

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal No.D-192-DB of 2010

Date of Decision:- November 10, 2017

Karnail Singh and others

.....Appellants

Versus

State of Punjab

....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Saransh Sabharwal, Advocate for
Mr. Sant Pal Singh Sidhu, Advocate, for the appellants.

Mr. H.S.Grewal, Additional Advocate General, Punjab.

Gurvinder Singh Gill, J.

1. Karnail Singh, Channa Singh @ Channa and Mukhtiar Singh have filed the present appeal challenging judgment dated 15.1.2010 passed by learned Special Judge, Ferozepur whereby they have been held guilty for committing offence punishable under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and have been sentenced to undergo rigorous imprisonment for 12 years and to pay fine of ₹ 1,00,000/- each.

2. The case of prosecution, in nutshell, is that on 3.8.2003 when ASI Gursewak Singh accompanied by HC Darshan Singh, HC Puran Chand, HC Surjit Singh and C. Baljinder Singh were present on the bridge of canal minor in the area of passage leading from village Bhagu to Dodewala in connection with *nakabandi*, then one Gurjant Singh was associated with the police party. A jeep was noticed coming from the side of village Dodewala and upon a signal given by ASI Gursewak Singh to stop, the jeep was stopped about 40-50 karams short of the police party, out of which three men and one lady alighted and started running. While the driver of the jeep was apprehended, the remaining two men and the lady managed to escape. HC Darshan Singh and HC Surjit Singh had chased the lady and one male while the other male was chased by HC Puran Chand and C. Baljinder Singh. HC Darshan Singh knew the lady and the male chased by him to be Jogindero Bai and her son Mukhtiar Singh. The third male was identified by C. Baljinder Singh to be Channa Singh @ Channa son of Bagh Singh.
3. Upon inquiry, the person apprehended disclosed his name as Karnail Singh son of Fauja Singh. ASI Gursewak Singh extended an offer to Karnail Singh in terms of Section 50 of the NDPS Act giving him an option as to whether he wanted his search and of his jeep to be conducted in the presence of any gazetted officer or Magistrate. However, Karnail Singh reposed faith in the police officer and said that he could conduct the search. A consent memo was accordingly prepared which was signed by the witnesses. Upon search of the jeep in question 4 bags containing poppy husk were recovered. A sample weighing 250 gms was drawn from each of the 4 bags and remaining poppy

husk in each of the bags, upon weightment was found to be 39 KG 750 Gms. The said four bags as well as the samples were duly sealed and packed in separate parcels upon which ASI Gursewak Singh affixed his seal bearing impression 'GS'. The seal after use was entrusted to Gurjant Singh. Entire case property was taken into possession.

4. The samples were sent for analysis and as per report of the Chemical Examiner(Ex.P-23), the contents were found to be poppy husk. Upon conclusion of investigation, challan was presented in the Court of Special Judge, Ferozepur on 18.10.2005 who framed charges against the accused for offence punishable under Section 15(c) of the NDPS Act on 23.12.2005 to which the accused pleaded not guilty and claimed trial.
5. The prosecution in order to establish its case examined four witnesses. PW-1 C. Jarnail Singh deposed that on 6.8.2003 SHO Raj Kumar handed over four sealed parcels and directed him to deposit the same in the office of Chemical Examiner, Chandigarh and he accordingly deposited the same on 7.8.2003 and handed over receipt to SHO Raj Kumar. He further stated that as long as the case property remained in his possession the same was not tampered with. PW-2 DSP Raj Kumar Stated that on 3.8.2003 he was posted as SHO Police Station Sadar, Abohar, and on the said day ASI Gursewak Singh produced accused Karnail Singh along with the recovered poppy husk and he verified the facts and affixed his seal and kept the case property in police malkhana. He further deposed that on 6.8.2003 he handed over the sample parcels to C. Jarnail Singh directing him to deposit the same in the office of Chemical Examiner, Punjab, Chandigarh which he accordingly deposited. He further

deposed that as long as the case property remained in his custody the same was not tampered with.

6. PW-2 Gursewak Singh (incorrectly numbered as DSP Raj Kumar is also referred to as PW-2) who is the Investigating Officer in the present case stated in detail in respect of the entire investigation conducted in the case right from apprehension of the accused upto the filing of challan. PW-3 ASI Puran Chand who was comprising the police party headed by ASI Gursewak Singh stated in corroboration to the testimony of ASI Gursewak Singh. PW-4 ASI Krishan Lal stated that he had arrested Mukhtiar Singh on 28.3.2005.
7. Upon conclusion of the prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C. wherein entire incriminating evidence appearing against the accused was put to them to enable them to explain the same but the accused denied the prosecution case and pleaded false implication. No evidence was, however, led by the accused in their defence.
8. Learned trial Court upon appreciation of evidence on record held that the prosecution had fully established the charges framed against the accused and accordingly convicted all the accused for offence punishable under Section 15(c) of the NDPS Act vide judgment dated 15.1.2010. Aggrieved against the same, the accused have filed the present appeal.
9. The learned counsel for the accused, while assailing the impugned judgment submitted that the accused have been falsely implicated in the present case and that the falsity of the case would be evident from the fact that despite there being five members in the police party, only one of the accused was allegedly

