

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

(1)

CRA-S-563-SB of 2004
Date of decision:-13.9.2017

Ramesh

...Appellant

Versus

State of Haryana

...Respondent

(2)

CRA-S-914-SB of 2004

Charan Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Ashok Arora, Advocate
for the appellant(s).

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of two appeals i.e.

CRA-S-563-SB of 2004 filed by Ramesh and **CRA-S-914-SB of 2004**

filed by Charan Singh, both of them being accused, who were tried and convicted by the Court of learned Additional Sessions Judge, Hisar vide judgment dated 19.1.2004 for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**') and vide order dated 21.1.2004, they were

sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹1,00,000/- each and in default thereof to further undergo rigorous imprisonment for one year each.

The accused-convicts, who are appellants before this Court pray that the appeals be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story is that on 15.12.2000, a police party headed by ASI Naresh Kumar from Police Station Adampur had laid a picket at bridge of the canal, in the area of village Chulikalan on the road leading from village Chulikalan to Bhiran. A vehicle make TATA-407 bearing registration No.HR-46/6453 was spotted coming from village Bhiran side. It was signalled to stop by ASI Naresh Kumar and when the vehicle came to a halt, its driver along with another persons sitting in the cabin managed to run away. Two other persons were found sitting in the rear of the vehicle and they also tried to escape but were apprehended by the police party. On being inquired, one of such persons told his name as Ramesh son of Sant Lal, Caste Odd Rajput, resident of Khai, P.S. Ratia, whereas the other person disclosed his particulars as Charan Singh son of Pritam Singh, resident of village Hizrawan. Both such accused informed that the person, who was driving the vehicle was Raju resident of Boba and other person, who had fled away was also resident of village Boba (Punjab) though they could not give his name. Search of vehicle TATA-407 was conducted and it was found to carry five gunny bags. The Investigating Officer had a doubt that the gunny bags contained some narcotic substance, as such, he

served a notice in writing under Section 50 of the Act to both the accused informing that he suspected the gunny bags to contain narcotic substance and they were asked to give option whether they wanted the search to be carried out before some gazetted officer or a Magistrate. Both the accused desired that they wanted to be searched before a gazetted officer. ASI Naresh Kumar summoned Sh.Maam Singh, DSP Headquarter, Hisar to the spot. Accordingly, Sh.Maam Singh, DSP Headquarter, Hisar along with his staff reached there. On his direction, the gunny bags were searched and were found to contain poppy husk. The Investigating Officer took out sample of 200 gms. each from each of the five gunny bags. The remaining poppy husk in each gunny bag was found to be 39 kgs. 800 gms. The residue poppy husk was put back in the same jute bag. Then the samples as well as the jute bags containing remaining poppy husk were converted into parcels sealed with the seal having impression 'MS' of Sh.Maam Singh, DSP. Sample seal impression was also prepared. DSP Maam Singh kept his seal with him. The samples as well as bulk parcels besides TATA-407 bearing registration No.HR47-6453 were seized vide recovery memo.

The Investigating Officer had sent ruqa to police station through Constable Dhup Singh, on the basis of which formal FIR was registered. The Investigating Officer prepared rough site plan of the place of recovery, served grounds of arrest upon both the accused and sent information to their relatives. The Investigating Officer recorded statements of witnesses under Section 161 Cr.P.C. Thereafter, the police party along with both the accused returned to police station, where Investigating Officer produced both the accused, witnesses and samples

as well as bulk parcels before Sh.Raja Ram, SHO P.S. Adampur to whom report under Section 57 of the Act was furnished. SHO Sh.Raja Ram verified the facts from the accused and witnesses and then on his satisfaction affixed his seal having inscription 'RR' on the sample and bulk parcels. He also made his endorsement on the report under Section 57 of the Act. On direction of SHO, case property was deposited with MHC and accused were put in the lock-up. During the course of investigation, the sample parcels were sent to FSL, Madhuban for analysis and as per report received therefrom, the sample were found to be of poppy husk. The Investigating Officer recorded statements of the witnesses.

After completion of investigation, challan against the accused was presented.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Hisar, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Then observing that offence under Section 15 of the Act was exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Hisar vide order dated 12.4.2001 committed the case to the Court of learned Sessions Judge, Hisar from where it was entrusted to the Court of learned Additional Sessions Judge, Hisar

Learned Additional Sessions Judge, Hisar finding that charge for offence under Section 15 of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, they pleaded not guilty and claimed trial. The case was then fixed for

evidence of prosecution.

To bring home guilt to the accused, the prosecution examined Inspector Raja Ram as PW1, HC Suresh Kumar as PW2, Constable Randhir Singh as PW3, SI Kapoor Singh as PW4, DSP Sh.Maam Singh as PW5, ASI Ram Singh as PW6 and ASI Naresh Kumar as PW7 besides tendering certain documents.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

During the course of defence evidence, the accused tendered document Ex.DA and closed their defence evidence.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals.

I have heard learned counsel for the appellants-accused-convicts and learned Assistant Advocate General for the State of Haryana besides going through the record.

The first and foremost argument advanced by learned counsel for the appellants – accused was that they were not found to be in conscious possession of the contraband since there is nothing to show that they were aware of the contents of the jute bags being carried in TATA-407 vehicle bearing registration No.HR-46/6453, therefore, the accused deserve to be acquitted on that count. In support of his such

contention, he has referred to authority **Avtar Singh Versus State of Punjab, 2002(4) R.C.R.(Criminal) 180** by Hon'ble Supreme Court wherein while dealing with a case when recovery of 16 bags of poppy husk had been effected from a truck with two accused sitting on the bags and one accused driving the truck, it was observed that possession and ownership need not always go together but the minimum requisite element which has to be satisfied is custody or control over the goods.

He further referred to authority **Nirmal Singh Versus State of Punjab, 2003(4) R.C.R.(Criminal) 132** by a Co-ordinate Bench of this Court wherein while dealing with a case regarding recovery of 16 bags of poppy-husk from tractor trolley underneath green fodder when two persons who were travelling in tractor ran away on seeing the police party whereas two other persons were arrested from the spot, it was observed that they kept sitting on the trolley and did not try to run away, rather they contended that they had taken a lift and had no knowledge that trolley contained gunny bags of poppy husk. It was observed that their conduct showed that they were not in conscious possession. On this very point, learned counsel for the appellants referred to another authority **Sukhwinder Singh alias Sukha Versus State of Punjab, 2003(3) R.C.R.(Criminal) 764.**

Another contention raised by learned counsel for the appellants was that case property was not produced in the Court, which puts a big question mark over the credibility of the prosecution story. In support of his that contention he has referred to authority **Dayal Singh and another Versus State of Punjab, 2007(2) R.C.R.(Criminal) 596** by a Co-ordinate Bench of this Court wherein while dealing with a case

when recovery of contraband had been affected from canter, the accused were residents of different villages. It was observed that merely because accused were physically present in the canter, it cannot be said to be a ground to hold that they were actually in conscious possession of the contraband. In this very authority, it was observed that when case property was not produced before the trial Court till conclusion of the trial despite several opportunities availed by the prosecution in that regard, although the prosecution case cannot be thrown merely on this weakness as the samples drawn from each bag were in fact produced before the learned Illaqa Magistrate.

One more citation pressed into service by learned counsel for the appellants was *Avtar Singh Versus State of Punjab, 2007(4) R.C.R.(Criminal) 898* by a Co-ordinate Bench of this Court. It was a case of recovery of 30 bags of poppy husk with each bag weighing 38 kgs. Sample had been sent to laboratory after 17 days, the seals were with the police and when case property was produced in the Court, the seals on some of the bags were partially broken. Under the circumstances, it was observed that the prosecution had failed to explain this aspect of the matter completely and conviction of the accused – convict was set aside. It was further observed that in case of seizure of 30 bags of poppy husk from a truck, when one of the accused was driving the truck and other was sitting on bags then the mere presence of accused on the truck could not give rise to a presumption that they were having custody and control of the contraband. It was further observed that the minimum requisite conditions which are required to be satisfied by the prosecution is to establish the custody and control of the goods.

