

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-590-DB of 2010

Date of Decision : November 17, 2016

Satpal @ Satta

....Appellant

VERSUS

State of Punjab

....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Suresh K. Arya, Advocate
for the appellant.

Mr. S.S. Dhaliwal, Additional Advocate General, Punjab.

T.P.S. MANN, J.

Convict Satpal @ Satta has filed the present appeal for challenging the judgment dated 22.3.2010 and order dated 26.3.2010 passed by learned Judge, Special Court, Patiala.

Vide judgment and order, learned trial Court convicted the appellant under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced him to undergo rigorous imprisonment for twelve years and to pay a fine of Rs.One lac and in default of payment of fine, to undergo rigorous imprisonment for two years. He was further convicted under Section 411 IPC and sentenced to undergo rigorous imprisonment for six months. He was further convicted under Section 471 IPC and sentenced

to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo rigorous imprisonment for one month. He was also convicted under Section 483 IPC and sentenced to undergo rigorous imprisonment for six months. The period of detention already undergone by him during investigation or trial was ordered to be set off against the sentence awarded.

According to the prosecution, on 10.8.2008, Inspector Nahar Singh, Incharge CIA Staff, Nabha, alongwith ASI Gurjant Singh, HC Sadha Singh, HC Gian Singh, HC Rajinder Singh, PHG Pakhar Singh and PHG Gurnam Singh, was proceeding in a private gypsy, being driven by PHG Parshotam Singh from Rohta Sahib Gurudwara to Rohti Bridge, in connection with patrolling and checking of suspicious and bad elements. When the police party reached just ahead of Rohta Sahib Gurudwara, one Piara Singh son of Dalip Singh, resident of village Achhal, who was seen coming from the side of Rohti Bridge, Inspector Nahar Singh, after getting the gypsy stopped started talking to Piara Singh. At about 7.45 p.m., one car bearing registration No.PB-57-A-8772 make Indigo and white in colour was seen coming from the side of Rohti Bridge. The occupants of the car tried to flee. The police party tried to apprehend the occupants and in the process, the front window panes of the car got damaged. One, who was driving the car fled away after opening the door. In order to apprehend him, HC Sadha Singh and PHG Gurnam Singh chased him but to no avail. The person sitting on the second seat of the car was apprehended and on enquiry he disclosed his name as

Satpal Singh @ Satta son of Piara Singh, resident of village Dedhna, Police Station Ghagga. He also disclosed that the person who had fled away was one Prince, resident of Anandpur Sahib. Inspector Nahar Singh apprised the appellant that he was an Inspector and posted as Incharge, CIA Staff, Nabha. He wanted to search his car but he had a right to get the search conducted in the presence of any Magistrate or a gazetted officer. The appellant replied that he wanted to get his car searched either in the presence of any Magistrate or gazetted officer. His non-consent memo Ex.PB was prepared. Inspector Nahar Singh then flashed message to the Deputy Superintendent of Police, Nabha and after making him conversant with the situation, requested him to reach the spot. The DSP, alongwith his staff, reached the spot in a government vehicle. He told the appellant that he was Arshdeep Singh, DSP, Nabha and wanted to know from him as to whether the search of his car be conducted in his presence. The appellant replied that he had full faith in him and he could get the car searched in his presence. His consent memo Ex.PC was prepared. Thereafter, in the presence of the DSP, Inspector Nahar Singh searched the car. Four gunny bags of poppy husk were recovered from the dicky of the car while two from the rear seat. From each of the six bags, two samples, weighing 250 grams each, were taken. The remaining gunny bags were weighed which came to be 39 kgs.500 grams in each bag. The six gunny bags of poppy husk and 12 sample parcels were duly sealed by Inspector Nahar Singh with his seal bearing inscription 'NS'. Sample seal was prepared separately. The seal after use was handed over to private witness Piara Singh. All the bags,

alongwith the sample parcels, were taken into possession through separate memo Ex.PD. By keeping those gunny bags of puppy husk in their possession, the appellant and Prince had committed offence under Section 15 of the NDPS Act. Accordingly, ruqa Ex.PF was prepared by Inspector Nahar Singh at 10.30 p.m., which was sent through Head Constable Rajinder Singh to Police Station Sadar, Nabha, where on its basis, FIR No.90 dated 10.8.2008 (Ex.PF/1) under Section 15 of the NDPS Act was registered by SI Baldev Singh at 10.50 p.m.

