

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A No.878/2011**

Reserved on :16.10.2015

Date of Decision : 21.12.2015

SUMER SINGH

..... Appellant

Through: Mr. Mukesh Kalia, Ms. Sumita
Kapil, Ms. Astha, Mr.Vansh
Kalia, Advs.

versus

STATE

..... Respondent

Through: Ms.Alpana Pandey, APP for the
State
SI Dinesh Kumar, Special
Team, Crime

+ **CRL.A.No. 1164/2011**

BALBIR SINGH

..... Appellant

Through: Mr. Mukesh Kalia, Ms. Sumita
Kapil, Ms. Astha, Mr.Vansh
Kalia, Advs.

versus

STATE

..... Respondent

Through: Ms.Alpana Pandey, APP for the
State
SI Dinesh Kumar, Special
Team, Crime

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The appellants Sumer Singh and Balbir Singh have been convicted for the offence under Section 20 of the Narcotics Drugs and Psychotropic Substances Act (hereinafter referred to as NDPS Act, 1985) and have been sentenced to undergo rigorous imprisonment for ten years, fine of Rs.1,00,000/- and in default of payment of fine, further rigorous imprisonment of one year by judgment and order dated 13.04.2011/19.04.2011 passed by the Special Judge, NDPS in Sessions Case No.04/09 arising out of FIR No.470/2008 (P.S. Jahangir Puri).

2. The case of the prosecution is that on 19.09.2008 at about 12:15 p.m., secret information was received by SI Sunil Kumar (PW14) that between 1:30 p.m. to 2:30 p.m., contraband (charas) would be delivered to accused Yogesh and appellant Sumer Singh. The information provided was that the consignment of the contraband would come in a truck bearing registration No.JK-02-AD-4765, which truck would reach Shimla Gate, Fruit Mandi, Azad Pur, Shalimar Bagh Road, Delhi between 1:30 p.m. to 2:30 p.m. The information was very specific. The informer stated that charas has been kept in three cartons of apples, which are in driver's cabin.

3. On receipt of such information, SI Sunil Kumar (PW14) produced the secret informer before ACP, Joy Tirkey, and also reduced the secret information in writing (DD No.7). As directed by ACP Tirkey, a raiding team was constituted comprising HC Rajinder, HC Kanwar Pal (PW13), HC Dharamvir (PW12), Ct. Amit, Ct. Atul, Ct. Devender, Ct. Ajit (PW9), Ct. Raj Kumar, Ct. Sunil and Ct.

Manoj. The raiding team along with the secret informer and SI Sunil Kumar reached the spot.

4. While the driver of the truck was handing over the boxes of apples to appellant Sumer Singh, he was apprehended. The driver and cleaner of the truck namely appellant, Balbir Singh and co-accused Bankey Sharma got down the truck and they too were apprehended. In the boxes which were delivered by appellant Balbir Singh to appellant Sumer Singh, 13 kg 500 gram charas were found to have been kept.

5. The mandatory provisions of NDPS Act were complied with. Samples were drawn. FSL form was filled up and the appellants and Bankey Sharma were arrested. Co-accused Yogesh Jain could not be apprehended.

6. After the investigation, charge-sheet was submitted, whereupon cognizance was taken and the case was committed to court of sessions.

7. After examining six witnesses on behalf of prosecution and none on behalf of defence, the Trial Court convicted the appellants under Section 20 of the NDPS Act and acquitted co-accused Bankey Sharma, cleaner of the truck, by judgment dated 13.04.2011.

8. By order dated 19.04.2011, both the appellants were sentenced to undergo RI for ten years, fine of Rs.1,00,000/- and in default of payment of fine a further RI for one year.

9. The appellants assail the judgment and order of conviction and sentence on the following grounds:

- (i) The samples of the contraband were not drawn up in accordance with the norms and guidelines for the same;

- (ii) Despite there being ample time for the police, no effort was made to join in public witnesses during the search and seizure operations;
- (iii) The prosecution failed to prove and attribute specific knowledge of the presence of the contraband to both the appellants;
- (iv) The conscious possession of the contraband by the appellants could not be established.
- (v) The mandatory provisions of Section 42, 52 and 55 of the NDPS Act have been completely disregarded.
- (vi) There are sufficient grounds to hold that the sample parcels were tampered with and;
- (vii) Shoddy investigation in the case whereby even the origin of the consignment could not be ascertained.

