

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

CRA-S-2322-SB-2004

Date of decision: July 03, 2018

Surinder Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. P.S. Sekhon, Advocate
for the appellant.

Mr. V.G. Jauhar, Senior DAG, Punjab.

RAJ SHEKHAR ATTRI, J.

The above named appellant has preferred this appeal against the judgment of conviction and order of sentence dated 25th November, 2004 vide which he was convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine in the sum of Rs.5,000/- or in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

Briefly stated, it is the case of the prosecution that on 3rd April, 2003, ASI Deepinder Pal Singh (PW-3) along with posse of police officials was present in the area of village Nagri in connection with patrolling and checking of the suspicious persons and one public man Binder Singh was also with the police party at that time. In the meanwhile, appellant was seen coming towards the police party while

carrying a plastic bag in his right hand. But on seeing the police party, he got perplexed and tried to retreat. His this act aroused suspicion in the mind of Investigating Officer, therefore, the appellant was immediately apprehended. The investigating officer suspected some incriminating material in the bag and he wanted to search the same. As such, an offer was given to the appellant with regard to the search of the bag before a Magistrate or before a Gazetted Officer but he opted search before the Investigating Officer. On search of the bag, the opium was recovered, out of which two samples each containing 10 gms opium were separated. Those were put into two different containers and converted into parcels. The bulk opium on weight came to 280 gms and also put in another container. All the three parcels were sealed with the seal of the Investigating Officer bearing impression 'DS'. Sample seal was prepared and after use the seal was handed over to HC Gurbachan Singh. First information report (commonly called as *ruqa*) was sent to police station through a constable for the purpose of registration of the FIR.

On return to the police station, the case property along with the accused were produced before the Station House Officer Sukhdev Singh (PW-2) who put his own seal bearing impression 'SS' on each parcel. The case property was deposited with MHC and one sample parcel was sent to chemical examiner who opined that it was opium.

On completion of the investigation, final police report under Section 173 Cr.P.C. was submitted before the Special Judge. On the conclusion of the trial, the accused was convicted and sentenced as aforesaid.

I have heard learned counsel for the appellant, the learned State counsel and more carefully examined the evidence available on the record.

Learned counsel for the appellant vehemently contended that the presence of police party at the spot was doubtful; that entire story was created in the police station; that there are material discrepancies in the prosecution story, which itself create suspicion; that the sample seal was not handed over to the alleged independent witnesses rather it was kept by a subordinate police officials, who was under the control and supervision of the investigating officer as well as the Station House Officer; that there is every possibility of tampering with the case property; that the case property was never produced before the Magistrate and there is a clear cut violation of Section 52-A of the Act; that PW Binder Singh was not produced during the trial nor special report was sent to the police station upto 06.04.2003. According to him, learned trial court failed to appreciate the evidence and wrongly recorded the judgment of conviction.

On the other hand, learned State counsel has vehemently contended that the prosecution has proved the charges against the accused beyond shadow of reasonable doubt; that there is no discrepancy, much less material one, which could cause a dent in the prosecution story and that non-examination of the independent witnesses as well as keeping the seal with the investigating officer is immaterial. According to him, in the circumstances of this case, the findings of the learned trial court are based upon proper appreciation of evidence. He urged for dismissal of the appeal.

This court has given its thoughtful considerations to the rival contentions of the parties.

First of all, coming to the presence of the police party at the spot. On the analysis of evidence, this court reaches to the conclusion that presence of police party at the spot is doubtful. None of the PWs has stated about the total numbers of the members of the police party. It is simply stated that police party comprised of driver, Investigating Officer Deepinderpal Singh, HC Gurbachan Singh and HC Kashmir Singh. While replying to a specific question, PW3-ASI Deepinder Pal Singh has stated that neither he nor HC Gurbachan Singh or HC Kashmir Singh had performed the writing work at the spot. The entire prosecution evidence is silent who had performed the writing work at the spot.

In these circumstances, it was the duty of the Investigating Officer and PW HC Gurbachan Singh to establish as to who had performed the writing work at the spot. In the circumstances of this case, it was incumbent on prosecution to examine the scribe of the statements and other documents, prepared at the spot. But neither name of said scribe came on file nor his presence was ensured in witness box. This fact establishes the presence of the police party at the spot is doubtful.

Admitted version of the prosecution is that a private person Binder Singh was available at the spot. But he has not been examined on the pretext that he was won over by the appellant. To the mind of this court, even if he has been won over even then he should have been produced in witness box to verify the truth because his statement was recorded during the investigation. In case he resiled therefrom he could

have been confronted with the same.

In the peculiar circumstances of the case, when no Gazetted Officer or a Magistrate was called at the spot and when the seal was retained by a petty police official, examination of PW Binder Singh was necessary and his non-examination is fatal to the prosecution case.

When an independent witness is available during investigation, it is the paramount duty of the prosecution to dispel the suspicion with regard to handing over the seal used at the spot to him. In case the seal is not handed over to him, then there must be cogent explanation. Herein, it is claimed by the prosecution that PW Binder Singh remained with the police party and even he had gone to the police station and met the Station House Officer. In these circumstances, the seal could have been handed over to him but it was kept by HC Gurcharan Singh. This fact goes to cause dent in veracity of case of the prosecution.

The case property was never produced before the Magistrate under the provisions of Section 52 and 52-A of the Act. This provision is mandatory and its non-compliance is fatal to the prosecution. Even no explanation is furnished as to why the case property was not produced before the Magistrate.

Prosecution claimed that a special report Ex.PH was prepared on 3rd April, 2003 and was forwarded the same to the higher authorities. But a bare perusal of Ex.PH transpires that this was submitted to the Station House Officer on 4th April, 2003 and it was received by Deputy Superintendent of Police on 7th April, 2003. The possibility cannot be ruled out if it was either prepared on 4th April or thereafter.

In this case, Form No.29 was not prepared at the spot. In fact the same was prepared on 7th April, 2003. In the peculiar circumstances of the case, when the seal was with the police party and the case property was not produced before the Magistrate, the non-preparation of Form No.29 at the spot is itself a doubtful circumstance.

On the critical examination of the evidence, this court has reached the conclusion that prosecution has not been able to prove the charges against the accused beyond shadow of reasonable doubt. Therefore, accused is entitled to the benefit of doubt which is hereby given to him.

This court is of the view that learned trial court failed to apprehend beyond circumstances therefore, judgment of conviction and order of sentence are not sustainable and are liable to be *set aside*.

Consequently, this appeal is accepted, judgment of conviction and order of sentence are *set aside* and reversed. As a result, the appellant is acquitted of the charges framed against him.

Disposed of accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

July 03, 2018
m. sharma

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