

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

Criminal Appeal No.D-1208-DB of 2011

Date of Decision: February 2nd, 2017

Makhan Singh

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Narinder Singh, Advocate
for the appellant.

Ms. Manjri Nehru Kaul, Additional Advocate General, Punjab,
for the respondent.

AUGUSTINE GEORGE MASIH, J.

This appeal has been preferred by Makhan Singh, who has been convicted and sentenced to undergo rigorous imprisonment of 11 years and fine of ₹1 lakh, in default thereof rigorous imprisonment of two years by the Judge, Special Court, Bathinda, under Section 15 (c) of The Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'The NDPS Act').

2. Briefly the prosecution case is that a police party of the Special Task Force was constituted for District Bathinda, headed by S.I. Gamdoor Singh. The said Special Task Force was on patrol duty in the area of village Rai Khana on 22.02.2006 when a white Maruti car was seen coming from the side of village Tungwali. It was signaled to stop but instead the driver of the car tried to reverse the same and turned back to escape. Meanwhile, a person sitting on the seat adjacent to the driver, jumped from the car and ran away towards the fields. He escaped despite he

being chased by Head Constable Tarjinder Singh. The driver of the car was apprehended, who disclosed his name as Makhan Singh (appellant), resident of Tirlokewala, Police Station Kalianwali, District Sirsa. He also disclosed the name of the person sitting beside him as Sukhpal Singh alias Balli. On an option given to Makhan Singh-appellant for his and the car's search being got done by a Magistrate or a Gazetted Officer, he opted for the search to be conducted before a Gazetted Officer. Consent memo was prepared which was thumb marked by Makhan Singh.

3. D.S.P. Jaspal Singh, Talwandi Sabo, was requested through a wireless message, who reached at about 8:45 AM. He after introducing himself, gave another opportunity to the appellant to exercise his option for his search and of the car, by him (a Gazetted Officer) or a Magistrate. The appellant reposed his confidence and faith in him. On this, consent memo was prepared which was thumb marked by appellant-Makhan Singh.

4. On instructions by the Deputy Superintendent of Police, search of the car bearing registration No.HR-03-4143 was conducted and five jute bags of poppy husk were recovered from the backside of the car which were numbered 1 to 5. Two samples of 250 grams each were separated from each bag numbering 10 in all. The remaining poppy husk when weighed was found to be 34 kgs and 500 grams in each bag. Separate parcels of the samples were prepared and sealed with a seal of 'GS'. Since the appellant could not produce any licence or permit, he was arrested for having committed an offence punishable under Section 15/61/85 of The NDPS Act. Ruqa Exhibit PW5/C was prepared and sent for registration of the case.

Case property was produced by S.I. Gamdoor Singh before S.I./SHO

Dhan Singh of Police Station Kot Fatta.

5. First Information Report No.08 dated 22.02.2006 under Sections 15/61/85 of The NDPS Act was registered at Police Station Kot Fatta. Case property was produced before the Illaqa Magistrate/Judicial Magistrate Ist Class, Talwandi Sabo, on 23.02.2006. Samples were sent for chemical analysis on 01.03.2006. Sukhpal Singh, the other accused, was arrested in this case on 08.07.2006. On the basis of the positive report of the chemical examination that the samples were poppy husk, challan was presented against appellant and Sukhpal Singh. Charges were framed on 01.09.2006 to which they pleaded not guilty and claimed trial. On the basis of the evidence produced by the prosecution, Judge, Special Court, Bathinda, acquitted Sukhpal Singh by giving him benefit of doubt, whereas the appellant was convicted and sentenced under Section 15 (c) of The NDPS Act.

6. It is the contention of learned counsel for the appellant that the appellant has been falsely implicated in this case as it is hard to believe that co-accused of the appellant Sukhpal Singh was successful in his escape from the spot despite there being presence of ten police officials and that too armed with weapons. The white Maruti car which is alleged to have been recovered from the appellant admittedly does not belong to him as it is not registered in his name, rather as per the evidence of Naresh Kumar PW-6, Registration Clerk of the Registration Authority, Panchkula, the said car was originally registered in the name of Ravinder Kumar Vohra and later on transferred in the name of his wife, namely, Seema Vohra. He asserts that the alleged recovery is dated 22.02.2006, whereas the samples have been sent on 01.03.2006 thus,

there is a delay of eight days in sending the sample for chemical examination which gives ample time in between to change or tamper with the samples. Another submission which has been put forth by the counsel for the appellant is that it has come in evidence that the Special Task Force had not intimated the Police Station Kot Fatta before laying down the *naka* (check post). That apart, he contends that neither any notification nor any order has been produced authorising the so called Special Task Force to lay the *naka*, carry out the search and make arrests. The Special Task Force, thus, had no jurisdiction of laying down of the *naka*, recovery, arrest and the proceedings which followed including the registration of the FIR, trial etc. stands vitiated and cannot sustain. He accordingly prays for acquittal of the appellant by setting aside the conviction and sentence as imposed by the trial Court.