10. In order to appreciate the contention of the appellants, deposition of relevant and material witnesses are required to be scrutinised.

11. SI Sunil Kumar (PW14) has deposed before the Trial Court that on 19.09.2008, while he was posted in the Anti Homicide Section of Crime Branch, Rohini, he received a secret information about the involvement of co-accused Yogesh Jain and Sumer Singh (appellant) regarding supply of contraband. He was made to understand that Yogesh Jain sends the contraband from Kashmir in trucks loaded with apples which normally is received by Sumer Singh (one of the appellants) in Delhi who supplies the same in Delhi. The secret informer also told PW14 that the truck is expected to arrive in Fruit

Mandi, Azad Pur in between 1:30 p.m. and 2:30 p.m. It was also informed that the contraband is kept in three cartons of apples and those cartons are in the driver's cabin.

12. It has been testified by PW14 that after satisfying himself regarding the genuineness of the secret information, he produced the secret informer before the ACP, Joy Tirkey, in his office. The aforesaid information was reduced into writing (DD No.7) at about 12:30 p.m. and copy of the same was handed over to the ACP. A raiding team was constituted comprising him and other police functionaries. The raiding team proceeded on a government vehicle and reached the spot at about 1:15 p.m.

13. Efforts were made by PW14 to join in private persons but no one agreed for the same and left the place without disclosing their identities.

14. A truck bearing registration no.JK-02-AD-4765 was spotted by the raiding team. After about five minutes of arrival of the truck, one man approached the vehicle on foot and started talking to the driver. The aforesaid person was identified by the informer as appellant Sumer Singh. The driver of the truck, appellant Balbir Singh, handed over three cartons of apples kept in the cabin of the truck to appellant Sumer Singh one by one. At the time when the third carton was being handed over to appellant Sumer Singh, the raiding team swooped down on him and made him immobile. The driver and cleaner of the truck namely appellant Balbir Singh and co-accused Bankey Sharma who had alighted from the vehicle, were also apprehended.

15. Before the Trial Court, PW14 has categorically stated that he introduced himself and the police party to the accused persons and informed them about their legal right of being searched before a Gazetted Officer or a Magistrate, gave them written notice in that regard and also offered himself for being searched by them to ensure fairness of the search and seizure proceeding. They were made known that the exercise was being done because of the secret information of their carrying contraband. Written notice under Section 50 of NDPS Act to each of the accused persons, separately, was given (Ex.PW12/A, PW12/B and PW12/C). The cartons of fruit which were delivered to appellant Sumer Singh were opened and were found to be containing black coloured pieces of different sizes wrapped in a plastic cover. Because of smell and preliminary test by the help of field test kit, those articles were prima facie found to be charas, a contraband. On electronic weighing scale, each of the consignment weighed 4.5 kgs of charas; thus total weight of charas being 13.5 kg. The cartons were marked as 1, 2 and 3. Two samples of 50 gram each were taken out from each of the cartons and separate pullandas were made which were marked as A1, B1; A2, B2 and A3, B3. The remaining contraband was also packed in pullandas and marked as Sl. No.1, 2 and 3. All of these pullandas were sealed by the impression RBS. After filling up the FSL form, the seal of RBS was also embossed upon it. All the recovery articles were taken into police possession vide seizure memo which was signed by PW14 (Ex.PW12/J). Thereafter rukka was prepared and was handed over to HC Kanwar Pal (PW13). HC Kanwar Pal was also handed over the case property,

sample pullandas, FSL form and was instructed to handover the rukka to Duty Officer for registration of the FIR and to produce the remaining articles before the SHO for completing the proceedings under Section 55 of the NDPS Act. It has been stated by PW14 that at about 7:00 p.m., SI Ram Avtar (PW15), second IO, arrived at the spot. He was handed over the custody of all the three accused including the appellants and the other documents which were prepared.

