

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

CRA-D No.148-DB of 2010

Date of Decision: 08.01.2016.

Surinder Singh @ SinderAppellant.

VERSUS

State of HaryanaRespondent.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE SNEH PRASHAR**

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

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

Mrs. Shubhra Singh, Additional Advocate General, Haryana.

SNEH PRASHAR, J.

Appellant-accused Surinder Singh @ Sinder was held guilty and was convicted for the commission of offence under Section 15(c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, “the Act of 1985”) and was sentenced to undergo Rigorous Imprisonment for a period of 12 years and to pay a fine of Rs.1,50,000/- and in default of payment of fine to further undergo Rigorous Imprisonment for a period of 2-1/2 years

vide judgment of conviction dated 03.11.2009 and order on quantum of sentence dated 05.11.2009. It was ordered that the period of detention already undergone by convict during trial of the case shall be set off against the substantive sentence.

The case of the prosecution as garnered from the record is that on 21.05.2006 Sub Inspector Ram Avtar alongwith Assistant Sub Inspector Nand Kishore, EASI Parmal Singh, EASI Ashok Kumar, Head Constable Chandeshwar, EHC Inder Singh, Head Constable Suresh Kumar, Head Constable Gurmail Singh and C. Vinod Kumar was present on Gurdawara Crossing, Nissing with Government vehicle bearing registration No.HR-05J-3400, of which Varinder Kumar was the driver, for patrol and crime detection duty. There he received a secret information that Surinder son of Balkar Singh, Jat Sikh, resident of Dera Balkar Singh, Nissing, Gurmukh Singh son of Sadha Singh, Jat Sikh, resident of Dera Amupur and Dilbagh Singh son of Chattar Singh, Jat Sikh, resident of Kotla Samana Mandi, Punjab, a relative of Sinder Singh, were engaged in the business of selling poppy husk in the Dera of Balkar Singh and were going to the said Dera by means of a Tractor-Trolley loaded with poppy husk for sale. In case a raid is conducted, they could be apprehended red handed.

Finding the information reliable, Sub Inspector Ram Avtar reduced the same into writing and sent the Ruqa to the police station for registration of the First Information Report. A wireless message to D.S.P. Headquarter was also sent. The police party reached the Dera of Balkar Singh situated on Kaithal Road, Nissing and saw the parked Tractor-Trolley

loaded with bags and two persons sitting on those bags. Seeing the police party, the men sitting on the bags fled away but were identified by A.S.I. Parmal Singh and A.S.I. Ashok Kumar as Gurmukh Singh son of Sadha Singh and Sinder Singh son of Balkar Singh as they were familiar to them.

After arrival of D.S.P. Vijay Kumar Barara alongwith his staff at the spot, on his direction the Tractor-Trolley was unloaded; 47 bags containing poppy husk were recovered; the weighing material was arranged; and two samples of 100 grams each were separated from every bag. The remainder on weighment came out to be 39 Kgs 500 grams poppy husk in each bag. All the samples and remainder were converted into separate parcels and were sealed with seal bearing letters 'RS'. D.S.P. Vijay Kumar Barara also affixed his seal 'VKB' on each parcel. A sample seal was retained and the seal after use was handed over to A.S.I. Nand Kishore. The samples, bags and sample seals were taken into possession by preparing recovery memo Ex.P4.

Further on the direction of the Deputy Superintendent of Police, Sub Inspector Ram Avtar with the help of his police officials searched the old well near the Kotha of the Dera. 56 plastic bags and three jute bags containing poppy husk were recovered from the well. Two samples of 100 grams each were separated from each bag. On weighment, the remaining contraband in 49 bags came out to be 39 Kgs 500 grams. In seven plastic bags, the remainder on weighment was found as 14 Kgs 800 grams and in the three jute bags the balance poppy husk weighed to be 39 Kgs 800 grams. All the 118 sample parcels as well as 59 bags were sealed

with seal 'RS'. The D.S.P. also affixed his seal 'VKB' on each parcel. Sample seal was prepared and the seal after use was handed over to A.S.I. Nand Kishore. The samples and the bags were taken into possession by preparing recovery memo Ex.P5.

