

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

CRA-S-2268-SB-2005
Date of decision:18.08.2017

Ranjit Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. D.N. Ganeriwala, Advocate
for the appellant.

M.s. Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This appeal has been preferred against judgment dated 21.10.2005 passed by Judge, Special Court, Bathinda vide which accused was convicted for offence under Section 15 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹1 lac and in default thereof to further undergo rigorous imprisonment for two years.

The accused - convict – Ranjit Singh, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of

his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly summed up, the prosecution story is that on 03.02.2003 a police party from Police Station Dialpura headed by Inspector Barjinder Kumar, SHO of the said police station in official vehicle No.PB-03H-09113 was proceeding in connection with checking of suspects and when the vehicle carrying the police party reached at bridge of the drain in the area of Aklia, then a Ceilo car white in colour was spotted coming there and it tried to turn to left side on bank of the drain after seeing the police vehicle, that car was chased; that two persons sitting on the rear seat of the car succeeded in fleeing away. Gurjant Singh an independent witness met the police party on the bank of the drain and he disclosed that the persons who had run away were Kuldeep Singh @ Keepa and Jagseer Singh @ Seera. Though, ASI Gurcharan Singh and other police officials chased the fleeing accused, but they could not be nabbed at the spot. However, Ranjit Singh who was driving the said Ceilo Car No.DL-3CG-5807 was apprehended. The Investigating Officer told Ranjit Singh that he suspected him of carrying contraband and he (Ranjit Singh) had a right to be searched in presence of a Gazetted Officer or by Magistrate. However, Ranjit Singh stated that he be searched by Gazetted Officer, a memo in that regard was prepared. Mr. Balbir Singh Khara DSP of Rampura Phul was called to the spot.

DSP Balbir Singh Khara after reaching the spot, disclosed his identity to Ranjit Singh telling him that he had a right of being searched in presence of any other Gazetted Officer or a Magistrate, but Ranjit

Singh reposed confidence in DSP Balbir Singh Khera and stated that his search could be carried in his (DSP Balbir Singh Khera) presence. A consent memo was prepared in that regard which was thumb marked by the accused. Thereafter, as per direction of DSP Balbir Singh Khera, Inspector Baljit Kumar conducted search of the car, which was found to contain five bags of poppy husk lying in the boot of the car. Two samples of 250 grams each were drawn from each of the five bags and those were assigned No.1-A to 1-E. The remaining poppy husk in each bag on being weighed came out to be 35 kgs. per bag. Ten samples and five bulk bags were converted into sealed parcels sealed with seal of Inspector/SHO Baljinder Kumar bearing inscription "BK" and those were taken into possession; that currency notes of ₹2,300/- and mobile phone were recovered as a result of personal search of accused Ranjit Singh, those articles were also seized. Ruqa was sent to the police station, on the basis of which formal FIR was registered. The Investigating Officer prepared rough site plan of place of recovery. Statement of witnesses were recorded and necessary documents were prepared including one with regard to sending of information regarding arrest of accused – Ranjit Singh. On return to the police station, the Investigating Officer put accused in the lock up and deposited case property with AMHC Karamjit Singh; that special report Ex.P-I was sent to Sh. Harbhajan Singh SP(D), Bathinda.

On 04.02.2003 itself items of the case property along with samples were produced before Illaqa Magistrate by filing an application and inventory. The Magistrate passed orders for depositing case property

in Judicial Malkhana. However, since there was no space available in the Malkhana for placing of the case property there, as such, after obtaining orders from the Court, the case property was deposited in police malkhana. The five sample parcels in intact condition were sent to Chemical Examiner through C. Sukhwinder Singh. Accused Jagsir Singh was arrested in this case on 06.02.2003, necessary documents in that regard was prepared. Kuldeep Singh was also arrested.

After completion of investigation and on receipt of report of Chemical Examiner, challan against the accused was presented.

On presentation of challan in the Court of Judge, Special Court, Bathinda, he supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C.

Learned Judge, Special Court, Bathinda 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, accused 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 as many as five witnesses as per details below:-

PW-1 Inspector Barjinder Kumar, Investigating Officer of this case, unfolded almost the complete story and deposed regarding the investigation conducted by him by proving various documents.

PW-2 C. Sukhwinder Singh had taken samples to the office of Chemical Examiner, which according to him were in intact condition.

PW-3 Harish Chander Clerk of SDM Office Gidderbaha had

brought necessary record of car bearing No.DL-3-CG-5807, which stood in the name of Darshan Singh son of Bakshish Singh resident of Malooka District Bathinda, now at Gidderbaha.

PW-4 DSP Balbir Singh Khera, DSP deposed regarding his part in the investigation.

PW-5 ASI Gurcharan Singh a witness of recovery testified in that regard besides, deposing about what had transpired in his presence.

Additional Public Prosecutor tendered in evidence report of Chemical Examiner and then closed evidence of the prosecution.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but accused denied the allegations contending that he is innocent and had been falsely involved in this case. In addition to that accused – Ranjit Singh claimed that he was picked up from his fields forcibly in presence of Gurjant Singh son of Mohan Singh, Darshan Singh son of Bakshish Singh and his mother; and his car was taken from his house for implicating in false case.

During the course of defence evidence, accused examined DW-1 Gurjant Singh son of Mohan Singh and DW-2 Hardip Singh Clerk, Punjab State Human Rights Commission, Chandigarh.

With that the defence evidence got concluded.

After hearing arguments, learned Judge, Special Court, Bathinda convicted and sentenced the accused Ranjit Singh as mentioned above, which left appellant – accused Ranjit Singh aggrieved and he has filed the present appeal. However, his co-accused Kuldeep Singh and

Jagsir Singh were acquitted of the charge framed against them.

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Punjab, besides going through the record, and I find that there is no merit in the appeal.

As regards the argument put forward by learned counsel for the appellant regarding non-production of the case property, learned trial Court has dealt with that aspect in detail in para No.12 of the judgment observing that PW1 Inspector Barjinder Kumar on return to the police station had retained the case property and samples with him but deposited the car and jamatalashi with AMHC Karamjit Singh. As a matter of fact such PW had produced items of case property along with accused before the Illaqa Magistrate by filling inventory Ex.PJ, moving application Ex.PK on which Magistrate had passed orders Ex.PJ/1 and Ex.PK/1 for depositing the case property in malkhana. As regards destruction of the case property, Magistrate passed order Ex.PL/1 in terms of which case property was deposited in malkhana of Police Station Dialpura. The Magistrate before whom the case property had been produced had signed the articles of the case property including samples finding the seals in intact condition. PW1 himself being SHO there was no necessity of depositing the case property with Incharge SHO, therefore, compliance of provisions of Section 55 of the Act was there. Further, it is established that samples and items of case property were produced in intact condition before the Magistrate on 4.2.2003 and case property was deposited in the malkhana of Police Station Dialpura in pursuance of order Ex.PK/1

passed by the Magistrate.

In para No.13 of the judgment, it has further been dealt that as per order Ex.PK/1 obtained from Magistrate on 5.2.2003 report from Incharge, Malkhana had been obtained regarding insufficiency of space there, as such case property along with samples were retained by PW1 Inspector Barjinder Kumar from 3.2.2003 to 4.2.2003 and that on statement of PW1 and PW4, it comes out samples were sent through PW2 to the office of Chemical Examiner in an intact condition. Report from Chemical Examiner Ex.PX corroborates that facts and link evidence is there to show that sample reached in the office of Chemical Examiner in intact condition. Therefore, statement Ex.PD of PW2 regarding taking of sample seal chit by him along with samples does not have any effect in light of affidavit Ex.PC of PW2 that in fact samples along with sample seal chit pasted on the docket from itself were taken by him and deposited in the office of Chemical Examiner. The trial Court has further dealt with those aspects observing that even stamped endorsement of office of Chemical Examiner established that seals on sample seal chit were found to be tallying with the sample parcels deposited in the office of Chemical Examiner and thereafter the Chemical Examiner had analyzed the contents of five samples and that omission in statement Ex.DA of PW2 to mention about the taking of sample seal chit is due to clerical mistake or like reasons and defence cannot take any advantage of that. Therefore, under the circumstances, the non-production of case property during the trial does not have any adverse effect on the case of prosecution.

As regards Section 52-A of the Act that deals with disposal

of seized narcotic drugs and psychotropic substances after their seizure and defence cannot take advantage of this provision while coming up with objection of non-production of case property during trial.

