

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

**CRA No.S-1539-SB of 2003**

**Date of Decision: January 06, 2016**

**Hans Raj @ Hansa**

**.... Appellant**

**vs.**

**State of Punjab**

**.... Respondent**

**CORAM: HON'BLE MR. JUSTICE KULDIP SINGH**

**Present:** Mr. K.P.S. Virk, Advocate for  
Mr. K.S. Dhaliwal, Advocate for the appellant.

Mr. Ashish Sanghi, Deputy Advocate General, Punjab.

**Kuldip Singh J.(Oral)**

Impugned in the present appeal is the judgment and order dated 05.08.2003 passed by learned Judge, Special Court, Patiala, vide which the present accused-appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act') and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of ₹1,00,000/-, in default thereof to undergo further rigorous imprisonment for six months. The period of detention already undergone by the convict was ordered to be set off in accordance with Section 428 Cr.P.C. The case property was confiscated in accordance with the provisions of Section 60 of the NDPS Act.

Brief facts of the case are that on 08.07.2001, ASI Bhupender Rai received a secret information that Sukha Singh @

Sukhdev Singh and Hans Raj @ Hansa have kept in their possession poppy husk in the area of village Suniarheri on Patiala-Balbehra road and are waiting for the customers. If raid is conducted, heavy amount of contraband can be recovered. ASI Bhupender Rai, accordingly, despatched a message to Bhupinder Singh Virk, Deputy Superintendent of Police, Patiala, to arrive at the spot. A ruqa was also sent to the police station, where formal FIR (Ex.PL/1) was registered. Thereafter, ASI Bhupender Rai along with ASI Jit Singh and some other police officials proceeded to the spot. On Sanaur road, SI Sadhu Ram met them and he was also joined in the police party. Thereafter, Gurcharan Singh, Ex-Sarpanch, village Mehmoodpur Arian arrived there and he was also joined in the police party. When the police party was 1 Km. short from the said place, they found that two persons were sitting on the bags in the *bir* near the Government tubewell room. On seeing the police party coming towards them, one of them made good his escape, whereas the present accused-appellant Hans Raj @ Hansa was apprehended at the spot. On inquiry, he disclosed that, the person who fled away from the spot is Sukhdev Singh S/o Shingara Singh R/o village Dabankheri. The accused-appellant was apprised of his right of search before some Gazetted Officer or Magistrate and he was given the option for the same. The accused-appellant opted for search before the Gazetted Officer. Dissent statement of the accused-appellant was recorded. In the meanwhile, DSP Bhupinderjit Singh Virk arrived there and he disclosed his identity to the accused-

appellant and also apprised him of his rights of search before some other Gazetted Officer or Magistrate. The accused-appellant reposed confidence in the DSP and consent statement of the accused-appellant in this regard was recorded. On direction of the DSP, ASI Bhupinder Rai conducted the search of the bags. It was found that there were 14 bags, each containing 41 Kgs. of poppy husk. Two samples of 250 gms. each were separated from each bag. The remaining poppy husk on weighment came to 40.500 Kgs. in each bag. All the sample parcels and bags were sealed with the seal bearing impression 'BR' of ASI Bhupinder Rai and 'BJS' of the DSP Bhupinderjit Singh Virk. The specimen seal impression was also prepared. A motor cycle was found from the spot and it was also taken into possession. On return to the police station, the accused-appellant and the case property were produced before SHO Sewa Singh, who verified the investigation and affixed his own seal bearing impression 'SS' on the case property and the same was deposited with MHC Sohan Singh. Thereafter, on the next day, the case property was taken back from MHC and the accused-appellant along with the case property was produced before the Illaqa Magistrate, Patiala. During the investigation, it came out that the ownership of the motorcycle bearing registration No.PB-11C-0931 was verified. From the extra judicial confession of Surjit Singh, Ex. Sarpanch, it also came out that on the day of recovery, in addition to Sukha Singh @ Sukhdev Singh, one Paramjit was also there. He also absconded from the spot. They could not be arrested and

supplementary challan against them is to be presented whenever they are apprehended. However, the present accused-appellant was challaned by the police.

He was charge-sheeted under Section 15 of the NDPS Act.

In support of its case, the prosecution examined ASI Jit Singh as PW1, MHC Sohan singh as PW2, S.H.O. Sewa Singh as PW3, H.C. Faquir Chand as PW4, DSP Bhupinderjit Singh Virk as PW5 and ASI Bhupinder Rai as PW6.

When examined under Section 313 Cr.P.C., the accused claimed that he is innocent. No recovery was effected from him. It was further claimed that one sale deed was executed with the father of Paramjit Singh. The dispute arose regarding the execution of the sale deed. Paramjit Singh got the present accused falsely implicated. It is also claimed that he is not involved in any other case. He was called from his house by the police in the presence of respectables and this case is planted upon him. He also claimed that on the complaint of his wife, an inquiry was also conducted.

In defence, the accused examined Harbhajan Singh as DW1, Kashmir Singh as DW2, Nasib Chand as DW3 and Goga as DW4 and closed his evidence.

