

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

**CRA-S-1966-SB-2012
Date of decision :07.11.2017**

Mukhtiar Singh and another

..... Petitioners

Versus

The State of Punjab

..... Respondent

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

Present : Mr. Aashutosh Jerath, Advocate for
Mr. Sant Pal Singh Sidhu, Advocate
for the appellant.

Ms. Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.

This appeal is directed against judgment of conviction and order of sentence dated 02.06.2012 passed by Special Judge, Ferozepur, vide which she had convicted accused - Mukhtiar Singh and Rama alias Ram Singh for an offence under Section 15 of the NDPS Act, 1985 sentencing them to undergo rigorous imprisonment for six months and to pay a fine of ₹2,000/- each and in default of payment of fine to further undergo rigorous imprisonment for one month each.

Feeling aggrieved the accused – convicts have preferred the instant appeal and prayed that the appeal filed by them be accepted and the impugned judgment and order be set aside and they be acquitted of the charge framed against them.

Briefly stated facts of the case are that on 11.04.2007, a police party from Police Station Khuiyan Sarwar District Ferozepur headed by ASI Dalip Kumar (hereinafter to be referred as the “Investigating Officer”) was travelling in a private vehicle going from village Dewan Khera towards village Panjawa Model, in connection with patrolling, when the vehicle carrying police party reached near graveyard in the area of village Dewan Khera, a motorcycle without registration number was seen coming from the side of village Panjawa Model which was having two riders; that the Investigating Officer signalled the motorcycle to stop and it accordingly came to a halt, the person riding pillion on the motorcycle managed to flee towards the fields; that he was identified as Rama son of Hakam Singh; that Mukhtiar Singh, who was driving the motorcycle was apprehended, a plastic bag having some contents which was placed between the driver of the motorcycle and the pillion rider was found; that the Investigating Officer informed Mukhtiar Singh that he suspected that bag to be containing contraband and wanted to search it and that accused had a right to get search carried out in the presence of a Gazetted Officer or a Magistrate. However, Mukhtiar Singh stated that he had faith in the Investigating Officer, the Investigating Officer prepared consent memo in that regard and thereafter searched the bag, which was found to contain 10 kgs. of poppy husk; the

Investigating Officer took out 250 grams of poppy husk from the bag and then the sample and the bulk were converted into parcels sealed with seal of Investigating Officer. Bulk parcel, sample parcel and motorcycle were taken into police possession. ASI Ram Sarup then sent ruqa to the Police Station, on the basis of which formal FIR was registered; that accused Mukhtiar Singh was formally arrested, grounds of arrest were served upon him, rough site plan of place of recovery was prepared, personal search of Mukhtiar Singh was conducted, which resulted in recovery of identity card of Punjab Police, that was taken into possession, on return to the Police Station, the Investigating Officer produced accused Mukhtiar Singh as well as the case property before ASI Ram Sarup, the officiating SHO, who verified the investigation, interrogated the accused and kept the case property in his possession; that on the next day accused along with case property was produced before the Illaqa Magistrate. During course of investigation sample parcels was sent to office of Chemical Examiner for analysis. Accused Rama @ Ram Singh was arrested in this case on 13.02.2008 and grounds of arrest were furnished to him. Intimation regarding his arrest was given to his father.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court. On presentation of the challan in the Court, copies of documents relied upon therein were supplied to the accused free of cost as envisaged under Section 207 Cr.P.C..

Finding a prima facie case under Section 15 of the NDPS Act against the accused, they were charge-sheeted accordingly, to which they

pleaded not guilty and claimed trial, thereafter case was fixed for prosecution evidence.

During the course of evidence of the prosecution, the prosecution examined as many as six witnesses i.e. HC Bal Krishan, recovery witness as PW-1; ASI Dalip Kumar, Investigating Officer as PW-2; ASI Ram Sarup, Officiating SHO as PW-3 before whom the accused as well as the case property was produced by the Investigating Officer, on return to the Police Station; SI Paramjit Singh who had arrested accused Rama alias Ram Singh as PW-4; HC Sukhpal Singh who took the sample to the office of Chemical Examine as PW-5, Inspector Balkar Singh who proved the sanction for prosecution of accused Mukhtiar Singh as PW-6. With that the prosecution evidence got concluded.

Statements of accused under Section 313 Cr.P.C. were recorded, in which all the incriminating circumstances appearing against them were put to them, but they denied the same and pleaded their innocence and false implication in this case.

Accused did not lead any evidence in defence.

After hearing the arguments, Judge Special Court, Ferozepur convicted and sentenced the accused as detailed above, which left them aggrieved and they have filed the present appeal.

I have heard learned counsel for the parties, besides going through the record. Here both the witnesses of recovery namely HC Bal Krishan PW-1 and ASI Dalip Kumar PW-2 had fully supported the prosecution story on relevant aspects, though they were cross-examined at

length on behalf of the accused but they could not be shattered on any material point. No reason has been alleged or proved prompted by which, they might have involved the accused wrongly and deposed against them falsely to secure their conviction. I find their presence at the spot at relevant time to be probable and natural and account given by them to be worthy of reliance. Since no previous enmity between the PWs and the accused has either been alleged or proved, they are to be considered at par with independent witnesses. The mere fact that no independent witness was joined at the time of apprehending the accused or effecting recovery does not adversely affect the prosecution case since as has been noticed people in general hesitate to join the investigation lest that should invite wrath and enmity of the criminals who may cause harm to them or their family members and further to avoid hassles of going to the police station in connection with the investigation and to the Courts to get their depositions recorded. Therefore, non-joining of any independent witnesses does not make any difference. The report from Chemical Examiner shows that on being analyzed the sample was found to be that of poppy husk. Although learned counsel for the appellants has contended that sample was sent to FSL after 13 days delay therefore link evidence is missing. However that contention does not make any sense. The Judge Special Court in para No.12 has dealt with aspect in detail referring to testimony of ASI Dalip Kumar PW-2 who stated that after separating the sample of 250 grams poppy husk, he sealed the sample with seal bearing impression "DK", he prepared sample seal chit Ex.P2 and further on reaching police station, he

produced the case property before ASI Ram Sarup officiating SHO. ASI Ram Sarup PW-3 has testified that when the Investigating Officer produced the case property before him, he checked the same and found it to be correct, he sealed both the parcels with his seal bearing impression "RS" and took the entire case property into his possession vide memo Ex.P10, he has also put one seal impression on the sample seal chit Ex.P2. He kept the case property in police Malkhana under his supervision. It has further come in his testimony that on 24.04.2007 he completed CFSL form Ex.P18, took out one sealed sample and handed over the same along with sample seal chit to HC Sukhpal Singh. HC Sukhpal Singh when appeared as PW-5 further completed the chain of link evidence by providing his affidavit Ex.PW5/A, which indicate that after getting a forwarding letter from the office of the SSP, Ferozepur, he deposited the sample in the office of Chemical Examiner, Amritsar. Ex.P18 form No.29 (CFSL form) indicates that the sample was received in the said office on 25.04.2007. Report of Chemical Examiner Ex.P19 indicate that certificate has been appended by the Chemical Examiner to the effect that seals on the exhibit were intact and agreed with the sampled seal sent.

The Judge Special Court, Ferozepur has dealt with this aspect in para No.13 also has reached to conclusion that link evidence is complete. It being so the delay in sending the sample to FSL does not make much difference, there is nothing on record to show that poppy husk is contraband the form and composition of which gets change with the passage of time due to some chemical reaction. Therefore delay in sending sample to the

office of Chemical Examiner does not have any adverse affect on the merits of the case of prosecution.

One more argument advanced by counsel for the appellant was that recovery memo bears FIR number when according to the prosecution story the recovery had been effected earlier and FIR was registered later on, therefore, lacuna in the investigation.

Learned State counsel countered the argument stating that case of the prosecution stands proved regarding the recovery and prosecution story cannot be discarded for such like reasons.

I on my part feel that the main thing to be seen is as to whether contraband had been recovered from the accused and small lapses or omission which are of procedural nature cannot result in guilt of the accused getting washed away. Here the prosecution has successfully proved charge against the accused beyond shadow of reasonable doubt.

The Investigation has been conducted in a fair and impartial manner. Both the accused are specifically named in the FIR. The very fact that they were carrying bag placed between two of the accused goes to show their conscious possession of the contraband. The sample sent to the office of Chemical Examiner was found to be of poppy husk. Therefore prosecution has successfully proved its charge against shadow of reasonable doubt and the Court below was justified in convicting and sentencing the accused. The judgment does not suffer from any illegality or infirmity, rather it is based upon proper appraisal and proper appreciation of evidence and correct interpretation of law. The judgment is upheld as far as the

conviction part.

As regards the sentence part, in terms of custody certificates filed, out of 6 months imprisonment awarded to them accused Mukhtiar Singh has undergone 04 months and 13 days of total sentence whereas accused Rama @ Ram Singh has undergone 04 months and 22 days of total sentence. They are not shown to be involved in any other criminal case. Accused Mukhtiar Singh is stated to be police Constable having three children and only bread winner of his family. Accused Rama @ Ram Singh is stated to be a poor labourer having two children and only earning member of the family.

Ends of justice shall be adequately met if they are sentenced to imprisonment already undergone by them in this case. The sentence part as regards payment of fine is kept as such. The impugned judgment is modified to that extent. The trial Court may recover the amount of fine from the accused as per law.

Intimation be sent to the quarter concerned.

07.11.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**