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

CRA-S-343-SB of 2005

Date of decision: February 21, 2017

Darshan Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Ms. Amandeep Kaur, Advocate for
Mr. J.B.S. Gill, Advocate for the appellant.

Mr. Daljeet Virk, DAG Punjab.

A.B. CHAUDHARI, J (Oral)

Being aggrieved by the judgment and order dated 07.02.2005 passed by the Special Court, Hoshiarpur, in Sessions case No.77 of 2002 by which the appellant was convicted for offence under Section 15/61/85 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act') and was sentenced to undergo rigorous imprisonment for 10 years and to pay fine of ₹1,00,000/-, the present appeal was filed by the appellant.

In view of the case of the prosecution that on 26.07.2002, SI Paramjit Singh of Police Station Mahilpur along with police staff were on patrol duty at bus-stop. They received a secret information that the appellant and Kuldeep Singh alias Achhru were selling poppy-husk in the jungle on the eastern side of the village Jandiala and therefore, the raid was required to be conducted. They believed the information and went to the place that was disclosed to them. When the police party went to the spot, they noticed two persons present by the side of the bags, but on looking at police party, one person fled away and another was nabbed by the police

who on query, disclosed his identity as Darshan Singh-appellant. Thereafter, the procedure was followed and the seizure of 29 kg 500 grams of poppy-husk was made. The sample was sent and it was found as poppy-husk. The appellant was presented after investigation and the appellant was put on trial. Appellate denied to have committed any offence. Trial Court framed three ponits for determination which I quote hereunder:-

- “i) Whether on 26.7.02 at about 7 PM in the jungle of village Jandiala, accused Darshan and Kuldeep Singh were found in possession of five bags of poppy husk each bag containing 30 kgs. poppy husk, without permit or licence?
- ii) Whether the identity of the accused Kuldeep Singh was established to be the same person who slipped away at the time of conducting the raid?
- Iii) Whether the accused can be attributed with the conscious possession of the poppy husk?”

Trail Court, thereafter, heard and appreciated the evidence and facts as stated above.

Trial Court acquitted Kuldeep Singh who ran away from the spot. Trial Court recorded the following findings in Paras 18 and 20 of its judgement which read thus:-

“18. It is no doubt true that no public witness was joined by the Investigating Officer before conducting the search. The Investigating Officer, however, reduced the secret information into writing and transmitted the same to police station for further sending the same to the higher officers of the police and wasted no time in conducting the raid at the disclosed place and was successful in the raid and apprehending accused Darshan Singh from the spot. However, one accused slipped away. The IO-PW-3 SI Paramjit Singh, however, called Sh. Navjot Singh DSP, Garhshankar to the spot before conducting the search and the seizure. Therefore, non-joining of the public

witness in the peculiar circumstances of the present case, in itself is not sufficient to disbelieve the entire version of the prosecution but rule of caution has to be followed that the testimony of the official witnesses has to put a closer scrutiny. Applying the said test, we find that testimony of PW-3 SI Paramjit Singh IO, PW-4 SI Rajinder Singh, recovery witness and PW-5 Shri Navjot Singh DSP is quite consistent and reliable and no material could be brought in their cross-examination is accordingly repelled.

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20. The argument of the learned defence counsel, however, is without any merit in as much as, the case property and the samples were initially produced in the court of Ilaqa Magistrate who verified the intactness of the case property. It may be that the slips which are pasted on the bags of the case property might have got detached due to wear and tear. Otherwise the bags were in tact condition bearing the seals of Investigating Officer and Shri Navjot Singh DSP.”

At the outset, I find as discussed in Para 20 of the judgement above that the samples were marked in the intact position nor the slips pasted on the bags of the case property were intact apart from the seals put by the Investigating Officer. Trial Court has given the benefit of doubt to the prosecution on this aspect that the slips on the case property might have got detached due to wear and tear in the absence of evidence to that effect. In my opinion, it is erred by the trial Court which ultimately convicted the appellant-Darshan Singh for 10 years, must be said to be casual. It is for the prosecution to prove that the samples were intact and were not tampered with by anybody or were put in a sealed and proper condition. The benefit of doubt in the absence of such evidence, would go to the accused and not to the prosecution.

There is one more reason which I find from the prosecution

case that when the police party raided near the alleged spot, Kuldeep Singh had run away from the spot but appellant-Darshan Singh was standing on the spot. The question is whether the appellant-Darshan Singh who was found standing on the spot and nearby 29 kg of poppy-husk was seized, is itself enough to hold him guilty of the serious offence and then sentence him to imprisonment of 10 years with fine of ₹1,00,000/-. In my opinion, merely because appellant-Darshan Singh was seen standing on the spot and Kuldeep Singh had run away from the spot which ultimately stood acquitted but the knowledge of conscious possession of poppy-husk cannot be put to Darshan Singh for recording his conviction for such a serious offence. That is in fact, perversity of justice that merely because the appellant was found standing at the spot, he should be held guilty of such a serious offence.

To sum up, I am fully convinced that the trial Court committed a grave error in giving the benefit of doubt to the prosecution rather than the accused. Not only that the initial burden of prove to show that the appellant-Darshan Singh was having in conscious possession of the contraband was not discharged by the prosecution and the burden thereof lay on the prosecution and not on the accused. At any rate, Kuldeep Singh who ran away from the spot stand acquitted by the trial Court. In that view of the matter, the judgment and order impugned will have to be set aside and the appellant will have to be acquitted. In that result, I make the following order:-

- (i) CRA-S-343-SB of 2005 is allowed;
- (ii) The judgment and order dated dated 07.02.2005 passed by the Special Court, Hoshiarpur, in Sessions case No.77 of 2002 convicting the appellant for offence under Section

15/61/85 of the NDPS Act and sentencing to undergo rigorous imprisonment for 10 years and to pay fine of ₹1,00,000/-, is set aside;

(iii) The appellant-Darshan Singh is acquitted of the charge under Section 15/61/85 of the NDPS Act. Fine, if paid by the appellant, shall be refunded to him.

(A.B. CHAUDHARI)
JUDGE

February 21, 2017

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No