

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

CRA No.S-764-SB of 2003

Date of Decision: January 13, 2016

Gurmail Chand

.... Appellant

vs.

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. M.L. Saini, Advocate for the appellant.

Mr. Ashish Sanghi, Deputy Advocate General, Punjab.

Kuldip Singh J.(Oral)

The present appeal is directed against the judgment of conviction and order of sentence dated 20.02.2003 passed by learned Judge, Special Court, Ludhiana, vide which the present accused-appellant was convicted under Section 18 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 ₹1,00,000/-, in default thereof to further undergo rigorous imprisonment for two years. It was also ordered that the convict shall be entitled to set off the period already undergone by him during the pendency of the trial against the period of sentence awarded to him. The case property was ordered to be disposed of after the expiry of the time allowed for appeal under the rules.

The prosecution case is that on 16.10.1998, S.I. Gurcharan Singh accompanied by ASI Teja Singh, H.C. Major Singh and other police officials was present on the bridge canal minor in the

area of village Khanjarwal when Hari Krishan S/o Bhajan Lal R/o Village Raikot arrived there. It was about 8.30 a.m., accused-appellant Gurmail Chand was seen coming from the side of village Khanjarwal on scooter bearing registration No.PB-04F-2642. As he tried to slip away, he was stopped on the basis of suspicion. On being enquired about the name and parentage etc., a polythene bag was found lying on the foot mat of the scooter. As the police party got suspected that there is some contraband in the polythene bag, the accused-appellant was given the option of getting the search done before the Magistrate or the Gazetted Officer. The accused-appellant desired the search to be conducted in the presence of some senior police officer. The statement of the accused-appellant was recorded as Ex.PA. Harjit Singh Pannu, DSP, Dakha was called at the spot through wireless message. The DSP arrived at the spot at 9.15. a.m. and he disclosed his identity to the accused-appellant and also apprised him of his rights of search before some other Gazetted Officer or Magistrate. The accused-appellant reposed confidence in the DSP and consent statement of the accused-appellant in this regard was recorded as Ex.PB. On direction of the DSP, Harjit Singh Pannu, SI Gurcharan Singh conducted the search of the polythene bag, from which 10 Kgs. opium was recovered. Two samples of 10 gms. each were separated. Then the samples of the bulk case property were sealed with the seal bearing impression 'GS' pertaining to SI Gurcharan Singh and 'HSP' pertaining to DSP Harjit Singh Pannu. The specimen seal impression was also prepared. The case

property was also taken into possession vide recovery memo (Ex.PC). These samples were got tested from the Forensic Sciences Laboratory, Punjab, Chandigarh. Vide report (Ex.PJ), the Forensic Sciences Laboratory, Punjab, Chandigarh, declared that the contents of the samples were of opium.

On presentation of the challan, the accused-appellant was charge-sheeted under Section 18 of the NDPS Act.

In support of its case, the prosecution examined ASI Teja Singh as PW1, DSP Harjit Singh Pannu as PW2, SI Gurcharan Singh as PW3, Constable Gurpreet Singh as PW4, H.C. Pargat Singh as PW5, Rajesh Kumar as PW6, Amarjit Singh, Registration Clerk in the office of D.T.O., Faridkot as PW7 and Sh. R.K. Garg, JMIC, Mansa as PW8. PW Hari Krishan was given up having been won over by the accused-appellant.

When examined under Section 313 Cr.P.C., the accused-appellant claimed that he is innocent and he has been picked up by the police from his house on 13.10.1998 and has been falsely implicated in this case. He also claimed that he is not the owner of the scooter.

In defence, the accused-appellant examined Hari Krishan as DW1 and C-II Sanjiv Bhagtana as DW2 and closed his evidence.

After hearing learned Addl. Public Prosecutor for the State as well as learned counsel for the accused-appellant and after going through the evidence, learned Judge, Special Court, Ludhiana convicted and sentenced the accused as aforesaid.

I have heard learned counsel for the accused-appellant, learned Deputy Advocate General for the State and have also gone through the case file.

Learned counsel for the accused-appellant has vehemently argued that ASI Teja Singh, PW1, who is recovery witness has stated in his cross-examination that he was not previously known to PW Hari Krishan. PW3 SI Gurcharan Singh also made the same statement, whereas it comes out from the connected FIR (Ex.D1) that PW Hari Krishan was also a witness in a case FIR investigated by the same Investigating Officer. It is also argued that Hari Krishan is a stock witness and is not reliable. It is also stated that Hari Krishan was examined as DW1 and stated that nothing was recovered from the accused-appellant in his presence.

I am of the view that even if it is assumed that Hari Krishan is a witness in two cases investigated by the same Investigating Officer, it does not make him stock witness. Hari Krishan was won over by the accused-appellant. This fact was proved when he appeared as defence witness to support the case of the accused-appellant.

Learned counsel for the accused-appellant has further argued that the place of recovery was a thoroughfare. There were Panches and Sarpanches in the adjoining villages and none of them was called for to join the investigation. Therefore, the investigation carried out by SI Gurcharan Singh, PW3 cannot be relied upon.

I am of the view that when the accused-appellant was apprehended, an independent witness was present with the police. Therefore, the police were not required to go to the adjoining villages in search of Panches and Sarpanches before carrying out further investigation as this is likely to be hampered the investigation and create more complications. The police on the asking of the accused-appellant had called the DSP at the spot and he accordingly joined the investigation.

Learned counsel for the accused-appellant has further argued that in this case, no report was sent to the higher officer.

However, it is well known that a copy of the FIR is always sent to the higher officer, which is an information to the higher officer.

Learned counsel for the accused-appellant has further argued that in this case, Sh. R.K. Garg, Judicial Magistrate 1st Class, Mansa was examined as PW8. He proved the production of the case property before him. However, during the course of cross-examination, it came out that the application moved before him is not on the judicial file. Further cross-examination was deferred. However, he never appeared thereafter. Therefore, his examination-in-chief cannot be read into evidence.

I am of the view that even if it is so, there is statement of the Investigating Officer regarding the production of the case property before the Magistrate. There is nothing on file to show that the case property was tampered with. As such, this discrepancy will not help the accused-appellant in any way.

Learned counsel for the accused-appellant has relied upon the authority of this Court delivered in case of “***State of Haryana vs Mahabir***”, 1998(2) R.C.R. (Criminal) 314 and urged that when the independent witness has been joined, to whom the seal was handed over must have been examined to elicit the truth by cross-examining him being a material witness.

In the present case, it is clear that said Hari Krishan had appeared during defence evidence. When he was given up by the prosecution, he appeared as defence witness as DW1 and was examined and cross-examined. Therefore, the said authority is not applicable to the present case.

In view of the foregoing discussion, I do not find any illegality or infirmity in the impugned judgment and order. Accordingly, the present appeal stands dismissed. The accused-appellant is on bail. His bail bonds and surety bonds are cancelled and he is ordered to be arrested and committed to jail to undergo the remaining part of his sentence.

January 13, 2016
sarita

(KULDIP SINGH)
JUDGE