

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

**CRA-S-1122-SB of 2004 (O&M)
Date of Decision: January 06, 2016**

Jaffer and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ashwani Bhardwaj, Advocate
for the appellants.

Mr. J.S. Brar, AAG, Punjab.

FATEH DEEP SINGH, J.

Appellants-convicts have come up in challenge against their conviction vide judgment, order of sentence dated 3.4.2004 passed by learned Judge Special Court, Ludhiana, whereby, in FIR No.29 dated 10.02.2001 pertaining to Police Station, City Khanna both the accused Jaffar and Indervesh have been found guilty under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹1,00,000/- each and in default of payment of fine to undergo rigorous imprisonment for three years.

Upon hearing learned counsel for the parties and perusing the records of the case, it was on 10.02.2001 police party of Police Station, City Khanna on receipt of secret information laid a naka on the main G.T. Road in front of grain market, Khanna when a truck bearing No.UP-12B-2898 came from the side of Gobindgarh and was stopped. On search of the vehicle which was being driven by appellant

Jaffar in which appellant No.2-Indervesh was sitting next to driver being conductor of the vehicle, 10 bags each weighing 30 Kg of poppy husk were recovered in all totalling to 300 Kg, a commercial quantity. The prosecution has relied upon testimonies of Investigating Officer, PW1 SI Rajesh Hastir, PW2 HC Jaswinder Singh, PW3 ASI Maghar Singh, PW4 C. Avtar Singh, PW5 ASI, Ashok Kumar and PW6 ASI Bant Singh, who produced the articles before the Court. The accused denied the allegations. The defence has examined DW1 HC Bahadur Singh, who could not prove any record which stood destroyed thereby lone independent witness Kali Dass as DW2 to controvert the case of the prosecution followed by DW3 C. Amar Singh who produced register No.19 and lastly DW4 Amarjit Singh, Copy Clerk, proved the registration of case under the Act against DW2 Kali Dass. Learned counsel for the appellants has led three pronged attacks on the prosecution story arguing that there has been non-compliance of provisions of Section 42 of the Act and that compliance of Section 50 is incomplete as a notice has been issued in Punjabi when the accused are residents of U.P. and not conversant with the language and that the alleged sugar bags from which the contraband was recovered have not been produced before the Court. The arguments have been controverted that neither provisions of Section 42 nor of Section 50 of the Act are applicable in the present set of circumstances and that sugar being a perishable quantity has been given on superdari and, thus, has no material relevance on the merits of the case.

Appreciating the arguments of the two sides, no doubt, as per the own prosecution's version it is on the basis of secret information to the police a naka was laid and on checking of the vehicle has led to the recovery of the contraband. It needs to be made emphatically clear that since the alleged recovery has been made from a

highway from the public conveyance and, thus, in terms of explanation to Section 43 of the Act the truck connotes a “public place” and, thus, a plain reading of Section 43 of the Act makes it clear that there is no requirement under the law for reducing such an information into writing and that it is not a recovery from a dwelling unit which could attract Section 42 of the Act and, therefore, this argument of the learned counsel for the appellants becomes highly fallacious.

Learned counsel for the appellant has misconstrued Section 50 of the Act and by now it is well entrenched law reliance of which can be taken note from **State of Rajasthan vs. Tara Singh 2011(11) SCC 559** which lays down that Section 50 is applicable only to search or seizure where the articles are recovered from a person of a person. Undisputedly, in the present case, recovery has been effected from a transport vehicle on a public highway and, therefore, applicability of Section 50 of the Act does not comes into play and, therefore, these arguments of the learned counsel for the appellant are highly untenable and are brushed aside. The contentions of the learned counsel for the appellants that sugar has not been produced before the Court has no much relevance in the present set of circumstances when it is not the case of the defence that they were not driver or the conductor of the vehicle in question. The prosecution has examined Investigating Officer S.I. Rajesh Hastir PW1 and though there are certain minor contradictions which are natural and bound to occur with the passage of time in a criminal trial which does not materially affects the case of the prosecution. Followed by the testimony of another witness to this occurrence PW4 C. Avtar Singh, who has materially supported the case of the prosecution that through MHC Jaswinder Singh the articles were deposited and, thereafter, were produced by ASI, Bant Singh before the Court and all the parcels were found to be intact

and the report of the FSL Ex.PZ makes it emphatically clear that contraband was none other than poppy husk. No doubt, the testimony of official witness as has been contended needs to be corroborated by an independent witness but mere non-examining of an independent witness does not in all cases leads to assumption that the prosecution story is false. Testimonies of official eye-witnesses cannot be brushed aside merely on that score . No doubt, DW2 Kali Dass, who was initially a prosecution witness has resiled but his credentials are very well highlighted by none other than the record produced by DW4 Amarjit Singh that he is already facing trial under narcotics and no benefit can be drawn out of the testimonies of DW1 Bahadur Singh and DW3 Amar Singh which could assuage the case of the defence. The prosecution has through its witnesses completely proved the case of recovery of commercial quantity of contraband and, thus, in terms of Section 54 of the Act the Court needs to draw a presumption that accused were in conscious possession of such a contraband. The defence has totally and miserably failed to dislodge the prosecution story.

The learned trial Court in its well reasoned judgment has correctly appreciated each and every aspect of the prosecution story. Thus, there appears to be no illegality and perversity in the findings of the Court below. The appeal being hopelessly without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

January 06, 2015
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