

**CRA-S-260-SB-2009 (O&M) with .
CRA-S-669-SB-2009 (O&M) and
CRA-S-769-SB-2009 (O&M)**

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

**CRA-S- 260-SB-2009 (O&M)
Date of Decision: February 17, 2018**

Pawan Kumar @ Pappu and another

..Appellant(s)

Versus

State of Punjab

..Respondent(s)

with

CRA-S- 669-SB-2009 (O&M)

Ranbir Singh

..Appellant(s)

Versus

State of Punjab

..Respondent(s)

CRA-S- 769-SB-2009 (O&M)

Kuldip Singh

..Appellant(s)

Versus

State of Punjab

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Mr. K.S. Aulakh, DAG, Punjab.

ANITA CHAUDHRY, J.

These are three appeals against the judgment of conviction and order of sentence dated 01.12.2008, passed by the Special Court, Ludhiana emanating from FIR No. 5 dated 14.01.2006, registered under Section 15 of the NDPS Act, whereby the appellants were convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lac each. In default of payment of fine, they were to undergo further rigorous imprisonment for a period of 6 months.

Since all the appeals have arisen from common judgment, therefore, they are being taken up together.

The case of the prosecution is that on 14.01.2006 SI Jangjit Singh along with HC Teja Singh, HC Bhagwan Singh and other police officials were going on their official vehicle from Dehlon towards village Kaind. A private witness Niranjan Singh met them near the bus stop of village Sayan. The police party laid a picket at the canal bridge of village Kaind. They saw a truck bearing registration no. HR-29-D-0267 coming from the side of village Kaind. SI Jangjit Singh signaled the truck to stop. The driver after stopping the truck tried to escape but was apprehended. There were three other persons who were sitting in the truck. They were also apprehended. The driver disclosed his name as Kuldeep Singh and the other disclosed their names as Subhash Chand, Pawan Kumar and Ranbir Singh. SI Jangjit Singh introduced himself to the accused and

desired to search the truck as they had suspicion that it had contraband articles. Those persons were informed that they could get the search conducted in the presence of a Gazetted Officer or a Magistrate. The accused consented to the search by SI Janjit Singh and their separate consent statements were recorded.

On search, 20 bags containing poppy husk were recovered, which were lying under the apple cartons. Two samples of 100 grams each were separated from each bag and on weighment the remaining bags were found to be 29 kgs 800 grams each. The samples as well as bulk parcels were sealed by SI Jangjit Singh with seal bearing impression "JS". The seal after use was handed over to ASI Jaswant Singh. Thereafter, personal search of the accused was carried out from whom some currency notes of small denomination were recovered. A separate recovery memo was prepared with respect to that recovery.

The police party returned to the police station and SI Jangjit Singh produced the case property alongwith the accused and PW5 before SHO Amarjit Singh and after verifying the same he deposited the case property with HC Gulab Singh.

The case of the prosecution further is that SI Jangjit Singh took the case property from MHC Gulab Singh and produced it alongwith the accused in the Court and on return the case property was deposited back with the MHC. On receipt of Chemical Examiner report, the challan was presented against all the accused. They were charged under Section 15 of the NDPS Act.

The prosecution examined DSP Amarjit Singh, ASI Jaswant Singh and SI Jangjit Singh PW5. Gurpreet Singh PW4 had deposited the samples with the office of Chemical Examiner. The remaining witnesses were given up as unnecessary. PW Nirranjan Singh was given up as won over.

The accused abjured the trial. Accused Pawan Kumar took a plea that he was running a cloth business since 2003 in Ludhiana and he had taken the shop on rent from its owner Mithhu Joshi who was working with a lawyer at Ludhiana and he had relations with the higher officials and he wanted to get the shop vacated and he had been falsely implicated.

Subhash accused brother of Pawan Kumar took the same plea as taken by his brother. The remaining two accused pleaded that they had been picked up from home and the real persons were let off and the case was planted. They examined two witnesses namely Major Singh Constable who proved the time of departure of the police party. Nirranjan Singh, the independent witness disclosed that the police had obtained his signatures on 4 – 5 blank papers and he happened to pass through that place where the picket was held. He stated that he was not a witness to the recovery.

Pawan Kumar examined his wife, DW3, who had made a complaint to the Senior Officers. Constable Bhupa Singh DW4 brought the Rojnamcha.

The trial Court convicted all the accused to the sentence mentioned hereinbefore.