Further case of the prosecution is that Inspector Nahar Singh, during investigation of the case, conducted personal search of the appellant and notified him about the grounds of arrest. Intimation of his arrest was sent to his brother Jaspal Singh. Statements of the witnesses were recorded. Site plan was also prepared. On return to the Police Station, Inspector Nahar Singh produced the case property, the accused, the witnesses and seal impression before Inspector Devinder Singh, Station House Officer, Police Station Sadar, Nabha who verified the facts of the case and sealed the case property after putting his seal bearing inscription 'DS' and on directions of the Station House Officer, Inspector Nahar Singh deposited the case property with MHC Manmohan Singh. On the next day i.e. 11.8.2008, the case property and the accused were produced before the Ilaqa Magistrate. During Investigation, registration certificate of the car was found to be a forged document. The actual registration certificate stood allotted to motorcycle and not to the car recovered from the possession of the appellant. The car was the stolen property and belonged to PW8 Deepak Sharma. Prince, co-accused of

the appellant, who was the one driving the car at the relevant time, could not be arrested and declared a proclaimed offender. On receipt of report from the Chemical Examiner, final report under Section 173 Cr.P.C. was presented in the Court. The case was, thereafter, committed to the Court of Sessions, where the appellant was charged for the aforementioned offences, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ten witnesses.

PW1 HC Sukhwinder Singh proved his affidavit Ex.PA wherein he had stated that on 12.8.2008 the MHC had given him the sealed samples and he deposited the same in the office of Chemical Examiner, Punjab. He also stated that neither he tampered with the case property during the period it remained in his possession nor he allowed anyone to tamper with it.

PW2 Raja Singh, Clerk, office of SDM Bulath, District Kapurthala proved that registration No.PB-57-A-8772 was allotted to Hero Honda motorcycle in the name of Manpreet Singh and the number was not allotted to Indigo car, which was in the name of Rajbir Singh. He further stated that that is the fake and forged document.

PW3 Sanjiv Kumar, Photographer proved the taking of photographs at Court Complex, Nabha as Ex.P1 to Ex.P16 and its negatives as Ex.P17 to Ex.P32 and also proved the memo regarding taking into possession the photographs and negatives as Ex.PW3/A.

PW4 MHC Manmohan Singh proved his affidavit Ex.PW4/A in order to prove the link evidence. He deposed in the affidavit that on 11.8.2008 he was MHC in the Police Station and Inspector Nahar Singh deposited the case property with him and on the same day he handed over the same to Inspector Nahar Singh, which he again deposited with him after producing it in the Court. He further stated that on 12.8.2008 he sent the samples through Constable Sukhwinder Singh to the office of Chemical Examiner, Punjab. He also stated that on return from the said office he gave him receipt and on the same day he handed over six bulk bags, six sample parcels bearing numbers 1 to 6 for depositing the same in judicial Malkhana. He further stated that during the period the case property remained with him, he did not tamper with the same nor he allowed anyone to tamper with it.

PW6 DSP Arshdeep Singh proved consent memo Ex.PC and recovery memo Ex.PD.

PW7 Inspector Devinder Singh, the then SHO, Police Station Sadar, Nabha stated that on 10.8.2008, Inspector Nahar Singh, produced before him the case property, accused Satpal, witnesses and sample chit. After verifying the same, he fixed seal bearing impression 'DS' on the case property and on the sample chit and, thereafter, deposited the case property with MHC Manmohan Singh.

PW8 Deepak Sharma, Taxi Driver deposed that he was employed as Driver on Indigo car bearing No.HR-68-F-6023 and plying

the same as Taxi at Shimla. He stated that on 26.4.2008 his taxi was hired from Shimla for going to Delhi by two Sikh gentlemen and on the way at Murthal, they fled away alongwith the car after administering him some intoxicant. He also proved the FIR No.76 dated 24.4.2008 under Sections 328/379 IPC. After about eight months, he came to know that the said car was recovered by CIA, Nabha. He found the car bearing fake and forged number PB-57-A-8772 and proved the copy of RC as Ex.PX/2.

