

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

CRA-S-1554-SB-2016 (O&M)

Date of decision : 23.09.2016

Sukhbir Singh @ Prince

...Applicant-Appellant

Versus

State of Haryana

...Respondent

CRA-S-1034-SB-2016 (O&M)

Balwinder Singh @ Bablu

...Applicant-Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. S.S. Gill, Advocate
for the applicant-appellant in CRA-S-1554-SB-2016

Mr. S.S. Antal, Advocate
for the applicant-appellant in CRA-S-1034-SB-2016

Mr. Pawan Garg, AAG, Haryana

JITENDRA CHAUHAN, J. (Oral)

The present appeals have been preferred against the judgment of conviction dated 17.02.2016 and order of sentence dated 23.02.2016, passed by learned Special Judge-cum-Additional Sessions

Judge, Kurukshetra (for short 'the trial Court'), whereby the appellants were convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act').

The facts of the case as noticed in the judgment passed by the trial Court are as under:-

“Allegations of the prosecution in this case are that on 4.2.2015 a police party, headed by SI Subhash Chand, was on patrolling duty and was present near Madhu Dairy, Pehowa where an information was received that three persons, dealing in the business of poppy straw, were travelling towards Pehowa via Kaithal in a vehicle bearing registration No.HR-67-7080. On this information, a barricade was raised by the above mentioned police party, at Gumthala Canal Bridge and a car was intercepted. Three persons were found travelling in the above mentioned vehicle. The said persons disclosed their identity as Manjinder Singh @ Kaka, Sukhbir Singh @ Prince & Balwinder Singh @ Bablu (accused). On being intercepted a notice under Section 50 of the NDPS Act was served upon both the accused and thereafter, on search of the car, in the presence of Shri Gurmail Singh, DSP Pehowa, poppy husk was recovered from their possession. The total quantity of contraband recovered from the above mentioned vehicle, kept in three bags, was 55 kilograms (total). The Investigating Officer of the case conducted all the usual formalities, prescribed under the statute, on the spot as well as in the police station, such as preparation of site plan of place of recovery and various

memos. The statements of witnesses u/s 161 Cr.P.C. were also recorded. On completion of investigation, the report under Section 173 Cr.P.C. was prepared and presented in the court.”

Charge under Section 15 of the Act was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove, its case, the prosecution examined PW1-ASI Virender Singh, PW2-SI Prem Dass, PW3-Constable Hoshier Singh, PW4-Sh. Vivek Yadan, PW5-ASI Rajesh Kumar, PW6-Constable Shish Pal, PW7-Constable Vikram Singh, PW8-Inspector Narender Kumar, PW9-SI Subhash Chander, PW10-Smt. Meena Devi, PW11-ASI Daljeet Singh, PW12-DSP Gurmail Singh, PW13-Inspector Aman Kumar, PW14-HC Raj Kumar, PW15-Gurvinder Singh and closed the evidence.

The statements of accused were recorded under Section 313 of Cr.P.C. and all incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied the same and pleaded false implications.

After appraisal of the evidence, the learned trial Court convicted and sentenced the accused as narrated above.

The learned counsel for the appellants refers to testimony of PW9-SI Subhash Chander, wherein he specifically stated that he did not affix his seal on samples. No effort was made to join any

independent witness(es) even though the recovery was allegedly effected from a public place during day time at 4.20 p.m. Further, he refers to testimony of PW12-Gurmail Singh, a substituted DSP, Shahbad and holding additional charge of Pehowa against the leave vacancy of DSP Chander Pal, that seal of SI Jagdish Chand posted at CIA Staff was imposed by him during the recovery proceedings. There is no compliance of Sections 55 and 57 of the Act. It is also to be noticed that DSP Chander Pal was neither involved in the recovery proceedings nor joined at any subsequent stage of the investigation. Thus, the seal on the recovery was appended by another officer which is a material defect in the investigation. The quantity in question is 55 kgs of poppy husk which is marginally higher than the commercial quantity and the appellants are not involved in any other case.

On the other hand, the learned State counsel states that 55 kgs. of poppy husk was recovered from the appellants which is a commercial quantity. He further states that the investigating officer had properly followed the procedure enshrined in the Act. However, he admits that the appellants are not involved in any other case.

I have heard the learned counsel for the parties and carefully perused the entire record on file.

The recovery in the instant case was allegedly effected at the Canal Bridge of village Gumthala at 4.20 p.m. However,

there is no whisper in the evidence of PW9-SI Subhash Chander, Investigating Officer qua the fact that he made an effort to join any independent witness(es) notwithstanding the fact that the place of recovery was a public place. No doubt, joining of the independent witness(es) is not mandatory in each and every case, however, at the same time it excludes the possibility of fabrication of the case of prosecution. If the Investigating Officer is unable to join any independent witness(es) or no one comes forward to assist him as independent witness(es) is one thing but the effort on the part of investigating officer should be made to join an independent witness. That apart, one more glaring fact which has surfaced on the record is that the seal impression on the case property was affixed as 'JC' where as SI Jagdish Chand to whom the seal belongs was not present on the spot. It has further been admitted by PW12-Gurmail Singh that he affixed the seal with the impression 'JC'. In other words, the seal impression of SI Jagdish Chand was affixed by PW12-Gurmail Singh, which creates a serious doubt in the mind of the Court, thus, the Court feels that the whole of the recovery proceedings stand vitiated. The appellants are not involved in any other case. In these circumstances, this Court is of the opinion that the prosecution has failed to establish its case against the accused. Consequently, the present appeals are

allowed.

Record of the Court(s) below be returned back.

23.09.2016
ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No