

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

CRA-D-356-DB-2014

Date of decision: July 27, 2016

Gurbhej Singh @ Bheja and another

.....Appellants

Versus

The State of Punjab

.....Respondent

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

Present: Mr. Krishan Singh Dadwal, Advocate
for appellant No.1-Gurbhej Singh @ Bheja.

Mr. Balbir Singh Jaswal, Advocate
for appellant No.2-Paramjit Singh.

Dr. Deipa Singh, Addl. A.G., Punjab.

GURMIT RAM, J.

This appeal is preferred at the instance of aforementioned appellants against the judgment of conviction and order of sentence dated 14.01.2014 passed by the learned Judge, Special Court, Ludhiana in criminal case bearing FIR No.184 dated 08.09.2007, Police Station Sidhwan Bet, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short - "the Act"), vide which they were held guilty under Section 15 of the Act and were awarded the sentence thereunder.

2. Briefly stated the prosecution version as put up before the

learned trial Court was that on 08.09.2007, Amarjit Singh, Inspector, Incharge, Anti Narcotic Cell Ludhiana (Rural) along with ASI Jagjit Singh and other police officials was holding a special *Nakkabandi* towards the northern side of drain bridge, village Leela in respect of checking of suspects, suspected vehicles and narcotic materials as per the direction of SP(D). One Shinder Singh son of Sajjan Singh was joined in the police party. In the meanwhile, one car of silver colour which was being driven by a Hindu gentleman came from the side of village Leela which was signalled to stop but its driver managed to flee away along with the car without stopping the same. At the same very moment, one truck bearing registration No.HR-55-7757 came at drain bridge from the side of village Leela, which was intercepted by Amarjit Singh, Inspector with the assistance of his party members. It was about 6:30 a.m. The driver of the truck and a person sitting along with him were got alighted from the truck. On interrogation, the person who was driving the truck told his name as Gurbhej Singh @ Bheja son of Sukhwant Singh resident of village Nagoke Police Station Vairawal, District Tarn Taran, whereas the person sitting along with him disclosed his name as Paramjit Singh son of Harbans Singh resident of village Kammalke, Police Station Lopoke, District Amritsar. Amarjit Singh, Inspector gave his introduction to both of them by disclosing his status and posting. He further told them that he intends to take search of their truck since he suspects that it is containing some narcotic material. He further disclosed them that they have a legal right to get search of their truck conducted in the presence of

any Gazetted Officer or the Magistrate by calling any Gazetted Officer or Magistrate at the spot, if they so desire. Both Gurbhej Singh @ Bheja and Paramjit Singh expressed that they intend that search of their truck be conducted in the presence of any Gazetted Officer. Accordingly, their dissent statements were recorded. Then on the request of Inspector Amarjit Singh, Satnam Singh DSP(D) Ludhiana (Rural) reached at the spot along with his staff and Government vehicle. He was apprised of the facts of this case. He also introduced himself to the accused by telling his status and posting and further told them that he wants the search of their truck be conducted in his presence, but in case if they desire then any Magistrate or any other Gazetted Officer can be called at the spot of which they have legal right. Both accused Gurbhej Singh @ Bheja and Paramjit Singh reposed confidence in DSP(D) Satnam Singh and further expressed that he {Satnam Singh DSP(D)} can get the search of their truck conducted in his presence. Their consent statements were recorded. The search of their truck was conducted after removing its *Tarpal* and on checking, hundred filled bags were found to be loaded in it. The said bags were got unloaded from the truck and on checking, poppy husk was recovered from each of the bags. Weighing and stitching materials etc. were arranged at the spot. Bikram Singh, photographer also reached there. Two samples weighing 100 grams each were separated from each of the said bags and the remaining contents of each of the bags on weighment were found to be 40 kgs. poppy husk. The said 200 sample parcels and the bags containing remaining poppy husk were sealed by