As far as the authority referred to by learned counsel for the appellant *Jitendra and another Versus State of M.P., AIR 2003(SC)4236* that had altogether on different facts where no explanation was rendered for failure to produce the case property in the Court whereas it is not so in the present case. Furthermore, there are several other factors like panches having turned hostile, probable motive of landlady having filed false complaint with the police only evicting the accused from house and Investigating Officer had also not been examined etc. It was cumulative effect of all those factors that the Apex Court had observed that conviction of accused under Section 18 of the Act could not be sustained. Similarly, the other authorities referred to by learned counsel for the appellant i.e. *Ashok @ Dangra Jaiswal Versus State of M.P., AIR 2011(SC)1335, Vijay Jain Versus State of Madhya Pradesh, MANU/SC/0709/2013* in that regard also does not help the appellant due to different facts and circumstances in which such observations have been made.

As regards no photograph of the same having been taken and no representative samples drawn of course taking of photographs or doing of videography would have been additional piece of corroborative evidence for the prosecution. However, omission thereof does not make any difference.

As regards the taking of samples, the Investigating Officer

had already drawn such samples, produced the same before the Magistrate and as already observed the Magistrate had found the seals of sample parcels and bulk parcels to be intact. Furthermore, the prosecution has successfully proved that the sample parcels had reached the office of Chemical Examiner with seals intact and no tampering with seals had taken place. Therefore, samples are clearly proved to be drawn from the total contraband recovered.

Coming to the citation **State of Rajasthan Versus Gurmail Singh, JT 2005(2) SC 574** that was regarding a case where link evidence was not satisfactory whereas it is not so in the present case in view of the detailed discussion referred above. Therefore, this authority also not helpful to the case of appellant.

As regards the contention of learned counsel for the appellant that Gurjant Singh, the alleged independent witness joined to whom seal 'BK' of the Investigating Officer had been given as per prosecution story was not examined, the learned trial Court in para No.25 of its judgment has also successfully met the objection observing that presence at the spot of Gurjant Singh independent witness at the relevant time stands proved and this has been so admitted by Gurjant Singh, though stating that his presence was in a different manner. Learned trial Court has observed that since the testimonies of official witnesses inspire confidence regarding nabbing of accused Ranjit Singh, non-examination of Gurjant Singh independent witness does not have any adverse effect.

In para 30 of the judgment, the trial Court has discussed in detail about Ranjit Singh being in conscious possession of the contraband.

The reasoning given for arriving at this conclusion is quite convincing and I do not see any reason to disagree with the same. The trial Court has also observed that compliance of provision of Section 40 of the Act is not mandatory in view of law laid by Hon'ble Apex Court, therefore, non-joining of any other gazetted officer is not fatal to the case of prosecution.

Learned counsel for the appellant has argued that since in the documents Ex.PA, Ex.PB, Ex.PC, Ex.PD and Ex.PF, Section and date besides the FIR number is in same ink and in same writing as the rest of documents that creates a doubt in the prosecution case because FIR number and its details cannot be known before hand. However, I find little merit in this contention. This can at best be termed as some procedural irregularity. It can hardly cause any prejudice to the accused and accused cannot be let off for such likely small procedural irregularities. The main thing to be seen is as to whether accused was found in conscious possession of contraband as per prosecution version. The prosecution has successfully proved that it was so. Keeping in the huge quantity of contraband involved, there is little possibility of the same being planted upon the accused. The trial Court by proper appraisal and appreciation of evidence and interpretation of law came to the conclusion that prosecution had successfully proved its charge against the accused Ranjit Singh as regards offence under Section 15 of the Act but had failed to prove its case against remaining accused namely Jagsir Singh @ Seera and Kuldeep Singh @ Deepa, resultantly only Ranjit Singh was convicted whereas Jagsir Singh @ Seera and Kuldeep Singh @ Deepa were acquitted. The defence evidence adduced by the accused

fails to cause any dent in the prosecution story. The authorities referred to by learned counsel for the appellant do not find application to the present case due to different facts and circumstances.

Learned counsel for the appellant had relied upon the authority **Didar Singh Singh @ Dara Versus The State of Punjab, 2010(3) R.C.R.(Criminal) 337** in support of his argument. However, that authority also does not come to rescue of the appellant due to quite distinct facts and circumstances of this case.

The judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or ambiguity in the judgment, as such, the same is upheld.

The appeal is found to be without merit, hence it stands dismissed.

Appellant – Ranjit Singh is stated to be on bail granted to him by this Court vide order dated 15.5.2007 while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Bathinda is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

18.8..2017

Gaurav Sorot/Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes