

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

**CRA-S-2178-SB of 2003 (O&M)
Date of Decision: March 25, 2015**

Lala Singh ...Appellant

Versus

State of Punjab ...Respondent

CRA-S-109-SB of 2007 (O&M)

Kala Singh ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Narinder Singh, Advocate
for the appellant (in CRA-S-2178-SB of 2003).

Mr. Nandan Jindal, Advocate
for the appellant (in CRA-S-109-SB of 2007).

Mr. J.S. Brar, AAG, Punjab
for the respondent-State.

FATEH DEEP SINGH, J.

Both these referred to above criminal appeals by convicts Lala Singh and Kala Singh having arisen in the same very case and an outcome of common judgment and order of sentence dated 13.11.2003 are being disposed off together.

The allegations of the prosecution are that on

20.1.1998, Police party from C.I.A. staff while on patrolling duty in the area of village Upali at a deserted place near a *katcha path* found two persons sitting on a gunny bag under the camouflage of bushes. Upon being apprehending their identities were revealed to be of present appellants Kala Singh and Lala Singh. After the Investigating Officer showed his inclination of search and recorded their option by way of memos Ex.PB and Ex.PC, and, thereafter, DSP as per the wishes of the accused being Gazetted officer was called and upon search of the bag underneath them poppy husk was recovered, out of which, two samples each of 250 grams were drawn separately and residual on weighing came to 30 kgs. Thus, totalling to 30 kgs and 500 grams and DSP, Ranbir Singh (now deceased) countersigned on the recovery memos as well as CFSL form and, thereafter, the same were taken into police possession through memo Ex.PD.

The Investigating Officer prepared ruqa Ex.PG and sent the same to the Police Station leading to the registration of FIR. Upon necessary formalities by way of recording statements of witnesses, preparing rough site plan Ex.PH, the samples were despatched to the Laboratory and on receipt of its report Ex.PJ opining the contents to be of poppy husk the accused were formally challaned.

The prosecution at the trial examined PW1 C. Ginder Singh, PW2 Inspector, Sardara Singh, PW3 HC Joginder Singh and PW4 Inspector, Gurpreet Singh. The accused denied the allegations in the stand taken under Section 313 Cr.P.C. leading to the conclusion, whereby, both the accused found guilty for committing an offence under section 15 of the Narcotic Drugs

and Psychotropic Substances Act, 1985 (in short, 'the Act') and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months.

Heard, Mr. Nandan Jindal, Advocate, Mr. Narinder Singh, Advocate for the appellants and Mr. J.S. Brar, Assistant Advocate General, Punjab and perused the records of the case.

Under the golden principle of criminal jurisprudence it is for the prosecution to establish its case beyond the shadow of reasonable doubt. Learned counsel for the appellants had made manifold submissions taking the plea that the accused were not proved to be in conscious possession of the contraband and has thus cited **Baldev Singh vs. State of Punjab 2005 (1) R.C.R.(Criminal) 823** and **Nachhatro vs. State of Punjab 2008 (1) R.C.R. (Criminal) 638** to enliven his argument. Further elaborating that the very presence of the DSP has not been established as he was never examined as a witness. He further argued that there was a delay in sending the samples to the Laboratory and even compliance of Section 50 of the Act have not been adhered too.

Learned State counsel has controverted these submissions arguing that the DSP had died before recording of the evidence which has been well elicited in the testimony of PW2 Inspector, Sardara Singh and that the prosecution has established the conscious recovery of the articles from the accused and, therefore, there being no material contradiction and adherence of all the provisions of law entails upholding of the judgment of the

conviction.