Inspector Amarjit Singh with his seal of "AS". Sample seal was prepared separately. DSP Satnam Singh also put his seal of "SS" on the sample parcels and gunny bags containing remaining poppy husk and thereafter, the same were taken into police custody vide a memo. On checking, registration certificate of abovesaid truck was recovered, which was in the name of Sukhwant Singh son of Kirpal Singh. This truck along with its registration certificate was also taken into police possession vide a separate memo. On interrogation, accused Gurbhej Singh @ Bheja and Paramjit Singh told the name of the person who succeeded to run away from the spot along with car as Bagga Singh resident of near Phillaur. Poppy husk recovered from their truck also belonged to him (Bagga Singh). The accused could not produce any license or permit for keeping the abovesaid narcotic into their possession. Ruqa was sent to police station, on the basis of which instant case was registered against the appellants-herein (accused) and Bagga Singh abovementioned. Statements of witnesses were recorded. Site plan of place of recovery was prepared. Case property was produced before the Court with regard to proceedings under Section 52-A of the Act. On the completion of investigation and on receipt of report of Chemical Examiner, challan was presented before the Judge, Special Court, Ludhiana against accused Gurbhej Singh @ Bheja and Paramjit Singh only. As regards accused Bagga Singh and Sukhwant Singh, it was stated that supplementary challan would be presented after their arrest.

3. Compliance of the provision of Section 207 of the Code of

Criminal Procedure (for short "Cr.P.C.") was made.

4. Finding a prima facie case under Section 15 of the Act, both the accused were chargesheeted accordingly, to which they pleaded not guilty and claimed trial.

5. During trial of the case, the prosecution examined seven witnesses in all.

6. On the completion of prosecution evidence, both the accused were duly examined as per provision of Section 313 Cr.P.C. in which they denied the entire incriminating evidence brought on the record during trial and put to them during their examination.

Further, they also took the plea of their innocence and false implication in this case. Then accused Gurbhej Singh @ Bheja, who as per the prosecution case was driving the truck in question at the relevant time, took the plea that no recovery was effected from him. Infact one Bagga Singh hired his truck bearing registration No.HR-55-7757 for carrying goods to Jalandhar District from Gwalior. Said Bagga Singh got the bags loaded from the labour and directed him to follow him. When he was following Bagga Singh who was going ahead of his truck in a car, the police gave signal to Bagga Singh to stop his car who anyhow managed to escape. Thereafter the police intercepted his truck and took him along with truck at Anti Narcotic Cell, Jagraon and involved him in this case falsely. The bags recovered from his truck belonged to Bagga Singh.

The plea taken by accused Paramjit Singh was also on the same line as that of Gurbhej Singh @ Bheja.

Accused did not lead any evidence in defence.

7. The learned trial Court after hearing learned counsel for both the parties and going through record as well held both the accused guilty for the offence punishable under Section 15 of the Act vide the impugned judgment of conviction and awarded them sentence as detailed below: -

Gurbhej Singh @ Bheja	15 of the Act	Rigorous imprisonment for a period of twelve years and to pay a fine of ₹1,25,000/-.	In default of payment of fine, the convict shall undergo rigorous imprisonment for a further period of nine months.
Paramjit Singh	15 of the Act	Rigorous imprisonment for a period of twelve years and to pay a fine of ₹1,25,000/-.	In default of payment of fine, the convict shall undergo rigorous imprisonment for a further period of nine months.

8. The appellants-herein (accused) being not satisfied with the impugned judgment of conviction and order of sentence have come up with the instant appeal, notice of which was given to the respondent-State. Record of learned trial Court was also requisitioned.