PW9 Inspector Nahar Singh, Investigating Officer narrated the entire prosecution story on oath and proved all the documents prepared during investigation. He proved Ex.PB non-consent memo/statement of accused Satpal; Ex.PC consent memo of accused Satpal, Ex.PD recovery memo vide which case property was taken into possession; Ex.PX/2 RC of the car; Ex.PE recovery memo of car; Ex.PF ruqa; Ex.PF/1 FIR, Ex.PG personal search memo of the accused; Ex.PH information of grounds of arrest; Ex.PJ site plan; Ex.PK police remand request; Ex.PK/1 Inventory memo; Ex.PK/2 order of the Court; Ex.P33 to Ex.P44 sample parcels; Ex.P45 to Ex.P50 bags and Ex.PX report of the Chemical Examiner.

PW5 ASI Gurjant Singh made a statement on the same lines as made by Inspector Nahar Singh, the Investigating Officer.

PW10 HC Ram Naresh proved FIR No.76 dated 24.4.2008 under Sections 328/379 IPC and proved the photocopy of the FIR as Ex.PW10/A.

When examined under Section 313 Cr.P.C., the appellant denied all the incriminating circumstances appearing against him and pleaded his false implication.

In defence, the appellant examined DW1 HC Sukhwinder Singh, who proved photocopies of FIRs Ex.DW1/A to DW1/C, besides photocopy of the DDR Ex.DW1/D.

After hearing learned counsel for the parties and on going through the evidence on record, the trial Court came to the conclusion that the prosecution had been successful in establishing the involvement of the appellant in committing offences under Section 15 of the NDPS Act and Sections 411, 483 and 471 IPC and, accordingly, convicted and sentenced him, as mentioned above.

According to learned counsel for the appellant, the presence of DSP Arshdeep Singh at the time of recovery of the contraband from the appellant is doubtful as he did not append his signatures on the various documents prepared during the investigation and also not affixed his seal on the case property. However, it may be noticed that while deposing before the trial Court as PW6, DSP Arshdeep Singh testified that after receiving a message from Inspector Nahar Singh, he had reached the spot and the recovery was effected in his presence. He also deposed that he had informed the appellant about his right of search before another gazetted officer or Magistrate but the appellant reposed faith in him. The consent memo prepared in this regard bears his signatures. Merely because the other documents were not signed by him

is not sufficient to hold that he had not reached the spot or was, later on, set up as a witness.

Learned counsel for the appellant has submitted that independent witness Piara Singh was not produced by the prosecution in support of its case and, therefore, the conviction of the appellant on the basis of the evidence of the official witnesses stood vitiated.

It is true that independent witness Piara Singh was witness to the recovery of the contraband from the car in which the appellant was travelling at the relevant time. However, he could not be examined by the prosecution as he had been won over by the appellant and, accordingly, statement to that effect was made by the learned Additional Public Prosecutor for the State. Even otherwise, the defence could not bring any material from which it could be made out that any one of the official witnesses was inimically disposed towards the appellant and, therefore, falsely implicated him in the present case. All the prosecution witnesses who were involved in the recovery of the contraband from the appellant were cross-examined at length but no material could be brought by the defence on the record that they were not truthful witnesses.

Certain discrepancies have been pointed out by learned counsel for the appellant. According to him PW5 ASI Gurjant Singh stated that he could not tell as to whether the DSP was in police uniform or in plain clothes, whereas DSP Arshdeep Singh testified that he was in police uniform. Similarly, the investigation officer testified that the

photographer had not given the bill for clicking the photographs and had also not taken the payment for the work done, whereas PW3 Sanjiv Kumar, Photographer stated that he had received the payment of his job. Further, PW5 ASI Gurjant Singh stated that the Inspector had made a phone call to the DSP but the DSP and the Investigating Officer stated that phone call was also made, besides flashing the message on wireless. Also, the prosecution claims that four bags were recovered from the dickey of the car and two from the rear seat but PW5 ASI Gurjant Singh stated that four bags were recovered from the dickey and two from the back seat of the car. Still further, according to Inspector Nahar Singh, ruqa Ex.PF was taken by HC Rajinder Singh from the spot at 9.30 p.m., whereas the ruqa indicates that it was prepared at 10.30 p.m.. Besides, the Investigating Officer could not tell as to of what metal his seal was made of.

The above mentioned discrepancies are too trivial and of no consequence as they are likely to creep in testimonies of truthful witnesses by lapse of time. Most of the prosecution witnesses were examined after 1½ years of the recovery of the contraband from the appellant. As such, no benefit of the above mentioned discrepancies can be extended to the appellant.

