

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

**CRA-S No.1483-SB of 2001 (O&M)  
Decided on: 30.07.2018**

Rameshwar Lal

....Appellant

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN**

**Present :** Mr. Siddharth Gupta, Advocate  
for the appellant.

Ms. Jaspreet Kaur, AAG, Punjab.

**ARVIND SINGH SANGWAN, J.**

Prayer in this appeal is for setting-aside the judgment of conviction dated 03.10.2001, vide which the appellant was convicted for an offence punishable under Section 18 of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') for having possession of 12 Kgs of opium without licence/permit as well as the order of sentence of even date i.e. 03.10.2001, vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 06 months.

Before referring to the facts, it may be noticed that the sentence of the appellant was suspended vide order dated 09.12.2003, thereafter, when the case was taken up for hearing, vide order dated

06.03.2017, an *amicus curiae* was appointed by the Court as no one appeared on behalf of the appellant on the previous dates of hearing.

Brief facts of the case are that on 04.02.1998, a police party head by SI Sakatter Singh, SHO Police Station Dehlon were present on a canal bridge while being on patrolling duty in the area of Killa Raipur, the accused – Rameshwar Lal was seen coming from the side of the canal carrying a bag on his head. The police party, with the help of a torch light asked him to stop and he tried to run away and on suspicion, he was apprehended. On disclosure, he informed his name and thereafter, he was given an offer that there is a suspicion, he is carrying some incriminating article in the bag and if he want a Magistrate or a Gazetted Officer can be called at the spot for conducting the search. The accused gave his consent vide memo Ex.PE, to be searched before the Gazetted Officer and the Deputy Superintendent of Police, namely, Harjeet Singh was called at the spot, who introduced himself to the accused as DSP, Dakha and asked him if he want to be searched before a Magistrate but he reposed faith in him and then consent memo Ex.PB was prepared. The search was conducted by SI Sakatter Singh in presence of the DSP, in which opium was recovered, out of which, 02 samples of 10 gms each were prepared and the remaining, on weighment came to 11 Kgs 980 gms and it was put in a tin drum. The sample parcel and the bulk parcel of the opium were prepared and were sealed by SI Sakatter Singh with his own seal bearing impression 'SS' and seal of the DSP bearing impression 'HSP'. The sample seal was also prepared and the bulk parcel, samples parcels

and seals were taken in possession vide memo Ex.PC. In the personal search of the accused Rs.250/- was also recovered which were separately taken in police possession vide memo Ex.PD. Thereafter, ruqa Ex.PF was sent to the Police Station, on the basis of which, an FIR Ex.PF/1 under Section 18 of the NDPS Act was registered. The rough site plan Ex.PG was prepared and on return to the Police Station, the accused along with the case property was produced before ASI Surinder Kumar, the officiating SHO, who checked the case property and verified the facts and put his own seal bearing impression 'SK' on the case property and sample seal chit. The case property was deposited with MHC Joginder Singh on the same night. Thereafter, the samples were sent to FSL and as per the report Ex.PJ, the contents of opium were having 4.01% of Morphine. Thereafter, the report under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was submitted before the trial Court.

The trial Court framed charge under Section 18 of the NDPS Act vide order dated 27.05.1998.

The prosecution in order to prove its case examined PW1 Constable Joginder Singh, who tendered his affidavit Ex.PA, regarding deposit of the case property with him.

PW2 Constable Pritam Singh, deposed about taking the case property and handing over the same to FSL. Both these witnesses stated that the seal was intact when the case property was in their possession.

PW3 SI Nahar Singh, stated that on 05.02.1998, he has

taken the case property and one sample parcel containing 10 grams opium and bulk parcel of 11 Kgs 980 gms sealed with the seal bearing impression 'HSP', 'SS' and 'SK' along with chit containing specimen impression along with the accused and produced the same, before the Judicial Magistrate Ist Class, Ludhiana.

PW4 – DSP Harjit Singh Pannu, has stated that on 04.02.1998, on receiving the message from SI Sakatter Singh, he went at the place of recovery. He introduced himself as DSP, Dakha and further told the accused that he has a right to be searched in the presence of any other Gazetted Officer or Magistrate but accused reposed faith in him and his statement Ex.PB was recorded and then, search was conducted and opium was recovered from his possession, out of which 02 samples of 10 gms each were taken out and the remaining contraband on weighing came to 11 kgs 980 gms. Its parcels were prepared and sealed by SI Sakatter Singh with his own seal bearing impression 'SS' and seal bearing impression 'HSP' of Harjit Singh Pannu, DSP. The chit including the specimen seal Ex.P1 was also sealed and was taken into police possession vide separate memo.

PW5 – SI Sakatter Singh, depose on the line of the version given in the FIR.

PW6 – ASI Darshan Singh, who is a recovery witness, has corroborated the statement of SI Sakatter Singh.