apprehended while other three including a lady are stated to have escaped which infact does not sound probable. The learned counsel further submitted that there is delay in sending the samples for its chemical examination and that while recovery was allegedly effected on 3.8.2003, the samples were deposited in the office of Chemical Examiner on 7.8.2003 and that in the absence of any explanation of delay, no sanctity can be attached to the report (Ex.P-23) of the Chemical Examiner. The learned counsel further submitted that neither appellant Channa Singh @ Channa and Mukhtiar Singh were arrested at the spot nor any recovery was effected from them nor is there any convincing evidence to establish their identity and in these circumstances the said two accused, in any case, cannot be said to have committed any offence. The learned counsel thus submitted that impugned judgment cannot sustain and prayed for acquittal of the accused.

10. On the other hand the learned counsel representing the State submitted that the evidence led by prosecution fully substantiates the case of prosecution and that the impugned judgment has been passed after appreciating the evidence on record. It has been submitted that the factum of recovery of poppy husk is duly established from the testimonies of PW-2 SI Gursewak Singh and PW-3 ASI Puran Chand and that since all the accused were specifically named in the very first instance in the FIR, therefore, there is no room to doubt the identity of the accused. The learned State counsel has thus prayed for dismissal of the appeal.

11. We have heard the rival submissions addressed before this Court and with able assistance of learned counsel have also perused record of the case.

12. The prosecution, in order to establish the factum of recovery relies upon the testimonies of Investigating Officer i.e. PW-2 SI Gursewak Singh and PW-3 ASI Puran Chand who was part of the police party headed by SI Gursewak Singh. PW-2 SI Gursewak Singh has categorically stated that on 3.8.2003 when he along with HC Puran Chand, HC Darshan Singh and HC Surjit Singh and other police officials were present on the bridge of canal minor in connection with *nakabandi* on the passage leading from Bhagu to Dodewala, then a jeep coming from village Dodewala was signaled to stop and that the occupants of the said jeep, while stopping the jeep about 40-50 karams from the police party alighted and started running away. He has further stated that while he with the help of Gurjant Singh apprehended one of those persons who disclosed his name as Karnail Singh, the others managed to escape. He has stated that out of the said persons, one male person and lady were identified by HC Darshan Singh to be Mukhtiar Singh and his mother Jogindero Bai and that the third male person was identified by C. Baljinder Singh as Channa Singh @ Channa.
13. PW-2 SI Gursewak Singh has further stated about the offer in terms of Section 50 of NDPS Act extended by him to Karnail Singh who reposed confidence in him and offered to be searched by ASI Gursewak Singh. PW-2 ASI Gursewak Singh further stated that upon search of the jeep 4 bags containing poppy husk were recovered and that after drawing sample weighing 250 gms each from each of the bags, the remaining poppy husk in each of the bag was found to be 39 kg 750 gms. He has further stated that all the samples so drawn were packed into separate parcels and duly sealed and that 4 bags containing poppy

husk were also separately sealed and were taken into possession.

14. PW-3 ASI Puran Chand has also stated consistently as regards holding of *nakabandi* and regarding apprehension of the accused Karnail Singh and as regards the recovery of 4 bags of poppy husk from the jeep in question. Both the witnesses were cross-examined at length on behalf of the accused but nothing substantial could be elicited during their cross-examination. Both the witnesses remained firm on all the material aspects of the case. In these circumstances this Court has no hesitation in affirming the findings of the trial Court as regards the factum of recovery of 4 bags of poppy husk weighing 40 KG each i.e. a total of 160 KG of poppy husk.
15. The learned counsel for the accused attempted to assail the case of the prosecution on the ground that though an independent witness namely Gurjant Singh is stated to have been associated with the police party, but somehow he has not been examined by the police which renders the case of prosecution doubtful.
16. We have considered the aforesaid submission. It is no doubt correct that Gurjant Singh has not been examined by the prosecution. However, associating an independent witness is a rule of prudence and not rule of law. The Act does not mandate that in every case of recovery an independent witness has to be associated. Even if an independent witness has been associated but not examined would not cause a dent in the case of prosecution. A reference in this context may be made to a judgment of Hon'ble the Supreme Court reported as (2013) 14 SCC 235 Ram Swaroop Vs. State Government of

NCT of Delhi wherein it was held that prosecution case cannot be doubted for non-examination of independent witnesses especially when there is nothing on record to show that evidence of police officials is untrustworthy.

