

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

Crl. Appeal No.S-1181-SB of 2013 (O&M)
Date of Decision: August 04, 2016

Lovedeep Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pardeep Singh Mirpur, Advocate
for the appellant.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Though today only application for suspension of sentence is listed, but in the interest of justice and as prayed for by learned counsel for the appellant, the main appeal which was admitted on 12.04.2013, is being taken up for final disposal.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 21.03.2013 passed by learned Judge, Special Court, Bathinda, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 18(c) of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Bathinda, are as under:-

“2. Prosecution story in brief is that on 28.02.2008, PW3

Inspector Ranjit Singh (the then Sub Inspector) investigating officer of the case (hereinafter referred as the IO) along with PW2 ASI Phulvir Singh (the then Head Constable) and some other police officials was holding Nakabandi at Engineering College Chowk, Bathinda for checking of vehicles as per order dated 27.02.2008. At about 12.45 pm, a Maruti Car of white colour having tinted glasses bearing registration No.DL-1CB-6441, which was having a flag rod with a green flag came from Dabwali side. HC Kashmir Singh signaled this car to stop. In the meantime, Raja Singh son of Mal Singh, Jat Sikh, resident of Dhobiana, Cantonement Bathinda reached there and was joined in the police party. On enquiry, the car driver disclosed his identity as accused Lovedeep Singh as fully detailed and described herein above. During the checking, there was suspicion of some Narcotic Substance in his car and hence accused Lovedeep Singh was given option to get search of his car conducted in the presence of a Gazetted Officer or a Magistrate. Accused opted to get his search conducted before a Gazetted Police Officer. Accordingly, his consent memo Ex.PB was prepared, which was attested by the witnesses. The IO sent information to PW5 Harsh Kumar Bansal, IPS, ASP, City Bathinda by making call on his mobile phone No.98784-21009 at about 1.15 pm and he was requested to reach the spot. After some time Harsh Kumar Bansal ASP reached the spot on his official vehicle along with his staff. He disclosed his name, rank and place of posting to the accused and gave him option to get search of his car conducted in his presence or in the presence of any Gazetted Officer or a Magistrate, due to suspicion of possession of some Narcotic Substance. The accused reposed confidence in the ASP and gave consent to get his search conducted in the presence of the ASP. Accordingly, consent memo Ex.PC of the accused was prepared, which was attested by the witnesses. As per direction of the ASP, the IO conducted search of the car and a polythene bag was found lying under driver seat of the car. This polythene bag was found containing opium wrapped in a glazed paper. On weighment, the opium was found 2 Kgs, out of which a sample weighing 20 grams was separated. Remaining opium was put in the same polythene bag, which was further put in a plastic container and was converted into a parcel. The sample parcel and the bulk parcel of opium were sealed by the IO with his seal bearing impression of words 'RS'. Sample of seal Ex.P2 was prepared. After use the seal was entrusted to Raja Singh independent witness. This case property was taken in police possession vide recovery memo Ex.PD, which was attested by the witnesses. On search of the car, its registration certificate in the name of Asha Mohindru, driving license of accused Lovedeep Singh and a photostat copy of learner's driving license of the accused were recovered from dash board of the car. The car was carrying a flag of green colour of Indian National Lok Dal bearing symbol of spectacle. On front and

rear wind screen of the car pamphlets of 'Gurtej Weds Khushdeep' were affixed. The car along with above said documents was taken in police possession vide recovery memo Ex.PE, which was attested by the witnesses. Personal search of the accused was conducted and he was found carrying a purse containing currency notes of Rs.1910/- as well as Two Nokia mobile phones, a ring of gold and locket in black thread etc. Accordingly, his personal search memo Ex.PF was prepared and these articles were taken in police possession after converting into sealed parcel. Accused could not produce any valid permit or license or keeping opium in his possession. Hence, ruqa Ex.PH was sent to the police station for registration of formal FIR under Section 18 and 25 of NDPS Act against the accused Lovedeep Singh and Asha Mohindru through C.Gurmail Singh, on its basis FIR Ex.PH/1 was recorded by SI Ravinder Singh. Investigation was conducted at the spot. Site plan Ex.P4 of place of recovery and arrest memo Ex.PI of the accused were prepared. Statements of the witnesses were recorded. Special Report Ex.PK under Section 57 of NDPS Act was sent.

3. On reaching the police station, the IO produced the case property and the accused before PW6 Jagdish Kumar DSP (the then Inspector) SHO of the police station vide entrustment memo Ex.PJ. The SHO affixed his seal bearing impression of words 'JK' on bulk parcel, sample parcel and sample of seal Ex.P2. On 29.02.2008, he produced the case property and the accused before the Area Magistrate and filed application Ex.PW6/A for drawing of representative sample from the bulk parcel of opium and application Ex.PW6/B for depositing the bulk parcel in NDPS Godown and under Section 52-A of NDPS-Act. The Area Magistrate vide his endorsement Ex.PW6/C had drawn a representative sample weighing 10 grams from bulk parcel of opium and then sealed the bulk parcel and the representative sample parcel with his seal bearing impression of words 'BS'. Sample of seal Ex.P1 was prepared. Photographs of the case property were taken. The SHO deposited the bulk parcel in NDPS Godown and sent the sample parcel to the Chemical Examiner along with CFSL Form Ex.PW6/D through PW1 HC Angrej Singh, who has furnished affidavit Ex.PA. Statement of PW2 Ramesh Kumar Record Keeper of District Transport Officer (hereinafter referred as DTO), Delhi with respect of registration certificate, Ex.PW2/A of Car No.DL-1CB- 6441 was recorded. Relevant Register entry is Ex.PW2/B and Form No.20 is Ex.PW2/C. Statement of PW4 Amarjit Singh Clerk of DTO, Bathinda was recorded with respect to driving license Ex.PW4/A of the accused. Statement of PW7 Narinder Pal Singh regarding sale of the said car was recorded. Report of Chemical Examiner Ex.PW6/E was received. Statements of remaining witnesses were recorded and on completion of investigation, final report

against the accused was presented in this court.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 18(b) of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Angrej Singh, PW-2 Ramesh Kumar, Record Reader of DTO, Delhi, PW-3 Inspector Ranjit Singh, Investigating Officer, PW-4 Amarjit Singh, Clerk DTO, Bathinda, PW-5 Harsh Kumar Bansal, PW-6 Jagdish Kumar and PW-7 Narinder Pal.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent.

In defence, accused examined DW-1 Head Constable Tara Singh and DW-2 Head Constable Ranjan Kumar.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued only on one point that the independent witness has not been examined and testimonies of police officials alone cannot be believed and reasonable doubt exists in the prosecution version. Learned counsel for the appellant, in the alternative, prayed for reduction of sentence imposed upon the appellant.

On the other hand, learned State counsel argued that case of the

prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

After hearing learned counsel for the appellants as well as learned State counsel, I find that it is settled law the testimony of police official is as good as of any other witness unless some enmity or motive of the police official to falsely implicate the accused is alleged and proved. In the present case, no such enmity or motive of the police officials is alleged and proved on the record. There is no ground to disbelieve the statements of the police officials. The PWs have deposed consistently regarding the prosecution version. There are no material contradictions or material improvements in the statements of the witnesses. No material discrepancies have been pointed by learned counsel for the appellants. There is nothing in the cross-examinations of the PWs which may make their statements unreliable. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is complete. Moreover, the police party joined the independent witness but he was given up by learned Public Prosecutor being won over by the accused. In no way, it can be held that no attempt was made to examine the independent witness.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 21.03.2013 passed by learned Judge, Special court, Bathinda, is correct, as per law and does not require

any interference from this Court.

As regarding the alternative prayer for reducing the sentence, learned counsel for the appellant contended that appellant has already undergone imprisonment of 3 years 2 months and 3 days out of the total sentence. He next contended that the appellant is young man of 28 years, poor person, first offender and only bread earner of the family and suffering from criminal proceedings since 2008. He further contended that recovery from the appellant falls under non-commercial quantity.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is young man of 28 years, poor person, only bread earner of the family and further in view of the fact that appellant has already undergone actual sentence of 3 years 2 months and 3 days out of the total sentence and he is suffering from long protracted criminal proceedings since 2008 i.e. for the last about eight years and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 2 kgs. opium, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The sentence of fine is also reduced and appellant is directed to pay fine of ₹10000/- instead of ₹20,000/-.

Accordingly, present criminal appeal stands partly allowed.

Appellant Lovedeep Singh, who is in custody, be set as liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

August 04, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No