9. Learned counsel for both the parties were heard. Record was also analyzed minutely with their able assistance.

10. Learned counsel for the appellants has contended that when appellants-herein (accused) were examined under Section 313, Cr.P.C., then no specific question was put to them by referring the relevant evidence on the file that they were in conscious possession of the contraband which was allegedly recovered from their truck. Since this material evidence was not put to them so the appellants were not able to

make out their defence properly which has resulted into the miscarriage of justice, the benefit of which is to be given to the appellants-herein. In support of his contention, he has referred to a case law delivered by Hon'ble Apex Court in case titled as ***State of Punjab vs. Hari Singh & Ors., 2009 AIR (SCW) 1596.***

On the other hand, the learned State Counsel has denied the above contention of learned counsel for the appellants and has contended that a specific question was put to both the appellants-herein (accused) in their examination under Section 313, Cr.P.C., that they were found in possession of 100 bags containing poppy husk.

11. Now let us see the record of this case in order to adjudicate properly the above rival contentions of both the parties. As per the record question No.1 was put to both the accused in their respective examinations under Section 313 Cr.P.C. that on 08.09.2007 in the area of village Leela Megh Singh they kept in their possession 100 bags containing 40 kgs. 200 grams poppy husk each in a truck bearing registration No.HR-55-7757 without any permit or license. So in view of this situation as per the record, the above contention of learned counsel for the appellants is held to be not valid one being found quite inconsistent with the record as well as evidence on the file.

In the case of ***Hari Singh*** (supra) as observed in its para No.18 *though there was evidence regarding conscious possession, but, unfortunately, no question relating to possession, much less conscious possession was put to the accused under Section 313, Cr.P.C. The questioning*

under Section 313, Cr.P.C., was held to be not an empty formality.

The appeal preferred by the State against the acquittal of the accused was dismissed.

12. In the case in hand as abovesaid both the appellants-herein (accused) during their examination under Section 313, Cr.P.C., were specifically put in question No.1 of their respective examinations that they were found in possession of 100 bags of poppy husk containing 40 kgs. 200 grams of poppy husk each in truck bearing registration No.HR-55-7757 in the area of village Leela Megh Singh. So the principle laid down in the case law of ***Hari Singh*** cited (supra) is not to be attracted to the case in hand for the reason that facts of this case law are different than the facts of the case in hand.

13. Then the learned counsel for the appellants has also contended that appellant-herein Gurbhej Singh @ Bheja was the owner of truck involved in this case, which was hired by one Bagga Singh for carrying goods from Gwalior to somewhere in District Jalandhar. Said Bagga Singh got loaded the bags in the said truck of appellant-Gurbhej Singh @ Bheja from the labour, contents of which were not within knowledge of this appellant. It is further his contention that after loading the said bags, said Bagga Singh started his car and asked this appellant to follow him. At the time of the alleged recovery, said Bagga Singh was going ahead of the truck of this appellant in his car and managed to flee away along with his car despite the signal given to him by the police to stop his car. The property loaded in truck of this appellant was also

belonging to said Bagga Singh. Lastly, he contended that in view of above circumstances no criminal liability of any kind can be fastened upon any of the appellants and liability, if any, rests upon said Bagga Singh.

In support of his above contention, he has referred to case law as laid down by Hon'ble Apex Court in case titled as ***Abdul Rashid Ibrahim Mansuri vs. State of Gujarat, 2000(1) Crimes 187***. In this case accused was driving an autorickshaw and some contraband was recovered from his vehicle. He admitted the recovery, but contended that he was engaged for the carrying purpose by two persons who were unknown to him and was carrying the same to the destination as told by them. Further he also contended that he had no knowledge that the bags recovered from his vehicle contained contraband. It was held that onus is on the accused to prove that he had no knowledge about the contents of these bags. The prosecution did not show that accused had entered into any conspiracy with the person who engaged him for the carrying purpose or they were either known to each other. It was further held that burden cast on the accused under Section 35 of the Act was duly discharged and accused was acquitted.

