

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1663-SB of 2004

Date of Decision: 25.10.2018

Sukhdev Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. H.S. Dhillon, Advocate
for the appellant.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

SURINDER GUPTA, J.

This is appeal filed by Sukhdev Singh @ Dulla against judgment dated 14.05.2004 passed by Judge, Special Court, Ludhiana whereby appellant was convicted for offence punishable under Section 15 of Narcotic Drugs and Pyschotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹1 lakh. In default of payment of fine he was further sentenced to undergo rigorous imprisonment for two years.

2. Case of prosecution, in brief, is that on 13.03.2002, ASI Teja Singh alongwith his police party was present at Jartoli *Chowk* in connection with *nakabandi*, when at about 09.00 a.m., a tractor-trolley came from the side of village Jartoli. It was stopped by its driver at a distance of about 100 yards from *naka*. The police party reached near the tractor-trolley and enquired about name of the driver, who disclosed his name as Sukhdev Singh @ Dulla (appellant). ASI Teja Singh apprised the appellant of his intention to conduct the search of trolley, which was covered with polythene

sheet and apprised him of his right to get the search conducted before a gazetted officer or a magistrate. However, the appellant reposed confidence in ASI Teja Singh and his consent memo (Ex. PB) was prepared. On search of the trolley, seven bags containing poppy-husk were recovered. From each of the bag two samples of 250 gms. were separated and remaining poppy-husk was found to be 30 kgs. 500 gms. in each bag. Separate parcels of samples and remaining poppy-husk were prepared and sealed with seal 'TS'. The case property alongwith tractor-trolley was taken into possession vide recovery memo (Ex. PC). *Ruqa* (Ex. PD) was sent to police station whereupon formal FIR (Ex. PD/1) was registered. The samples were later on sent to Chemical Examiner and found to be that of poppy-husk and on completion of investigation challan against the appellant was presented in Court.

3. In support of its case, prosecution has examined C. Sukhwinder Singh as PW-1, ASI Teja Singh as PW-2, ASI Dalip Singh as PW-3, Inspector Sikander Singh as PW-4 and HC Sulab Singh as PW-5.

4. After conclusion of prosecution evidence, statement of appellant under Section 313 Cr.P.C. was recorded wherein he denied allegations against him and pleaded his innocence. He alleged that *“he has been involved in this case falsely at the instance of Smt. Gurdial Kaur, who is closely related to ADGP, G.S. Aujla and who contested the election for the assembly constituency of Killa Raipur against Jagdish Singh Garcha then sitting MLA. Gurjit Singh, Chairman, Market Committee, Killa Raipur is his uncle and the daughter of said Gurjit Singh is married to Harpreet Singh, who is the son of the brother of Jagdish Singh Garcha. On the day of the polling the (accused) was the polling agent of Jagdish Singh Garcha.*

An altercation had taken place between him (accused) and said Smt. Gurdial Kaur and for that reason he has been got involved in this case falsely by said Smt. Gurdial Kaur.....”

5. The appellant examined DW-1 Gurjit Singh and DW-2 Lekh Raj in his defence.

6. Learned trial Court on appreciation of evidence held the charge for offence punishable under Section 15 NDPS Act as proved against the appellant and held him guilty for the same. He was convicted and sentenced as mentioned in para 1 of the judgment.

7. Learned counsel for the appellant has argued that the appellant has come up with a specific version of his false implication in this case at the behest of Gurdial Kaur, who is a close relative of the then ADGP, Punjab Sh. G.S. Aujla for political reasons and also because of his altercation with her. The defence version of the appellant has been supported by Gurjit Singh son of Santokh Singh, who appeared as DW-1.

8. As per case of prosecution, recovery from the appellant was allegedly made at a thoroughfare but no independent witness was joined. No special report was sent to higher officers as per requirement of Section 42 NDPS Act. The tractor, which was carrying the trolley, from which alleged recovery of contraband was made, was not produced in Court. Seals of case property, when produced in Court were in broken condition and there were holes in the bags, which had been stitched. ASI Teja Singh, who had allegedly effected the recovery and sent *ruqa* to police station, had continued with investigation. The FSL form was also not filled at the spot. Owner of the tractor was not joined in the investigation and all these facts when taken together reflect towards false involvement of the appellant in

of **Balwinder Singh @ Mohinder Singh vs. State of Punjab, 2016 (1) RCR (Criminal) 393** and **Gannu and another vs. State of Punjab, 2017 (3) RCR (Criminal) 566**.

9. Learned State counsel has argued that it was a chance recovery from the appellant. The police party was not having any secret information and was present in connection with patrolling and checking of suspicious elements at Jartoli *chowk* at about 09.00 a.m. on 13.03.2002, when the tractor-trolley of the appellant was searched on the basis of suspicion as he on witnessing the police party had stopped it at a distance of about 100 yards away from the police patrolling party. Before conducting the search option was given to the appellant to get the search conducted before a gazetted officer or a magistrate but he reposed confidence in the investigating officer and agreed for the search of trolley by him vide his consent memo (Ex. PB) prepared at the spot. Non-joining of independent witness casts no doubt about the testimony of official witnesses, who have fully supported the case of prosecution. Though, the appellant has alleged his enmity with Gurdial Kaur who had contested the election of MLA but his plea is not supported by any cogent evidence. Recovery from the appellant is quite heavy. Provisions of NDPS Act were duly complied in this case. It is proved that samples, when reached the Chemical Examiner, were intact and learned trial Court has rightly convicted and sentenced the appellant for offence under Section 15 NDPS Act.

10. As per case of prosecution, the appellant was apprehended on 13.03.2002 and recovery of seven bags containing poppy-husk 31 kgs. each was effected from his possession.

11. The case property was produced in Court at the time of

statement of ASI Teja Singh, who appeared as PW-2, and has stated that seals on bags were in broken condition. There were holes in the bags, which had been stitched.

12. PW-2 ASI Teja Singh while describing manner in which the recovery was effected has stated as follows:-

“On 13.03.2002, I was posted in P.S. Dehlon. On that day, I alongwith ASI Dalip Kumar and other police officails was present at Jartoli Chowk in connection with nakabandi. At about 09.00 a.m., a tractor-trolley came from the side of Jartoli. The tractor-trolley was stopped at a distance of 100 yards from the police party. Accused Sukhev Singh now present in the Court was driving the said tractor-trolley. I apprehended the accused on suspicion. There were gunny bags lying in the trolley covering (sic covered) with glazed paper. I expressed my desire to the accused to search the bag and I also told the accused that if he so desired the search of the bags could be conducted in the presence of G.O. of (sic or) a Magistrate but the accused reposed trust in me. I recorded the consent statement of the accused Ex. PB, signed by the accused and attested by ASI Dalip Kumar and HC Prem Lal.....”

13. It is evident from the above statement of ASI Teja Singh that he apprehended the accused on the basis of suspicion. He has nowhere stated that either he had some prior information that the appellant was carrying poppy-husk or was having any suspicion that the trolley, which was covered with glazed sheet, was having some bags containing poppy-husk. Perusal of consent memo (Ex. PB) shows that he gave him the option to get his search conducted before Illaqa Magistrate or a gazetted officer for search of bags lying under the polythene sheet. There is nothing on file to show that he had removed the polythene sheet to check the bags before preparing the consent

memo or before preparing the consent memo (Ex. PB) he had any reason to believe that the appellant was carrying poppy-husk in his trolley. Perusal of consent memo (Ex. PB) shows that at the top of the consent memo after the name and address of the appellant, he has mentioned FIR number, date and offence under Section 15/61/85 NDPS Act. There is slash below the FIR number, which indicate that it was mentioned later on. However, remaining part of the line i.e. date and section of the offence have been written while preparing the consent memo.

14. A question, which arises for consideration, is as to how ASI Teja Singh was aware that the appellant was possessing poppy-husk? The matter would have been otherwise in case ASI Teja Singh had checked the bags and found with his observation that these were containing poppy-husk. He has nowhere stated that he had checked the bags before preparing the consent memo. Mentioning of section of the offence as 15 NDPS Act in the consent memo before effecting recovery or having any idea that appellant possessed poppy-husk creates a serious doubt about the entire credibility of the proceedings by the investigating officer. This also creates a shadow of doubt about the compliance of provisions of Section 50 NDPS Act. The mentioning of section of the offence on the consent memo indicates that it may have been prepared after the recovery had been effected and investigating officer was sure on seeing the contraband after recovery that it was poppy-husk and this is why he mentioned the offence under Section 15 NDPS Act in the consent memo. The above fact demolishes the entire case of prosecution and provides credibility to the defence version of the appellant that he has been falsely implicated. To arrive at this conclusion the defence of appellant about his enmity with Gurdial Kaur and that she is

closely related to an officer of the rank of ADGP, Punjab is not required to be looked into, though it has been supported by DW-1 Gurjit Singh. This sole reason, as discussed about, is sufficient to discard the prosecution version and disbelieve testimony of prosecution witnesses. In addition, the case property produced in Court at the time of recording statement of ASI Teja Singh was having seals in broken condition and the bags were having holes, which had been stitched. This also creates doubt about the genuineness of the case property.

15. Other submissions of learned counsel for the appellant about non-compliance of provisions of Section 42 NDPS Act, non-joining of independent witness, non-preparation of CFSL form at the spot etc. are not required to be discussed in detail.

16. Keeping in view above facts, I am of the opinion that the prosecution has failed to comply with provisions of Section 50 NDPS Act before effecting the recovery. The testimony of prosecution witnesses is not reliable and the prosecution has not been able to prove the case against the appellant beyond any shadow of doubt.

17. As a sequel of my above discussion, I find merit in this appeal and the same is allowed. The judgment of conviction and order of sentence passed by Judge, Special Court, Ludhiana are set aside.

October 25, 2018

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No