17. In yet another case reported as (2013) 6 SCC 595 Kashmiri Lal Vs. State of Haryana, it was held as follows:

“That apart, there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust.”

18. There is nothing on record to doubt the trustworthiness of police witnesses who had conducted the search in discharge of their official duties. In these circumstances the mere fact that independent witness has not been examined by the prosecution cannot be held to be fatal to the case of the prosecution. The prosecution has thus fully established the factum of recovery of 160 kgs of poppy husk.

19. The learned counsel for the accused has also submitted that since there is delay of about 4 days in depositing the samples in the office of the Chemical Examiner, therefore, no sanctity can be attached to the report of the Chemical Examiner (Ex.P-23) as it is evident that the time gap had been utilized by the police to tamper with the samples so as to procure a favourable report from Chemical Examiner.
20. We have considered the aforesaid submission. In the present case, the recovery was effected from the accused on 3.8.2003. The SHO entrusted the samples to PW-1 C. Jarnail Singh on 6.8.2003 directing him to deposit the same in the office of the Chemical Examiner, Chandigarh. PW-1 C. Jarnail Singh after getting the necessary formalities of issuance of docket completed, deposited the samples in the office of Chemical Examiner on 7.8.2003. PW-1 C. Jarnail Singh as well as PW-2 DSP Raj Kumar specifically deposed that as long as the case property remained in their possession the same was not tampered with. A perusal of Chemical Examiner's Report (Ex.P-23) shows that it is specifically recorded therein that the seals on the samples were intact and tallied with the specimen seals. In these circumstances there is hardly any room to doubt that the samples had ever been tampered. The delay, if any, in sending the sample to Chemical Examiner would, thus, lose significance.
21. Hon'ble the Supreme Court in a case reported as 2008(8) SCC 557 Hardip Singh Vs. State of Punjab wherein there was a delay of 40 days in sending the sample for its chemical examination but the seals were found to be intact when it reached the office of the chemical examiner, held that the delay could not have caused any prejudice to the appellant.

22. In light of ratio of the aforesaid judgment, delay in the present case in sending the sample cannot *ipso facto* cause any doubt in the case of the prosecution especially when the evidence on record clearly establishes that the sample parcel has not been tampered with and the seal had remained intact. The contention in this regard raised by learned counsel for the appellants is thus found to be devoid of merit and is repelled.
23. In the present case while Karnail Singh was arrested at the spot, the remaining accused managed to escape. Karnail Singh after his arrest and after the recovery had been effected was produced by SI Gursewak Singh before the SHO i.e. the DSP Raj Kumar who after verifying the facts took the case property in his custody and affixed his seals. The consistent testimonies of the Investigating Officer i.e. PW-2 Gursewak Singh and PW-3 ASI Puran Chand leave no room to doubt the factum of apprehension of Karnail Singh and as regards recovery of 160 KG of poppy husk from the jeep which he was driving. However, as regards the accused Mukhtiar Singh and Channa Singh @ Channa we find that there is lack of convincing evidence as regards their identification. Hon'ble Supreme Court in (2008)16 SCC 417 Noor Aga Vs. State of Punjab held that graver the sentence, stricter the degree of evidence required to establish the offence. While Mukhtiar Singh, as per FIR, was identified by HC Darshan Singh, Channa Singh @ Channa is stated to have been identified by C. Baljinder Singh who were comprising the police party. However, prosecution has neither examined HC Darshan Singh nor examined C. Baljinder Singh. In these circumstances when both the said accused were neither arrested at the spot and nor the persons who identified

them have been examined, it is certainly not safe to hold that they were also traveling in the jeep driven by Karnail Singh. In the absence of their identification, accused Mukhtiar Singh and Channa Singh @ Channa are entitled to be acquitted.

24. As a sequel to the discussion made above, while the conviction of appellant Karnail Singh is affirmed. The appellants Mukhtiar Singh and Channa Singh @ Channa are acquitted of all the charges framed against them. The sentences imposed upon appellant Karnail Singh shall remain unaltered.
25. The appeal is thus allowed qua appellants Mukhtiar Singh and Channa Singh @ Channa but is dismissed qua appellant Karnail Singh.
26. Before parting with the judgment, we wish to add that as in the present case, some other matters have also come to our notice where the accused get benefit on account of inability of prosecution to produce and examine even the official witnesses. In the present case, though two of the accused namely Channa Singh and Mukhtiar Singh had been identified at the spot by two members of the police party namely Head Constable Darshan Singh and Constable Baljinder Singh but for the reasons best known to the prosecution, the said police officials have not been examined resulting in acquittal of the said two accused. It is not known as to whether any action is taken in such like cases against erring police officials. We would recommend that in such like cases, the Public Prosecutor should ensure that all the official witnesses are examined without fail and should inform the SSP concerned, in case of any

difficulty. On failure action should be taken against the defaulting officials.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

November 10, 2017
mohan

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No