7. On the other hand, counsel for the respondent-State submits that the procedure as provided for under The NDPS Act has been duly followed and complied with. Recovery of the car as well as the five bags of poppy husk has been duly proved by D.S.P. Jaspal Singh PW-4 and the recovery memo Exhibit PK which has been fully corroborated by S.I. Gamdoor Singh PW-5, the Investigating Officer. The seal 'GS' on the car as also the samples drawn from the gunny bags were taken in police possession vide recovery memo Exhibit PF. The case property has been produced by S.I. Gamdoor Singh before S.I./SHO Dhan Singh PW-2 of Police Station Kot Fatta, who has proved the recovery memo Exhibit PB. The case property was produced before the Illaqa Magistrate/Judicial Magistrate Ist Class, Talwandi Sabo, on 23.02.2006 which was found to be intact and thereafter the same was sent to the Chemical Examiner through Constable

Jota Singh PW-1 whose affidavit is Exhibit PA. He, therefore, contends that firstly there is no delay in sending the samples to the Chemical Examiner and secondly even if that be so, it would not affect the prosecution case as the samples reached the office of Chemical Examiner in intact condition. As regards the contention of the counsel for the appellant that the Special Task Force did not have the jurisdiction, he contends that the FIR has been registered at the Police Station Kot Fatta within whose area of jurisdiction the case property was recovered and produced before the SHO, Police Station Kot Fatta. The Special Task Force was constituted for the entire district of Bathinda and, therefore, it had jurisdiction over the whole district. Prayer has been made to dismiss the appeal.

8. We have considered the submissions made by the counsel for the appellant as also the State along with records of the case.

9. The pleas which have been taken by the appellant are mainly on two counts. Firstly there is a delay of eight days in sending the samples to the Chemical Examiner during which period there is a possibility of tampering the samples and secondly that the Special Task Force did not have the jurisdiction over the Police Station Kot Fatta as no authority letter or order has been produced enabling the said force to carry out any search and seizures. In addition an argument which has been raised by the counsel for the appellant is that S.I. Gamdoor Singh PW-5, the Investigating Officer, has admitted in his cross-examination that a criminal case under The Prevention of Corruption Act and The NDPS Act, is pending against him at Ferozepur. This shows that the Investigating Officer himself is a tainted person and, therefore, has falsely implicated the appellant in the present case.

10. So far as the first plea of the counsel for the appellant that there is a delay in sending the samples to the Chemical Examiner and, therefore, the report of the Chemical Examiner cannot be relied on, is concerned, suffice it to say that delay in itself cannot be a ground to discard the said report unless some prejudice is demonstrated and shown to have been caused to the accused.

11. That apart, delay, if any, in this case is only of eight days i.e. the recovery is dated 22.02.2006, whereas the sample had been sent on 01.03.2006 which cannot be said to be unreasonable and inordinate. Further the evidence which has been led by the prosecution, goes to prove that there was no tampering with samples. Statement of PW-1 Constable Jota Singh who had deposited the samples with the Chemical Examiner. On deposit of the samples, a certificate was given by the Chemical Examiner that the seals were found intact and tallied with the sample seal. The report clearly establishes that all the ten samples were of poppy husk. Further, the link evidence is complete as the case property was duly produced by the Investigating Officer S.I. Gamdoor Singh PW-5 before S.I. Dhan Singh PW-2 who was the SHO, Police Station Kot Fatta, who had verified the facts that he had taken the case property in his possession vide recovery memo Exhibit PX and affixed his seal as 'DS'. S.I. Dhan Singh had produced the case property as also the samples before the Illaqa Magistrate/Judicial Magistrate Ist Class, Talwandi Sabo, on 23.02.2006. Exhibit PD/1 proves that five gunny bags bearing seal 'GS' and 'DS' were opened in Court and other samples of 250 grams were separated from each bag in his presence in the Court. Thereafter the gunny bags were sealed again with seal of 'DS' which is his seal. All this goes to prove

beyond doubt that there had been no tampering with the case property and the samples. Thus, the argument of the counsel for the appellant fails.

12. As regards the plea that the Special Task Force did not have the jurisdiction regarding investigation of NDPS Act cases and that no standing order or authority letter has been produced in Court in support of such jurisdiction with the Special Task Force, suffice it to say that the Special Task Force was formed for District Bathinda and thus it had jurisdiction over the whole of the said district. More so, the procedure as enshrined under Section 50 of The NDPS Act has been duly complied with. Proper option has been given to the appellant and he has exercised the same. The recovery was effected from the accused after preparing the consent memo in the presence of D.S.P. That apart, the appellant as also the case property was produced by S.I. Gamdoor Singh PW-5 before S.I. Dhan Singh PW-2, SHO, Police Station Kot Fatta, who affixed his seal bearing impression 'DS' on the entire case property and the sample seal chit and took the entire case property into possession vide memo Exhibit PB duly attested by S.I. Gamdoor Singh. The case property was taken in possession by the SHO of the Police Station Kot Fatta and the FIR was also registered there. Further no prejudice has been caused to the accused in any manner as there is no violation of any statutory provision.

13. As regards the criminal case which has been admitted to be pending against the Investigating Officer, namely, Gamdoor Singh, suffice it to say that it would not make any difference so far as the appellant is concerned as it is not the case of the appellant that he had any earlier enmity or that he was known to the Investigating Officer because of which he had been falsely implicated in the case. There is no evidence indicating

in this direction.

14. Another argument which has been pressed into service in support of the theory of false implication is that how could a co-accused run away from the spot in the presence of ten police officials. The answer is simple that the physical health and fitness of each person varies and there is no evidence on record which would throw light thereon. In any case, appellant was apprehended at the spot in conscious possession of commercial quantity of poppy husk. The statutorily mandated procedure as provided for under The NDPS Act has been meticulously followed for the search and seizure of the appellant as well as the car. It has neither been argued nor have we found anything which would indicate non-compliance of any of the provisions of the statute benefit whereof could have been derived by the appellant or any action/omission on the part of prosecution which would have prejudiced the defence of the appellant in any manner.

15. In view of the above, conviction of the appellant under Section 15 (c) of The NDPS Act is upheld. However, keeping in view the fact that the appellant is a married person having three minor children and old age father, is a first offender, the sentence is reduced to 10 years rigorous imprisonment from 11 years. The fine as imposed along with the default sentence shall remain unchanged.

(M. JEYAPPAUL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

February 2nd, 2017

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