

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal No.S-935-SB of 2003 (O & M)

Date of Decision: February 10, 2016

Puran Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. K.S. Dhaliwal, Advocate, for the appellant.

Mr. J.S. Sekhon, Assistant Advocate General, Punjab.

. . .

Jaspal Singh, J

1. The instant appeal has been preferred by accused – Puran Singh challenging judgment of conviction and order of sentence dated April 17, 2003 rendered by the Judge, Special Court, Patiala, in case bearing FIR No.201 dated December 22, 1999, under Section 15 of the Narcotics Drugs & Psychotropic Substances Act, 1985 (for short, 'Act'), registered at Police Station, Ghagga, whereby he has been held guilty for commission of aforesaid offence, convicted and sentenced to undergo RI for ten years alongwith fine to the tune of ₹ 1 lac and in default of payment of fine, to further undergo RI for six months.

2. Brief facts of the case are that secret information was received to SI Wassan Singh, at the time of holding naka bandi in the area of

husk in the area of village Gurdialpura after covering the bags of poppy husk with parali. Accordingly, ruqa was sent to the police station, on the basis of which, a formal FIR was recorded. One Lakha Singh son of Ganda Singh, resident of village Attalan was joined in the police party and accused was apprehended on the bank of river Ghaggar in the area of village Gurdialpura Beer, while sitting on the bags. Option was given to him whether he wanted to be searched in the presence of a gazetted officer or a Magistrate. Accused opted to be searched in the presence of a gazetted officer, whereafter his statement was recorded which was thumb marked by him and attested by the PWs. DSP – Gurbachan Singh was informed by a wireless message who reached the spot and disclosed his identity to the accused. Thereafter, on the direction of DSP, Gurbachan Singh, SI Wassan Singh conducted the search of bags (25 in number), which were found to contain poppy husk.

3. After completion of necessary formalities and on receipt of report of Chemical Examiner, final report under Section 173 (2) Cr.P.C. was presented in the court. Copies of documents as required under Section 207 Cr.P.C. were supplied to the accused, free of costs. Finding a prima facie case, accused was charge-sheeted under Section 15 of the Act, to which, he pleaded not guilty and claimed trial.

4. In order to substantiate its case, prosecution examined as many as six witnesses.

5. When incriminating circumstances appearing in prosecution evidence were put to accused for eliciting his explanation as required under Section 313 Cr.P.C., he denied all the allegations and pleaded false implication in the instant case. In defence, the accused tendered into evidence affidavits of Pritam Singh son of Kundan Singh,

Mohinder Singh son of Faquir Chand, Kundan Singh son of Mulla Singh and Shisha Singh son of Lohra Singh (Ex.DA to Ex.DF) besides copy of judgment dated October 03, 2002 (Ex.DG) passed by this court in Criminal Appeal No.1137-SB of 2002.

6. After hearing learned counsel for the parties and on appraisal of evidence, the trial court vide judgment of conviction and order of sentence dated April 17, 2003 held the accused guilty, convicted and sentenced him as detailed above.

7. Aggrieved by the aforesaid judgment/order of trial court, accused – Puran Singh has approached this Court by way of instant appeal. The conviction and sentence of the appellant has been challenged on the ground that prosecution has miserably failed to prove the conscious possession of the contraband; non-examination of independent witness; non-examination of HC Amrik Singh, to whom, seal after use is alleged to have been handed over; sending of samples with inordinate delay to the office of Chemical Examiner; non-investigation of the source of contraband; and contradictory deposition of DSP and Investigating Officer.

8. While assailing the impugned judgment of conviction & order of sentence, it has been argued with vehemence by learned counsel for the appellant that accused has been falsely implicated in the instant case by SI Wassan Singh in connivance with other police officials. Infact, he was taken away by the police from his village in the presence of respectables namely Pritam Singh son of Kundan Singh, Jarnail Singh son of Gopal Sigh, Jagdish Singh son of Tehal Singh, Mohinder Singh son of Faquir Chand, Kundan Singh son of Mulla Singh and Shisha

Ex.DA to DF respectively unfolding that the appellant was arrested by the police in their presence and then falsely implicated in the instant case.

9. On the other hand, learned counsel for the State has supported the impugned judgment of conviction and order of sentence. He has reiterated the version of the prosecution story. He has argued that there is no discrepancy or infirmity in the testimonies of witnesses which would falsify the prosecution case. He has submitted that the impugned judgment of conviction and order of sentence are absolutely in consonance with the evidence available on file and accordingly prayed for dismissal of this appeal.

10. This Court has given an anxious thought to the rival contentions made by learned counsel for the parties and scanned the documents available on file.

11. As regards the first and foremost contention raised by learned counsel for the appellant that prosecution has miserably failed to establish that he was found in conscious possession of 25 bags of poppy husk. The said recovery is alleged to have been effected from the bank of river Ghaghar. Appellant is alleged to have been sitting on the bags when raid was conducted and he was apprehended. But, mere sitting on the bags does not *ipso facto* mean that appellant was in conscious possession of bags containing poppy husk. The police was obliged to conduct further investigation to prove that accused was really in possession of the bags and from where, the same were brought and what was its source. The failure to give any explanation by the appellant for being present at that place itself does not prove that he was in a conscious possession of contraband. To fortify the aforesaid observation, we can have the

State of Punjab vs. Balkar Singh & another, 2004 SCC (Crl.) 838 which has been subsequently relied upon by the Division of this Court in case ***Sukhdev Singh @ Sukha vs. State of Punjab, 2006(1) R.C.R. (Criminal) 4***. In case ***Lakhvinder Singh vs. State of Haryana, 1996(2) Recent Criminal Reports 372***, police had allegedly recovered 36 bags of poppy husk from the fields, concealed under heap of Parali but there was no evidence that the land, from where bags were recovered, belonged to the accused or that he was in possession of that land or he was dealing/holding or was concerned in any manner with the same. The mere fact that accused hid himself behind the heap of Parali is not sufficient to prove possession of accused and it was held that the prosecution has failed to prove its case.

12. Adverting to the facts of the present case, on receipt of secret information, raid was conducted at the place disclosed by the secret informant and accused was allegedly found sitting on the bags concealed under Parali on the bank of river Ghaghar. The place, from where alleged recovery is effected, does not belong to the appellant in any way. Mere fact that appellant was present at the place of recovery, is itself no ground to infer that he was in conscious possession of the bags of poppy husk. In another case ***Baldev Singh vs. State of Punjab, 2005(1) RCR (Crl.) 823***, while relying upon the judgment delivered by the Hon'ble Apex Court in ***Syed Mohd. Syed Umer Syed & others vs. State of Gujarat, JT 1995(3) SC 489***, similar observation was made. In the case of ***Baldev Singh (supra)***, two bags of poppy husk were recovered. It was alleged that two accused were sitting over the bags. It was not established that bags belonged to the accused. It was held that

bags, does not infer that they were in conscious possession of those bags. So, conviction recorded under Section 15 of the Act was set aside. This judgment is fully applicable in the facts & circumstances of this case and goes to the rescue of the appellant.

13. As regards second submission that case of prosecution is solely hinges on the testimony of officials witnesses and PW Lakha Singh who is alleged to have joined the raiding party was given up for the reasons best known to prosecution and was not examined to corroborate their version, non-examination of independent witness Lakha Singh also goes to the root of the case and shatters the basic prosecution version. This Court finds full force in this contention raised by learned counsel for the appellant. Undoubtedly, as per the case of prosecution, PW Lakha Singh was associated in the raiding party after receipt of secret information but to the utter surprise, he has not been examined by the prosecution. He has simply been given up as having been won over by the accused. Non-examination of PW Lakha Singh also casts a serious doubt, who was the only independent witness allegedly associated in the raiding party. Moreover, seal after use was not entrusted/handed over to PW Lakha Singh either by DSP or by SI Wassan Singh who conducted the investigation of this case. SI Wassan Singh (PW-3) when subjected to cross examination stated that he handed over the seal after use to HC Amrik Singh whereas DSP Gurbachan Singh (PW-2) retained his seal with him. The version of Gurbachan Singh (PW-2) is that he retained the seal after its use whereas SI Wasan Singh firstly handed over the seal to HC Amrik Singh and then it was handed over to PW Lakha Singh but infact, seal was never handed over to Lakha Singh. The testimonies of

DSP (PW-2) and SI Wassan Singh (PW-3) in this regard are contradictory.

14. Here, it would be pertinent to mention that HC Amrik Singh was neither a member of the raiding party nor he appended his signatures on any of the documents. Even the prosecution neither examined him as a prosecution witness to depose that seal after use was handed over to him nor his affidavit has been produced on record. The non examination of HC Amrik Singh also leads to the conclusion that the link evidence is missing in the instant case. Similarly, HC Harmesh Kumar, alleged recovery witness who appeared in the witness box as PW-4, while subjected to cross examination, has stated that SI Wassan Singh handed over his seal after use to HC Amrik Sing while DSP retained his own seal. Thus, non examination of HC Amrik Singh is fatal to the case of the prosecution and makes it highly doubtful and suspicious. Thus, possibility of tampering with sample seals; substance of case property being changed; and bags been re-sealed cannot be ruled out. To fortify these observations, we can have the reference of pronouncements of Division Bench of this Court in the case of ***Sukhdev Singh @ Sukha (supra)***. Moreover, samples in this case are alleged to have been taken on December 22, 1999 whereas the same were sent to the office of Chemical Examiner for analysis thereof on January 03, 2000. There is no explanation about the inordinate delay in sending samples to the office of Chemical Examiner. It also castes a shadow of doubt upon the prosecution case.

15. Not only this, even the appellant was not questioned or examined under Section 313 Cr.P.C. with regard to his alleged conscious

accused recorded under Section 313 Cr.P.C. transpires that when he was examined under Section 313 Cr.P.C., the essence of accusation was not brought to his notice, more particularly, the aspect of conscious possession. As observed by the Hon'ble Apex Court in case ***Avtar Singh vs. State of Punjab, 2002(4) RCR (Criminal) 180***, the fact of such omission vitally affects the case of the prosecution.

16. Thus, it can be safely concluded that case of the prosecution suffers from material infirmities and illegality. As such, the appellant is entitled to the benefit of doubt.

14. Taking into consideration the aforesaid aspects, the instant appeal is allowed. Impugned Judgment of conviction & order of sentence dated April 17, 2003 are set aside and the accused – appellant stands acquitted of the charges.

February 10, 2016
avin

(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No