After hearing learned Addl. Public Prosecutor for the State as well as learned counsel for the accused and after going through the evidence, learned Judge, Special Court, Patiala convicted and sentenced the accused as aforesaid.

I have heard learned counsel for the accused-appellant, learned Deputy Advocate General and have also gone through the case file.

In this case, all the material witnesses, namely ASI Bhupinder Rai, PW6, Bhupinderjit Singh Virk, PW5 as well as ASI Jit Singh, PW1 supported the prosecution version and proved the recovery. In the present case, 14 bags of poppy husk, each containing 41 Kgs. poppy husk, were found from the possession of the accused-appellant. The accused-appellant was found sitting on the said bags. His co-accused is stated to be absconded from the spot.

Learned counsel for the accused-appellant has argued that mere sitting on the poppy husk does not prove the conscious possession. Merely sitting on the bags of poppy husk does not mean that the accused-appellant knew that there is poppy husk in the said bags.

I am of the view that it is a case of the prosecution that accused-appellant was sitting on the bags of poppy husk. The poppy husk omits smell, from which one can know that it is a contraband. It was for the accused-appellant to explain as to how he came to the spot and why he was sitting on the said bags? His defence story is that he has been falsely implicated on account of dispute of one sale deed with the father of Paramjit, who was also named in the FIR. However, there is no evidence to prove the same.

The accused-appellant has also examined one Goga, Chowkidar of *bir* Suniarheri, District Patiala as DW4, who stated that he is working as Chowkidar in the Forest Department at Suniarheri and village Kullemajra. On 08.07.2010, he did not see any police official or poppy husk at the spot. There is nothing on file to show that Goga, Chowkidar was present on duty on the said tubewell for whole of the day. The recovery in this case effected somewhere between 8.00 a.m. to 9.00 a.m. He also admitted that there is no boundary wall around the Govt. tubewell and there is only barbed wire. He also admitted that it is a big forest. Therefore, this make it an ideal place for transacting such illicit business of narcotics.

Statement of Nasib Chand, Sarpanch of village Sass Gujran, DW3 to the effect that the accused-appellant was called by the police and later on this case was planted upon him, does not prove the innocence of the accused-appellant.

The accused-appellant himself claimed that on his complaint, some inquiry was conducted. But no inquiry report was produced. If the accused-appellant has been falsely implicated, he should have moved an application before the higher authorities for conducting inquiry and production of such inquiry report would have thrown light on the defence raised by the accused-appellant.

Similarly, the statement of Harbhajan Singh, DW1 is of general nature and cannot be believed without any supporting document.

Learned counsel for the accused-appellant has further argued that in this case, ASI Bhupinder Rai was posted as in-charge, Police Post, Bahadurgarh. In cross-examination, he has admitted that he had gone through the place of recovery via Police Station Sadar, Patiala. He also admitted that the place of recovery does not fall within the jurisdiction of Police Post Bahadurgarh. Police Post Sanaur also falls on the way but nobody from the Police Post, Bahadurgarh nor from the Police Post, Sanaur joined the police party.

In this case, immediately after receiving the secret information, the DSP of the area was called. Therefore, when officer in-charge was called, there was no need to join the lower police official in the police party. Similarly, the mere fact that ownership of the tubewell kotha was not verified by the Investigating Officer is no ground to hold that the recovery was planted upon the accused-appellant. It is for the accused-appellant to prove as to how he was sitting on the 14 bags, containing poppy husk at the spot. Therefore, if the ownership of the tubewell kotha is not verified, it does not affect the merits of the case.

It was suggested to ASI Bhupinder Rai, PW6 that on the complaint of the accused-appellant, an inquiry was conducted and his increment was stopped. However, no such inquiry report was produced nor any punishment order against ASI Bhupinder Rai was produced.

Learned Judge, Special Court, Patiala has dealt with all the contentions raised by the accused-appellant including the compliance of various Sections of NDPS Act. Therefore, there is no illegality or infirmity in the findings recorded by the trial court.

Learned counsel for the accused-appellant has further argued that in this case, no specific question was put to the accused-appellant that how he was in conscious possession of the bags. He relies upon the authority of Hon'ble the Apex Court delivered in case of ***“State of Punjab vs Hari Singh and others”, 2009(2) SCC(Cri) 243.***

A perusal of the statement of the accused-appellant recorded under Section 313 Cr.P.C. shows that it was specifically put to the accused-appellant that he was sitting on the bags of poppy husk, which is held by this Court to be conscious possession. Therefore, the said authority is of no help to the accused-appellant.

In view of the foregoing discussion, I do not find any illegality or infirmity in the impugned judgment and order. Accordingly, the present appeal stands dismissed. The accused-appellant is on bail. His bail bonds and surety bonds are cancelled and he is ordered to be arrested and committed to jail to undergo the remaining part of his sentence.

**January 06, 2016**  
sarita

**(KULDIP SINGH)**  
**JUDGE**