

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

CRA-S-3032-SB of 2015 (O&M)

Date of decision: 02.12.2017

Ajay Kumar and another

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. Mohan Singla, Advocate for the appellant(s).

Ms. Anju Arora, Addl. A.G., Punjab  
for the State.

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**Jitendra Chauhan, J.**

The present appeal is directed against the judgment of conviction and order of sentence dated 18.05.2015, passed by Judge, Special Court, SAS Nagar, Mohali, whereby the appellants were convicted under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'Act') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹1,00,000/- each and in default of payment thereof, to undergo further rigorous imprisonment for six months.

2. The brief facts as culled out in para No.2 of the judgment of trial Court, is reproduced as under:-

*“On 08.06.2014, PW-3 ASI Sartaj Singh, Investigating Officer of the case (hereinafter to be referred as the IO) along with Head Constable Sham Sunder, recovery witness and some other police officials was present near Old Well on Machhli Kalan-Mehdoodan road in connection with patrolling and checking of suspicious persons. At about 5.00 PM, car No.HR-24-L-2682 make Santro was spotted coming from Mehdoonan side. On seeing the police party, the driver immediately stopped the car and tried to reverse the car. Due to suspicion, the IO intercepted the car with the help of other members of the police party. On enquiry, the car driver disclosed his identity as accused Ajay Kumar and the person sitting on co-driver seat disclosed his identity as accused Sanjay Kumar, as fully detailed and described herein above. The IO disclosed his name, rank and place of posting to both the accused and due to suspicion of some narcotic substance in the car, the IO gave option to the accused as per their legal right, to get their search conducted in the presence of a Gazetted Officer or a Magistrate. But both the accused reposed confidence in the IO and separately gave consent to get their search conducted in the presence of IO. Accordingly, their consent memos Ex.P2 of Sanjay Kumar and Ex.P3 of accused Ajay Kumar were prepared, which were signed by the accused and were attested by the witnesses. Then the IO conducted search of the car and from boot of the car three plastic bags of white colour were recovered, which on checking were found containing poppy husk. A bed sheet and weighing scale were arranged. On weighment, poppy husk was found 70 kgs out of which two samples weighing 250 gms each were separated. Remaining 69.500 kgs poppy*

*husk was put in the same bags. The sample parcels and bulk parcels of poppy husk were sealed by the IO with his seal impression of words 'SS'. Sample of seal Ex.P10 and CFSL form Ex.P11 were prepared. Seal after use was handed over to PW2 HC Sham Sunder. This case property was taken in police possession, vide recovery memo Ex.P4. Car No.HR-24-L-2685 along with its registration certificate Ex.P16 was taken in police possession, vide recovery memo Ex.P5. The accused possessed the poppy husk without having any valid permit or licence. Therefore, ruqa Ex.P12 was sent to the police station through Constable Maninder Singh and on its basis FIR Ex.P13 was recorded by ASI Jaspal Singh, who made endorsement Ex.P14 on the ruqa. Investigation was conducted at the spot. Personal search memos Ex.P6 and Ex.P7 and arrest memos Ex.P8 and Ex.P9 of the accused and site plan Ex.P15 of the place of recovery were prepared. Statements of the witnesses were recorded. On reaching the police station, the IO produced the case property and the accused before PW6 Sub Inspector Lakhvir Singh, officiating SHO, who affixed his seal bearing impression of words 'LS' on bulk parcels, sample parcels and sample of seal Ex.P10 and then the case property was deposited in malkhana of the police station with PW1 ASI Palwinder Kumar MHC, who has furnished affidavit Ex.P1. On 09.06.2014, the IO produced the case property and the accused before the Area Magistrate along with inventory Ex.P17, application Ex.P18 under Section 52-A of NDPS Act and application Ex.P19 for obtaining certified copy of the order. The Area Magistrate certified the inventory to be correct and allowed the other applications, vide*

*endorsement Ex.P20. Thereafter, the MHC sent the sample parcel to the Chemical Examiner through Constable Buta Singh. Statements of remaining witnesses were recorded. On completion of investigation and on receipt of report Ex.P21 of the Chemical Examiner, final report under Section 173 Cr.P.C., against the accused was presented before the Court.”*

3. On presentation of challan, the trial Court finding prima facie case against the accused-appellants, framed the charge for the offence under Section 15(c) of the Act. The accused pleaded not guilty to above charge and claimed trial.

