

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

CRA D-421-DBA of 2004

Date of Decision: February 5, 2018

State of Haryana

.....Appellant

Versus

Mithu Singh and another

.... Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present : Mr. Praveen Bhadu, Asstt. A.G., Haryana.

Mr. G.S. Sidhu, Advocate
for respondent No. 2.

T.P.S.MANN, J.

The State of Haryana has filed the present appeal against the judgment dated 23.8.2003 passed by learned Additional Sessions Judge, Sirsa, whereby Mithu Singh and Gian Chand accused, who are respondents herein, were acquitted of the charge under Section 15 of the the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the NDPS Act').

According to the prosecution on 14.6.1994, a police

party headed by ASI Kartar Singh and consisting of H.C. Roshan Lal and Constables Tek Ram, Dharam Pal and and Sunder Singh was present on the link road leading to village Jandwala Jatan and behind the Gurdwara of Chormar for patrolling and detection of crimes when Darshan Singh son of Nachhattar Singh, caste Jat Sikh, resident of Chormar met ASI Kartar Singh and started talking to him. In the meanwhile, one camel cart came there from the side of Jandwala Jatan, which was driven by one person and another person was sitting on the gunny bags placed in the cart (Rehra). On suspicion, the camel cart was got stopped and both the persons were nabbed and on enquiry, the person, who was handling the camel cart disclosed his name as Mithu Singh son of Ganda Singh, Jat Sikh, resident of village Rampura Bishnoian and the person who was sitting on the gunny bags disclosed his name as Gian Singh son of Kishori Lal Mahajan, resident of Mithari. Both the accused were served with notices separately that there was suspicion of some type of narcotic substance in the gunny bags lying in their camel cart, which fell within purview of 'the NDPS Act' and they were asked if they wanted to be searched before any Gazetted Officer of Police or Ilqa Magistrate or they should be taken before them. In reply, both the accused stated in one voice that they wanted to give the search of the camel rehra before some Gazetted Officer of Police.

Thereafter, Constable Sunder Singh was sent to Police Post Odhan to give V.T. Message to call the Deputy Superintendent of Police at the spot. The accused and the witnesses signed the notices and reply to the notices. Constable Sunder Singh returned to the spot after informing the Deputy Superintendent of Police, Dabwali to reach the spot through wireless message. In the meanwhile, Shri Shadi Lal Malik, Deputy Superintendent of Police, Dabwali reached at the spot and on his directions, ASI Kartar Singh conducted the search of the gunny bags, which resulted in the recovery of poppy straw, contained in nine gunny bags. A sample of 100 gms each was separated from each of nine gunny bags and the remaining poppy straw on weightment was found to be 39 kilograms 900 gms per bag. The sample parcels and the gunny bags containing remaining poppy straw were sealed with seal bearing 'KSB' monogram and seized vide a recovery memo prepared at the spot attested by the Deputy Superintendent of Police and other witnesses. Seal 'KSB' after use was handed over to Head Constable Tek Ram.

It is also the case of the prosecution that ASI Kartar Singh after preparing ruqa, sent it to Police Station Kalanwali where on its basis FIR No. 147 dated 14.6.1994 under Section 15 of the NDPS Act was registered. Site plan of the place of the occurrence was prepared and statements of the witnesses were

recorded under Section 161 Cr.P.C. On returning to the Police Station, he produced the accused, witnesses and the case property before SI Abhey Singh, the then SHO, who verified the case and put his own seal "ASY" on all the parcels. Under his parcels, the case property was deposited with the MHC.

After completion of the investigation and on receipt of the report of Chemical Examiner, the respondents were challaned to face trial under Section 15 of the NDPS Act and after supplying copies of the challan to them, they were charged for the aforementioned offence, to which, they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined SI Abhey Singh as PW1, Shadi Lal Malik, Deputy Superintendent of Police, Dabwali as PW2, ASI Kartar Singh as PW3 and Head Constable Tek Ram as PW4. Thereafter, the learned Public Prosecutor tendered report of FSL Ex.PA and tendered the affidavits of Joginder Kumar and Surinder Singh Ex.PB and Ex.PC, respectively and concluded the prosecution evidence on 19.3.1998.

