

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1602-SB-2012 (O&M)

Date of decision: 07.10.2017.

Sucha Singh

...Appellate

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Divya Sharma, Advocate
for the appellant.

Ms. Rajni Gupta, Sr.DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Sucha Singh had faced trial in case FIR No.74, dated 30.03.2010 under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 489(b) and 489(c) IPC, registered at Police Station Sadar Fazilka. The trial Court, vide its judgment of conviction and order of sentence dated 27.02.2012, held the appellant guilty and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹1 lac and in default of payment of fine to further undergo simple imprisonment for a period of 01 year under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985. The trial Court further sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of ₹4,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 03 months under Section 489 (c) IPC.

Brief facts of the case as per prosecution version are that on 30.03.2010, Inspector Sarabjit Singh along with his co-official was present on the bridge of seepage drain in the area of village Bale Shah Hithar

(Noorshah) with regard to investigation on receiving special information.

At about 5.00 AM one person was seen from the side of village Ghurka and when he was about to reach the bridge, he was apprehended by the police party and on inquiry disclosed his name as Sucha Singh. The Inspector Sarabjit Singh, after disclosing his identity to the accused asked him that he suspected that he was carrying some intoxicant article and he had a legal right to get the search conducted before him or in the presence of Gazetted Officer or Magistrate. The accused-persons gave their options to be searched in the presence of some Gazetted Officer and accordingly, the consent memo (Ex.P-2) was prepared, which was signed by the accused and attested by Inspector Baljit Singh and SI Atma Singh. The Inspector-Baljit Singh requested DSP Raghbir Singh, Ferozepur to reach at the spot, who came thereafter some time in his official vehicle along with his gunman and after disclosing his identity, he informed the accused that he suspected that he had carrying some intoxicant material and his personal search was to be conducted. Thereafter, the consent memo of the accused Ex.P-3 was prepared which was signed by the accused and attested by Inspector Baljit Singh and SI Atma Singh and verified by DSP Raghbir Singh. On the direction of the DSP, Inspector Sarabjit Singh conducted the search, as a result of which, heroin wrapped in a glazed paper was recovered from the right side pocket of the trouser of the accused persons and twenty five (25) fake currency notes of denomination of ₹500/- each were recovered from the left side of his trouser's pocket. On weighing, the intoxicant was found to be 400 grams out of which two samples of 10 grams each were separated and kept in a plastic box and the parcels were prepared. The remaining heroin was also sealed in a separate plastic box and its parcel was also

prepared by Inspector Sarabjit Singh with his seal bearing impression SS.

CFSL form was prepared as Ex.P-4 and he put one impression of his seal on CFSL form as Ex.P-5 and DSP also affixed his seal impression RS on all the parcels as well as on CFSL form Ex.P-6. The numbers of fake currency notes were noted on the recovery memo and was also sealed by Inspector Sarabjit Singh and DSP also put his seal bearing impression RS and the seal was later on handed over to Inspector Baljit Singh, whereas DSP retained his seal with himself. The case property was taken into possession by the police vide recovery memo Ex.P-7 and thereafter, a Ruqa /information was sent to the police station through Head Constable Pipal Singh for registration of the case and accordingly, an FIR was registered. The personal search memo of the accused was also prepared and the grounds of arrest memo Ex.P-11 was also prepared by Inspector Sarabjit Singh alongwith a rough site plan and thereafter, the accused was interrogated. On interrogation, the accused was informed that he used to supply fake currency notes and heroin to co-accused Sukhwinder Singh and Resham Singh (who have been declared proclaimed offender), after receiving the same from Indo Pak Border and they used to sell it further. He also informed that both the accused persons could be apprehended, if the police party hold a Naka at a place disclosed by him. In the meantime, Joginder Singh alias Kali son of Hakam Singh, resident of village Jhanggar Bhaini came there and joined the police party and after some time, car bearing registration No.PB-57-A 3328 was seen coming from Fazilka side and the police party stopped the car and on inquiry the driver disclosed his name as Sukhwinder Singh alias Sukha and the other person disclosed his name as Resham Singh. When DSP Raghbir Singh told those accused that they had

suspicion about some intoxicant material and search was to be conducted, the accused were also informed that they had legal right to get the search conducted in his presence or in the presence of some other Gazetted Officer, they (accused) reposed confidence in him and accordingly, consent memo of accused Sukhwinder Singh Ex.P-13 and Resham Singh Ex.P-14 were prepared and on conducting the search, heroin wrapped in a glazed paper of 50 grams each was recovered from them, out of which two samples of 5 grams each were separated and kept in a plastic box and all the parcels were sealed. The other formalities were also completed and thereafter, the police returned to police station along with accused persons and the recovered contraband.