PW7 – ASI Surinder Kumar, officiating SHO, with whom the case property along with the accused was produced, sealed the case property with his own seal bearing impression 'SK' and the same was

deposited with MHC and thereafter, the prosecution tendered the report of FSL Ex.PJ and closed the prosecution evidence.

Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C. and he denied all the incriminating evidence put to him and pleaded innocence and false implication in the case.

In his defence, the accused recalled PW1 – C. Joginder Singh as DW1 and also produced DW2 – HC Karamjit Singh and closed the defence evidence.

The trial Court vide impugned judgment and order of conviction dated 03.10.2001, sentenced the appellant and thereafter, the present appeal has been filed, challenging the said order.

Counsel for the appellant has submitted that the sample seal was not deposited along with case property in the Malkhana and there is no corresponding entry in this regard in Register No.19 maintained by the police. It is further submitted that as per the statement of PW1, who submitted his affidavit Ex.PA, on 05.02.1998, the bulk parcel and the sample parcel were handed over to SI Nahar Singh for production before the Illaqa Magistrate and PW1, in his cross-examination, has deposed that in this regard, no entry was made in Register No.19 and it was only mentioned in the DDR, therefore, there is no other evidence on record that the same case property was produced before the Illaqa Magistrate.

Counsel for the appellant has further submitted that it has come in the statement of PW1 – C. Joginder Singh that he did not produce the sample parcel before SI Surinder Kumar, who was the

acting SHO. It is further submitted that as per the statement of PW2 – C. Pritam Singh, in Form M-29 submitted to FSL, though signed by ASI Surinder Kumar, however, it does not bear any date under his signatures and stated that though, in the affidavit Ex.DA, it is recorded that the sample parcel was handed over to him on 07.02.1998, however, the same was handed over to him on 06.02.1998, which creates a doubt. It is further submitted that PW3 – SI Nahar Singh, additional SHO, in his cross-examination has stated that in Register No.19, there is no entry by him for taking the case property from MHC on 05.02.1998 and even, he has not signed as a token of this fact. This witness has further stated that in the relevant entry in DDR, there is no mention of deposit of sample seal with MHC by the Investigating Officer. This witness also stated that on the same day, he has produced one another accused namely Balwinder Singh, in some another FIR along with the accused/appellant, before the Illaqa Magistrate.

Counsel for the appellant has further argued that it has come in the cross-examination of PW4 – Harjeet Singh Pannu, DSP, that in the statement Ex.PD, the offer made to be searched before the Gazetted Officer is not mentioned. It is further submitted that PW5 – SI Sakatter Singh, who arrested the appellant and conducted the investigation at the spot, in his cross-examination has admitted that ASI Darshan Singh returned the original seal to him in the evening of 05.02.1998 and on the same day, after effecting recovery from the appellant, recovery of opium was also made from one person namely Balwinder Singh and in his case also, he used the same seal and said

Balwinder Singh stands acquitted. Since, the Investigating Officer in the said case was SI Nahar Singh and therefore, in the capacity of an SHO, he has used the same seal. It is also submitted that in the cross-examination of PW7 – ASI Surinder Kumar, he has shown ignorance about Form No.29 and stated that no such form was produced before the MHC i.e. PW1.

Counsel for the appellant has further argued that PW1, while appearing as a defence witness as DW1, has furnished his affidavit Ex.DB and there is a variation in this affidavit with the affidavit Ex.PA submitted by him while appearing as PW1. It is further argued that on the application Ex.PH, submitted by SI Sakatter Singh before the Illaqa Magistrate, for verification of the case, an order Ex.PH/1 was passed and as per this order, the seal was having impression 'SS' and 'HSP'. The operative part of this order is reproduced as under:-

*“Present: APP  
Accused in custody of police.*

*Heard. The origin of the opium is yet to be enquired from accused. So, the accused is remanded to police custody till 07.02.1998. Case property and sample produced with the seal bearing impression “SS” and “HSP” (cutting) after endorsing the same is returned to Nahar Singh, SI of P.S. Dehlo.*

*Sd/-  
JMJC, 05.02.1998.”*

Counsel for the appellant has, thus, submitted that the Magistrate, on the case property did not find the seal 'SK' and, therefore, the prosecution has failed to explain that it is the same case

property, which was recovered from the appellant. It is further argued that in the report of FSL, it has come that the sample parcel contained the seal 'SS', 'HSP' and 'SK' and it has not been explained by the prosecution that when the case property was produced before the Judicial Magistrate Ist Class on 05.02.1998, why the case property did not bear the seal 'SS', 'SK' and 'HSP' and, thus, by not examining the concerned Magistrate, the prosecution has failed to clear this doubt especially when in his order Ex.PH/1, there is cutting on the word 'HSP'.

Counsel for the appellant has further argued that since there are many lacunas in the statement of the prosecution witnesses, therefore, non-joining of an independent witness is also fatal as in the absence of such evidence, it cannot be held that the evidence led by the prosecution is trustworthy.

Counsel for the State has submitted that it is well settled principle of law that mere non-joining of an independent witness cannot discard the testimony of the official witnesses. It is also submitted that there is an over-writing in the order Ex.PH/1 regarding the 02 seal sample impressions i.e. 'SS' and 'HSP'. It is further submitted that the prosecution has successfully proved that the recovery was effected in the presence of the Deputy Superintendent of Police and as per the report of the FSL, it was found containing Morphine and, therefore, the trial Court has rightly convicted the appellant.

Counsel for the State, however, on the basis of the Custody Certificate dated 10.11.2017 has submitted that the appellant has

undergone 05 years, 10 months and 02 days of actual sentence and 07 years, 10 months and 02 days of total sentence out of 10 years rigorous imprisonment awarded by the trial Court.

After hearing the counsel for the parties, I find merit in the present appeal for the following reasons:-

**(a)** It has come in the statement of PW5 – SI Sakatter Singh that he had handed over the seal to ASI Darshan Singh and the same was returned to him on the same evening i.e. on 05.02.1998. Thereafter, the seal was used for investigation of another FIR registered against one Balwinder Singh under the NDPS Act and, therefore, the original seal was never produced before the Magistrate.

**(b)** As per the statement of PW1 – Constable Joginder Singh, he did not produce the sample parcel before SI Surinder Kumar, who was the acting SHO and a perusal of the order dated 05.02.1998 Ex.PH/1 passed by the JMIC show that the case property produced before him bear the seal impression 'SS' and 'HSP' and there was a cutting on the word 'HSP'. In the light of this order, the report of FSL reveal that the case property had 03 seals i.e. 'SS', 'SK' and 'HSP' and the prosecution has failed to explain this aspect that the case property was the same property which was produced before the concerned Magistrate. On the same day, another accused – Balwinder Singh was also arrested and produced before the same Magistrate in which recovery was sealed using the same seal.

**(c)** The prosecution has not recorded the statement of the Magistrate to prove that the case property which was produced before him was the same property, which was sent to FSL especially to clarify 02 seal impressions, which were bearing on the case property when it was produced before the JMIC and 03 seal impressions when it was

produced before the FSL.

**(d)** It has come in the evidence of PW1 that the sample seal was not deposited along with the case property in the Malkhana and there is no corresponding entry in Register No.19, maintained by the police. Even, as per this witness, who submitted his affidavit Ex.PA, the bulk parcel and sample parcel were handed over to SI Nahar Singh for production before the Illaqa Magistrate and in this regard only a DDR was entered and no entry was made in Register No.19 maintained for this purpose and, therefore, again it raises a doubt that it was the same case property which was recovered from the appellant then, produced before the JMIC and thereafter, sent to FSL.

**(e)** It has also come in the statement of PW1 that he did not produce the sample parcel before SI Surinder Kumar, who was the acting SHO and in FORM No.29 sent to FSL, though it bears the signatures of SI Surinder Kumar, however, it does not bear any date under his signatures and it is unexplained in the affidavit Ex.DA that the sample parcel was handed over to him on 07.02.1998 whereas in the examination-in-chief, it is stated that the same was handed over to him on 06.02.1998, which itself creates a doubt.

**(f)** PW3 – SI Nahar Singh, Additional SHO in his cross-examination has admitted that neither he has signed in Register No.19 regarding taking the case property from MHC on 05.02.1998 nor any such entry is made in the said register. This witness has also stated that in the entry made in the DDR, there is no mention of deposit of sample seal by the Investigating Officer. This again raises a suspicion especially in view of the fact that on the same day, he arrested another accused i.e. Balwinder Singh in some other FIR and produced him before the same Illaqa Magistrate as admitted by him.

(g) In the cross-examination of PW4 – Harjeet Singh, DSP, it is admitted that in the statement Ex.PD, it is not mentioned that the accused has a right to be searched before a Gazetted Officer, which is the mandatory requirement of Section 50 of the NDPS Act.

(h) Though it is well settled principle of law that mere non-joining/examination of an independent witness cannot be sole ground for acquittal of an accused person but in the present case in view of the aforesaid reasons discussed hereinabove, which has created a doubt about the identity of the case property as well as the investigation conducted by the police and non-joining of independent witnesses, has created a doubt.

Therefore, in view of the above reasons and also in view of the fact that the appellant has already undergone 05 years, 10 months and 02 days of actual sentence and 07 years, 10 months and 02 days of total sentence out of 10 years rigorous imprisonment awarded by the trial Court, the present appeal is allowed and the impugned judgment of conviction as well as the order of sentence dated 03.10.2001 are set-aside.

30.07.2018  
yakub

(ARVIND SINGH SANGWAN)  
JUDGE

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