16. In his cross-examination PW14 has stated that on 20.09.2008, SI Ram Avtar Sharma (PW15) again reached the spot along with appellant, Sumer Singh and HC Dharamvir (PW16) in a private car. SI Ram Avtar was informed that on search of all the boxes of apples, 352 boxes of large size and 474 boxes of small sizes were found to be loaded in the truck. PW14 has identified the exhibits in the Court.

17. HC Kanwar Pal (PW13) has deposed before the Trial Court that he was posted as a head constable in SIT, Section of Crime Branch. He was one of the members of the team and has supported the prosecution version. He has supported the factum of recovery of contraband, notice under Section 50 of NDPS Act to all the accused persons as well as seizure of other documents. Similarly, HC Dharamvir (PW12), who was also a part of the raiding team, has also confirmed and proved the factum of recovery of the contraband from the possession of the appellants.

18. From the deposition of PWs. 12, 13 and 14, referred to above, it stands proved that on secret information having been provided in the office of PW14, the piece of information was verified, reduced in writing and despatched to the ACP. It also stands proved that the

informer was brought to the office of the ACP and when the information supplied by him was found to be credible, a raiding team was constituted at his instance, of which PW12, PW13 and PW14 were part and PW14 led the team. From the deposition of the aforesaid witnesses, it further stands proved that the requirements under Sections, 40, 50 and 55 of the NDPS Act have been complied with.

19. Thus, the contentions of the appellants that the secret information was not reduced in writing and the same was not sent to the superior police officer, and that after the arrest, the appellants were not produced before the concerned SHO as well as the allegation of non-compliance of Section 55 of the NDPS Act, therefore, do not have any substance.

20. All the recovery witnesses namely PW12, PW13 and PW14 have fully supported and corroborated each other and have proved the recovery of 13 kgs and 500 gram of charas from the possession of the appellants.

21. It was seriously contended on behalf of the appellants that the secret information was received at about 12:15 p.m. on 19.09.2008 and therefore there was ample time for the prosecuting agency to have made arrangements for joining in private persons. It was also urged that the recovery of the contrabands was effected near fruit mandi. It would not be, then, in the mouth of prosecution to say that the place of recovery was a lonely and desolate place. The Azad Pur Fruit Mandi is dotted with shops and commercial establishments in line. The place is normally busy. Thus, it was only a lip service of the prosecuting

agency that efforts were made for joining in private persons, but nobody came forward.

22. The Supreme Court, in *Ajmer Singh vs. State of Haryana*, (2010) 3 SCC 746 has held that joining of public persons is not an inviolable rule and there could not be any acquittal merely because no independent person was produced. In *Ram Swaroop vs. State (Government of NCT of Delhi)*, (2013) 14 SCC 235, the Supreme Court, on finding the evidence of the police witness absolutely unimpeachable, held that the failure to associate independent witnesses did not affect the prosecution case.

23. In the case in hand, though, the recovery was made at a public place but it is not to be lost sight of that normally in a police proceeding, members of general public are reluctant to join for the fear of being asked to support such proceedings in Courts of Law at the trial. From the deposition of PW12, PW13 and PW14 it would appear that serious efforts were made for joining in independent witnesses but to no avail. This by itself would not discredit the prosecution version and no mileage could be gained by the appellants. On the contrary, it would occasion failure of justice if the prosecution case is thrown overboard only because independent witnesses have not been produced at the Trial.

24. The appellants have also raised the issue of the conviction being based upon the testimonies of only police personnel and no independent public witness. There is no rule of law which would permit an accused/convict to have a blanket defence of the case hinging only on the testimonies of police witnesses. Police witnesses

are normally to be believed as they do not have any animus against an accused. Unless it is shown that there was a malafide intention on the part of the police personnel, they ought not to be generally disbelieved merely on the ground of their being members of police organisation or raiding team.

