

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

1. **CRA-S No.1242-SB of 2003**
Date of Decision: 11.11.2017

Charanjit Singh @ GoshaAppellant
vs
State of PunjabRespondent

2. **CRA-S No.1792-SB of 2003**

Gejo and anotherAppellants
vs.
State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Appellant(s) in person with
Mr. Akshay Jain, Legal Aid Counsel
Mr. Kuldeep V. Singh Ahluwalia, Advocate and
Ms. Shweta Nahata, Advocate
for the appellant(s).

Mr. Sandeep Vermani, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Vide this common order CRA-S No.1242-SB of 2003 and CRA-S No.1792-SB of 2003 are being decided as both the appeals have arisen out of the common judgment of conviction and order of sentence dated 13.06.2003 passed by the Judge, Special Court, Mansa vide which accused/appellants were convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred

as 'the Act') and were sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.1,00,000/- each. In default of payment of fine, the accused were to undergo further rigorous imprisonment for six months. Co-accused Beeru Singh has died. The factum of his death has been verified, therefore, the appeal *qua* him stands abated.

[2]. The prosecution story started with the allegations that on 05.04.2001, the Investigating Officer ASI Surjit Singh along with other police officials was on patrolling duty in a government canter driven by Constable Harvinder Singh. When they reached on the *pucca* road, then one person namely Ram Singh took a lift upto village Joga. When the police party crossed about 100 *karams* from Jai Durga Maisar Mandir, then from the side of village Ralla at about 5.30 a.m. one pickup van of white colour came from village Ubha side in a very fast speed. On suspicion ASI Surjit Singh stopped his canter in the middle of the road and with the help of other police officials, got the van stopped. The driver of the van disclosed his name as Gurmail Gir. Occupant on front seat towards left hand side of the driver, disclosed his name as Charanjit Singh @ Gosha. On the back seat, a lady was found sitting and she disclosed her name to be Gejo w/o Beeru Singh. ASI Surjit Singh checked the van and found that towards left side of Gejo, a gunny bag was lying. In

the dicky of the van, four gunny bags were lying. On suspicion ASI Surjit Singh told the occupants of the car one by one that he had some suspicion in respect of presence of some contraband in the van and, therefore, these bags were required to be searched. He informed the occupants about their right of search of the bags in the presence of any Gazetted Officer or the Magistrate. All the three occupants agreed and replied that the bags lying in the van could be searched in the presence of gazetted officer. Consent memo was prepared in the presence of all the three persons. ASI Surjit Singh informed police control room for sending some gazetted officer along with lady police official. At about 6.50 a.m., Sh. Balwinder singh Ramana, DSP along with his gunmen and lady constables namely Karamjit Kaur and Sukhraj Kaur reached at the spot in the government vehicle. ASI Surjit Singh apprised the DSP about the facts of the case. DSP told Gurmail Gir, Charanjit Singh and Gejo about his identity and told them that he had a suspicion about the contents of five gunny bags in their possession to be containing some contraband, therefore, the bags were required to be checked. He also told the accused that they had a right of search of bags in the presence of any gazetted officer or magistrate. All the three persons one by one replied that the bags be searched at the spot.

[3]. ASI Surjit Singh prepared the documents and the witnesses attested the same on the instructions of DSP Balwinder Singh Ramana. Investigating Officer Surjit Singh opened the mouth of the five bags and bags were found containing poppy straw. The samples of 100 grams each were separated from each bag and the remaining contraband after weighment came to be 35 kgs. each. The bags were tied with the string. All the five samples and five bags were separately sealed with the seal of 'SS'. The sample seal was separately prepared and the seal after use was handed over to the witness Ram Singh. The case property along with the van was taken into police possession and the documents were attested by the witnesses. Thereafter *ruqa* was sent to the police station for registration of the case. The site plan was prepared by the Investigating Officer and the statements of the witnesses were recorded. The accused persons were arrested. On personal search, currency notes of Rs.400/- were recovered from Charanjit Singh and Rs.200/- in the denomination of Rs.10/- were recovered from Smt. Gejo. Six currency notes in the denomination of Rs.10/- were recovered from Gurmail Gir. One wrist watch was also recovered from his possession. Investigating Officer handed over the case property along with the accused to SI/SHO Kesar Singh, who checked the case

property and interrogated the accused persons. He also affixed his seal 'KS' on the samples and the case property. The accused persons along with the case property were produced before the Chief Judicial Magistrate on 06.04.2001. The Court made the endorsement of seen. There was no space in the judicial *malkhana*, therefore, the case property was taken back to the police station and was kept by SHO in his supervision. The accused were detained in the police lockup. The samples were sent through road vide certificate No.65 dated 09.04.2001 to Forensic Science Laboratory, Punjab, Chandigarh through constable Rajwinder Singh. On 10.04.2001, the samples were deposited in the Forensic Science Laboratory. On receipt of report of FSL, the contraband was found to be poppy straw. The vehicle was found to be under the ownership of Beeru Singh, therefore, Beeru Singh was arrested under Section 25 of the Act.

[4]. After presentation of challan, the charges were framed against the accused persons under Sections 15 and 25 of the Act. The accused pleaded not guilty and claimed trial.

[5]. The prosecution in order to prove its case examined lady constable Karamjit Kaur as PW-1, Balwinder Singh Romana DSP as PW-2, HC Rajwinder Singh as PW-3, ASI Surjit Singh, Investigating Officer as PW-4, ASI Karam Singh as PW-5,

Sukhjit Singh, Jr. Asstt., DTO, Sangrur as PW-6, Suresh Kumar as PW-7, Inspector Kesar Singh as PW-8, Rajesh Kumar as PW-9, C Balour Singh as PW-10 and HC Bhim Sain as PW-11. Thereafter the prosecution closed the evidence.

[6]. The statements of the accused were recorded under Section 313 Cr.P.C. The accused denied the allegations and pleaded false implication.

[7]. In the defence evidence, the accused persons examined HC Gurmit Singh as DW-1, Constable Gurtej Singh as DW-2, Ajaib Singh as DW-3 and Dharma Singh as DW-4 and thereafter closed their evidence.

[8]. The trial Court after hearing both the sides convicted and sentenced the accused/appellants in the manner as indicated in the preceding para. That is how the present appeals were preferred before this Court.

[9]. Learned counsel appearing on behalf of the appellant (s) have submitted that Section 50(4) of the Act has not been complied with as Gejo could not be searched by the male police official. She could have been searched by a female police official. Appellant Gejo was personally searched. The testimony of lady constable Karamjit Kaur PW-1 revealed that neither she, nor any other lady constable conducted the search of Gejo.

[10]. Learned counsel further submitted that inventory of articles allegedly recovered by the police party on 05.04.2001 was not prepared, nor the same was recorded in the Register No.19 on that day and the said fact has been admitted by the Inspector/SHO Kesar Singh PW-8. The case property and the seal remained with the Inspector/SHO throughout till the same was sent to Forensic Science Laboratory. The cross-examination of Inspector Kesar Singh PW-8 has revealed that the case property was not entered in Register No.19 on 05.04.2001 and the seal remained with him. The alleged independent witness Ram Singh had left the spot and he handed over the seal of Investigating Officer to ASI Surjit Singh. The link evidence was missing altogether. The case property was never recorded in Register No.19 maintained by the Police, nor the same was deposited in the *malkhana*. MHC of the *malkhana* has not been brought in the witness box, nor Register No.19 was produced. In this way, the case property was not found intact from the date of its alleged recovery till the time when it was sent to FSL. The case property was found to be tampered with as seals on two bags were not legible and on the remaining bags, though the seals were intact, but were in broken condition. The bags which were full upto 3/4th of the capacity, but were not carrying distinguished marks in the

context of FIR, case details and other particulars. In the sample portion produced before the Court, the seal of 'KS' was not found.

[11]. Learned counsel further submitted that there was total non-compliance of Section 52-A of the Act as no representative samples were drawn by the Magistrate. The presence of DSP was doubtful as he did not witness personal search memo and arrest memo of the accused persons. The witness did not sign any parcel or sample seal and the arrest was not effected in his presence. Form No.29 was not filled at the spot, nor the same was deposited with the MHC in the malkhana along with the case property.

[12]. Learned counsel further submitted that there was delay in depositing the samples in FSL. Inordinate delay in sending the samples to FSL could not be explained by the prosecution satisfactorily. The samples/case property remained with the SHO without any record in Register No.19 from 05.04.2011 to 10.04.2011, when the samples were sent. According to circular No.1/88 issued by the Narcotics Control Bureau, the samples were required to be sent to the FSL within 72 hours.

[13]. Learned counsel further highlighted the contradictions in respect of cots, use of scale having spring

balance or the floor scale and non-joining of the independent witnesses. Learned counsel further submitted that Ram Singh was found to be a stock witness as he was police witness in other FIR of the same police station. A specific stand was taken by the appellant Charanjit Singh in respect of his false implication on the ground that he was having enmity with DSP Joginder Singh, Mansa against whom he had filed a complaint to the higher authorities being Sarpanch of the village. This fact was suggested to the witness PW-2 during his cross-examination.

[14]. On the other hand, learned State counsel submitted that during pendency of appeal Beeru Singh son of Buta Singh had expired. The factum of his death was verified. He submitted that the evidence led by the prosecution was reliable and trustworthy. The discrepancies, if any, were minor in nature and huge quantity of poppy husk/straw was recovered. Sections 42 and 50 of the NDPS Act were not applicable in the present case as the case was not registered on the basis of secret information, nor any contraband was recovered from the personal search of the accused. In case of chance recovery, the provisions in terms of Section 50 of NDPS Act were not attracted.

[15]. Learned State counsel further submitted that the seals

on the samples were found to be intact and the delay in sending the samples was not fatal to the prosecution case. He submitted that as per statement of PW-8 Inspector Kesar Singh, after production of the accused and case property in the Court, the entries were made in Register No.19, when he reached the police station. The case property remained with the police as *malkhana* was full to the capacity. At last learned State counsel submitted that since huge recovery was effected from the accused persons and all the necessary provisions of the Act were duly complied with and both the appeals be dismissed.

[16]. I have heard learned counsel for the parties and have perused the record.

[17]. The testimony of PW-1 would reveal that no lady police official was joined in the investigation. No lady ASI had conducted the search of accused Gejo which ultimately led to recovery of poppy straw. The witness further submitted that she did not conduct any search which led to the recovery of *poppy* straw. Lady constable Sukhraj Kaur also did not conduct any search which led to the aforesaid recovery. The witness further admitted that she was not vested with powers to conduct investigation of the case under NDPS Act and similarly lady constable Sukhraj Kaur was also not vested with any such power. No written document or paper was shown by the ASI to

DSP in her presence. The witness was not made to see any such document before her reaching at the spot. The witness did not know about the spring balance which was allegedly brought by the driver of the canter. DSP had signed on parcels of samples. ASI Surjit Singh did not instruct driver of the canter to bring some persons from the village. Investigating Officer did the writing work. Accused Charanjit Singh had told the DSP that he was Sarpanch of the village. The witness did not disclose any enmity due to party faction with Ram Singh to DSP. The cots were not brought in her presence, rather those were brought at the spot before she reached along with the DSP. The witness did not know as to who returned the said cots. DSP had asked the consent of the accused persons jointly and the witness did not remember as to at what time seals were entrusted to Ram Singh by Investigating Officer after its use. When Ram Singh had left the place and he had returned the seal back to the ASI Surjit Singh.

[18]. According to testimony of Balwinder Singh Romana DSP, all the parcels were sealed by ASI Surjit Singh with his seal 'SS', Separate sample seals were prepared. The seal after use was entrusted to private witness Ram singh. Van, parcels of samples, parcels of remaining *poppy* straw in bags and sample seal were taken into possession vide recovery memo

Ex.PD and the same was witnessed by DSP and other witnesses. The DSP did not witness personal search memo and arrest memo of the accused persons. In none of the memos, any specific note was given that those were read over and explained to the accused persons. ASI Surjit Singh had given dictation and memos were prepared by HC Gurdeep Singh or Gurjit Singh. The accused were hearing when memos were dictated. DSP did not state this fact in his statement, under Section 161 Cr.P.C. DSP was not in the knowledge of the fact that Charanjit Singh was the Sarpach of the village. He further admitted that Ram Singh private witness did not contact him. The police party did not make any call for the cots. The bags were lying in the van and were visible through the wind screen of the van. At the time of arrival of the DSP at the spot, the accused persons were sitting in the van. DSP did not sign any parcel or sample seal. In QST message, he was asked to bring lady constable with him. The witness also contradicted on the aspect of spring balance and the person, who was sent for calling private witnesses from the nearby village.

[19]. The statement of ASI Surjit Singh Investigating Officer would show that the seals appearing on the bags produced in the Court were not legible on two bags and on the remaining bags seals were intact, but were in broken condition. Driver

Harwinder Singh was sent to call persons from the village, but he did not disclose the names of those 5-7 persons to whom contact was made and they refused to come to the spot. Ubha Mandir was at distance of 100 *Karams* from the spot and people used to visit the said *mandir* at all times. The witness further admitted that the place of recovery was a public thoroughfare and many persons passed from there, when they remained present at the spot. The witness further admitted that the description of seal 'KS' was not written on the samples produced in the Court, only description of seal 'SS' was found. The witness also volunteered that the samples were prepared at the spot and the seal of 'KS' was affixed in the police station. The samples were weighed with the help of *Farshi* scale (small) and *Farshi kanda* was brought by Harwinder Singh driver of the canter from shopkeeper in Ubha. The witness did not remember the name of the shopkeeper. The witness came to know about ownership of the van on 23.04.2001 when Suresh Kumar came to the police station. The accused Gejo first disclosed that the van was in the name of Beeru Singh and thereafter she disclosed that it was in the name of Suresh Kumar. When house of Suresh Kumar was raided before 23.04.2001, Jaspal Singh son of Beeru Singh told that the van was purchased from Suresh Kumar and thereafter raid was conducted in the house

of Suresh Kumar. The van so produced in the Court was having instruments of a working still in its body.

[20]. The cross-examination of the witness further revealed that Charanjit Singh was Sarpanch of the village at the relevant time and he was not having any knowledge about the rift between Charanjit Singh and Ram Singh. The witness pleaded ignorance about any application moved by Charanjit Singh against DSP Joginder Singh Mansa, as Panch of the village. The SHO did not prepare any separate recovery memo and the witness also pleaded ignorance as to whether the case property was entered into Register No.19 or not. The witness further admitted that the seals were in crackled form and in the other bags some of the words could not be read.

[21]. Statement of Suresh Kumar PW-7 would show that he had sold the van to Beeru Singh and the receipt of agreement and advance money did not bear his signatures and thumb impressions of Beeru Singh. He had given an affidavit in respect of sale of van to Beeru Singh. He had denied that the RC of the van was in his name.

[22]. The statement of Inspector/SHO KesarSingh would show that the case property was retained by him in his custody till 09.04.2001. He filled form no.29 and thereafter handed over

five samples to the constable Rajwinder Singh along with sample slips for the FSL, Chandigarh. The witness admitted that he had not seen the case property in the Court. No memo was prepared by him about presentation of the case property by Investigating Officer before him. He did not made any entry of the proceedings dated 05.04.2001 in Register No.19. The bags and the samples were kept in the room of *malkhana* meant for NDPS cases and the chits were not handed over to MHC by him, rather he kept the same in his possession. The chits were signed by the him after the affixation of his seal impression. Though the witness had stated that after producing the accused and the case property in the Court, he entered the same after going back to the police station in Register No.19, but Register No.19 was never produced in Court. The entire case property including the *jamatalashi* was allegedly entered in Register No.19, but the same was not brought on record, nor any entry in the DDR after return of SHO to the police station from the Court was entered. The MHC of the relevant time was not produced in the Court. The seals remained with the SHO. The witness further admitted that the person, who made entry in Register No.19 when samples were sent to FSL was not known to him. The witness further admitted that he did not remember, if inventory report was scribed by him or by any other person.

[23]. From the testimonies of the aforesaid witnesses, it can be noticed that the case property was never deposited in the *malkhana*, rather the same remained with the SHO for which no entry was made in Register No.19. No such register was produced in the Court. The statement of SHO as PW-8 was discrepant in respect of making entry in Register No.19 and deposit of the case property in the *malkhana*. His seal was not found on the recovery memos. The case property was not shown in the police record, nor it was deposited in the *malkhana*. The existence of case property in terms of Register No.19 was not established on record and even MHC of the *malkhana* at the relevant time was not examined.

[24]. In nutshell the case property from the time of its recovery remained with the SHO without there being any official entry proved on record. No seal of 'KS' was found on the samples. The case property remained with SHO throughout and seals remained with him. The seal of the Investigating Officer also remained with him as the alleged independent witness Ram Singh had left the spot and he had handed over the seal to Investigating Officer ASI Surjit Singh. The link evidence was not established inasmuch as that neither the Register No.19 was produced on record, nor the MHC of the *malkhana* was produced as witness. Above all, there was no seal of impression

'KS' on the case property produced in the Court.

[25]. PW-4 during his cross-examination admitted the fact that the seals on two bags were not legible and on the remaining bags, seals were intact, but were in broken condition. The bags were found to be full upto 3/4th capacity, but were not carrying any distinguished marks in terms of FIR, details and other particulars. Even in the sample portion produced before the Court, seal of 'KS' was not found.

[26]. From the testimony of PW-1 and PW-8, it can be noticed that there was a violation of Section 50(4) of the Act. No personal search of Gejo was done by lady constable Karamjit Kaur PW-1, nor by lady constable Sukhraj Kaur. No inventory of articles was prepared by the SHO. Since the case property was not entered in Register No.19, therefore, statement of PW-8 in the context of property remained intact could not be appreciated. No representative samples were drawn by the Magistrate and there was violation of Section 52-A of the Act. Even though Sections 42 and 50 of the Act were not attracted to the facts of the case, but still the prosecution was under legal obligation to prove it beyond all reasonable doubts.

[27]. The statement of PW-2 did not show that the personal search memo and arrest memo of the accused persons were

witnessed by him. He did not sign any parcel or sample seal. The arrest was not effected in his presence, rather the statement was that at the time of his visit, the accused were found sitting in the van. Since no statement of MHC was recorded, nor form No.29 allegedly filled at the spot, was produced on record, therefore, deposit of form No.29 along with recovered contraband to MHC of the *malkhana* could not be proved as the case property was never sent to *malkhana* along with form no.29. The statement of PW-8 did not reveal any such compliance of filling form No.29 at the time of recovery and deposit of the same along with the case property with him. The delay of more than 5 days in sending the samples to FSL would make it more aggravated as during the entire period, the case property remained with the SHO without there being any maintenance of official record in terms of entry in Register No.19 and the seal of SHO was not found on the case property. According to instructions/notification No.1/88 issued by the Narcotics Control Bureau, the samples were required to be sent to the FSL within 72 hours. In view of **Union of India vs. Bal Mukund & ors., 2009(2) R.C.R. (Criminal) 574** and **CRA-S No.1449-SB of 2008** titled '**Satpal vs. State of Haryana**' decided on 06.08.2012, non-compliance in the aforesaid context would render the case to be doubtful. In the statement under

Section 313 Cr.P.C., the accused Charanjit Singh alleged his false implication on account of enmity with DSP Joginder Singh Mansa against whom, he had filed the complaint to higher authorities being Sarpanch of the village. This fact was duly suggested to witness PW-2 during his cross-examination.

[28]. The entirety of facts and circumstances of the case would show that the prosecution has not brought on record the material to establish link evidence from the date of alleged recovery till the samples were sent to the FSL. The prosecution story is discrepant on material particulars which makes the prosecution story untrustworthy and the benefit has to go the appellants.

[29]. In view of facts and attending circumstances of the case, I deem it appropriate to set aside the impugned judgment of conviction and order of sentence dated 13.06.2003 passed by the Judge, Special Court, Mansa against the accused. Both the appeals are accepted and the accused are ordered to be acquitted. Normal consequences to follow.

November 11, 2017

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No