Appreciating the arguments, at the very onset, it is the case of the prosecution that the recovered contraband was in a gunny bag upon which the accused were found sitting and, since the recovery has been effected not from the person of a person and, therefore, provisions of Section 50 do not stand attracted as has been laid down in **State of Punjab Vs. Baldev Singh 1999 Vol IV SCC 595** and subsequently reiterated in the case of **Kalema Tumba vs. State of Maharashtra reported in 1999 Vol IV R.C.R (Criminal) 575.**

The arguments that the prosecution has not proved the conscious possession of the narcotics with the accused appears to be off the tangent. In this case it is very well established from the testimony of Investigation Officer PW2, Inspector Sardara Singh and the site plan proved by him by way of Ex.PH itself established beyond any doubt that the accused were found to be sitting with the contraband in a deserted place on a *katcha path* under bush camouflage. More so, the provisions of Section 54 of the Act which were enforced w.e.f. 2.10.2001 ensure that accused are certainly supposed to explain the circumstances of such a recovery and in their statements they have not explained the same and did not even examine any witness in defence to rebut the case of the prosecution. Thus, the cited ratios do not come to their aid. Learned counsel for the appellants could not pinpoint anything adverse that has come in the cross-examination of the principal witness of the prosecution.

The corroboration of the testimony of the Investigating Officer has come forth from the statement of PW3

H.C. Joginder Singh and he was the witness to whom Investigating Officer had handed over the seal after the same was used by the Investigating Officer and even both these witnesses have explained that due to odd hours no independent witness could be associated and it is not a rule of mandate but only a rule of caution that in such recoveries independent witness ought to be associated. However, nothing adverse could be brought to the notice of the Court in the cross-examination of these witnesses.

PW4 Inspector, Gurpreet Singh, SHO of the Police Station in his deposition has elaborated how the articles were produced before him on the day of the recovery and its intact deposit and, thereafter, its safe deposit in the Laboratory proved by PW1 C, Ginder Singh by way of his affidavit Ex.PA and that of MHC by way of Ex.PK. No doubt, as per the report of the Chemical Examiner the articles have reached the Laboratory on 3.2.1998 does not undermines the case of the prosecution merely on account of this delay as it is well established from this unrebutted evidence that the samples reached the Laboratory in an intact state. Thus, after the articles were deposited with the officer incharge the same have been despatched and there is nothing suggestive of the likelihood of the samples having been tampered.

The faint argument that no independent witness has been associated does not comes to the aid of the appellants as there is nothing in law to doubt the credentials of a witness in uniform and when there is sufficient explanation forthcoming from the prosecution as to the absence of the independent witnesses on account of deserted place and odd hours at the time of recovery such an argument needs to be brushed aside.

There is utter failure of the accused to explain for these circumstances which have led to the recovery of the contraband and the present case is factually at variance from **Baldev Singh vs. State of Punjab 2005 (1) R.C.R.(Criminal) 823** cited on behalf of the appellants as it was from near the dwelling place, a plot, from which the accused were found to be in possession and even in **Niku vs. State of Punjab 2010 (2) R.C.R. (Criminal) 454** relied upon by the defence the place of recovery was in a populated area quite in contrast to the case before this Court and similar is the situation in **Nachhatro vs. State of Punjab 2008 (1) R.C.R. (Criminal) 638,** thus, not much of a solace for the appellants.

The DSP, though, unfortunately having died could not be examined by the prosecution but his signatures have been proved on the documents so countersigned by him and rather brings about cogently the fact that it was before a senior police functionary recoveries were made.

It is the own stand of Mr. Narinder Singh, learned counsel for the appellant that the appellant is undergoing sentence in another similar drug case and has prayed for concurrent running of the sentences in these two matters. However, to the mind of this Court, neither the findings in the other case are before this Court nor the counsel for the appellant could convince this Court how a special ground is made out for this Court to exercise its power under Section 427 Cr.P.C. and, thus, in the absence of any special ground brought to the notice of this Court, the prayer for grant of such a benefit of concurrent

running of sentences is declined.

In view of the foregoing discussions, the learned lower Court while passing the judgment of conviction has rightly held that the prosecution has fully established its case beyond the shadow of reasonable doubt. Thus, finding no fault in these findings no indulgence needs to be shown. Both the appeals being without any merit stand dismissed.

(FATEH DEEP SINGH)
JUDGE

March 25, 2015
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