

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

CRA-S-1662-SB-2004

Date of decision:-21.3.2018

Darshan Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.Namit Sharma, Advocate
for the appellant.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

H.S. MADAAN, J.

This appeal is directed against the judgment dated 11.8.2004 passed by learned Special Judge, Amritsar vide which accused Darshan Singh was convicted for an offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*the Act*') and vide order of the same date, he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.20,000/- and in default thereof, to further undergo rigorous imprisonment for six months.

The accused-convict – Darshan 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 9.7.2002, a police party from Police Station 'C' Division, Amritsar was present at Grain Market, Bhagtanwala Chowk, Amritsar in connection with official duties, when the accused was spotted coming on foot from the side of Mulechak; on seeing the police party, he abruptly turned back so as to slip away, however, he was apprehended by the police party headed by ASI Joginder Singh and on being inquired, he disclosed his name and other particulars; Investigating Officer informed him that he suspected him of carrying some narcotic on his person and asked him if he wanted to be searched by a Gazetted Officer or a Magistrate; the accused opted to have the search before a Gazetted Officer, as such, Sh. Jatinder Singh, DSP was called to the spot telephonically; though the police party made efforts to join witnesses from the public but those persons showed their unwillingness and a memo in that regard was prepared; that after some time, DSP Jatinder Singh arrived at the spot and he disclosed his identity to the accused stating that he was a Gazetted Officer and informed him that he had a right to have his person searched before him or before a Magistrate but the accused opted to have his person searched before DSP Jatinder Singh and a memo in that regard was prepared; on instructions of DSP Jatinder Singh, personal search of accused was conducted; the accused was carrying a *jhola* (bag) in his right hand, which was found to contain opium wrapped in a glazed paper; the Investigating Officer took

out 10 gms. of opium as a sample and the residue on being weighed came to be 990 gms.; that the sample and residue opium were converted into two separate parcels, sealed with the seal of Investigating Officer having inscription 'JS' as well seal of DSP having inscription 'JS'; that sample seal impressions were prepared; that the parcels of sample, reminder as well as seal impressions were taken into police possession vide recovery memo; that seal after use was handed over to HC Kashmir Singh, whereas DSP Jatinder Singh retained his seal with him; that ruqa was sent to the police station, on the basis of which formal FIR was recorded. Accused was arrested in this case and his *jamatalashi* was conducted and a memo was prepared. Rough site plan of the place of recovery was prepared. Statements of witnesses were recorded. On return to the police station, the accused along with the case property was produced before SI/SHO Harjinder Singh, who verified the facts from the accused and affixed his own seal bearing impressions 'HS' on the case property and the sample seal and placing the case property in double lock. On the next day, accused and the case property were produced before Illaqa Magistrate by whom the case property was seen. On return to the police station, the case property was put in double lock. During the course of investigation, sample parcel was sent to FSL, Punjab, Chandigarh and subsequently a report was received therefrom finding the sample sent to be that of opium.

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

On presentation of challan in the Court of Special Judge,

Amritsar, he supplied copies of documents relied upon in the challan to the accused Darshan Singh free of cost as provided under Section 207 Cr.P.C.

Learned Special Judge, Amritsar finding that charge for an offence under Section 18 of the Act was disclosed against the accused, charge-sheeted the accused accordingly, to which, he pleaded not guilty and claimed trial. The case was then fixed for the evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as four witnesses, namely, ASI Joginder Singh as PW1, Constable Satnam Singh as PW2, SI Harjinder Singh as PW3 and DSP Jatinder Singh as PW4.

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 he was picked up by the police from a petrol pump near Chhehartta and a false case was planted upon him and nothing was recovered from him.

Accused did not lead any evidence in defence.

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

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 prosecution has successfully proved recovery of 1 kg of opium from the possession of accused on 9.7.2002 without any licence or permit by examining PW1 Joginder Singh and PW4 DSP Jatinder Singh. Both of them supported the prosecution story on material aspects. No previous enmity between them and the accused – convict has been alleged or proved prompted by which they might have involved the accused in this case wrongly and deposed against him to secure his conviction.

Furthermore from the testimony of PW3 SI Harjinder Singh, it comes out that the case property was kept in safe custody and on 22.7.2002 the sample parcel was sent to FSL, Punjab, Chandigarh through Constable Satnam Singh. From the affidavit of PW2 Constable Satnam Singh Ex.PH, it comes out that the sample parcel had reached FSL, Punjab, Chandigarh with seals intact. Therefore, vital link evidence in this case is there. From the report of FSL, Punjab, Chandigarh it comes out that the sample was that of opium.

Although learned counsel for the appellant has argued that there has been non-compliance of Section 50 of the Act but he could not convince me as to how it is so. Learned trial Court in paras No.22 to 26 of the judgment has dealt with that aspect in detail and I find the reasonings given therein to be quite convincing. Even otherwise Section 50 of the Act relates to the personal search and not otherwise. In this case the recovery was effected from the bag being carried by the accused.

Therefore, Section 50 of the Act did not find application there.

Learned State counsel had referred to citation State of **Himachal Pradesh Versus Pawan Kumar, 2005(2) RCR Criminal 621, Supreme Court** where the Apex Court had observed that question of compliance or non-compliance of Section 50 of the Act is relevant only in case of personal search of a person and it is not so, if a recovery has not been effected from his personal search but from vehicle, luggage or other articles in his possession.

As regards the non-joining of independent witness, that aspect has also been discussed in a proper and appropriate manner in para Nos.27 to 30 of the judgment in light of the case law that testimony of police personnel should be considered in same manner as testimony of any other witness and no independent corroboration is required for that purpose.

As regards the authorities referred to by learned counsel for the appellant i.e. **State of Punjab Versus Jalaur Singh, 2002(3) R.C.R.(Criminal) 478, Bashir Main Versus State of Hamachal Pradesh, 2015(42) R.C.R.(Criminal) 610** and **Parminder Singh Versus State of Haryana, 2006(4) R.C.R. (Criminal) 495**, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

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.

Darshan Singh appellant – accused is stated to be on bail granted to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Amritsar is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

21.3.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No