14. Now it is essential to evaluate the facts of this case in order to hold as to whether the principle laid down in Abdul Rashid's case (supra) is applicable to the case in hand or not. As above discussed, it is admitted by both the appellants herein (accused) that truck of appellant Gurbhej Singh @ Bheja was hired by one Bagga Singh for carrying some goods from

Gwalior to Jalandhar District. Then it was also admitted by them that bags were got loaded by said Bagga Singh in the truck from the labour. Thereafter they started from Gwalior and as directed by Bagga Singh they were following him in their truck, who was going ahead of them in his car. Their truck was intercepted by the Police party of Inspector Amarjit Singh (PW-6) in the area of drain bridge, village Leela Megh Singh in Ludhiana District. So meaning thereby the appellants had covered the distance of about 650 kms. starting from Gwalior to the place of alleged recovery which might have taken at least 10/12 hours to cover the same by a vehicle like truck. So on the way the appellants-herein (accused) as well as Bagga Singh might have stopped somewhere either for easing themselves or to take some food or refreshment etc. etc. Then it also came in the statement of both the appellants (accused) under Section 313, Cr.P.C., that said Bagga Singh was resident of nearby Phillaur. So in these circumstances it cannot be said that the appellants-herein (accused) were not known to said Bagga Singh or vice-versa. Then it is to be noted that 100 bags containing 40 kgs. 200 grams of poppy husk each were loaded in the truck of the accused (appellant) Gurbhej Singh @ Bheja. 100 bags containing 40 kgs. 200 grams poppy husk each generally take the form of a big heap if stacked together. So on this ground also appellants cannot be permitted to take the plea that they were not having any knowledge about the contents of the gunny bags allegedly recovered from their truck. Such like plea can be taken or considered if the quantity of recovered contraband is such which one could conceal without its

knowledge to other. Moreover, it is basic legal duty of a driver of any vehicle to check the contents of the containers, bags etc. before the same are loaded in his vehicle for the safe carriage. If he does not discharge his this duty diligently and vigilantly, then certainly he will have to suffer its consequences. If the above contention of learned counsel for the appellants is taken to be true, then certainly the transport industry will become a source of turmoil to disturb the peace of society with adverse effect to our economy and further to create a lot of problems, to our law enforcing agencies. The case law of ***Abdul Rashid*** (supra) cannot be applied to the case in hand since the case in hand is not squarely covered within the ambit of this case law.

15. Then the learned counsel for the appellants has further contended that it was the case of prosecution that one Shinder Singh son of Sajjan Singh was associated with the police party at the time of the alleged recovery being an independent witness. It is further his contention that this Shinder Singh was given up by prosecution during trial of the case being won over by the accused and as such a serious dent had been caused in the prosecution version which made it to be highly doubtful. Herein he has also submitted that residence of this Shinder Singh was at a distance of about 10 kilometers from the place of alleged recovery and on this score also the prosecution version is not free from suspicion, since no explanation came on the record on the part of prosecution as to how this Shinder Singh was present at the spot at the time of alleged recovery i.e. 6:30 a.m. in the morning. In support of his

this contention he has referred to the cross-examination of PW-5 Jaswant Singh (Retd.) ASI, wherein he stated that house of Shinder Singh was at a distance of 8 to 10 kilometers from the place of recovery, whereas this distance as stated by PW-6 Amarjit Singh (Retd.) DSP was 8 kilometers. Further in support of his contention, he has also referred to the case law as laid down by this Court in ***Sahab Singh vs. State of Haryana, 2015(1) R.C.R. (Criminal) 594.***

16. But as above discussed, facts of the case in hand are somewhat unique for the reason that appellants had admitted the recovery of 100 gunny bags stated to be containing poppy husk from their truck. Their plea that they were not having knowledge about the contents of these bags as above discussed in para No.12 of the judgment has been declined. Since they had admitted the alleged recovery from their truck, so the examination or non-examination of said Shinder Singh in this case is quite immaterial.

17. Learned counsel for the appellants has failed to point out any other hallmark point / material from the record available on the file in order to cause any tremor in the case of prosecution and further to upset the findings recorded by learned trial Court vide the impugned judgment of conviction.

18. Since the appellants-herein (accused) had admitted the alleged recovery, so there is no need to discuss the evidence of prosecution in detail, the brief resume of which was as under:-

Inspector Amarjit Singh, Investigating Officer, (DSP

Vigilance) appeared during the trial of the case as PW-6. He narrated the prosecution version on the same lines as recorded in ruqa Ex.PW5/F and as also mentioned in para No.2 of the judgment. Further, he also proved the recovery memo Ex.PW5/E vide which entire case property after doing the necessary formalities was taken into police possession. Further, he also proved the FIR Ex.PW3/A and memo Ex.PW5/G vide which truck involved in this case along with its registration certificate, tarpal etc. was taken into police possession. Then he also proved the memo Ex.PW5/K and Ex.PW5/L prepared in respect of arrest of the accused. He also proved the special report Ex.PW6/1 which was sent by him during proceedings and rough site plan of the place of recovery Ex.PW6/2. Ex.PW6/5 was the application moved by him before the Court for preparing inventory of the case property under Section 52-A of the Act and order Ex.PW6/6 passed by the learned Illaqa Magistrate. Then he also proved the abovesaid truck Ex.P2, samples drawn at the spot Ex.P8 to Ex.P107 and the representative samples drawn by Magistrate Ex.P108 to Ex.P207.

ASI Jaswant Singh and ASI Jagjit Singh were attesting witnesses of the abovesaid memos along with Shinder Singh. The said ASI Jaswant Singh appeared as PW-5 during trial of the case and he corroborated with the above discussed statement of PW-6, Inspector Amarjit Singh (DSP Vigilance).

PW-7 Satnam Singh, DSP(D) was the Gazetted Officer in whose presence the search of the truck of the accused was conducted after

taking their consent and willingness which led to the recovery of contraband in question. He also supported the version of prosecution to all the intents and purposes by lending corroboration to above discussed statement of PW-6.

PW-3 Retd. Sub-Inspector Kashmir Singh was posted at Police Station Sidhwan Bet on the date of alleged recovery. He recorded FIR Ex.PW3/A on receipt of ruqa. After the recovery, the entire case property along with accused and witnesses was produced before him as he was working as officiating SHO on that date. He put his seal of "KS" on sample parcels, gunny bags containing remaining poppy husk, sample seal chit after verifying the facts of the case and deposited the same with MHC Kuldeep Singh.

Said MHC Kuldip Singh appeared as PW-1. He tendered his duly sworn affidavit Ex.PA to the effect that case property was deposited with him in intact condition and he kept the same as such in his safe custody, till he sent the same to the office of Forensic Science Laboratory, Punjab Chandigarh through HC Sanjeev Kumar.

This HC Sanjeev Kumar appeared as PW-2 who tendered his duly sworn affidavit as Ex.PB to the effect that after necessary formalities, he got deposited the samples of this case along with sample seal in the office of Forensic Science Laboratory, Punjab, Chandigarh in intact condition.

PW-4 Kishore Kumar, Steno to RTA Office, Gurgaon proved the RC Ex.PW4/A of the Truck involved in this case i.e. HR-55-

7757. As per record, this vehicle was initially registered in the name of one Narinder Singh son of Atma Singh, Delhi Road, Gurgaon. It was later on transferred to one Ashok Kumar son of Lal Chand r/o B-5-183, Sector 3, Rohini Delhi on 4/6.08.2004 and then to Sukhwant Singh son of Kirpal Singh r/o VPO Nagoke, Tehsil Khandoor Sahib, District Amritsar (Punjab) on 9/12.06.2006. This Sukhwant Singh is none-else, but the father of appellant-herein Gurbhej Singh @ Bheja.

18. In view of the above, this appeal is held to be meritless and as such, the conviction of the appellants-herein (accused) is upheld, but anyhow in the interest of justice, their sentences are reduced to 10 years rigorous imprisonment and fine of ₹1,00,000/- each. In default of payment of fine, the appellants-herein (accused) shall undergo rigorous imprisonment for a further period of nine months each.

So this appeal is partly accepted to this extent only and partly dismissed and disposed of accordingly.

July 27, 2016
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |