

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

CRA-S-991-SB-2016(O&M)

Date of decision:-4.8.2017

Gurlal Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Anupam Bhardwaj, Advocate
for the appellant.

Ms.Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This appeal is directed against the judgment dated 10.2.2016 passed by Judge, Special Court, Kaithal vide which accused Gurlal Singh was convicted for an offence under Section 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*the Act*') and vide order dated 12.2.2016 he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default thereof, to further undergo rigorous imprisonment for one year.

The accused-convict – Gurlal Singh, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that on 10.5.2014, ASI Tejinder Singh from Police Post Kambo, Amritsar was heading a police party going from villages Muradpura, Bal Khurd, Bal Kalan etc. in

private vehicles, in connection with patrolling and search of bad elements.

When the police party reached near Chowk Bal Khurd, then accused who was standing there, took out a polythene from the dub (waist-fold) of his pant and after throwing the same on the ground, he tried to run towards village Bal Kalan. He was apprehended by the ASI Tejinder Singh on the basis of suspicion and on being inquired, he disclosed his name as Gurlal Singh son of Sukhwinder Singh, resident of Chardi Pati, Bal Kalan. The Investigating Officer tried to join independent witnesses in the investigation but none was ready. When the polythene, which had been taken out by the accused from the dub of his pant and then thrown on the ground was checked, it was found to contain intoxicant powder. The Investigating Officer took out 10 gms. from the total, putting it into a separate plastic container and then converted it into a parcel. The residue powder in the polythene came out to be 140 gms., which was also put in a plastic container and converted into a parcel. Both the parcels were sealed by ASI Tajinder Singh with his seal having inscription 'TS'. Then those sealed parcels were seized vide memo Ex.PA. Form M-29 was filled at the spot. Sample seal was separately prepared and the seal after use was handed over to HC Sulakhan Singh. Accused could not produce any permit of licence to keep in his possession 150 gms. of intoxicant powder. ASI Tejinder Singh sent ruqa Ex.PE to Police Station Kambo through HC Satswinder Singh on the basis of which formal FIR Ex.PF was recorded by SI Gurmeet Singh at that police station. The Investigating Officer prepared rough site-plan of the place of recovery as Ex.PG. Accused was arrested in this case and a memo Ex.PB was prepared in that

regard. His personal search was conducted and a memo Ex.PC was prepared. On reaching Police Station Kambo, ASI Tejinder Singh handed over both the parcels along with Form M-29, sample seal as well as custody of the accused to PW4 Inspector Nirmal Singh vide handing over memo Ex.PD. The Investigating Officer had disclosed the entire facts of the case to Station House Officer and the latter after verification of facts put his own seal bearing inscription 'NS' on the parcels keeping those in double lock of the *malkhana*. Sample seal impression was prepared. On the next day i.e. 11.5.2014, Inspector Nirmal Singh handed over the accused and the parcels along with documents to ASI Tejinder Singh, who produced the same before Duty Magistrate, Amritsar by moving an application Ex.PH for certification of correctness of inventories. The Court passed order Ex.PJ. A representative sample was taken in the Court as per rules. After certification, the case property was handed back to ASI Tejinder Singh with a direction to deposit it, i.e. bulk parcel and one of the two sample parcels, in the judicial *malkhana* as per rules. On return to the police station, ASI Tejinder Singh handed over the case property to SHO Nirmal Singh, who kept the same in double lock up.

On 18.5.2014, PW3 Station House Officer – Nirmal Singh got issued a docket from the office of SSP, Amritsar (Rural) and on 19.5.2014, he handed over one sample parcel along with sample seals and Form M-29 to HC Bhupinder Singh for depositing the same in the office of Chemical Examiner, Kharar. HC Bhupinder Singh deposited the sample parcel in the office of Chemical Examiner and brought back a receipt, which he produced before SHO Nirmal Singh.

On 22.5.2014, SHO gave parcel containing bulk quantity and one of the sample parcels to ASI Tejinder Singh for the purpose of depositing the same in the judicial malkhana, who accordingly did so. During the course of investigation, report Ex.PL from the office of Chemical Examiner was received in terms of which the sample was found to contain Alprazolam.

After completion of investigation and other formalities, challan against accused Gurlal Singh, who was arrested at the spot was prepared and filed in the Court of Judge, Special Court, Amritsar.

On presentation of challan in the Court of Judge, Special Court, Amritsar, he supplied copies of documents relied upon in the challan to the accused Gurlal Singh free of cost as provided under Section 207 Cr.P.C.

Learned Judge, Special Court, Amritsar finding that charge for offence under Section 21 of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as four witnesses as per details below:

PW1 SI Sulakhan Singh, a member of the police party headed by ASI Tejinder Singh deposed regarding the recovery of contraband from accused and other proceedings which had taken place in his presence.

PW2 ASI Tejinder Singh, who was heading the police party

which had apprehended the accused and effected recovery of contraband from him besides carrying out the necessary investigation deposed in that respect.

PW3 HC Bhupinder Singh who had taken the sample parcel along with necessary documents to the office of Chemical Examiner and deposited the same there, testified about the same.