4. In order to prove the guilt of accused, the prosecution examined PW-1 ASI Palwinder Kumar who tendered his affidavit Ex.P1;

PW-2 HC Sham Sunder, the recovery witness proved documents on record Ex.P2 to Ex.P9;

PW-3 ASI Sartaj Singh, Investigating Officer, deposed regarding the manner of investigation and corroborated the version of other recovery witnesses;

PW-4 Raj Kumar, Clerk of Registering Authority Motor Vehicles, Sirsa proved on record the registration certificate of the car in question;

PW-5 ASI Balbir Singh, MHC proved on record

documents Ex.P23 to P27 and stated that the sample parcel was sent to the Chemical Examiner for analysis in an intact condition through C.Buta Singh, who has since expired;

PW-6 SI Lakhvir Singh, the officiating SHO also deposed regarding the recovery of contraband and affixing of his seal on bulk parcels as well as sample parcels.

5. The statement of the accused under Section 313 Cr.P.C., was recorded. They pleaded innocence and alleged false implication. However, they did not lead any evidence in their defence.

6. After hearing the Addl. Public Prosecutor for the State, the counsel for the accused and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellants, as stated hereinbefore.

7. Feeling aggrieved, against the judgment of conviction delivered by the trial Court, the instant appeal was filed by the accused/appellants which was admitted on 15.07.2015.

8. Learned counsel for the appellants has contended that the accused have been falsely implicated in the present case. The complainant, ASI Sartaj Singh himself is the investigating officer who appeared as PW-3, therefore, when the complainant himself performed the duties of the investigating officer, there could not be transparency in the investigation. In support of his assertion, learned counsel has placed reliance upon **Gannu and another** Vs. **State of**

**Punjab**, 2017(3) RCR (Criminal) 566, **Laltu Prasad** Vs. **State of West Bengal**, 2017(2) RCR (Criminal) 237, Calcutta (DB) and **State of Himachal Pradesh** Vs. **Atul Sharma and others**, 2015(6) RCR (Criminal) 949.

9. Learned counsel for the appellants further submits that the alleged recovery was planted upon the accused. The case of the prosecution solely rests upon the testimonies of the official witnesses, who are interested in the conviction of the appellants. As per the prosecution story, the recovery was effected from an open place accessible to public, however, no independent witness was joined in the investigation. Further no gazetted officer was called while conducting the search of the appellants/accused. Thus, in the absence of gazetted officer or independent witness, the recovery of alleged contraband is totally doubtful. No witness was examined to prove the genuineness of FSL report Ex.P21.

10. It is further submitted that as per the prosecution story the alleged recovery was effected from the boot of the car whereas the accused/appellant Ajay Kumar was driving the car and accused/appellant Sanjay was sitting on the co-driver seat. The appellants were not the owners of the car in question. The original owner of the car was not examined by the prosecution, therefore, the conscious possession of the contraband was also not proved. The link evidence is also missing.

11. There is an unexplained delay of 19 days in bringing the sample to FSL within the very short distance i.e. Police Station Kharar to FSL at Mohali, therefore, the possibility of tampering with the sample cannot be ruled out especially when no witness was examined to prove the fact that the sample was received in an intact condition. There are also some material contradictions in the testimony of the prosecution witnesses.

12. Lastly, the learned counsel for the appellants has contended that the appellants have faced the agony of trial as the FIR was registered on 08.06.2014, therefore, a lenient view may be taken, if this Court finds that this appeal has no merit.

Learned counsel for the appellants cites **Jagir Singh** Vs. **State of Punjab**, 2010(3) RCR (Criminal) 831 and **Hakam Singh** Vs. **State of Punjab**, 2008(4) RCR (Criminal) 489.