In support of his argument that precise question regarding conscious possession of contraband were not put to the accused while being examined under Section 313 Cr.P.C., learned counsel for the appellants referred to **Sukhdev Singh and another Versus State of Punjab, 2006(4) R.C.R.(Criminal)263**. The conscious possession in that case was not proved and conviction of the accused was set aside.

To press home the point that link evidence in this case is missing, learned counsel for the appellants has referred to **State of Rajasthan Versus Gurmail Singh, 2005(2) R.C.R.(Criminal) 58** which was a case of recovery of contraband when the seized articles were kept in malkhana for 15 days, malkhana register was not produced and sample of seal was not sent to laboratory for the purpose of comparing with the seal appearing on the sample bottles. It was concluded that there is no evidence to prove satisfactorily that the seals found were in fact the same seals as were put on the sample bottles immediately after seizure of the contraband. Under the circumstances, the accused was acquitted.

Learned counsel for the appellants further relied upon authority **Raghubir Singh and another Versus State of Punjab, 2008(1) R.C.R.(Criminal) 510** where samples were sent to Chemical Examiner after 18 days of seizure and delay is not explained and jamatalashi memo did not bear signatures of SI who was heading the police party, who had intercepted the accused, the accused was acquitted.

One more authority referred to by learned counsel for the appellants was **State of Haryana Versus Virsa Singh, 2008(1) R.C.R.(Criminal) 487** by Division Bench of this Court when samples of

poppy husk were despatched to Forensic Laboratory after 16 days of recovery whereas the same were required to be despatched at the earliest so as to rule out the possibility of their being tampered with, but no cogent reason was assigned for the same.

In an another authority referred to by learned counsel for the appellants *Ramji Singh Versus State of Haryana, 2007(3) R.C.R.(Criminal) 452*, it was observed that when the case property was produced in the Court, the seals were broken and indecipherable. It was also observed that there was no evidence that Form No.29 was prepared at the spot and deposited in the malkhana on the same day, it was observed that till the case property is not despatched to the forensic science laboratory, the seal should not be available to the prosecuting agency and in absence of such a safeguard, the possibility of the seal, contraband and the samples being tampered with cannot be ruled out.

Learned counsel for the appellants further referred to authority *Tulsi Ram Versus State of H.P., 2008(1) R.C.R.(Criminal) 137*, wherein it was observed that when no independent witnesses were examined, incriminating circumstances after seizure i.e. deposit of contraband in malkhana, its entry in register, its despatch for analysis and report of chemical analysis which are very vital links were not put to accused, they must thus be excluded and cannot be used against the convict, in that way guilt of the accused cannot be proved beyond reasonable doubt.

As regards the first contention raised by learned counsel for the appellants, the same is devoid of merit. Both the accused were travelling in the vehicle sitting in the rear portion, from where the gunny

bags containing contraband had been recovered. It is neither alleged nor proved that such appellants-accused had just taken a lift in the vehicle and were not aware of the fact that contraband was being carried therein. The very fact that when the police party had stopped the vehicle, four persons travelling therein including the appellants-accused had tried to escape goes to show their guilty intention, otherwise if they were unaware of the fact that contraband was being carried in the vehicle, where was the necessity for these two accused trying to escape. As a matter of fact, the driver and person sitting in cabin with him did manage to escape. Furthermore, the gunny bags containing contraband had been concealed under the parali (dry parts of jwar plant) that also goes to show that accused had knowledge that gunny bags were having contraband, otherwise there was no necessity of concealing those. The trial Court has dealt with that aspect in a very detailed manner in para Nos.15 to 18 and 20 of the judgment coming to the conclusion that the prosecution had successfully proved that both the accused had custody and control of the bags and they were having knowledge that TATA 407 was carrying five bags of poppy husk concealed under the parali (dry parts of jwar plant), in that way they were in conscious possession of the bag containing poppy husk. I find myself in agreement with the trial Court as regards drawing that conclusion. The judgments referred to by learned counsel for the appellants i.e. ***Avtar Singh's*** case, ***Nirmal Singh's*** case, ***Sukhwinder Singh's*** case (supra) do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

Coming to the next argument put forward by learned

counsel for the appellants as regards the non-production of the case property in the Court, it revealed that PW6 and PW7 have proved the case property Ex.P1 to P5, which fact is specifically mentioned in para No.11 of the judgment and a perusal of the impugned judgment goes to show that no such argument was raised before the trial Court nevertheless production of case property is just a piece of corroborative evidence and its non-production is not fatal to a prosecution case. The prosecution has led overwhelming evidence to show that recovery of contraband had been made from TATA-407 bearing registration No. HR-46/6453 of which the accused were in conscious possession. The samples had been drawn therefrom, which were duly sealed and no tampering is shown to have taken place till the sample reached Forensic Science Laboratory and those were analyzed and found to be poppy husk. PW5 DSP Maan Singh, PW6 Ram Singh, PW7 ASI Naresh Kumar have categorically deposed in that regard.

The link evidence in this case is complete which is evident from the affidavits of formal witnesses Ex.PB and Ex.PD. Any defect in the verification does not make any difference because PW2 HC Suresh Kumar who tendered his affidavit Ex.PB proved that five samples duly sealed with the seals of MS and RR were handed over to him by ASI Naresh Kumar on 15.12.2000 and on 29.12.2000, he had handed over the same to PW3 Constable Randhir Singh, who after depositing the same in FSL had given the receipt to him. Similarly PW3 Constable Randhir Singh in his affidavit Ex.PD had stated so. The accused were given opportunity to cross-examine the witnesses, therefore, now the defence cannot take any advantage of any alleged defect in the

verification of the affidavits and start saying that link evidence in this case is missing.

As regards the seal of ASI Naresh Kumar being not there on the sample parcels and bulk parcels, the trial Court has successfully met this objection in para No.26 of the judgment contending that Sh.Maana Singh DSP had affixed his seal bearing inscription 'MS' on the parcels, who had kept his seal with himself after using the same. On reaching the police station, PW7 ASI Naresh Kumar had produced before Inspector Raja Ram, SHO of Police Station Adampur, the case property along with accused and report Ex.PA, who had verified the facts from both the accused, witnesses and affixed his seal having inscription 'RR' on the sample parcels and bulk parcels and made his endorsement Ex.PA/1 on report Ex.PA. Therefore, there could not be any possibility of tampering with the samples till those reached FSL, Madhuban, Karnal for analysis. Therefore, non affixation of the seal by the Investigating Officer in this case does not make any difference.

As regards the aspect of delay of 16 days in sending the sample to the office of F.S.L., that also does not render the prosecution case doubtful since the prosecution has led sufficient evidence to show that no tampering of seals had taken place during that period the sample parcels were deposited with MHC of the police station till those reached F.S.L.Madhuban, Karnal and was analyzed there. The poppy husk is not such stuff which gets degenerated or its composition changes with passage of time say within short duration of a few days. Therefore, I am not in agreement with such contention of learned counsel for the appellants.

Coming to the contention that no independent witness was examined, it is a matter of common knowledge that now-a-days people generally hesitate to come forward to appear as a witness for the prosecution against the criminals apprehending that such criminals may not turn towards them and cause harm to them or their near relatives. Then there are hassles of going to the police station in connection with investigation and to attend hearings in the Court, therefore, people mostly avoid joining the investigation and offering themselves as witnesses.

I do not find any illegality or infirmity with the impugned judgment.

In view of the above discussion, the said judgment of conviction and sentence is upheld whereas appeals are found to be without any merit and the same are dismissed accordingly.

Appellants – accused Ramesh and Charan Singh are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Hisar is directed to issue arrest warrant to get them arrested so as to make them undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

13.9.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No