

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRA-S-1261-SB-2007
Date of Decision:23.9.2017

Jagjit Singh @ Jeeta

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Gaurav Sharma, Advocate for the appellant/Legal aid counsel
Mrs.Anju Sharma Kaushik, DAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Present appeal, at the hands of convict-appellant, is directed against the impugned judgment of conviction and order of sentence of even date, i.e. 15.6.2007 passed by the learned Special Court, Ludhiana, whereby the appellant was convicted for the charge framed against him under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') and upon his conviction, appellant was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lac or in default of payment of fine, to undergo further rigorous imprisonment for six months.

The prosecution case, as disclosed from the reading of FIR No.116 dated 8.9.2002 Police Station Raikot, Ex.PB/1 was that on 8.9.2002, ASI Rajinder Singh of Police Post Lohatbadi, Police Station Raikot (wrongly recorded in the impugned judgment as Police Post Jodhan, Police

Station Sadar, District Ludhiana) along with some other police officials was present on the bridge seepage drain Lohatbadi in connection with patrolling in a government vehicle Nissan bearing No.PB-10B-9426, where he received a secret information that Jagjit Singh @ Jeeta-appellant was present sitting on kachha passage leading from village Lohatbadi to Tungaheri, having in his custody some bags containing poppy husk and was waiting for the customers. Relying upon this information, ASI Rajinder Singh sent a ruqa Ex.PB to the Police Station, on the basis of which formal FIR EX.PB/1 was recorded. Thereafter, Sakander Singh, resident of village Lohatbadi, came there incidentally, who was joined as independent witness with the police party. A wireless message was sent to ASI Police Station Raikot to come at the disclosed place. Police party along with independent witness reached at the site and found accused Jagjit Singh sitting on the bags containing something therein. On seeking the police party, accused tried to run away but he was apprehended by the police party. Then ASI Rajinder Singh disclosed his identity to the accused and he further told him that he suspected that the five bags lying with him in his possession contained some intoxicant/contraband. ASI Rajinder Singh further made the accused aware of his legal right that he can get the search of these bags conducted in the presence of some gazetted officer or magistrate. The accused expressed his desire to have the said search conducted in the presence of some gazetted officer. His statement was recorded as Ex.PC, which was duly thumb marked by the accused and attested by PWs including Sakander Singh, independent witness.

It was further case of the prosecution that in the meantime, DSP Hardip Singh Brar of Raikot arrived at the spot, who disclosed his identity to the accused and further told him that he can get his search conducted from some other gazetted officer or magistrate, but accused reposed confidence in him. Thereafter, consent memo Ex.PD was prepared, which was thumb marked by the accused and attested by the prosecution witnesses.

Thereafter, ASI Rajinder Singh conducted the search of the bags under the directions of DSP Hardip Singh Brar and found poppy husk in the bags. He separated two samples of 250 gms each from the above-said bags and the remaining bulk in each of the bag was found to be 34 ½ kgs. Different parcels of the samples and the bulk in each of the bag were prepared which were sealed with the seal bearing impression 'RS' of the investigating officer and 'HS' of DSP Hardip Singh Brar. The specimen seal chit Ex.P1 was also prepared and the seal after use was handed over to the independent witness Sakandar Singh. All the parcels were taken into possession vide recovery memo Ex.PD, which was attested by the prosecution witnesses. Rough site plan Ex.PG with correct marginal notes was prepared and the statements of prosecution witnesses were recorded under Section 161 of the Code of Criminal Procedure ('Cr.P.C.' for short).

On reaching the police station, the case property was produced before the SI/SHO Mohinder Kumar, who interrogated the accused and verified the facts and affixed his seal bearing impression 'MK' on all the sample parcels. The case property was deposited with AMHC Natha Singh,

which was produced in the court of Illaqa Magistrate, vide application Ex.PK. The order was passed by the Illaqa Magistrate vide Ex.PK/1. After receipt of report of the Chemical Examiner and completion of all the procedure and formalities, report under Section 173 Cr.P.C. was presented in the Court.

Copy of police reports along with all other relevant documents was supplied to the accused, as per the procedure provided under Section 207 Cr.P.C. The accused was charge sheeted under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

With a view to substantiate the charges framed against the accused, the prosecution examined as many as six witnesses namely Constable Balwinder Singh as PW-1, ASI Rajinder Singh as PW-2, DSP Harjit Singh Brar as PW-3, Inspector Mohinder Kumar as PW-4, HC Natha Singh as PW-5 and HC Pritam Singh as PW-6 (wrongly recorded as PW-5 at page 17 of lower court record). Thereafter, the learned Addl. Public Prosecutor appearing for the State did not examine Constable Bhinder Singh as PW being unnecessary and after tendering into evidence, report of Chemical Examiner as Ex.PJ, the prosecution evidence was closed, vide order dated 21.1.2005.