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

The first and the foremost submission made on behalf of the appellants is that there is a serious lacuna in the prosecution case as the CFSL form effecting the alleged recovery had not been deposited in the Malkhana and this ground alone is fatal to the prosecution and the appellants are entitled to acquittal. It was urged that filling of such a form at the spot is a valuable safeguard and it ensures that the sample seal is not tampered and coupled with this, the only independent witness did not support the prosecution version. It was urged that the prosecution failed to examine him and he was given up and they had examined him in defence as they wanted the true version to appear. It was contended that the sample seal was not handed over to the independent witness but was handed over to a police official which again goes to show that the independent witness was not present on the spot. The counsel further submitted that the recovery was effected from the truck and the prosecution has failed to prove that the accused had the custody and control of the bags and the police did not bother to produce the registration certificate and there is no evidence that any of the accused was its owner and they cannot be presumed to be in conscious possession. It was urged that the entire investigation has been conducted by the complainant himself and there is no evidence to show that the investigation was handed over to some other independent Investigation Officer and the

complainant himself cannot be the investigator. Reliance was placed upon *Radhey Sham Vs. State of Haryana 2011(2) RCR (Criminal) 90*, *Avtar Singh Vs. State of Punjab 2002(4) RCR (Criminal) 180*, *Jagraon, District Ludhiana Vs. State of Punjab 2012(25) RCR (Criminal) 209*, *Jaswinder Singh and another Vs. State of Punjab 2013(1) RCR (Criminal) 257*, *Chainna Singh Vs. State of Punjab 2014(33) RCR (Criminal) 108*, *Dayal Singh and another Vs. State of Punjab 2007(2) RCR (Criminal) 596*, *State of Himachal Pradesh Vs. Atul Sharma and others 2015(6) RCR (Criminal) 949*, *Dev Singh Vs. The State of Punjab 2008(8) RCR (Criminal) 524*, *Pragat Singh Vs. State of Haryana 2008(4) RCR (Criminal) 596* and *Gian Singh Vs. State of Punjab 2006(2) RCR (Criminal) 611*.

The State counsel supported the judgment of the Court below and urged that the recovery was effected from the accused and there are no material contradictions and conscious possession had been proved and Kuldip was driving the truck and it is common that private witnesses are won over by the accused.

The sample seals and the case property was deposited with HC Gulab Singh PW1. His statement is clear that no CFSL form was deposited in the Malkhana. The statements of DSP Amarjit Singh and ASI Jaswant Singh are also silent in this regard. Therefore, it becomes clear that CFSL form was neither prepared on the spot nor deposited in the Malkhana.

In *Gurucharan Singh vs. State of Punjab 2005(4) RCR (Crl.) 681*, the seal which was affixed and was given to the Head

Constable and not to the public witness, the CFSL form was not prepared at the spot, it was held that the preparation of CFSL form at the spot is an important safeguard against an allegation of tampering with the sample.

In *Bhola Singh Vs. State of Punjab 2005(2) RCR (Criminal) 520 (P&H)*, it was held that the CFSL form should be prepared at the spot and deposited in the Malkhana. Where the seal remained with the police after use and the CFSL form was neither prepared on the spot nor deposited in the Malkhana, it was held that such a circumstance would be fatal to the prosecution case. Filling up the CFSL form at the spot is a very valuable safeguard to ensure that the seal sample is not tampered with till its analysis by the Forensic Science Laboratory.

On perusal of the evidence, it is found that there are serious contradictions in the prosecution version. A photographer had been called on the spot but there are no photographs nor the photographer was examined. There is a discrepancy with respect to the time the police party had started from the police station. The DDR records the time at 10:30 AM. The accused were allegedly apprehended at 2:30 PM but the Ruka was sent at 6:10 PM. The Investigating Officer failed to take into possession the registration certificate of the truck. There is no evidence as to who was the owner of the truck. There is no evidence either that any accused had tried to run away. It was necessary for the prosecution to prove their conscious possession. No doubt possession is the core ingredient to

be established before an accused can be subjected to the punishment under Section 15 of the NDPS Act but the recovery becomes doubtful when the only independent witness is not examined. There was no reason why the prosecution had held back the photographs. Even if it is accepted that the truck was loaded with poppy husk bags, there is no evidence that any of the accused were sitting on the bags. All of them were sitting in the cabin. No investigation has been directed to ascertain the role played by each of the accused and the nexus between the accused and the offending goods. It cannot be said on the basis of the evidence available on record that the appellants including the driver were having custody or control of the contraband lying on the back of the truck. It is difficult to reach such conclusion beyond reasonable doubt. None of the appellants were the owners of the truck.

Considering the fact that the independent witnesses had not supported the prosecution version and non-preparation of CFSL form, it has to be held that the non-preparation and non-deposit of the CFSL form is fatal to the prosecution case. Coupled with this, the seal was not handed over to the independent witness. The presence of the independent witness is also doubtful. The Investigating Officer did not prepare the inventory, which was required to be prepared on the spot. If the matter is viewed in the background of the above observations, the possibility of the seal being tampered cannot be ruled out. A complaint had been given by the wife of the one of the accused on 13.01.2006 that her husband was missing. A telegram had

also been given to the DGP and the Human Right Commission by Sarabjit that his father was missing and he had apprehension that a false case would be planted upon him. It is held that the prosecution had failed to prove the charge against the appellants beyond reasonable doubt. All the three appeals are allowed. The conviction and sentence awarded to them is set aside. All of them are acquitted. The bail bonds stand discharged.

February 17, 2018
Sunil

(ANITA CHAUDHRY)
JUDGE

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