PW4 Inspector Nirmal Singh, SHO, Police Station Kambo, Amritsar before whom the Investigating Officer had produced the accused along with the case property and who had verified the facts and case property and also attested the sealed parcels putting his seal having inscription 'NS' on it, thereafter deposited the same in the double lock up with MHC deposed in that regard.

With that the prosecution evidence stood closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case and nothing was recovered from him.

During his defence, accused examined Sawinder Singh, Member Panchayat as DW1, who has supported the defence version.

With that defence evidence was closed.

After hearing arguments, learned Judge, Special Court, Amritsar convicted and sentenced the accused as mentioned supra, which left appellant – accused Gurlal Singh aggrieved and he has filed the present appeal.

The trial Court has formulated the following points for determination:

- 1) Whether recovery of 150 gms. of intoxicant powder was made from the accused in the manner as alleged by the prosecution?
- 2) What is the effect of non-joining of an independent witness at the time of alleged recovery?
- 3) Whether there are discrepancies on material points in the statements made by the various prosecution witnesses and if so, its effect?
- 4) Whether two handing over memos have been prepared and if yes, what is the effect thereof and reasons for preparing two handing over memos?
- 5) Whether there is delay in sending the sample to the office of Chemical Examiner?

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Punjab besides going through the record and I find that there is no merit in the appeal.

The recovery of the contraband from the possession of accused stands established from the statement of PW1 SI Sulakhan Singh and PW2 ASI Tejinder Singh. Both of them were cross-examined at length on behalf of the accused but they remained unshattered and unanimous regarding material details of the episode. A few minor contradictions in their statements do not go to root of matter since those

are bound to occur due to different power of perception and retention of events, lapse of memory due to passage of time etc. The PWs are not shown to have any previous enmity with the accused so as to involve him in this case wrongly or to depose against him falsely. Due credibility is attached to their testimonies. Therefore, it comes out that recovery of 150 gms. of intoxicant powder was made from accused in the manner as alleged by the prosecution. As regards the second point of determination that what is the effect of non-joining of an independent witness at the time of alleged recovery, it may be stated that independent corroboration is rule of prudence and not requirement of law. It is nowhere provided that in absence of independent corroboration, the depositions of official witnesses are to be discarded outrightly. The only check which can be put to use is that depositions of the official witnesses are subjected to more close scrutiny. The depositions of two witnesses of recovery in this case have passed the test with flying colours. Their statements are to be taken at par with those of independent witnesses and there is nothing to put a question mark over their credibility. In the ruqa itself, it is mentioned that the Investigating Officer had tried to join the independent witnesses but none was ready. It is a matter of common knowledge that now-a-days people generally hesitate to come forward to appear as a witness for the prosecution against the criminals apprehending that such criminals may not turn towards them and cause harm to them or their near relatives. Then there are hassles of going to the police station in connection with investigation and to attend hearings in the Court, therefore, people mostly avoid joining the investigation and offering themselves as witnesses.

Therefore, the prosecution case cannot be doubted on that account.

As regards the next contention of learned counsel for the appellant that there have been two handing over memos proved on record one being Ex.PD while other Ex.DA inasmuch as in handing over memo Ex.PD, HC Sulakhan Singh had disclosed the belt number as 1046, whereas in memo Ex.DA, belt number was disclosed as 1040. In memo Ex.DA, the seal impression of the seal of SHO was mentioned as 'WS' whereas in Ex.PD, it was mentioned as 'NS'. It is contended that according to Investigating Officer ASI Tejinder Singh, the handing over memo Ex.DA was prepared by him attested by HC Sulakhan Singh and Inspector Nirmal Singh, whereas memo Ex.PD was prepared by Inspector Nirmal Singh which was signed by him as witness.

On the other hand, learned State counsel has argued that the trial Court has dealt with this issue at length finding that only one memo was there as part of challan which was Ex.PD and there is no mention of memo Ex.DA and that memo Ex.DA does not bear any FIR number etc., signatures of SHO and it was added later on by some mischievous persons. The trial Court suspected involvement of accused in connivance with police officials and for that reason had directed SSP (Rural), Amritsar to take necessary action in the matter. It has been noted that the challan before being presented in the Court was got checked from prosecution agency and no such objection was raised by prosecution agency that there was two handing over memos attached with the file. It has been concluded that memo Ex.DA was never intended to be acted upon. Thus handing over memo is to be taken as Ex.PD whereas Ex.DA

which is document of doubtful authenticity and result of mischief is not to be taken into consideration.

Another objection taken by learned counsel for the appellant has been regarding delay of 14 days in sending of sample to FSL. According to him, it created a dent in the prosecution story. However, I am not impressed by this contention. There is nothing to show that the contraband experience a change in its composition and constitution as the time passes rather its contents remains the same and do not get changed with the passage of time. The accused is not shown to have suffered any prejudice due to late sending of sample to FSL, Mohali. The recovery so effected from the accused amounted to commercial quantity.

The impugned judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas the appeal is found to be without any merit and the same is dismissed accordingly.

Gurlal Singh appellant – accused is stated to be on interim bail granted to him by this Court vide order dated 17.4.2017. His bail is cancelled and he is directed to surrender forthwith. However, Chief Judicial Magistrate, Amritsar is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

4.8.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No