural fields of village Pattar Kalan. The accused was found sitting on a cot in the room. The police party headed by DSP Opinderjit Singh Ghuman expressed their suspicion and inclination to search the place after disclosing his identity and apprising the accused of his rights. The accused reposed confidence in the DSP on the basis of which consent memo Ex.PC was prepared. On search of the premises, nine bags each containing 34 kg 250 grams of poppy husk were recovered, in all totaling to 308 kg 250 grams. From each of the bags, samples were drawn and each of the samples as well as the residual contraband Ex.P1 to Ex.P9 were

sealed in separate parcels with seal having impression 'OJS' of the DSP Opinderjit Singh Ghuman and 'GS' of the Investigating Officer Gurmail Singh and were taken into police possession through memo Ex.PD. The seal after use was handed over to the independent witness by the Investigating Officer. The accused was arrested through memo Ex.PD/1 and information Ex.PF was sent. Investigating Officer prepared rough site plan Ex.PQ of the place of recovery, recorded statements and after necessary formalities and on receipt of report of the analysis Ex.PX opining the contents to be poppy husk, challan was presented and the accused was put to trial.

Prosecution examined PW1 C. Charanjit Singh and PW2 Vidya Sagar. PW3 AMHC Tarlochan Singh, formal witness tendered his affidavit Ex.PB and PW4 DSP Opinderjit Singh Ghuman detailed the events of recovery. PW5 Bant Singh corroborated the factum of recovery whereas PW6 Inspector Nirmal Singh, SHO proved the formalities undertaken and thereafter the Investigating Officer Inspector Gurmail Singh testified as PW7 followed by testimony of PW8 C.Charanjit Singh by way of his affidavit Ex.PA.

The incriminating evidence, oral as well as documentary, was put to the accused under Section 313 Cr.P.C. who denied the same and in his defence examined DW1 Boota Singh, Member Panchayat to show his false implication along with DW2 Dalip Singh, Draftsman to prove the site plan Ex.D1 and thereafter, DW3 C.Sushil Kumar from Police Station Nurmahal proved copy of the FIR Ex.D2 and DW4 HC Kulwant Singh produced the documents Ex.D2 to Ex.D5,

of different FIRs registered at Police Station, to establish the fact that Mangat Ram is a stock witness of the police. Thereafter, on closure of the defence evidence led to passing of the impugned findings.

Mr. Vivek Goyal, representing the appellant, at the very onset of his submissions has sought to highlight that there has been total violation of the provisions of Section 42 of the Act as the information was secret information prior to the recovery and there has been non-fulfillment of the mandatory provisions, and has relied upon **‘Karnail Singh v. State of Haryana’ reported in 2009(5) RCR (Criminal) 515**, but the same is stoutly opposed by the learned State counsel who has sought to assert that there has been due reducing into writing of the information and which was duly intimated to the immediate superior, DSP Opinderjit Singh Ghuman, who arrived at the spot and thus, nothing is found wanting in the procedure so prescribed in law.

It is the own case of the prosecution which has remained unscathed that upon receipt of the secret information and on despatch of ruqa, DSP Opinderjit Singh Ghuman was called to the spot, in itself illustrates that there has been due sending of the information to the immediate officer superior by the Investigating Officer and the fact that ruqa Ex.PD/PE was duly sent and more so, in the case of **‘Union of India v. Satrohan’ reported in 2008(8) SCC 313**, the Hon’ble Supreme Court of India has very well laid down while interpreting the provisions of Section 42 of the Act holding that where search is conducted by a gazetted officer himself, compliance of Section 42 is

not necessary. However, in the present case, the arguments put forth by learned counsel for the appellant are certainly untenable being contrary to what is there on the record and has been well elaborated even in the testimonies of PW4 DSP Opinderjit Singh Ghuman; now SP(D) who has categorically stated having received the intimation through wireless from the Investigating Officer as well as deposition of the Investigating Officer PW7 Gurmail Singh, now DSP, who has specifically stated that on receipt of the information he sent an intimation Ex.PE, thus clearly erodes the very credibility of the submissions of the appellant's counsel. Thus, these arguments of the appellant's side fall down to the ground.

The other line of arguments that has been made by the appellant's counsel revolves around the very non-fulfillment of the provisions of Section 57 of the Act, which provides sending of report of arrest and seizure and which essentially lays down that within 48 hours of the arrest or seizure a full report has to be made to the immediate superior officer. As has been argued on behalf of the State, the DSP who has been examined as PW4, being the officer immediate superior has been duly intimated in writing as well as orally and therefore, there is sufficient compliance of these provisions which are not mandatory. Moreover, the recovery has been effected in the presence of a gazetted officer of the rank of DSP as well as independent witnesses Mangat Ram and Vidya Sagar. Though, as is obvious, one of these witnesses Vidya Sagar has not supported the prosecution story and has been declared as hostile, however by now it

is well settled position of law that the testimony of a hostile witness is not to be thrown overboard and if something incriminating comes forth, it can be taken as a legitimate piece of evidence. But nothing has come forth in his cross-examination which could be of any help to the prosecution and even if it is accepted that the other witness Mangat Ram is sought to be proved through the defence witness DW3 C. Sushil Kumar and documents Ex.D2 to D5, the FIRs in which he has been cited as a witness; does not necessarily means that he is a stock witness of the police unless and until there is some tangible evidence to establish it so. It has been rightly argued on behalf of the State by placing reliance upon '**Jarnail Singh v. State of Punjab**' 2011(1) **RCR(Criminal) 925**, where the Hon'ble Apex Court has held that mere non-examination of independent witness who was earlier associated, does not undermines the case of the prosecution, holding that there is always a reluctance on the part of the villagers or strangers to testify to ward off any such enmity that might ensue out of it. Moreover, there is nothing in law that testimonies of official witnesses cannot be accepted. DSP Opinderjit Singh Ghuman; Inspector Gurmail Singh and PW5 C. Bant Singh have clearly elaborated the manner in which raid was conducted leading to recovery of the contraband. Learned counsel for the appellant could not point out anything incriminating that has come in the cross-examination of these official witnesses which could make their testimonies unacceptable and whose testimonies could be discredited.

Though on behalf of the appellant Mr.Goyal has sought to assert that the dwelling unit 'Dera' from which recovery has been effected could not be proved to be owned and exclusively possessed by the appellant, are matters which have neither been taken up in defence by the accused to deny his conscious possession of the contraband or his legitimate possession over the premises from where recovery has been effected. The prosecution through testimonies of the witnesses have duly proved the recovery of contraband at the behest and in possession of the appellant, who was sitting in the room with the contraband for which there is no plausible explanation given by him, and learned counsel for the appellant could not convince this Court how the accused has been able to rebut this presumption shown and enshrined by virtue of Section 54 of the Act.

On careful perusal of the impugned findings, which are duly supported by cogent reasoning and correct appreciation of evidence, oral as well as documentarily proved on the file, and at no point of time learned counsel for the appellant could pinpoint that any prejudice has been caused to the appellant during the trial or any such factor which could have its adverse impact on these findings. There has been apparently no miscarriage of justice. Thus, finding the impugned judgment to be wholly sustainable, the appeal being wholly devoid of any merit stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

December 1, 2015
rps