

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

CRA-S No.336-SB of 2005 (O&M)

Date of decision: 11th August, 2016

Paramjit Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Baljeet S. Kathuria, Advocate for the appellant.

Mr. J.S. Brar, Asstt. Advocate General, Punjab
for the respondent/State.

FATEH DEEP SINGH, J

This appeal by appellant/convict Paramjit Singh is against a judgment of learned Judge, Special Court, Sangrur whereby through judgment of conviction and order of sentence dated 02.06.2004 the appellant was convicted for being found in illegal possession of commercial quantity of poppy husk under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act') and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to further undergo rigorous imprisonment for 1 year. The appellant along with his co-accused Kashmir Singh was also sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- each and in default thereof to further undergo rigorous imprisonment for 2 months

for recovery of another 35 kg of poppy husk. Both the sentences were ordered to run concurrently.

Upon hearing Mr. Baljeet S. Kathuria, Advocate for the appellant; Mr. J.S. Brar, Asstt. Advocate General, Punjab on behalf of the respondent/State and on perusal of the records.

The prosecution story in brief is that on 19.08.2000 police party in the area of village Bhudan around 6.30 p.m. accosted two persons coming on a scooter and on seeing the police party the person sitting on the pillion jumped off the vehicle and ran away and was identified by HC Surinder Singh as Kashmir Singh. The person apprehended disclosed his name as Paramjit Singh present appellant convict. From the scooter make Bajaj Chetak bearing registration number PB-10P-2576 the police upon search recovered a bag containing poppy husk which came to be 35 kg for which the accused could not show any valid authorization. On the basis of the same, after necessary formalities of drawing samples, preparing parcels and recoding statements accused was formally arrested. It was while in police custody the accused upon interrogation suffered disclosure statement and on the basis of which he led the police party to the disclosed place and got recovered seven gunny bags containing poppy husk and which came to be 35 kg in each bag, from which each two samples were drawn and necessary formalities were undertaken and during the course of investigations necessary articles were taken in to police possession and upon completion of the investigation challan was presented after receipt

of chemical examiner's report which has opined the articles to be poppy husk. The prosecution at the trial examined HC Gurdarshan Singh PW1; DSP Surinder Singh PW2; ASI Mahavir Singh PW3; Daulat Ram PW4; Harmesh Singh Assistant from the office of DTO Ludhiana PW5; Smt.Navjot Sohal, SDJM Malerkotla PW6; Constable Bhupinder Singh PW7; Kulbir Singh Clerk from the office of DTO Amritsar PW8 and Inspector Joginder Singh PW9 and closed the evidence.

Entire incriminating evidence was put to both the accused Paramjit Singh and Kashmir Singh under Section 313 Cr.P.C. and who denied the allegations and examined in defence Vishal Rattan LRC DW1 and Taj Mohd. DW2.

It is subsequent thereto, through impugned judgment learned trial Court convicted both the accused and that is how the present appellant Paramjit Singh is before this Court.

Contentions of learned counsel for the appellant are that the recovery of seven bags on the basis of alleged disclosure statement of the appellant cannot be termed to be a legal piece of evidence and that the only recovery from the scooter attributed to the appellant is of non-commercial quantity and thus has submitted that sentence so awarded to the appellant is not commensurate with the alleged recovery.

The same is sought to be opposed with much vehemence and force by learned State counsel who has sought to hammer home the point that a huge quantity of contraband has been recovered from the

conscious possession of the appellant and thus, findings of the trial Court cannot be put to doubt by any means.

Appreciating the submissions of the two sides, the semblance of submissions that there is non-joining of independent witnesses and their non-examination before the Court and that even independent witness PW Taj Mohd. has never supported the prosecution story and rather has been examined in the defence as DW2. It is the case of the prosecution that Taj Mohd. was present and was a witness to this recovery who has been given up because of his alignment with the accused for obvious reasons and rather he has been examined in defence and even if he has tried to undermine the prosecution version but one can safely conclude that since the defence also accepts the fact of presence of this witness at the time of this occurrence rather lends credence to the case of the prosecution and therefore arguments of the defence to that effect do not carry much weight. The mere argument that non-recording of the statement of HC Surinder Singh under Section 161 Cr.P.C. by the investigating officer undermines the prosecution version cannot be accepted. It is not each and every witness whose statement needs to be recorded and learned counsel for the appellant could not pinpoint anything that non-recording of the statement had caused any prejudice when this witness admittedly has signed documents of this recovery. The recovery has been apparently witnessed by none else than the DSP and Inspector Joginder Singh, senior functionaries of the police and it is nowhere case of the defence that the accused on account of

enmity with the police has been falsely implicated. The accused could not in any manner deny the irrefutable evidence which has come from the Vehicle Registration Authority that the vehicle in which the contraband was being ferried initially apprehended belong to him. Neither the accused in his defence has refuted this fact and therefore, lends credence to the prosecution story when initially 35 kg of poppy husk was recovered from the scooter which was being driven by none else than the convict appellant.

The accused has been apprehended by the police and it is the case of the prosecution that while in police custody during interrogation the accused has suffered disclosure statement Ex.PE and thus, in terms of section 27 of the Evidence Act such a statement comprises of two components and the component which was the case of immediate recovery and cause of discovery of an incriminating article on the information supplied by the accused falls within the ambit of a legal piece of evidence. In the present case, while in police custody on questioning the accused appellant has led the police party on the basis of disclosure statement to a place from where remaining contraband consisting of seven bags each weighing 35 kg in all 245 kg of poppy husk was recovered. Thus, the very element of that much of the information leading to discovery of the incriminating article certainly is to the mind of this Court a legitimate piece of evidence for which the accused could not put forth any worthwhile, acceptable, tangible refutation. The learned Court below has given a well reasoned finding

discussing each and every aspect of the matter to its logical conclusion and the learned counsel for the appellant could not pinpoint anything adverse that has come in the impugned findings which could have its impact upon the prosecution story. A huge quantity of poppy husk weighing 280 kg has been recovered from the conscious possession of the accused appellant and it is highly unbelievable and unacceptable as has been sought to be put forth by learned counsel for the appellant that the accused appellant has been falsely implicated and recovery implanted, certainly is too preposterous a preposition to escape from the very prosecution for such a heinous crime by the convict. The Statute has been framed with a definite purpose to curb drug menace and thus, has prescribed heavy and rigorous punishment for commission of such offences. The Courts needs to be sensitive to the very object of such a special provision to deal with ever increasing drug trade which is seeping at the very roots of the nations of the world. The impugned findings certainly have legally and legitimately considered each and every aspect of the matter thus, finding nothing adverse or perverse, the same needs to be upheld. The appeal being without any merit stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

August 11, 2016

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No