After completion of the investigation, the report under Section 173 Cr.P.C. was submitted in the Court. Vide order dated 18.11.2010, accused Sukhwinder Singh and Resham Singh were declared proclaimed offender. Appellant-Sucha Singh faced trial and charges were framed against him under Sections 21 of NDPS Act and 489(b) and 489(c) IPC.

The prosecution, in its evidence examined PW-1 HC Lekh Raj, the official who carried the sample parcels and tendered his affidavit Ex.P-1 that he obtained the sample parcels on 14.04.2010 and the sample parcels along with specimen seal impressions and the docket for depositing the same in the office of the Chemical Examiner and deposited the same on 15.04.2010. PW-2 Inspector Sarabjit Singh, Investigating Officer, stated that on 30.03.2010, the accused were apprehended and disclosed the entire procedure adopted by the police party with regard to preparing the consent memo for search before the Gazetted Officer and informing the DSP Raghbir Singh, Ferozepur through a wireless message for reaching at the

spot and thereafter, preparing the consent memo of the accused for conducting the search in presence of the DSP and the other documents prepared at the spot. This witness proved all the material documents i.e. Ex.P-2 non-consent memo of the accused Sucha Singh, Ex.P-3 consent memo of Sucha Singh, Ex.P-4 CFSL form, Ex.P-5 and P-6 specimen seals impressions, Ex.P-7 recovery memo of the entire case property, Ex.P-8 Ruqa/information sent to the police station, Ex.P-9 copy of the FIR, Ex.P-10 personal search of accused Sucha Singh, arrest memo as Ex.P-11, rough site plan as Ex.P-12. The documents relating to the arrest and procedure adopted for co-accused Sukhwinder Singh and Sucha Singh, who have been declared proclaimed offenders are not discussed for the sake of brevity. Thereafter, PW-3 SP (Raghubir Singh) appeared and deposed on the same line as of PW-2 and PW-4 Inspector Baljit Singh, the recovery witness also supported the case of PW-2 - Inspector Sarabjit Singh, Investigating Officer and also proved that same documents. PW-5 HC Piara Singh deposed about the deposit of sealed parcels containing counterfeit currency notes in Government press, Nashik (Maharashtra State). PW-6 SHO Surinder Singh deposed that he had handed over the sample parcels to HC Lakh Raj for depositing the same in the office of Chemical Examiner. PW-7 HC Partap Singh tendered his affidavit Ex.PW7/A regarding deposit of fake currency notes in the Reserve Bank of India, Sector-17, Chandigarh. Thereafter, prosecution evidence was closed and the statement of the appellant/accused under Section 313 Cr.P.C. was recorded and in which, he denied all the incriminating evidence, produced by the prosecution and pleaded innocence.

In defence, the accused has examined DW1 Tota Singh, father

of the accused, who deposed that his son was picked up by the CIA staff on 28.03.2010 and on inquiry from CIA staff, Ferozepur, he came to know that a false case was planted upon him regarding the recovery of heroin and fake currency notes. This witness was also proved an application Ex.DW1/E and a Panchayatnama Ex.DW1/E vide which, he represented to the higher Police Officials and the village Panchayat resolved that the accused person is an innocent person and he also produced the receipts Ex.DW1/A to DW1/C vide which he has sent these documents to the Higher Police officials regarding false implication on his son. DW-2 Mangat Singh, Sarpanch of the village, corroborated the statement of DW1-Tota Singh and deposed that the Panchayatnama Ex.DW1/E was executed by him regarding false implication of Sucha Singh in the present case. DW-3, an official witness has brought the record from the police station with regard to depositing the case property in the Malkhana. His statement will be dealt with at the appropriate stage, after considering the arguments raised by learned counsel for the appellant.

Learned counsel for the appellant has submitted that from the statement of PW-2 Inspector Sarabjit Singh, it has come on record that the DSP Raghbir Singh was joined by him in most of the cases under the NDPS Act. Even this fact is not disputed by PW-4-Baljit Singh as well as SP(D) Raghbir Singh himself during his cross-examination who stated that it is correct that "I am a witness in most of the cases conducted by Inspector Sarabjit Singh under NDPS Act".

It is further submitted by learned counsel for the appellant that both these witnesses i.e. PW-2 Inspector Sarabjit Singh, Investigating Officer as well as PW-3 DSP Raghbir Singh have clearly admitted that there

are posts of DSPs at Fazilka, Jalalabad and Abohar and all DSPs were on duty on that day. It has also come in the statement of these witnesses that the distance of Fazilka is about 8/9 kms from the place of recovery, Abhor is at the distance of about 30 to 40 Kms from the place of recovery, whereas, Ferozepur where DSP Raghbir Singh was posted, is at the distance of 80/90 Kms.

