

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

CRA-S-1672-SB-2004 (O&M)
Date of Decision: February 24, 2018

Dalbir Singh

..Appellant(s)

Versus

State of Punjab

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Aditi Girdhar, Advocate
for the appellant.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

ANITA CHAUDHRY, J.

The appellant was tried by the Special Judge Amritsar for the offence under Section 15 of the Narcotics Drugs & Psychotropic Substances Act 1985 (here-in-after referred to as the Act). He has preferred this appeal challenging the judgment and order of conviction passed on 18.03.2004 vide which he was sentenced to undergo rigorous imprisonment for 10 years along with a fine of Rs.1 lac. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of one year.

The prosecution case in brief is that S.I. Satnam Singh along with police officials was on patrol duty at Fatehabad – Jamarai road in connection with search of antisocial elements. When they reached Fatehabad, secret information was received that the accused was going to sell poppy husk in a tonga and going towards village Chhabri Sahib Tur and if a raid is conducted, he could be apprehended. It is per chance that Major Singh Ex-Sarpanch was going and he was

joined in the police party. A picket was put up on the katcha path leading to village Jamarai at 2:00 PM. A tonga driven by appellant came from Fatehabad side. There were four gunny bags loaded on the tonga. The accused was apprehended and since he was suspected to be carrying narcotics substance, the Investigating Officer gave him the option to be searched by him or in the presence of a Gazetted Officer or a Magistrate. The accused offered to be searched in the presence of a Gazetted Officer, therefore, DSP Lakhwinder Pal was called to the spot and in his presence search was carried out. The bags were found to contain 40 Kgs. of poppy husk. 250 grams of one sample was separated from each bag and made into sealed parcel. Remaining poppy husk was put back in the same bag and both the samples and the bags containing powder poppy husk were sealed with the seal bearing initials "SS" and "LPS". Ruka was sent to the police station on which the FIR was lodged. On completion of investigation and receipt of report challan was presented.

The accused pleaded not guilty to the charge and claimed trial. The prosecution examined Ashok Kumar Constable, DSP Lakhwinder Pal, SI Satnam Singh.

The defence of the accused was that of denial. It was contended that he was innocent and was arrested from his home four days ago and nothing was recovered from him.

The learned Special Judge accepting the evidence of the witnesses found the appellant to be guilty and convicted and sentenced him for the offence in which he was charged. Hence, the appeal challenging the conviction and sentence.

I have heard the counsel for the appellant at great length as well as the State counsel and have perused the record with their assistance.

The submission on behalf of the appellant is that secret information was received which was specific to the appellant but no information in writing or otherwise was communicated to the Senior Officer as provided under Section 42(2) of the Act. It was urged that only one sample was drawn and the witnesses are at variance whether the poppy husk recovered was 40 Kgs. or 38 Kgs. It was urged that the case property was not produced. It was urged that the case set up by the accused was that he was picked up from home and the police would have taken the tonga and the horse into their custody but there is no material to show that the tonga was taken into custody or produced at any time before the trial or show that the tonga was released on Supardari. It was urged that a witness from the public was joined but the seal was handed over to a police officer and the independent witness was given up. Referring to the statement of DSP Lakhwinder Singh, the counsel urges that he had stated that the recovery was 38 Kgs. and after drawing the sample the left over poppy husk was 37.75 Kgs. It was urged that the CFSL form was not handed over and the sample has been sent late for chemical examination and the seal remained with the police official and valid offer was not given as the Investigating Officer also included himself as being one of the officers who could search the appellant. It was urged that it was a case where substantial compliance has not been made and since the punishment is

10 years, the prosecution has to prove the case to the hilt and show that all the rules had been mandatorily followed. The counsel urges that adequate safeguards have been provided in the Act and it was a case of non-compliance of the mandatory provisions. Reliance was placed upon *Jaswinder Singh and another Vs. State of Punjab 2013(1) RCR (Crl.) 257*, *State of Himachal Pradesh Vs. Rajiv Kumar @ Vicky 2016(3) Him. L.R. 1681* *State of Himachal Pradesh Vs. Atul Sharma and others 2015(6) RCR (Crl.) 949*, *Mohan Singh Vs. State of Punjab 2004(4) RCR (Crl.) 260*, *Radhey Sham Vs. State of Haryana 2011(2) RCR (Crl.) 90*, *Dayal Singh and another vs. State of Punjab 2007(2) RCR (Crl.) 596* and *Vinayak Vs. State of Maharashtra 2002(4) ALL MR(Crl.) 1922*.