13. On the other hand, the learned State counsel, has submitted that the accused/appellants were apprehended having alleged contraband i.e. 70 kgs of poppy husk without any valid permit or licence. Though there is delay in sending the sample parcel to FSL, however, from the FSL report Ex.P21 and from the testimony of PW-1 Palwinder Kumar, MHC, it has been proved the specimen seal impression tallied with the seal affixed on the sample parcel when it was received in the office of FSL, which nullifies the contention raised by learned counsel for the appellants regarding late

sending of sample and tampering with the same. There was no previous enmity of any of the official witnesses with the accused before registration of the present FIR. The link evidence is complete. The appellants/accused have rightly been convicted by the trial Court.

14. This Court has heard the arguments of learned counsel for the parties and has carefully gone through the record of the case.

15. In the present case, on 08.06.2014, the appellants/accused while they were coming from Mehdoodan side in car bearing registration No.HR-24-L-2682, were apprehended on the basis of suspicion by ASI Sartaj Singh, the Investigating Officer along with other police officials when they were present near Old Well on Machhli Kalan-Mehdoodan road in connection with patrolling duty. The car was being driven by accused Ajay Kumar and accused Sanjay Kumar was sitting on co-driver seat. The Investigating Officer disclosed his name, rank and place of posting and after reposing faith, search was conducted by the Investigating Officer and allegedly three plastic bags of white colour containing 70 kgs of poppy husk were recovered from the boot of the car. The recovery was effected on 08.06.2014 and the sample parcel was sent to FSL Laboratory on 27.06.2014. Obviously, there is a delay of 19 days in sending the sample. As observed by a Division Bench of this Court in **Parminder Singh vs. State of Haryana, 2006(4) Recent**

*Criminal Reports (Crl.)*, 495(DB), according to the Narcotic Control Bureau Instructions, the sample parcel should have been deposited within 72 hours with the Chemical Examiner. Herein, the prosecution has not given any explanation for withholding the sample for such a long time.

16. As regards the non joining of the independent witness in the investigation at the time of recovery, a careful perusal of the prosecution evidence shows that there are certain loop holes which have not been plugged. The trial Court has convicted the appellants on the testimony of police officials. It is true that the testimonies of police officials cannot be brushed aside on the score of being interested witnesses but while considering its probative value, the Court must also be cautious against false implication. There must be some independent corroboration as far as possible. In the instant case, there is no record to suggest that any effort was made to join independent witness.

17. The next contention of learned counsel for the appellants is that the appellants were not the owners of the car in question and the original owner of the car was not examined. As per prosecution story, the contraband was recovered from the boot of the car, however, the owner was not examined to prove the fact that as to how the appellants came in possession of the vehicle in question.

There is no investigation with regard to the source of the contraband

in question and as to who put the contraband in the boot of the car. Thus, the prosecution has failed to prove the conscious possession of the case property.

18. Moreover, Investigating Officer himself is the complainant and the search was not conducted before any gazetted officer or the Magistrate and the same was conducted by the IO himself on the basis of alleged consent memo given by the accused which makes the prosecution case doubtful. There are material discrepancies in the testimonies of the prosecution witnesses which cannot be brushed aside. In his cross examination, PW-2 HC Sham Sunder testified that some document were prepared on the laptop which were available with the Investigating Officer, however, PW-3, ASI Sartaj Singh, the Investigating Officer makes no mention of any laptop with him at the relevant time. PW-2 and PW-3 have admitted in their cross examination that a case under Section 7 of the Prevention of Corruption Act was registered against them during the relevant period. The defence version that the Investigating Officer was demanding money for their release or that on their refusal, they were implicated in the present case appears to be probable in the given facts.

19. In view of the foregoing discussion, this appeal is allowed. The judgment of conviction and order of sentence dated 18.05.2015, passed by the trial Court are set aside. The appellants

are acquitted of the charge levelled against them. They be set at liberty if not required in any other case.

02.12.2017

(JITENDRA CHAUHAN)  
JUDGE

sumit.k/gsv

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