25. Though it has been submitted on behalf of the appellants that the sampling of the contraband was not done in accordance with the rules and guidelines but the records belie such arguments. This Court has noticed the deposition of PWs 12, 13 and 14 wherein the factum of drawing of 50 gram of sample in duplicate from each of the boxes has been testified and proved. Each of the samples was marked separately and a separate pullanda was made. The FSL form was filled up. All the aforesaid pullandas including the FSL form were embossed with the seal of RBS which stands for “Rajbir Singh”. No doubt Rajbir Singh has not been examined at the trial, but merely because of non examination of Rajbir Singh, the procedure adopted by PW14 in sampling the contraband cannot be faulted with. After embossing the pullandas with the seal of RBS, the same was handed over to PW12. It has been argued that PW14 has stated in his deposition that samples were taken randomly and not from each piece. PW14 was also not aware whether those pieces were 500 or 5000. This Court is of the view that these inconsistencies are no ground for holding that proper sampling of the contraband was not done. .

26. The FSL report clearly indicates that the parcels which were sent, remained intact and were not tampered with. Of course, the samples were sent to FSL on 16.10.2008, when the samples were

deposited with the police station on 19.09.2008; nonetheless such delay in sending the samples to FSL is not fatal to the prosecution version and it would not be correct to say that the samples have been tampered with.

27. Lastly, it has been argued that both the appellants cannot be attributed with the knowledge of there being contraband in the boxes of fruits which were delivered. It is submitted that there is no admissible evidence which has been placed on record which could establish that it was in the knowledge of the appellants that apple boxes contained charas. The contraband was not visible from outside the boxes.

28. In order to appreciate the contention of the appellants, it would first be necessary to examine the provisions of Section 35 and 54 of the NDPS Act, 1985.

“35. Presumption of culpable mental state.

(1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. -In this section “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.”

“54. Presumption from possession of illicit articles

In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of-

(a) Any narcotic drug or psychotropic substance or controlled substance;

(b) Any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) Any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) Any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.”

29. In ***Madan Lal vs. State of Himachal Pradesh***, (2003) 7 SCC 465, the Supreme Court while dealing with the issue of possession observed that conscious possession of a contraband has to be determined with reference to the factual background of each case. Section 20 (b) makes possession of contraband articles, an offence. Section 20 appears in Chapter 4 of the NDPS Act which provides for punishment for offences for possession of such articles. Thus for making the possession illicit, there must be a conscious possession. In the absence of requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession

is what is required for attracting the provisions of Section 20 of the NDPS Act.

30. The Supreme Court in Madan Lal & Another (Supra) has stated thus:

“22. The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52] to work out a completely logical and precise definition of “possession” uniformly applicable to all situations in the context of all statutes.

23. The word “conscious” means awareness about a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in Gunwantlal v. State of M.P. [(1972) 2 SCC 194 : 1972 SCC (Cri) 678 : AIR 1972 SC 1756] possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

25. The word “possession” means the legal right to possession (see Heath v. Drown [(1972) 2 All ER 561 : 1973 AC 498 : (1972) 2 WLR 1306 (HL)]). In an interesting case it was observed that where a person keeps his firearm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness [(1976) 1 All ER 844 : 1976 QB 966 : (1976) 2 WLR 361 (QBD)] .)

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.

27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.

28. In fact, the evidence clearly establishes that they knew about the transportation of charas, and each had a role in the transportation and possession with conscious knowledge of what they were doing. The accused-appellant Manjit Singh does not stand on a different footing merely because he was the driver of the vehicle. The logic applicable to other accused-appellants also applies to Manjit Singh.”

31. After having seen what “possession” in connection with offence under NDPS Act should actually mean, the same needs be applied to the facts of this case. According to the explanation appended to Section 35 of the Act “culpable mental state” includes intention, motive and knowledge of a fact and belief in, or reason to believe, a fact.

32. The records of this case reveal that appellant Balbir Singh was not named by the secret informer. Though the three fruit boxes containing contraband were kept in the driver’s cabin but that by itself would not be sufficient to impute specific knowledge of such boxes

containing contraband. It could be possible that three boxes were given to appellant Balbir Singh, the driver of the truck, to specifically hand it over to appellant Sumer Singh. The truck which was being driven by Balbir Singh contained fruit boxes. Thus, the appellant Balbir Singh, being the driver of the vehicle may not have doubted that the three fruit boxes contain anything else than fruits. It is not the case of the prosecution that the entire consignment of fruits was ordered by appellant Sumer Singh. The boxes of fruits which were loaded in the truck were required to be unloaded in the market. There could be a possibility of the appellant Balbir Singh thinking that three boxes are meant for a specific customer namely Sumer Singh.

33. In this connection, it would be relevant to examine the evidence of Sanjeev Kumar and Gurumukh, PWs 1 and 2 respectively.

34. Sanjeev Kumar (PW1) has stated that he deals in sale and purchase of apples from Subzi Mandi, Azad Pur, Delhi. The business is being run under the name and style of Sai Fruits of which Rakesh, Gurumukh and Yogesh (declared proclaimed offender) were partners. Sumer Singh (appellant) was not a partner in the firm nor was he related to anyone of the partners. They brought fruits from Sopore in Kashmir and the commission after sale, was shared by all the four partners. The truck in question was loaded with boxes of fruits and the money was to go to the orchard owners. Yogesh was involved in getting the truck loaded with fruits from Kashmir and reaching it to his shop at Subzi Mandi and he and Gurumukh were required to sell the apples in the mandi and collect commission. The suggestion to him that appellant Sumer Singh had given them money was vehemently

denied. Yogesh was stated by the aforesaid witnesses to be residing in Delhi. It is further stated that he never went to Jammu & Kashmir.

35. Similarly, Gurumukh (PW2), one of the partners with PW1, has stated that he was never introduced to appellant Sumer Singh by Yogesh. He has also denied any knowledge about Yogesh being the nephew of appellant Sumer Singh. It was stated by the aforesaid witness that appellant Sumer Singh worked in Delhi Fire Service, and therefore, he could not have become partner with them.

36. From their deposition, what stands established is that in normal course of business, fruits were brought from Kashmir and sold in the Azad Pur market. The partners of Sai Fruits, which had commissioned the truck were only responsible for the commission earned out of the sale proceeds of those boxes of fruits.

37. There is no evidence on record brought forth by the prosecution regarding the origin of the consignment or as to who handed over the aforesaid consignment of three boxes to appellant Balbir Singh. Admittedly, appellant Balbir Singh is the driver of the truck whereas co-accused Bankey Sharma was the cleaner. In the absence of any evidence that the three boxes of fruits which contained contraband were specifically handed over by someone to be given to appellant Sumer Singh, it would be very difficult to impute the culpable mental state to appellant Balbir Singh. Appellant Balbir Singh may have been provided with the three boxes to be handed over to appellant Sumer Singh. This presumption is only on the basis that three boxes were found in the driver's cabin. The evidence thereafter is blurred. It is not known whether appellant Balbir Singh was asked to give

those boxes as boxes of fruits to appellant Sumer Singh or as boxes which contained, apart from fruits, contraband, to Sumer Singh

38. It is to be further borne in mind that appellant Balbir Singh drove the vehicle from Sopore. Bankey Sharma, cleaner of the truck, who has since been acquitted, boarded truck from Udampur. While Bankey Sharma remained in the driver's cabin during the journey, he must have spotted three boxes of fruits.

39. If the Trial Court has given benefit of doubt to Bankey Sharma about his not having the requisite culpable mental state for him to be attributed with the conscious possession of the contraband, there is no reason why a separate line of reasoning be adopted in case of appellant Balbir Singh.

40. The conduct of the appellant Balbir Singh and Bankey Sharma is also required to be seen. There was no attempt on the part of either Balbir Singh or Bankey Sharma to flee away from the vehicle. Appellant Sumer Singh was first apprehended by the police team. Had there been any culpable mental state of appellant Balbir Singh and Bankey Sharma, they would have tried to escape.

41. The statement of appellant Balbir Singh recorded under Section 313 of the Cr.P.C. speaks of him and Bankey Sharma having been apprehended from Kundli border at about 9:30 a.m.

42. Appellant Sumer Singh in his statement recorded under Section 313 of Cr.P.C. has denied every factum of the prosecution case and has stated that he had a dispute with one Naresh regarding a flat at Rohini in which SI Sunil Kumar (PW14) tried to mediate. During the

course of mediation between him and Naresh, appellant Sumer Singh had a brief fight with PW14 and therefore he was made an accused.

43. The statement made by both the appellants under Section 313 of Cr.P.C. is not believable for the simple reason that no evidence has been led on their behalf. It does not appear to be probable that because of a dispute with a third party, a sub inspector of police on being shouted at, during mediation, would get a person prosecuted in such a serious case.

44. The case against the appellants is not only based on the evidence of SI Sunil Kumar (PW14) but each aspect of the prosecution version namely factum of recovery, secret information and other proceedings were seen and witnessed by other witnesses as well.

45. However, prior to the search, seizure and arrest of the appellants, the secret information which was received by PW14 merely spoke of Yogesh and appellant Sumer Singh. Appellant Balbir Singh was not named in the secret information. The prosecution of the appellants, therefore, cannot be said to be the handy work of PW14 but the cases of appellant Balbir Singh and appellant Sumer Singh stand on different footing.

46. In fact, the case of Balbir Singh is akin to the case of co-accused Bankey Sharma who has been acquitted by the Trial Court on the ground that he had boarded the truck from Udhampur and therefore he may not have had any knowledge of the three fruit boxes containing contraband.

47. In *Harbans Singh vs. State of U.P. & Ors*, (1982) 2 SCC 101, the Supreme Court has emphasised the relevance of parity regarding the evidence of accused persons inter se. In a case where two accused are similarly situated in all respects, then benefit extended to one ought to be extended to the other.

48. In the aforesaid case, the Supreme Court held that “.... It will be a sheer travesty of justice and course of justice would be perverted, if for the very same offence, the petitioners have to swing and pay the extreme penalty of death whereas the death sentence imposed on his co-accused for the same offence is commuted to one of life imprisonment and the life of the co-accused is spared.”

49. The Apex Court in *Akhil Ali Jahangir Ali Sayyed vs. State of Maharashtra*, (2003) 2 SCC 708 has followed the same principles and has held that the second accused, if placed on the same pedestal as the other who has been extended the benefit, Article 21 of the Constitution of India does not permit denial of the same benefit to the second accused.

50. In an offence which is said to have been committed by many persons, parity has to be accorded importance. Apart from the case of appellant Balbir Singh being of the same nature as Bankey Sharma, factually speaking as well, no evidence has been led by the prosecution to establish special knowledge to Balbir Singh. The case of appellant Sumer Singh is absolutely different in the sense that he was named in the secret information and that he was the only person who had come to receive the consignment.

51. The judgment and order of conviction has also been assailed on the ground that the Trial Court failed to consider that Ex.PW12/T disclosed that the truck was seized by the investigating agency in the evening of 20.09.2008 and it bore the signature of appellant Balbir Singh. What the Trial Court, it was argued, ignored to consider was that appellant Balbir was sent to judicial custody in the afternoon of 20.09.2008 whereas the admitted case of the prosecution is that appellant Balbir and co-accused Bankey Sharma were produced in the court during court hours and were remanded to judicial custody. Ex.PW12/T was prepared after returning to the spot from the court. It was thus urged that signature of a person cannot be obtained after he is sent to judicial custody. It was further urged that on personal search of appellant Balbir Singh, a small amount of Rs.1040/- was found. If, it has been argued, that appellants were dealing in narcotics, such a small amount of money would not have been recovered from their possession. Both the arguments are not worth accepting so far as appellant Sumer Singh is concerned for the reason that these do not adversely affect the prosecution version.

52. In the aforesaid view of the matter, in the absence of the requisite mental state of appellant Balbir Singh (Crl. Appeal No.1164/2011), his conviction and sentence is set aside and he is directed to be released from jail forthwith, if not required in any other case.

53. For the reasons stated in the judgment, the conviction and sentence of the appellant Sumer Singh is sustained and upheld.

54. Criminal Appeal No.1164/2011 is allowed. Criminal Appeal No.878/2011 is dismissed.

55. Trial Court records be sent forthwith to the court below.

56. Two copies of the judgments be transmitted to the Superintendent of the concerned jail for information, compliance and record.

Crl. M.B. No.2443/2013 & Crl. M.B. No.1292/2013

1. In view of the final judgment in the appeals, these applications have become infructuous.

2. These applications are disposed of accordingly.

ASHUTOSH KUMAR, J

DECEMBER 21, 2015

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