Learned counsel for the appellant further submitted that the appellant had no connection with the contraband which was recovered from the car, rather the contraband belonged to the driver who had managed to escape from the spot. The appellant was only an innocent

passenger as he had taken lift in the car in question. Therefore, the appellant cannot be held to be in conscious possession of the contraband.

From the evidence, it is apparent that the appellant had admitted his presence in the car which was stopped by Inspector Nahar Singh. The appellant was apprehended and the six gunny bags from the car were taken into possession. Each of those bags contained 40 kgs. of poppy husk. Going by the sizes of the bags and also from the photographs Ex.P1 to Ex.P6, it is made out that they were not small bags which could have escaped the attention of the appellant in case he had chosen to take lift from the driver of the car who had, later on, managed to run away from the spot. Even otherwise after being produced before the Station House Officer and, thereafter, before the Ilaka Magistrate, the appellant did not intimate them that he had no connection with the gunny bags containing the poppy husk, whereas he was an innocent passenger in the car.

Once the presence of the appellant at the relevant time is admitted, he is deemed to be in conscious possession of the contraband. Section 35 of the NDPS Act requires the Court to presume the existence of the mental state for the commission of the offence and it is for the accused to prove otherwise. Even Section 54 of the NDPS Act requires drawing of presumption of being in conscious possession until or unless the accused proves that he had not committed the offence under the NDPS Act.

Half hearted attempt has been made by learned counsel for the appellant to challenge the veracity of the prosecution case by submitting that the provisions of Section 50 of the NDPS Act had not been complied with. However, from the evidence brought on the record it is made out that to begin with, Inspector Nahar Singh had given an option to the appellant as to whether he wanted to get his search conducted from a gazetted officer or a Magistrate but the appellant opted that his search be conducted in the presence of a Magistrate or a gazetted Officer. Pursuant thereto, Inspector Nahar Singh requested the Deputy Superintendent of Police, who also disclosed his identity to the appellant and informed about his right to be searched by another gazetted officer or a Magistrate but the appellant reposed confidence in him. It cannot be said that provisions of Section 50 of the NDPS Act had not been complied with. Even otherwise, the recovery of the contraband was from the bags carried in the car. No recovery of the contraband was made from the person of the appellant.

In view of the above, the appellant has rightly been held guilty and, accordingly, convicted for the offence under Section 15 of the NDPS Act.

From the testimony of PW8, Deepak Sharma it stood proved that the car in question bearing registration No.HR-68-F-6023 was taken away by two persons from Murthal after administering him some intoxicant. An FIR to that effect was lodged under Sections 328 and 379 IPC, which has been proved on record by PW10 HC Ram Naresh. As per

the Investigating Officer, it was the same car which was stolen on 26.4.2008. From the testimony of PW2 Raj Singh, Clerk, Office of SDM, Bulath, it stood established that registration No. PB-57-A-8772 found displayed on the car in question stood allotted to a motorcycle owned by Manpreet Singh. Therefore, the registration certificate Ex.PX/2 which was found recovered from the car was a fake document but the accused were using the same as a genuine document. Therefore, the appellant has rightly been convicted for the offences under Sections 411, 483 and 471 IPC.

Coming to the question of sentence, it may be noticed that the appellant is behind the bars ever since the recovery for the contraband from him. As per the custody certificate produced by the learned State counsel, the appellant also stood convicted in one more case under Section 15 of the NDPS Act and sentenced to undergo imprisonment for one year, besides another case under Section 52-A(1) of the Prison Act, wherein he has been sentenced to the period already undergone by him. The appellant has been sentenced to undergo imprisonment for twelve years in the present case for being found in possession of 240 kgs. of poppy husk. Taking into consideration the totality of the circumstances, this Court is of the view that the sentence of twelve years imposed for the offence under Section 15 of the NDPS Act is somewhat on the higher side. Ends of justice would be suitably met if the same is reduced to ten years.

Accordingly, the conviction of the appellant under Section 15 of the NDPS Act and under Sections 411, 471 and 483 IPC is upheld. The imprisonment of twelve years imposed for the offence under Section 15 of the NDPS Act is reduced to rigorous imprisonment for ten years. The fine of Rs.One lac for the said offence, alongwith its default clause, is maintained. The sentences of imprisonment and fine imposed upon the appellant for offences under Sections 411, 471 and 483 IPC, alongwith the default clause, are maintained. All the substantive sentences of imprisonment shall run concurrently.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

November 17, 2016
satish

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO