

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

**CRA-S-1548-SB of 2004
Date of decision: 01.08.2016**

Darshan Singh and another

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Aditi Girdhar, Advocate
Amicus Curiae for the appellant(s).

Mr. Mehardeep Singh, Addl. AG, Punjab.

JITENDRA CHAUHAN, J.

This appeal is directed against the judgment and order dated 15.07.2004, passed by Judge, Special Court, Patiala vide which the accused-appellants were convicted under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.2,500/- each, with default stipulation.

In brief, the case of the prosecution as noticed in the judgment passed by the trial Court is as under :-

*The case of the prosecution is that on
10.09.2001 ASI Karan Singh of Police Station Ghagga*

along with his police party was present on the culvert in the area of village Dedhna in connection with patrol duty wherein he received a secret information that accused Darshan Singh and Jaspal Singh are selling poppy husk in the pits, which fall on the right side of the katcha path leading from village Dedhna to Brahaminmajra. If a raid be conducted, both the persons mentioned above may be arrested and huge quantity of poppy husk may be recovered from their possession. On this information, he sent ruqa Ex. PC to the police station, whereupon formal FIR Ex. PC/1 was recorded by ASI Surjit Singh.

Municipal Councillor, Ram Lal came to the spot and was joined in the police party, which proceeded towards the place of secret information. Both the accused were present there and on seeing the police party, they tried to run away but were apprehended. Two bags of poppy husk with their mouths open were lying at the place where they were sitting. From each bag, two samples of 250 gms. each were separated and the remaining churra poppy heads came to be 34 kg. 500 gms in each bag. A dabba tin was also lying near the bag. The samples were converted into parcels. The samples and the bags of

remaining churra poppy heads were sealed with the seal bearing impression K.S. sample seal impression Ex. P1 was also prepared and the seal after use was handed over to Municipal Councillor Ram Lal. Case property was taken into possession vide recovery memo Ex. PD along with the currency notes of ` 30/- which were recovered from Darshan Singh and ` 20/- which were recovered from accused Jaspal Singh. Memo of personal search to this effect Ex. PE was also prepared separately. The accused was supplied grounds of arrest vide memo Ex. PF and the information memo regarding their arrest Ex. PG was also prepared, which was signed and thumb marked by both the accused and rough site plan of the place of recovery Ex. PH was prepared with correct marginal notes. On return to the Police Station, case property along with the accused was produced before ASI/SHO Bindu Bala, who tallied the sample seals on the case property with sample seal impression Ex. P1 and put her own seal bearing impression 'BB' on the case property was deposited with the MHC on that day. On the next day the case property and the sample seal impression Ex. P1 was produced before Illaqa Magistrate. Sample was sent to the Chemical

Examiner and vide report Ex. PL, the same was found to be that of churra poppy heads. After completion of investigation, the challan against the accused was presented in Court.

Copies of documents as envisaged under Section 207 Cr.P.C were supplied to the accused free of cost. Charge under Section 15 of the Act was framed against the accused to which they did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 MHC Hardial Singh, PW-2 Constable Kakka Singh, PW-3 ASI Karan Singh, PW-4 SHO Bindu Bala and PW-5 Constable Kulwant Singh. The statements of the accused were recorded under Section 313 CrPC and all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which they denied and pleaded false implication. It was further stated by the accused that no recovery was effected from them.

No evidence in defence was led by the accused. After appraisal of the evidence, learned trial Court convicted and sentenced the accused vide judgment and order dated 15.07.2004, as narrated above. However, they were granted interim bail on the same day to enable them to file this appeal.

Feeling dissatisfied, the present appeal has been filed by the

accused-appellants assailing the judgment and order dated 15.07.2004 passed by the trial Court which was admitted on 12.08.2004. The sentence of the appellants was suspended during the pendency of this appeal.

On behalf of the appellants, it is contended that the FIR was lodged on the basis of a secret information. However, no intimation was sent to the higher officers as mandated by Section 42 of the Act. Further, it is contended that the alleged witness of recovery namely Ram Lal, the Municipal Councillor, though joined in the recovery proceedings but has not been examined as a prosecution witness. As per the case of the prosecution, the seal after use was handed over to the independent witness Ram Lal, but no evidence has come on record as to what happened to the seals and whether the seals in question were returned by him to some other person. Therefore, it is asserted that a legitimate presumption ought to be drawn that there was a tempering with the seals.

On the other hand, the learned State counsel contends that the Court below has rightly convicted and sentenced the accused. All the pleas raised by the accused have been dealt with extensively by the trial Court and the same were not found to be cogent. Therefore, the accused were rightly convicted under Section 15 of the Act for possessing 35 Kg. of churra poppy by each of the accused.

I have heard the learned Amicus-Curiae, the learned State counsel and have carefully gone through the record with their able assistance.

A perusal of the record reveals that no intimation was sent to the higher officers intimating them regarding effecting the recovery of churra poppy. For the ready reference, the provisions of Section 42 is reproduced as under :-

“(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non- cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required: Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.

(3) Should the true name and residence of such person not be ascertained within twenty- four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties. he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.”

The mandate of law has not been complied with in this case. Not only that, the alleged independent witness, namely, Ram Lal has not been examined as prosecution witnesses which further creates doubt with regard to the story propounded by the prosecution. Non-examination of the independent witness by the prosecution further weakens its case. Thus, the link evidence is missing in the instant case. As per the case of the prosecution, the seal after use was handed over to Ram Lal, Municipal Councillor, but there is no evidence on record that the seal was further handed over by the independent witness to any other person. As to why the prosecution has withheld this witness to whom the seal was handed over has not come on record. So, a dent stands created in the case of the prosecution. The evidence is missing qua the fact that the case property remained intact throughout. The safeguards provided under the Act are meant to ensure that no innocent person is convicted. The provision has an object underneath it.

Taking all the aforesaid circumstances cumulatively, this Court comes to the conclusion that the prosecution has failed to prove its case against the accused beyond reasonable shadow of doubt.

In the upshot, for the discussion made above, this Court allows the appeal by setting aside the conviction and sentence as awarded by the learned trial Court and acquit the appellants of the charges framed against them.

The fine amount, if already paid, is directed to be refunded to the appellants.

The appeal is allowed accordingly.

01.08.2016
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No