When examined under Section 313 Cr.P.C., the respondents alleged false involvement and pleaded their innocence. In defence, they examined Constable Kanshi Ram as DW1, Constable Kamal Singh as DW2, Constable Hawa Singh as

DW3 and complainant Bhagwan Dass as DW4. They also tendered in defence evidence copy of judgment Ex.DC, photocopy of telegram Mark-A, copies of applications Mark B to D and copies of postal receipts Mark E to H.

After hearing learned counsel for the parties and on going through the record of the case, learned trial Court came to the conclusion that the prosecution had woefully failed to prove its case against the respondents beyond the shadow of reasonable doubt. Accordingly, both of them were acquitted of the charge framed against them after giving the benefit of doubt.

This Court has heard Mr. Praveen Bhadu, Assistant Advocate General, Haryana and Mr. G.S. Sidhu, Advocate for the respondents.

It may be mentioned here that on the last date of hearing, learned counsel for the respondents informed the Court that respondent No.1-Mithu Singh had died during the pendency of the appeal. Accordingly, the State counsel prayed for time to verify the said fact. Pursuant to the same, learned State counsel has placed on record the report prepared by ASI Rajender Singh, Police Post Goriwala as also the report prepared by Vinod Kumar, Station House Officer, Police Station Sadar Dabwali, as per which, the factum of respondent No.1-Mithu Singh expiring on 22.6.2015 stands duly verified. Alongwith the report, attested copy

of the death certificate has been appended.

It being an appeal against acquittal and respondent No.1-Mithu Singh has died during its pendency, the appeal qua him shall abate.

The appeal filed by the State now survives qua respondent No. 2-Gian Chand against his acquittal by the trial Court.

This Court finds that no case is made out for any interference in the impugned judgment of acquitting respondent No.2-Gian Chand of the charge against him.

According to the prosecution, Darshan Singh, an independent witness was talking to ASI Kartar Singh when in the meantime, the accused came on a camel cart there from the side of Jandwala Jatan and, thereafter, the recovery of the contraband was made from the accused. Said Darshan Singh has not been examined by the prosecution in support of its case. In fact, he was given up by the prosecution as having been won over by the accused. The bald statement of the learned Public Prosecutor that the independent witness had been won over by the accused is not sufficient. Rather, the prosecution was duty bound to examine him in the Court so as to elicit real facts from him.

In regard to the link evidence, the prosecution has placed reliance upon the affidavit Ex.PB of Joginder Singh and

affidavit Ex.PC of Surinder Singh, which were tendered in evidence. However, both Joginder Singh and Surinder Singh were not tendered for cross-examination. As such, the accused were not afforded any opportunity to cross-examine them.

PW2 Shadi Lal Malik, Deputy Superintendent of Police testified in his cross-examination that the seals on the bags were totally damaged and not decipherable. As such, there was nothing on the bags to connect them with the accused.

Provisions of Section 57 of the NDPS Act were also not complied with by the prosecution as neither any entry in that regard was prepared nor sent to the immediate superior officers. As such, there was non-compliance of mandatory provisions of Section 57 of the NDPS Act.

Section 52 of the NDPS Act mandates the supplying of grounds of arrest to the accused. However, neither the grounds were supplied to the accused nor any memo prepared by the Investigating Officer in this respect. The specimen impressions of the seal were also not deposited in the Malkhana nor prepared at the spot.

In view of the above, no case is made out for any interference in the impugned judgment to the extent of acquitting respondent No.2-Gian Chand of the charge against him.

Resultantly, the appeal qua respondent No.1-Mithu

Singh is disposed of as having abated on account of his death
whereas it is dismissed qua respondent No.2-Gian Chand.

(T.P.S. MANN)
JUDGE

February 5, 2018
amit rana

(DEEPAK SIBAL)
JUDGE

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