The submission on the other hand is that general information was received which was required to be reduced into writing and Section 50 of the Act was not attracted and compliance of Section 80 of the Act is to be made in case of search of a person and there are no allegations that the police officials were biased or had any animus and there is no remote possibility of the case being planted by the police. Reliance was placed upon *Khet Singh Vs. Union of India 2002(2) RCR (Criminal) 277*, *Babubhai Odhavji Patel etc. Vs. Stte of Gujrat 2005(4) RCR (Criminal) 858*, *State of Punjab Vs. Balbir Singh 1994(1) RCR (Criminal) 736* *Dilbagh Singh Vs. State of Punjab 2017(1) RCR (Criminal) 88*.

It is to be first seen whether it was a chance recovery and whether compliance of Section 42(1) of the Act was required to be made. A reading of the statement of the witnesses shows that SI Satnam Singh received specific information with respect to appellant Dalbir Singh. In his examination-in-chief, he made the following

statement:-

“On 2.7.99 I was posted as SI/SHO P.S. Goindwal. On that I alongwith ASI Raghbir Singh and other police officials was going for patrol duty from village Fatehianbad to village Jamarai. When we reached near village Fatehianbad I received a secret information that Dalbir Singh alias Buri son of Teja Singh was going for selling some poppy husk while loading the same in his tonga and that he could be apprehended, if a raid was conducted. Major Singh Ex-Sarpanch was joined in the party and thereafter we were going towards village Jamarai on a Katcha path at about 2:00 P.M. A horse driven tonga came from Fatehabad side and it was driven by the accused Dalbir Singh now present in the Court.....”

The above would show that though the police party had left the police station for patrol duty but on the way they received specific information with respect to the accused, his name, his father name and the mode of conveyance he was using was received but no information was sent to the police station. It is not a case where the Investigating Officer made a search for suspecting any contraband by chance. He had prior information and was required to make necessary compliance of Section 42 of the Act. If the police could not spare to send the information in writing, they had the option to call up their senior officers and inform on phone.

On going through the statement of the prosecution witnesses, it is found that there is a glaring contradiction with respect to the amount of poppy husk recovered from the accused. The Investigating Officer had stated that 40 Kgs. of poppy husk was

recovered and one sample of 250 grams was taken out and the remaining 39 kgs. 750 grams poppy husk was sealed whereas the DSP Lakhwinder Singh had stated that the recovery was 38 Kgs., out of which one sample was drawn and the remaining 37 Kgs. 750 grams was sealed. This is a major contradiction and cannot be ignored specially when the police party had joined an independent witness but chose not to examine him.

The seal in this case was handed over to a police official and the samples were sent six days later and the the seal was handed over to ASI Raghubir Singh who was not examined and was given up. The samples were deposited in the office of chemical examiner on 06.07.1999. The requirement of the Rule is that it is to be sent within 72 hours.

There is substance in the argument made by the counsel for the appellant that as per standing order 1/89 issued by Government of India, it has been made mandatory that two samples must be drawn from the recovered substance, failing which, the whole recovery procedure would be vitiated. In the present case, only one sample was drawn from each of the bags and that vitiates the whole process of drawing the sample.

As a matter of fair play it has always been insisted that the property and sample after seal should be handed over to a third person. This is to ensure that no tampering is done with the said property. In the present case, the evidence shows that the seal after use was given to a police official and not to the private person joined

by the police. The very sanctity of handing over the seal to a third person in the presence of a private witness casts a doubt on the whole process.

For the foregoing reasons, it is held that the prosecution had failed to prove the charge against the appellant beyond reasonable doubt. Therefore, the present appeal is allowed. The judgment of conviction and order of sentence are set aside. The accused is acquitted. The bail bonds stand discharged.

February 24, 2018

Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No