Statement of the accused was recorded under Section 313 Cr.P.C. He alleged false implication at the hands of Harnek Singh, Sarpanch of village Noorpur, who was inimical towards him as he was cited as witness in a criminal case against Harnek Singh by Mohd. Iqbal. The accused further stated that he was taken to the police station, at the instance

of Harnek Singh, Sarpanch of village Noorpur, where he was falsely implicated in the present case by the police, at the instance of Harnek Singh, Sarpanch. Accused also led his defence evidence by examining as many as five defence witnesses.

After examining the evidence brought on record and hearing the learned counsel for the parties, the learned Special Court, Ludhiana, came to the conclusion that the prosecution has duly proved its case. Accordingly, the accused was convicted for the charge framed against him under Section 15 of the NDPS Act. Having been convicted, the accused was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lac and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months. Period of detention already undergone by the convict was ordered to be set off from the sentence awarded to him. The impugned judgment of conviction and order of sentence were passed by the learned Special Court, Ludhiana on the same date, i.e. 15.6.2007.

Feeling aggrieved, convict got his appeal forwarded to this Court through Superintendent Central Jail, Ludhiana, which was registered. The appeal was admitted vide order dated 23.7.2007. Later on vide order dated 31.1.2009 passed by this Court in CRM No.620 of 2009, sentence of the convict-appellant was suspended, in view of Division Bench of this Court in **Daler Singh Vs. State of Punjab, 2017 (1) RCR 316**. The appeal was set down for regular hearing. That is how, this Court is seized of the matter.

Learned counsel for the appellant vehemently contended that the entire case of the prosecution was based on a secret information and alleged independent witness Sakander Singh. Admittedly, neither the said alleged secret information was reduced into writing as required under Section 42 of the NDPS Act nor the said alleged independent witness Sakander Singh was examined by the prosecution. In this regard, he also placed reliance on the statements of DW-4 HC Gurdial Singh at page 83 and DW-5 Constable Deepak Kumar at page 84 of the lower court record. Placing heavy reliance on the statements of these two defence witnesses DW-4 and DW-5, learned counsel for the appellant submits that since this very Sakander Singh was a cited prosecution witness in as many as 12 earlier FIRs, he was undoubtedly a stock witness of the police. He next contended that no plausible reasoning was given by the prosecution not to examine this so called independent witness Sakander Singh. Winning over the said witness by the accused could not be presumed, as sought to be claimed at the hands of the prosecution. This allegedly claimed independent witness was not brought to the witness box at all by the prosecution and that too for no good reasons. He further submitted that the prosecution has also failed to comply with the provisions of Section 57 of the NDPS Act, thereby causing serious prejudice to the accused. There was inordinate and completely unexplained delay of 22 days in sending the sample to the office of chemical examiner. Finally, learned counsel for the appellant submits that there were very many serious contradictions in the story put forth and the evidence brought on record by the prosecution, making the present case

highly doubtful. Since the learned trial court miserably failed to appreciate all these material aspects of the matter, while recording conviction of the appellant, a manifest injustice has been done to him. While placing reliance on a judgment of this Court in **Lakhbir @ Giri and Manjit Kumar Vs. State of Punjab, 2012 (2) RCR (Crl.) 491**, he prays for setting aside the impugned judgment of conviction and order of sentence by allowing the instant appeal.

Per contra, learned counsel for the State, while strongly opposing the contentions raised on behalf of the appellant, submits that barring minor discrepancies in the case of the prosecution, which were supposed to be there in the very nature of things, there was no serious contradiction in the case of the prosecution, who has successfully proved its case by bringing on record cogent and convincing evidence. He prays for dismissal of the appeal.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the story put forth by the prosecution is highly doubtful and the accused by examining the defence evidence particularly the above-said DW-4 and DW-5 has created a clear dent in the prosecution story. It is so said because both these defence witnesses, which were officials of the police department, DW-4 and DW-5 have specifically proved on record that Sakander Singh, joined by the investigating officer as an independent witness at the time of alleged search and seizure, had already been found

associated in as many as 12 FIRs, out of which most of them were under the NDPS Act itself.

No reason, whatsoever, is forthcoming on record on behalf of the prosecution as to why this alleged independent witness was not even brought to the witness box and why it was presumed that he would have been won over by the accused. Under these circumstances, observations made by this Court in para 13 of its judgment in **Lakhbir's** case (supra), which can be gainfully followed in the present case, read as under:-

“Less said is better as regards the independent witness Balbir Singh, who was allegedly associated for the purpose of recovery of the material objects. Firstly, he was not examined by the prosecution. Secondly, PW5 has categorically stated that Balbir Singh was cited as a witness in about three criminal cases under the Narcotic Drugs Psychotropic Act. In other words, the alleged witness was a stock witness. A stock witness cannot normally be won over by the defence. For the reason best known to the prosecution, the said witness was not also examined before the trial Court. The association of a stock witness by the police official creates a doubt in the very case of the prosecution.”

