

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

Crl. Appeal No.S-851-SB of 2016 (O&M)
Date of Decision: March 01, 2017

Paramjit Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Dhivya, Advocate for
Mr.Navjot Singh, Advocate
for the appellant.

Mr.Deep Singh, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction and order of sentence dated 16.02.2016 passed by learned Judge, Special Court, Mansa, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three months and to pay fine of ₹2,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month under Section 15 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Mansa, are as under:-

““2. The material facts, as are unfolded in the report under Section 173 Cr.P.C, fall within a short compass and are, herein, given:- That, on 17.09.2013, ASI Amarjit Singh along

with his police companions, in connection with checking of bad elements, was present at D.C. Residence 'T' point, Mansa. There one person was spotted standing near the taps of the water cooler, which had been installed in the residence, with taps, existing outside the residence, for supply water to the public. The said person, after consuming something from the plastic bag, held by him, was about to drink water. On suspicion, ASI Amarjit Singh, with the help of his companions, intercepted the said person, who, on inquiry, disclosed his name as "Paramjit Singh" and also disclosed his other particulars. In the meanwhile, one person had come there and on inquiry, that person disclosed his name as "Amritpal" and also disclosed his other particulars. He was apprised of the factual position by ASI Amarjit Singh and associated in the police party. Poppy husk was visible in the plastic jhola (bag), whose mouth was open, which was held by Paramjit Singh. Then, ASI Amarjit Singh had prepared the consent memo of Paramjit Singh. The contents of the plastic bag were checked and poppy husk was confirmed to be there. One sample of 100 grams of poppy husk was separated and the residue poppy husk weighed to be 2 Kgs. 400 grams. Separate parcels of the sample and the residue poppy husk were prepared, which were sealed with the seal bearing impressions 'AS'. Sample seal was separately prepared. Seal after use was handed over to HC Manjit Singh and all the aforesaid articles were taken into possession, vide separate memo. Ruqa was sent to the Police Station, on the basis whereof, case was registered against Paramjit Singh. Various other proceedings were conducted at the spot.

On return to the Police Station, the case property was produced before SI/SHO Narinder Kumar, who had verified the fact of recovery and counter-sealed the case property, with his seal bearing impressions 'NK' and retained the case property in his possession.

During the course of investigation, sample parcel was sent to the office of the Chemical Examiner and the latter, vide its report, opined the sample to be "Chura Poppy Heads".

On completion of the investigation, accused Paramjit Singh was sent up to face trial for the commission of an offence under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 by the police of Police Station, City-2, Mansa."

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted

under Section 15 of the NDPS Act, to which he pleaded not guilty and

claimed trial.

In support of its case, prosecution examined PW-1 Constable Gurpartap Singh, PW-2 SI Narinder Kumar, PW-3 ASI Amarjit Singh, Investigating Officer and PW-4 ASI Manjit Singh.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent and his false implication in the present case. He also pleaded that he has been picked from his house. In defence, accused-appellant examined DW-1 Major Singh.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

From the record, I find that in the present case, prosecution examined PW-1 Gurpartap Singh, formal witness, who stated that sample parcel was handed over to him after taking it out from the malkhana. PW-2 SI Narinder Kumar, who was officiating SHO on 17.09.2013, stated that the case property was deposited in judicial malkhana and sample parcel and sample seal were retained by him and he had handed over the sample parcel and sample seal to Constable Gurpartap Singh on 22.09.2013 for its onward transmission to the office of Chemical Examiner. In cross-examination, PW-2 Narinder Kumar stated that he had retained the case property with him in the trunk under the lock and key. He had handed over the sample parcel to carrier in the post lunch session. He also stated that entry in

register No.19 must have been made by MHC.

The perusal of this cross-examination shows that PW-2 SI Narinder Kumar has not deposited the sample with the malkhana. Rather, he himself retained the same in his trunk under the lock but PW-1 Constable Gurpartap Singh has stated that the sample parcel was handed over to him after taking it out from the malkhana, which is material contradiction in the statements of PWs. It also creates doubt regarding the completion of link evidence. MHC has not been examined in this case and if the sample parcel was given from malkhana to Constable Gurpartap Singh, then link evidence is incomplete. The entry in register No.19 is to be made by the MHC where any case property is deposited in the malkhana. PW-2 SI Narinder Kumar has stated that entry in register No.19 must have been made by the MHC. From this cross-examination of these two witnesses, I find that they are discrepant on the material point.

Further, the Investigating Officer PW-3 ASI Amarjit Singh has stated in chief examination that on return to the police station, he produced the accused and entire case property before the officiating SHO, who verified the fact of recovery and counter sealed the parcels etc. but PW-2 SI Narinder Kumar, the then officiating SHO stated in cross-examination that only Investigating Officer had come before him for production of case property, which is again a material discrepancy in the statement of the PWs. For verification of the recovery as per law, the Investigating Officer is to produce the accused, witnesses and the case property. If the Investigating Officer alone with the case property had appeared before the officiating SHO, then how the fact of recovery has been verified by the officiating SHO.

statements of the PWs and in the absence of independent witness, I find that reasonable doubt exists in the prosecution version. The prosecution has failed to prove its case beyond reasonable doubt. Therefore, by giving benefit of doubt, the accused is acquitted of the charge framed against him. The impugned judgment of conviction and order of sentence dated 16.02.2016 passed by learned Judge, Special Court, Mansa, is set aside.

Therefore, finding merit in the present appeal, the same is allowed.

Since, appellant Paramjit Singh is on bail, his bail/surety bonds stand discharged.

March 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No