Learned counsel for the appellant has further argued, with reference to the consent memo Ex. PW-3, which was prepared by the Investigating Officer at the spot, that a bare perusal of this consent memo shows that it was not prepared by the DSP himself and his signatures as a witness is at the end of this recovery memo i.e. after scribing this document, the signature of Sucha Singh was taken, then the Investigating Officer signed, then one of the witness signed, then two of the witnesses, who are the police officials, they have signed and lastly, in the end DSP has signed. It is thus submitted on behalf of the appellant that from the prosecution evidence, it is highly doubtful that the DSP was present at the spot, when the recovery was allegedly made from the appellant and in fact, a perusal of Ex. P-3 shows that it was not prepared by DSP himself and he has only attested it, which according to the counsel for the appellant, was not done at the spot and signed later on.

It is next submitted by learned counsel for the appellant that it has come from the statement of all the prosecution witnesses that the place of recovery was on the main road, many people were harvesting crop, no independent witness was joined at the time when the recovery from the appellant was effected. Counsel for the appellant has further submitted that when the second recovery from co-accused was effected, the police party

involved an independent witness, who was ever available at the time when the first recovery was effected from the appellant, but they were never joined and therefore, it raises a doubt about the investigation conducted by the police. It is further submitted that joining of an independent witness in the present case, was required for the reasons that the presence of DSP Raghbir Singh was doubtful at the spot and if an independent witness was joined at the time of recovery effected from the appellant, the truth would have come, if DSP Raghbir Singh was actually present at the spot or not.

It is next submitted that it has come in the statement of PW-2 as well as PW-3 that the seal of Ex. MO-1, the bulk parcel was found to be broken and, therefore, there is every possibility of tampering with the same and there is no explanation given by the prosecution in what circumstances, the seal was broken.

It is further submitted that it has come in the statement of PW -1 HC Lekh Raj – official witness that he has taken the samples for depositing the same to CFSL on 14.04.2010 from MHC, whereas the same was deposited on the next day i.e. 15.04.2010 and there is no explanation for depositing the CFSL form sample on the next day.

Counsel for the appellant has further submitted that it has come in the evidence of PW-4 Inspector Baljit Singh as under:-

“I brought the case property back to the police station after producing the same before the Illaqa Magistrate at about 6.30 P.M. on the same day. It is correct that as per the order Ex.P-25 passed by Illaqa Magistrate, case property is ordered to be deposited in the Judicial Malkhana. It is correct that I went to deposit the case property before the Judicial Malkhana along with other case property of other cases on 05.08.2010. Case property of this case remained

with me till 05.08.2010 and I have not obtained any order for keeping the same with me volunteered the Court passed an order that there is no space to keep the case property of any more case. It is correct that this order of 05.08.2010 and in this order there is no mention to keep the case property with me. Court has ordered me to deposit the case property before the Judicial Magistrate on 30.03.2010.”

It is thus submitted that the case property which was recovered from the appellant, remained in possession of this witness till 05.08.2010 and there is no specific order produced on record that the Court had directed him to keep the case property with him and, therefore, there is no explanation how the case property was kept by him for a period of five months.

Counsel for the appellant submitted that there was a specific order of the Court dated 30.03.2010 directing this witness to deposit the case property in the Judicial Malkhana, which was not adhered to by this witness and the case property remained with him for a period of five months. It is next submitted on behalf of the appellant that it has come in the statement of PW-2, the Investigating Officer that at the spot, he had prepared three carbon copies of CFSL forms, whereas Ex. P-4 which is produced before the trial Court is a photostat copy of the same. Learned counsel for the appellant has also referred to the discrepancies coming in the statement of two witnesses i.e. PW-2, who stated that three copies of CFSL forms were prepared whereas PW-4 Inspector Baljit Singh, stated only one CFSL form was prepared at the spot. She further submitted that as per statement of PW-3 DSP Raghbir Singh, he arrested the accused on 10.03.2010 and again stated on 10.04.2010 and then stated that the appellant was not arrested by him before 10.04.2010 and he was not joined in any

investigation against Sucha Singh prior to 10.04.2010. It is thus, submitted that the presence of DSP at the spot is highly doubtful.

Counsel for the appellant has further submitted that it has come in the statement of defence witnesses that DW-1 Tota Singh, father of the appellant, who has made a representation to the higher officials, with regard to his false implication and arresting him on 28.03.2010 and an independent witness DW-2, who was Sarpanch of the village, to prove the panchayatnama under the signatures of other members of the Panchayat saying that the appellant was picked up by the CIA staff, Ferozepur on 28.03.2010 and was falsely implicated in this case. Counsel for the appellant with reference to the statement of DW-3 has argued that it has come in the evidence of this witness that with regard to the other FIR registered under the NDPS Act, the case property was deposited promptly in the Malkhana, whereas, in the present case, it was deposited after five months. With regard to charge under Section 489(c) IPC, it is submitted on behalf of the appellant that there was no evidence on record to show that the appellant had any knowledge that currency recovered from him is fake and therefore, the charges are not proved against the appellant.

On the other hand, learned State counsel has submitted that prosecution has adopted the proper procedure, the accused was given an option to search before the Gazetted Officer or Magistrate and after recording the consent memo, the search was conducted in presence of the Gazetted Officer i.e. DSP and on the disclosure of the appellant, two other co-accused persons were arrested and recovery from them was also made.

In reply, counsel for the appellant submits that there is no written information produced on the record to show that the appellant has

disclosed that co-accused Sukhwinder Singh and Resham Singh were arrested on his disclosure. In fact, no such document has been prepared by the police or produced on record. Therefore, on oral disclosure set up by the prosecution is not admissible in evidence.

After hearing, counsel for the parties, I find merit in the present appeal. The presence of DSP Raghbir Singh, at the spot is highly doubtful. Both the prosecution witnesses i.e. PW-2, the Investigating Officer and DSP, who appeared as PW-3, have deposed that in almost, all the NDPS cases investigated by PW2 Inspector Sarabjit Singh, DSP Raghbir Singh used to be Gazetted Officer. It has also come in the statement of DSP Raghbir Singh that he could not give the exact date when the appellant was arrested, as this witness has stated that the appellant was arrested on 10.04.2010 and before that no Investigation was done in his presence qua arrest of appellant-Sucha Singh. It is also come in the evidence that 3 DSP's were available at Abhor, Jalalabad and Fazilka and their place of posting are much closer to the place of recovery but the Investigating Officer, PW-2 Sarabjit Singh opted to call, DSP Raghbir Singh from the place which was about 80/90 Kms. A perusal of the consent memo Ex.P-3 also shows that it was neither scribed by DSP himself nor it was attested by him at the first instance. Appellant Sucha Singh signed on the same and this witness has signed at the fag end of this document, which shows that PW-2 prepared this document and, thereafter, two other police Officials signed the same and thereafter, this witness has signed which makes his presence doubtful at the spot. The prosecution has further failed to explain in what circumstances, PW-2 has kept the case property with him till 05.08.2010 despite an order of the Court dated 30.03.2010 to deposit the same with the

Judicial Malkhana. Hence, there is no explanation for keeping case property with him for a period of five months and it has come in the statement of PW-2 as well as PW-3 that the seal of Ex.MO-1, the bulk parcel was found to be tampered with. Thus, the case property was not kept intact and the seal was found tampered.

The trial Court, while passing the impugned judgment has not dealt with the defence evidence produced by the appellant and a careful perusal of the impugned judgment passed by the trial Court would show that in fact, the defence evidence led by the appellant with regard to the charge under Section 21 of the NDPS Act was not at all discussed and evidence against the appellant with reference to the charges under Section 489B and 489C IPC was primarily discussed by the trial Court. In the defence evidence, the appellant has produced on record an independent witness, who has produced a Panchayatnama that the appellant was taken by the CIA staff on 28.03.2010 and the representations were given by the father of the appellant in this regard, which were neither considered by the police nor any communication was sent to him. There are various discrepancies in the statement of prosecution witnesses with regard to the recovery, the deposit of sample parcel with the CFSL which remained in the custody of PW-1 for a period of one day after receipt from malkhana on 14.04.2010 as it was deposited on 15.04.2010 without there being any explanation.

Accordingly, I hold that the charge under Section 21 of the NDPS Act is not proved against the appellant. So far as the charges under Section 489 (C) IPC is concerned, the recovery of counterfeit currency notes in denomination of ₹500/- which was found to be fake, is proved from the statement of PW-2 Inspector Sarabjit Singh and PW-4 Inspector Baljit

Singh. The recovery from the appellant was proved to be a fake currency as per report of Reserve Bank of India which is produced on record at Ex.P-24. Accordingly, I hold that charges under Section 489 (C) is proved against the appellant.

Learned counsel for the appellant has submitted that the appellant has already undergone 4 years 4 months and 01 day of actual sentence that is to say that he has already undergone the sentence awarded by the trial Court under Section 489 (C) IPC i.e. for 3 years RI including 3 months RI for non-deposit of fine of Rs.4,000/-, therefore, no further action is required with regard to the conviction under Section 489 C IPC.

For the reasons stated in this appeal, the appeal is partly allowed. The impugned judgment and order of sentence qua charges under Section 21 NDPS Act is set aside.

Disposed of with the above terms.

(ARVIND SINGH SANGWAN)
JUDGE

07.10.2017
Hemlata

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