

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

CRA-S-3394-SB-2016 (O&M)

Date of decision-17.12.2016

Chamkaur Singh

...Appellant

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. M.S.Rai, Advocate,
for the appellant.

Mr. Luvinder Sofat, AAG, Punjab.

JITENDRA CHAUHAN, J. (Oral)

The present appeal is directed against the judgment and order dated 09.08.2016 passed by Judge, Special Court, Ludhiana vide which the appellant was convicted under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and sentenced to undergo rigorous imprisonment for two years with fine of Rs.10,000/- with default stipulation.

The brief facts of the present case as noticed in the judgment passed by Lower Appellate Court are as under:-

“On 14.07.2012, SI Kanwaljit Singh-Investigating Officer (in short I.O) alongwith other police officials on private vehicles in connection with patrolling and checking of suspicious persons and vehicles was going towards village Gonspur from Village Buraj Lambran. When police party reached near closed School Surjit Singh Gonspur, then from the side of village Burj

Lambran, one black colour motor cycle bearing no.PB-09-AF(T)-2489 made Pulsar was seen coming, on which, two persons were sitting. The person who was riding the motorcycle was aged about 25-30 years of 5'x7' height, wheatish colour medium body and active and the second person was pillion rider, who was aged about 35-40 years of dark complexion medium body. A plastic bag was kept in between both the persons on the said motorcycle. On the basis of suspicious, ASI Kanwaljit Singh signaled them to stop, but both the unknown persons threw the above said motorcycle and plastic bag and ran away towards the fields. Police party chased them but both of them ran away from the spot. ASI Kanwaljit Singh checked the plastic bag after opening the same. Poppy husk was recovered from the same. He separated two samples of 250gm each from the recovered poppy husk and the remaining came to be 19kg.500gms on weight. Both the sample parcels and bulk parcel were sealed with his seal bearing impression K.S.Sample seal was separately prepared and seal was handed over to HC Gurmail Singh after its use. On checking of the motorcycle No.PB-09AF(T)2489, no documents was recovered from it and thereafter, I.O came to know its EngineNo.DHGBUC71335 and Chassis No.MD2DHDZZ UCC-91522. Parcel containing poppy husk and motorcycle Pulsar was taken into police possession vide separate memos and memos were witnessed by the witnesses. Thereafter, I.O.sent ruqa to the police station through C-Nirmaljit Singh 3114 for registration on this case against the unknown persons. Investigation was conducted by the I.O at the spot, site plan was prepared and statements of the witnesses U/s 161 Cr.P.C were also

recorded. Thereafter, case property was deposited with MHC at Police Station.”

On committal, the accused were charged with offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution has examined C-Nirmaljeet Singh as PW-1, HC Raj Kumar as PW-2, HC Gurmail Singh as PW-3, SI Kanwaljit Singh as PW-4, Sandeep Singh as PW-5 and Inspector Ajit Singh as PW-6.

Thereafter, statements of the accused under Section 313 Cr.P.C was recorded in which entire incriminating circumstances appearing in the prosecution evidence were put to the accused to which accused denied and implied false implication. However, they did not lead any evidence in defence.

After appraisal of the evidence, learned trial Court convicted the accused-appellant(s) under Section 15 of the NDPS Act and sentenced to undergo imprisonment as narrated above. However, the co-accused Joginder Singh was acquitted by the trial Court.

Feeling aggrieved against the judgement and conviction and the order of sentence passed by the learned trial Court, the instant appeal has been filed by the accused/appellant.

It is submitted by learned counsel for the appellant that there is no complaint under Section 42(2) of the NDPS Act as it was a case of secret information and the Investigating Officer was enjoined upon to reducing the

information into writing and then to send it to his superior officers. He further refers to the observation made by trial Court in paragraph No.23 of the judgment which is reproduced as under:-

“After hearing the Learned Addl.P.P and Learned defence counsel at length, I am of the view that it is for the prosecution to prove that accused facing trial may be Chamkaur Singh and Joginder Singh were the same persons, who were coming on motorcycle no.PB-09-AF(T)-2489 make Pulsar keeping a plastic bag in between them but when the police gave them signal to stop the motorcycle, they both of them throwing the motorcycle and the bag containing poppy husk fled away from the spot. In fact, to prove their identity, the prosecution was supposed to give the exact bodily feature of the accused and to got their identification parade conducted. However, it is not the case of the prosecution that either of the accused already knew the police party. Although, their colour, approximate age and height has been given but even no attempt was made during evidence to match the same with the body description of the accused facing trial. So, the best course with the prosecution was to get conducted the identification parade from the I.O and other police officials present in his police party. But it was not got conducted. Moreover, it was not possible for accused flee away giving dodge to the police party consisting the I.O, two recovery witnesses and driver of their private vehicle. So, this fact case doubt about the identification of the accused. While saying so, I am fortified with the judgments of Hon'ble Punjab & Haryana High Court referred by the Learned defence counsel 'supra'.”

It is further contended that on the one hand, trial Court has observed that the prosecution has failed to prove the identity of the accused by describing their exact bodily features. Although their colour, approximate height and age were given but no attempt was made to match the same with the accused facing trial. Moreover, test identification parade was not conducted. On the other hand, the trial Court has convicted the accused

contrary to its own observations. The benefit of these observation has been given only to one accused i.e. Joginder Singh whereas on the same evidence the accused-appellant has been convicted. It is further contended that except the Registration Certificate (RC) of the motorcycle, there is no evidence on record to prove the identity of the case and the trial Court has fallen in error in convicting the accused only on the basis of registration certificate.

On the other hand, the learned State counsel supports the judgement of conviction and order of sentence passed by the trial Court and submits that the accused-appellant has been rightly convicted the sentence.

I have heard the arguments of the learned counsel for the parties and have carefully gone through the record of the case.

In this case, except the registration certificate of the motorcycle and the evidence that the motorcycle belongs to the appellant, there is no other evidence on record to prove the identity of the accused. Allegedly accused/appellant along with his co-accused, Joginder Singh had fled away from the spot. The prosecution has not produced any evidence to prove the exact bodily feature of the accused or to prove their colour, approximate age and height or to match the same with the accused facing trial. Moreover, no Test Identification Parade (TIP) was conducted by the prosecution.

This Court feels that the identity of the accused is not established on record and further since the case was registered on the basis of secret information; Investigating Officer was required to send intimation under Section 42(2) to his superior officers which has not been done in the instant case.

Consequently, the recovery proceedings stand vitiated and the accused is acquitted by giving the benefit of doubt. The impugned judgment and order passed by the trial Court are set aside.

The present appeal is allowed.

(JITENDRA CHAUHAN)
JUDGE

December 17, 2016
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No