

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

CRA-S-2808-SB-2016 (O&M)

Date of decision-10.03.2017

Manjinder Singh @ Kaka

...Appellant

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. G.S.Chhina, Legal Aid Counsel for the appellant.

Mr. Naveen Kaushik, Addl.A.G, Haryana.

JITENDRA CHAUHAN, J. (Oral)

The present appeal is directed against the judgment and order dated 17.02.2016/23.02.2016 passed by Special Judge-cum-Additional Sessions Judge, Kurukshetra vide which the appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act') and sentenced to undergo rigorous imprisonment for ten years with fine of Rs.1,00,000/- with default stipulation.

The facts of the case as noticed in the judgment passed by the trial Court are as under:-

“Allegations of the prosecution in this case are that on 4.2.2015 a police party, headed by SI Subhash Chand, was on patrolling duty and was present near Madhu Dairy, Pehowa where an information was received that three persons, dealing in the business of poppy straw, were travelling towards Pehowa via Kaithal in a vehicle bearing registration No.HR-67-7080. On this information, a barricade was raised by the above

mentioned police party, at Gumthala Canal Bridge and a car was intercepted. Three persons were found travelling in the above mentioned vehicle. The said persons disclosed their identity as Manjinder Singh @ Kaka, Sukhbir Singh @ Prince & Balwinder Singh @ Bablu (accused). On being intercepted a notice under Section 50 of the NDPS Act was served upon both the accused and thereafter, on search of the car, in the presence of Shri Gurmail Singh, DSP Pehowa, poppy husk was recovered from their possession. The total quantity of contraband recovered from the above mentioned vehicle, kept in three bags, was 55 kilograms (total). The Investigating Officer of the case conducted all the usual formalities, prescribed under the statute, on the spot as well as in the police station, such as preparation of site plan of place of recovery and various memos. The statements of witnesses u/s 161 Cr.P.C. were also recorded. On completion of investigation, the report under Section 173 Cr.P.C. was prepared and presented in the court.”

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

In order to prove, its case, the prosecution examined PW1-ASI Virender Singh, PW2-SI Prem Dass, PW3-Constable Hoshiar Singh, PW4-Sh. Vivek Yadan, PW5-ASI Rajesh Kumar, PW6-Constable Shish Pal, PW7-Constable Vikram Singh, PW8-Inspector Narender Kumar, PW9-SI Subhash Chander, PW10-Smt. Meena Devi, PW11-ASI Daljeet Singh, PW12-DSP Gurmail Singh, PW13-Inspector Aman Kumar, PW14-HC Raj Kumar, PW15-Gurvinder Singh and closed the evidence.

The statement of accused was recorded under Section 313 of Cr.P.C. and all incriminating circumstances appearing in the prosecution

evidence were put to the accused. The accused denied the same and pleaded false implication.

After appraisal of the evidence, the learned trial Court convicted and sentenced the accused as narrated above.

The learned counsel for the appellant refers to testimony of PW9-SI Subhash Chander, wherein he had specifically stated that he did not affix his seal on samples. No effort was made to join any independent witness(es) even though the recovery was allegedly effected from a public place during day time at 4.20 p.m. The learned counsel refers to notice under Section 50 of NDPS Act was allegedly served upon the accused persons, including the present petitioner whereas the alleged consent memo of the present petitioner (Ex.P-7) stating that he desired to get the search conducted in front of a gazetted officer was hand written. Further, he refers to testimony of PW12-Gurmail Singh, a substituted DSP, Shahbad, holding additional charge of Pehowa against the leave vacancy of DSP Chander Pal, that seal of SI Jagdish Chand posted at CIA Staff was affixed by him during the recovery proceedings. There is no compliance of Sections 55 and 57 of the Act. It is also to be noticed that DSP Chander Pal was neither involved in the recovery proceedings nor joined at any subsequent stage of the investigation. Thus, the seal on the recovery was appended by another officer which is a material defect in the investigation. The quantity in question is 55 kgs of poppy husk which is marginally higher than the commercial quantity and the appellants are not involved in any other case.

On the other hand, the learned State counsel states that 55 kgs.

of poppy husk was recovered from the appellant which is a commercial quantity. He further states that the investigating officer had properly followed the procedure enshrined in the Act. However, he admits that the appellant is not involved in any other case.

I have heard the learned counsel for the parties and carefully perused the entire record on file.

The recovery in the instant case was allegedly effected at the Canal Bridge of village Gumthala at 4.20 p.m. However, there is no whisper in the evidence of PW9-SI Subhash Chander, Investigating Officer qua the fact that he made an effort to join any independent witness(es) notwithstanding the fact that the place of recovery was a public place. No doubt, joining of the independent witness(es) is not mandatory in each and every case, however, at the same time the joining of an independent witness excludes the possibility of fabrication of the case of prosecution. If the Investigating Officer is unable to join any independent witness(es) for the reason that no one came forward to assist him as independent witness(es) is one thing but the absence of such an effort on the part of investigating officer, when the provisions of the Act are very stringent, robs the victim of the protection made for him in law. Further case of the prosecution has become doubtful. The appellant is not involved in any other case. In these circumstances, this Court is of the opinion that the prosecution has failed to establish its case against the accused. Consequently, the present appeal is allowed.

Record of the Court(s) below be returned.

(JITENDRA CHAUHAN)
JUDGE

March 10, 2017
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No