In the absence of above-said alleged independent witness Sakander Singh, the main prosecution witness remained ASI Rajinder Singh, PW2. His cross-examination, which is available at pages 62-64 of the lower court record, also creates serious doubt in the prosecution story. Reasons are more than one. Admittedly, alleged secret information was initially received by HC Parmod Raj, who has also not been examined by the prosecution. It is also not in dispute that the said alleged secret information was not reduced into writing as required under Section 42 of

the NDPS Act. What were the means of communication between PW-2 Rajinder Singh IO and HC Parmod Raj is also conspicuously missing.

Even after receiving the said secret information allegedly conveyed by HC Parmod Raj, PW-2, ASI Rajinder Singh IO (PW-2) also did not reduce the said secret information to writing. PW-2 claimed that he had conveyed the said secret information to DSP Harjit Singh Brar, PW-3 with a request to reach at the place of recovery. Prosecution has miserably failed to give any reasonable explanation in this regard as well, as to why the secret information was not reduced into writing either by the first police officials i.e.HC Parmon Raj or by ASI Rajinder Singh, PW-2. It was also not reduced into writing even by the third senior police officer DSP Harjit Singh Brar, PW-3.

Another equally important aspect of the matter is that the alleged search was conducted by the police party on 8.9.2002 after 8.30 pm. By that time, it was total dark. None of the prosecution witnesses have claimed that the accused was earlier known to them or they were in a position to recognize him. It has been specifically admitted by PW-2 ASI Rajinder Singh, Investigating Officer of the case that when the police party reached at the spot, it was dark. There was no electric light at the place of recovery. Police party allegedly saw the accused in the light of the vehicle. However, the police party managed to apprehend the accused at the site, despite it was dark.

Again no respectable from village Lohatbadi was called or associated by the police party at the alleged place and time of recovery of

contraband in question from the appellant, in spite of fact that Investigating Officer Rajinder Singh, PW-2 claimed to have known names of owners of adjoining fields of the place of recovery, because he was posted at police post Lohatbadi two months prior to the occurrence in the present case. Under these glaring circumstances, it can be safely concluded that the prosecution miserably failed to prove its case beyond reasonable shadow of doubt. However, since the learned court below could not appreciate the above-said more than one material aspects of the matter, while recording conviction of the appellant, a miscarriage of justice has taken place by passing the impugned judgment of conviction and order of sentence.

It goes without saying that the provisions of law contained in the NDPS Act are stringent in nature. In this view of the matter, it casts more onerous duty on the investigating agency and prosecuting agency to be more careful and vigilant so as to ensure strict compliance of the provisions of law contained under the NDPS Act at all the relevant stages of the case right from registration of the FIR till the conclusion of criminal trial. When the investigating officer remained posted at police post Lohatbadi, about two months earlier before the incident took place in the present case and he was knowing very many persons who were residents of village Lohatbadi, it was not difficult for him to join some other independent witnesses, giving preference to any resident of village of Lohatbadi over and above the above-said stock witness Sakander Singh. However, it was also not done for the reasons best known to the investigating agency in spite of the fact that the recovery was allegedly

effected at a thorough fare. In such a situation, it can not be held that the investigation was conducted in a free and fair manner, thus, this was another serious serious doubt in the prosecution story.

Again, after alleged recovery, the case property was handed over to MHC Karamjit Singh. He has also not been examined by the prosecution agency for the reasons best known to it, which was another lacuna in the prosecution case, because link evidence was missing. Further, although PW-3 Harjit Singh Brar claimed that search was conducted in his presence and numerous memos were prepared but not even one memo was found to be attested by this witness, thus, his presence itself was doubtful at the place and time of recovery. This witness has also admitted in his cross-examination that place of recovery was a thorough fare but no resident from the village Lohatbadi was called. He also admitted in his cross-examination that during his stay at the spot, persons might have passed by his side but nobody was requested to join the search proceedings. When all the above-said circumstances put together and carefully examined, it becomes clear that the recovery itself was doubtful. Since the learned trial court failed to appreciate the above-said relevant aspect of the matter at the time of recording conviction of the appellant, the impugned judgment of conviction and order of sentence have been found suffering from patent illegality and the same cannot be sustained, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court in **Gurnam Kaur and others Vs. State of Punjab, 2006(3) RCR (Crl.) 984, State of**

West Bengal and others, Vs. Babu Chakraborty, 2004(12) SCC 201, Directorate of Revenue and another Vs. Mohammed Nisar Holia, 2008 (2) SCC 370, Rajender Singh Vs. State of Haryana, 2011(8) SCC 130, Sukhdev Singh Vs. State of Haryana, 2013(2) SCC 212, Kishan Chand Vs. State of Haryana, 2013(2) SCC 502 and State of Rajasthan Vs. Jag Raj Singh @ Hansa, 2016(11) SCC 687.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the prosecution has miserably failed to prove its case. Conviction of the appellant was illegally recorded because of which, the impugned judgment of conviction and order of sentence cannot be sustained. Accordingly, instant appeal is allowed. Impugned judgment of conviction and order of sentence of even date, i.e. 15.6.2007, are hereby set aside. Since the appellant is on bail, his bail bonds shall stand discharged.

Resultantly, with the above-said observations made, the present criminal appeal stands allowed.

23.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No