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

CRA S-1060-SB of 2017 (O&M)

Date of decision : 21.04.2017

Balwinder Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. KDS Sandhu, Advocate,
for the appellant.

Mr. Luvinder Sofat, AAG Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 03.02.2017 passed by Judge, Special Court, Ludhiana, vide which the appellant was convicted under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and sentenced to undergo RI for 06 months and to pay fine of Rs.2000/- with default stipulation.

Briefly stated the case of the prosecution as noticed in the judgment passed by the trial Court is as under:-

“The facts of the prosecution case are that on 4.1.15, ASI Jaswant Singh 252 alongwith ASI Harinder Singh 719 PP, HC Nahar Singh 975 and PPHC Amrik Singh 284 in connection with checking of smugglers and bad elements were present at Platform No.4, 5 towards northern side of Railway Station. At about 16.00 hours, one person whose name came to be known later on as Balwinder Singh was seen coming from the side of platform no.4, 5 carrying a cloth bag of coco cola colour with black straps in his right hand. On seeing the police party, he stopped by ASI

Jaswant Singh and was inquired about his name and parentage to which he disclosed his name as Balwinder Singh son of Faqir Singh. Then ASI Jaswant Singh inquired the contents of the bag in his possession but he got nervous and did not give any proper and satisfactory reply and kept mum. Accordingly ASI Jaswant Singh tried to join independent witness from the passengers and railway staff but they showed their inability to join investigation. Then ASI Jaswant Singh disclosed his identity to the accused and further stated that he had suspicion that some contraband articles were lying in the bag in his possession and he wanted to conduct search of the same. ASI Jaswant Singh further apprised the accused regarding his legal right to get his search conducted in the presence of Magistrate or Gazetted Officer who could be called at the spot, if he so desired. However, the accused reposed confidence in ASI Jaswant Singh. Consent statement of accused was recorded. Then ASI Jaswant Singh conducted search of the bag in possession of the accused and recovered 8 kg poppy husk from the same. He separated two samples of 250 gm each and two sample parcels were prepared in two plastic containers. Remaining poppy husk on weighment came to be 7 kgs 500 grams which was converted into parcel. The parcels were sealed by ASI Jaswant Singh with his seal bearing impression JS. Sample seal chits were prepared separately and seal after use was handed over to ASI Harinder Singh. Form No.29 was prepared at the spot partially. All the three parcels alongwith sample seal and form No.29 were taken into police possession vide recovery memo signed by ASI Harinder Singh and HC Amrik Singh. Ruqa was sent by him through HC Amrik Singh to the police Station for registration of case on the basis of which formal FIR was registered by SI Mohinder Ram. ASI Jaswant Singh inspected the spot and prepared site plan. Accused was arrested and his arrest memo was prepared. Intimation of his arrest was given to his relative on mobile. From personal search of accused Rs.100/- were recovered. Statements of the witnesses were recorded and accused were produced before SHO. Upon receipt of report of Chemical Examiner and after completion of investigation, challan against the accused was presented in the Court.”

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free of cost.

Charge under Section 15 of the NDPS Act was framed against the accused to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 ASI Harinder Singh, PW-2 HC Gurpal Singh, PW-3 ASI Jaswant Singh Investigating Officer), PW-4 HC Surjit Kumar and PW-5 SI Inderjit Singh, and thereafter closed its evidence.

The statement of accused was recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which the accused denied and pleaded false implication.

No evidence in defence was led by the accused.

After appraisal of the evidence, the trial Court vide impugned judgment and order dated 03.02.2017, convicted and sentenced the accused as narrated above.

Feeling aggrieved against the judgment and order dated 03.02.2017, passed by the trial Court, the accused have filed the instant appeal.

As per the case of the prosecution on 04.01.2015 at 04.00 p.m., the appellant was seen coming by the police party from the side of platform Nos.4 and 5 carrying a cloth bag in his right hand. On suspicion he was stopped by ASI, Jaswant Singh (PW-3) and after due formalities, on search the cloth bag was found to contain 8 kg poppy husk.

This Court in “Balwinder Singh @ Mohinder Singh Vs.

State of Punjab, 2016 (1) R.C.R.(Criminal) 393, observed as under:-

“Filling of CFSL form on the spot is a very valuable safeguard to ensure that the seal sample is not tampered with till its analysis by the F.S.L. The CFSL form ought not only be prepared and sealed by the officer making seizure at the place where the case property is seized from the accused, it requires to be sealed by the SHO to whom the sample and the case property is handed over and the same should accompany the sample to the Chemical Examiner. The object of taking such a precaution is to complete the material link in the prosecution evidence by eliminating the possibility of the sample being tampered with.”

The learned counsel refers to the testimonies of PW-3, ASI Jaswant Singh who has specifically stated that Form No.29 was partially prepared on the spot. The said Form contains the FIR as well which goes to show that the Form was not filled on the spot. It is further asserted that the appellant was allegedly seen coming from the railway station. However, in the absence of recovery of the railway ticket or any other document to corroborate the same, the presence of the appellant on the spot is not conclusively established. The link evidence in the instant case is missing as SI Mohinder Ram, who as per the case of the prosecution received ruqa in the Police station has not been examined by the prosecution. There is a delay in depositing the case property which causes doubt in the prosecution case. Despite the fact as per the case of prosecution the recovery was effected from the public place i.e. Railway Station, no independent witness was joined by the prosecution which is a serious violation of Section

100 Cr.P.C. and the case of the prosecution deserves to be dismissed on this score alone.

Heard.

The recovery in the instant case is 8 kilograms of poppy husk. PW 1-ASI Harinder Singh, in his testimony has specifically stated that Form No.29 was prepared on the spot whereas it has specifically come in the testimony of PW-3 ASI Jaswant Singh that Form No.29 was prepared on the spot partially. These two witnesses are the most material witnesses in the present case. Therefore, in the instant context, the Court feels that the contradiction with regard to preparation of Form No.29 is material and fatal to the case of the prosecution. Further, it has come in the testimony of PW-3 ASI Jaswant Singh that he made earnest effort to join independent witnesses including the railway staff. In this context, the Court feels that the Government officials cannot be at par and if the railway officials as per the version of the prosecution had been requested to join in the proceedings, the IO was expected to lodge protest against those officials to the Railway Authorities.

In the absence of independent witness and the absence of explanation as to why no further effort was made to join railway officials in the proceedings and the contradiction in the statements of key witnesses PW-1, namely, ASI Harinder Singh and PW-3, namely, ASI Jaswant Singh, the Court feels that the prosecution has failed to establish its case beyond shadow of doubt. Therefore, the Court feels that the appellant deserves to be given the benefit of doubt. Accordingly, the appeal is accepted and the

impugned judgment and order are set aside.

Accused Balwinder Singh is acquitted of the charge under Section 15 of the NDPS Act. He is stated to be in custody. He be released forthwith, if not required in any other case.

The appeal is allowed.

April 21, 2017

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(JITENDRA CHAUHAN)
JUDGE

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