The Tractor-Trolley was taken into possession vide recovery memo Ex.P6. Site plan of the place of recovery Ex.P23 was prepared by the Investigating Officer. On completion of investigation at the spot, the case property alongwith witnesses was produced on 22.05.2006 before S.H.O. Joginder Singh for verification of facts. After verification, he too affixed his seal 'JS' on each parcel and deposited the case property with M.H.C., Police Station Nissing. A report under Section 57 of the Act of 1985 Ex.P24 was prepared on which S.H.O. made his endorsement Ex.P25. The case property was then produced before the Area Magistrate by moving application Ex.P26 and the inventory Ex.P27. The Magistrate issued certificate Ex.P28, subsequent to which the case property was again deposited with the MHC of Police Station Nissing.

Appellant-accused Surinder Singh @ Sinder and his co-accused namely Dilbagh Singh were arrested on 12.08.2007. Their disclosure statements Ex.P29 and Ex.P38 respectively were recorded. After completion of investigation and all other formalities, they were challaned and sent to the Court for trial.

Both the accused were charge-sheeted for the commission of offence under Section 15 of the Act of 1985, to which they pleaded not guilty and claimed trial.

As many as ten witnesses were examined by the prosecution to substantiate the charges.

After closure of prosecution evidence, in their statement under Section 313 of the Code of Criminal Procedure (for short, "Cr.P.C."), the accused pleaded that no poppy husk was recovered from their possession and they had been falsely implicated.

In his defence evidence, appellant-accused tendered copy of judgment dated 18.08.2006, Ex.D1.

Considering the arguments advanced by the learned Public Prosecutor for the State and counsel representing the accused, learned trial Court acquitted accused Dilbagh Singh son of Chattar Singh of all the charges levelled against him whereas appellant Surinder Singh @ sinder was held guilty and was convicted and sentenced as indicated above.

Feeling aggrieved, the convict (appellant) preferred the instant appeal.

Heard the submissions made by Mr. K.P.S. Virk, Advocate, learned counsel representing the appellant and Mrs. Shubhra Singh, Additional Advocate General, Haryana.

To begin with, learned counsel for the appellant assailing the prosecution charges pointed out that according to the story of the prosecution itself, no contraband was recovered from the appellant at the time of his arrest on 12.08.2007. The police had allegedly recovered 47 heavy plastic bags of poppy husk from a Tractor-Trolley parked in the Dera of Balkar Singh and some 56 plastic bags and three gunny bags containing

poppy husk from an abandoned well also in the Dera of Balkar Singh on the night of 21.05.2006. It is the said recovery that was planted on the appellant and he was implicated in the present case. Apart from the fact that no recovery was effected from the conscious possession of the appellant, also no substantive and reliable evidence was led by the prosecution to prove that the appellant was owner or had any connection with Dera of Balkar Singh or that he was owner of the Tractor-Trolley from which the contraband was recovered.

It was also emphatically asserted by learned counsel that the allegation of the prosecution that the appellant was sitting on the bags loaded in the Tractor-Trolley from which allegedly poppy husk was recovered, rested mainly on his identification by A.S.I. Parmal Singh and A.S.I. Ashok Kumar who were said to be accompanying the raiding party. While A.S.I. Parmal Singh did not step into the witness box, A.S.I. Ashok Kumar who appeared as PW8 admitted during his deposition that he had never lodged any First Information Report against Sinder (appellant), had also not given any statement against him in any case and further that he was not related to him. It being so, A.S.I. Ashok Kumar had no occasion or reason to know appellant Surinder Singh @ Sinder prior to the alleged occurrence of recovery of narcotic drug and therefore, there was nothing to link the appellant with the recovery of contraband from the Dera of Balkar Singh.

We do not find the arguments of learned counsel for the appellant convincing or meritorious. Indeed, the recovery of bags

containing 4051 Kgs poppy husk was made by the raiding party led by Sub Inspector Ram Avtar (PW7) in the presence of Deputy Superintendent of Police Vijay Kumar Barara (PW5), A.S.I. Nand Kishore (PW2) and A.S.I. Ashok Kumar (PW8) on 21.05.2006 from the Dera of Balkar Singh. It could not be denied by appellant Surinder Singh @ Sinder that Balkar Singh is no other person but his father who had died. The site plan of the spot of occurrence Ex.P23 prepared by the Investigation Officer PW7 Retired Inspector Ram Avtar indicates that the places where the Tractor-Trolley loaded with bags of poppy husk was parked and the old well from which also the bags containing poppy husk were recovered, were part of house of appellant Surinder Singh @ Sinder. The said document was put to the appellant in his statement recorded under Section 313 Cr.P.C. which he simply denied. He did not state that he was not residing in that house known as 'Dera of Balkar Singh'. He also did not opt to produce evidence to name/ prove the place where he was residing, if at all he was not living and was not in possession of Dera of Balkar Singh.

As regards the Tractor-Trolley, which loaded with bags of poppy husk was recovered from Dera of Balkar Singh was admittedly registered in the name of Balkar Singh, father of the appellant. Balkar Singh had died much prior to registration of the present case from which it follows that the legal heirs of Balkar Singh including the appellant were the owners of the Tractor-Trolley.

The word '**conscious**' means awareness of a particular fact. It relates to existence of a mental state, deliberate or intended. It is not the law

that only when the contraband is found in physical possession of a person, that he will be taken to be in conscious possession of the same. Even constructive possession can be conscious and deliberate possession.

In the instant case, it has been unequivocally stated by PW2 A.S.I. Nand Kishor, PW7 Retired Inspector Ram Avtar and PW8 A.S.I. Ashok Kumar that on receipt of a secret information that Sinder (appellant), Gurmukh and Dilbagh Singh were engaged in the business of selling poppy husk in the Dera of Balkar Singh and that they were present in the Dera with poppy husk loaded on their Tractor-Trolley for sale and further that if raid is conducted, they can be apprehended red handed, a ruqa Ex.P3 containing the information was sent to the police station and thereafter the police party proceeded to the spot i.e. Dera of Balkar Singh and on reaching there saw the parked Tractor-Trolley loaded with bags and two persons sitting on those bags, who on seeing the police party immediately fled away. The witnesses also consistently deposed that the two persons, who were seen running away from the spot, were identified by A.S.I. Parmal Singh and A.S.I. Ashok Kumar (PW8) as Sinder Singh (appellant) and Gurmukh Singh.

It is a separate matter that Gurmukh Singh was found to be innocent during investigation and was not challaned and Dilbagh Singh, the other person challaned has since been acquitted by learned Judge, Special Court. However, as far as appellant Surinder Singh @ Sinder is concerned, the version of all the three witnesses, PW2 A.S.I. Nand Kishore, PW7 Retired Inspector Ram Avtar and PW8 A.S.I. Ashok Kumar coupled with

the fact that Dera of Balkar Singh was residential house of the appellant, is authentically and cogently proved.

It is not the requirement of law to examine all the eyewitnesses of an occurrence in order to prove the same. Instead of voluminous evidence only substantive and reliable is more appreciable. Even if A.S.I. Parmal Singh was not examined by the prosecution, the statement of PW8 A.S.I. Ashok Kumar is competent enough to prove identity of the appellant as one of the two persons who were seen sitting on the 47 gunny bags of poppy husk loaded in the Tractor-Trolley at the Dera of Balkar Singh. In addition to his statement is the fact that the appellant was owner of the Tractor-Trolley.

No doubt, A.S.I. Ashok Kumar deposed during cross-examination that he had never earlier lodged any First Information Report against the appellant and had not made any statement against him in any case and was also not related to him, but the said three reasons are not the only criteria for a police official to know a person who is residing in the area of the police station in which he is posted. No query was put to PW8 A.S.I. Ashok Kumar to know since when and for what reason appellant Sinder was known to him. In other words, his personal knowledge leading to identification of the appellant was not challenged. Also nothing was produced to prove that PW8 A.S.I. Ashok Kumar had any reason to be hostile against the appellant so as to falsely implicate him in the present case. There could be no presumption that PW8 A.S.I. Ashok Kumar had no occasion to know the appellant. His testimony is elaborate and specific on

all material aspects of the case and therefore there is no reason to doubt his credibility.

The Tractor-Trolley loaded with bags of contraband on which the appellant was seen sitting was parked in the Dera of Balkar Singh i.e. house of the appellant. Needless to say that it was not a public place and such being the facts, there could be no reason to doubt that the identity of the contents of the plastic bags were in knowledge of the appellant. Apparently, for the said reason, he fled away seeing the police party. In that manner, recovery of 47 plastic bags containing poppy husk from the conscious possession of the appellant is duly proved.

As regards, recovery of 56 plastic bags alongwith three gunny bags containing poppy husk from the old well in existence in Dera of Balkar Singh, when the plastic bags loaded in the Tractor-Trolley were proved to be in control and conscious possession of the appellant, the plastic bags and gunny bags containing poppy husk lying concealed in an abandoned well in existence at some distance in the same house can also be said to be in the conscious/constructive possession of the appellant. Dealing with the issue of conscious possession, the observations of Hon'ble Supreme Court in **Mohan Lal vs. State of Rajasthan, Criminal Appeal No.1393 of 2010 decided on 17.04.2015** are as under:-

*“When one conceives of possession, it appears in the strict sense that the concept of possession is basically connected to "actus of physical control and custody".
Attributing this meaning in the strict sense would be*

understanding the factum of possession in a narrow sense. With the passage of time there has been a gradual widening of the concept and the quintessential meaning of the word possession. The classical theory of English law on the term "possession" is fundamentally dominated by Savigny-ian "corpus" and "animus" doctrine. Distinction has also been made in "possession in fact" and "possession in law" and sometimes between "corporeal possession" and "possession of right" which is called "incorporeal possession". Thus, there is a degree of flexibility in the use of the said term and that is why the word possession can be usefully defined and understood with reference to the contextual purpose for the said expression. The word possession may have one meaning in one connection and another meaning in another.

The term "possession" consists of two elements. First, it refers to the corpus or the physical control and the second, it refers to the animus or intent which has reference to exercise of the said control. One of the definitions of possession given in Black's Law dictionary is as follows: "Having control over a thing with the intent to have and to exercise such control. Oswald v. Weigel[6]. The detention and control or the manual or ideal custody, of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held

personally or by another who exercises it in one's place and name. Act or state of possessing. That condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. The law, in general, recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and the intention at given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it. The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint."

When possession of the Narcotic drug with the appellant is established, reference to Section 35 and Section 54 of the Act of 1985 becomes relevant. Section 35 of the Act of 1985 reads as under:-

“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."

In the same context, Section 54 of the Act of 1985 postulates as under:-

“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.”

It having been established by the prosecution that the appellant was sitting on the bags of contraband loaded in the Tractor-Trolley parked in his house presumption of existence of culpable mental state of the appellant can be inferred. It was for the appellant to explain as to how the 47 plastic bags containing poppy husk loaded in the Tractor-Trolley, on which he was found sitting and how the 56 plastic bags and three jute bags also filled with poppy husk, were stored in the abandoned well in existence in his residential Dera. In absence of explanation, presumption as provided under Sections 35 and 54 of the Act of 1985 against the appellant can well be drawn and the conclusion irresistible is that the appellant, who was in conscious possession of 4051 Kgs of poppy husk, had committed the offence under the Act of 1985.

Next, learned counsel for the appellant urged that recovery of the contraband is alleged to have been made by PW7 Retired Inspector Ram Avtar in pursuance of a secret information received by him. When he knew that the secret information was reliable and had sent ruqa to the police station reducing the information into writing, it was incumbent upon him to have joined some public witness in the raiding party. His intentional failure to do so rendered the entire story of the prosecution doubtful.

Here again, we find no force in the argument of learned counsel. Having received the information regarding commission of offence,

the duty of the Investigation Officer was to act promptly and apprehend the offender. He could not be expected to be wasting time in persuading public persons to join the raiding party least his such action could leak the information.

The presumption that a public person acts honestly applies equally to the police officials as to any other person. It shall not be judicious to discard the testimony of the police officials merely for the reason that they belong to Police force and that no independent public person had come forward to corroborate their statement. It is commonly seen that public persons avoid becoming witness in a criminal case fearing enmity of the offender. In the instant case, recovery was effected from the Dera of Balkar Singh which was a residential place. The public witnesses who could be available were co-villagers of the appellant and it is obvious that they would not have supported the police as against the appellant. Therefore, non joining of an independent public witness would not render the testimony of the police officials doubtful when otherwise it is found to be cogent, convincing and trustworthy. It was held by Hon'ble Supreme Court in *Tahir v. State (Delhi), (1996) 3 S.C.C. 338* that where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration of their evidence, does not in any way affect the creditworthiness of the prosecution case.

Last, but not the least, learned counsel for the appellant

emphatically argued that the deposition of PW6 Head Constable Raj Kumar, Photographer unveils the falsity in the prosecution case. He deposed that during the night of 21/22.05.2006 he was called in Police Station Nissing by Sub Inspector Ram Avtar. He went to the police station and took photographs of the bags and other sealed parcels. During cross-examination, he clarified that he had reached the police station at about 11:15 p.m. in the night on 21.05.2006. Learned counsel contended that PW7 Retired Inspector Ram Avtar, the Investigation Officer, as well as PW2 A.S.I. Nand Kishore and PW8 A.S.I. Ashok Kumar stated that they remained at the Dera of Balkar Singh during the night of 21/22.05.2006 and came to the police station in the morning at around 6/6:15 a.m. on 22.05.2006. It was not the version of PW6 Head Constable Raj Kumar, Photographer that he had taken the photographs of the contraband at the spot of occurrence. His version that the case property was in the police station in the night at around 11:15 p.m. on 21.05.2006 proves that the occurrence as narrated by the prosecution is false.

The above argument of learned counsel for the appellant is also of no favourable consequence to him. For the mere reason that during the statement of the photographer, the date on which he took the photographs was incorrectly stated either due to his own memory loss or by typographical mistake, the other entire evidence of the prosecution consisting of eyewitness account of the witnesses which is so crystal clear cannot be rejected. The minor discrepancy caused no prejudice to the accused.

Thus, a detailed scrutiny of the evidence of the prosecution which suffers from no serious infirmity leads to the conclusion that it stands established beyond all reasonable doubts that recovery of 4051 Kgs of poppy husk was made from appellant Surinder Singh @ Sinder. Accordingly, the judgment of conviction under Section 15(c) of the Act of 1985 recorded by learned trial Court that suffers from no illegality or adversity and calls for no intervention, is upheld.

Coming to the order on quantum of sentence, considering the recovery of such heavy quantity of the narcotic drug i.e. 4051 Kgs of poppy husk made from the appellant, there appears no ground to intervene in the order of sentence passed against him by learned trial Court.

Accordingly, the appeal filed by the appellant is dismissed.

(HEMANT GUPTA)
JUDGE

(SNEH PRASHAR)
JUDGE

08.01.2016
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