

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

CRA No.S-1891-SB of 2012 (O & M)
Date of decision :05.05.2018

Nanak Singh and another

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amaninder Preet Singh, Advocate
for the appellants.

Mr. D.S. Sukarchakia, DAG, Punjab.

ANIL KSHETARPAL, J.

Nanak Singh and Kashmir Singh who have been convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act and sentenced to undergo rigorous imprisonment for a period of ten years and pay a fine of Rs.1.00 lac each and in default of payment of fine further undergo rigorous imprisonment for a period of one year.

Facts as noticed by learned trial Judge are extracted as under:-

“2. As per the prosecution story on 2.9.2009 ASI Harpreet Singh, Investigating Officer (Herein after to be referred as the Investigating Officer only) along with ASI Satpal Singh and other police officials was going on patrol duty and checking of suspects on a Government vehicle which was being driven by HC Sukhjinder Singh and when the police party reached on the Phirni of village Shahwala, then the Investigating Officer received secret information that Kashmir Singh alias Kashmira

and Baldev Singh alongwith Nanak Singh were keeping and selling poppy husk jointly and if search is conducted in their houses, then poppy husk can be recovered. Then two police parties were made by the Investigating Officer out of which one was headed by ASI Satpal Singh alongwith HC Satnam Singh, HC Harnam Singh and SPO Jank Singh and they were directed to conduct search in the house of Baldev Singh, whereas IO alongwith other police officials conducted a search in the house of Kashmira Singh. When they reached near the house of Kashmira Singh, he (Kashmira Singh) was seen coming on a scooter and on seeing the police party he ran away on the scooter. One another person namely Baldev Singh also tried to skip away. ASI Satpal Singh alongwith other police officials tried to apprehend him but he ran away from the spot. IO conducted the search at the house of Kashmir Singh and he also sent HC Gurjant Singh to bring independent/respectable person from the locality but none joined the police party. Search of the room which was meant to keep the fodder was conducted and Nanak Singh was apprehended by the Investigating Officer. On further search four gunny bags containing poppy husk were recovered from the fodder. Message to DSP Jasbir Singh was sent who reached the spot after sometime. Then the Investigating Officer conducted the search of the four gunny bags as per

rules. From all the gunny bags poppy husk was recovered. Out of the said gunny bags, four samples of 250 grams each were separated and converted into parcels. Remaining poppy husk in each bag was found to be 35 Kgs which were also converted into bulk parcels by putting the same in the same bags. The Investigating Officer sealed all the parcels with his seal bearing impression HS. Specimen seal impression was directly prepared on the CFSL form and the seal after use was handed over to HC Manjit Singh. The entire case property was taken into possession vide recovery memo which was attested by HC Manjit Singh, HC Gurjant Singh and DSP Jasbir Singh. From the personal search of accused Nanak Singh nothing valuable was recovered. The accused failed to produce any permit or licence to keep the poppy husk with him, so the Investigating Officer sent a ruqa to the police station, Zira on the basis of which FIR was registered by SI Swaran Singh. Then accused Nanak Singh was arrested in this case and his grounds of arrest memo was prepared which was signed by the accused and attested by the above said witnesses. The Investigating Officer prepared the rough site plan of the place of recovery with correct marginal notes, the Investigating Officer recorded the statements of witnesses concerned and completed other formalities at the spot. On return to the police station the

Investigating Officer produced the case property and accused Nanak Singh before SI Swaran Singh, who checked the case property and then he affixed his seal on the same bearing impression SS. He also affixed impression of his seal on all the parcels. Then he interrogated accused Nanak Singh and took the entire case property into possession vide separate recovery memo which was attested by the Investigating Officer. Accused Kashmir Singh was arrested in this case on 26.9.2009. He was apprised about the grounds of arrest and on his personal search currency notes worth Rs.110/- were recovered which were taken into police possession vide separate memo and the memos, were attested by HC Jaspal Singh and HC Hartej Singh. Investigating Officer also took into possession Scooter bearing registration No.PB-02U-6853 vide separate memo. Intimation memo regarding the arrest of accused Kashmir Singh was also prepared. IO recorded the statements of witnesses under Section 161 Cr.P.C. After completion of investigation and on receipt of report of Chemical Examiner, the challan in hand was prepared by SI Gurpreet Singh and submitted in the court for commencement of trial against the accused.”

Prosecution in order to bring home the guilt of the appellants examined PW1 SI Harpreet Singh, Investigating Officer; Assistant Sub Inspector Manjit Singh (PW2), the recovery witness; Head Constable

Baljinder Singh (PW3), who deposed regarding deposit of four samples in this case with the office of the Chemical Examiner, Kharar; PW4 Jasbir Singh Deputy Superintendent of Police, Sub Division Shahkot, Jalandhar; PW5 Gurpreet Singh, who deposed that after completion of the investigation, challan was prepared and presented in the Court. Statement of the accused under Section 313 Cr.P.C. were recorded and incriminating evidence were put to them.

In defence evidence, the appellants examined DW1 Baldev Singh son of Baj Singh.

As noticed above the learned trial Court convicted the appellants and sentenced as noticed above and hence this appeal.

It is apparent from the case put-forth by the prosecution that Assistant Sub Inspector Harpreet Singh along with certain police officials who are stated to be eleven in number were going on patrol duty and checking of suspects. On receipt of secret information, two teams were formed and houses of Baldev Singh and Kashmir Singh were raided and searched. Team headed by Satpal Singh ASI searched the house of Baldev Singh whereas team headed by Assistant Sub Inspector Harpreet Singh searched the house of Kashmir Singh alias Kashmira. It is the case of the prosecution that when they reached near the house of Kashmir Singh, Kashmir Singh was seen coming on a scooter and on seeing the police party he ran away on the scooter. In another case, the police party headed by Satpal Singh also stated that Baldev Singh also slipped away and could not be apprehended at the spot. Prosecution registered two FIRs with respect to raid conducted and recovery made from respective houses of Baldev Singh and Kashmir Singh. With respect to raid on the house of Kashmir Singh

and FIR No.117 dated 02.09.2009 was registered and four bags of poppy husk total weighing 141 Kgs were shown to have been recovered whereas in respect of raid on the house of Baldev Singh three bags of poppy husk weighing 105 kgs was shown to have been recovered subject matter of FIR No.118 dated 02.09.2009. It may be noticed that both the appellants namely Nanak Singh and Kashmir Singh have been acquitted by the Special Judge, Ferozepur in FIR No.118 dated 02.09.2009. Baldev Singh from whose house recovery was shown, had been absolved during investigation. Counsel for the appellants has stated that no appeal against the judgment dated 16.03.2013 passed in FIR No.118 dated 02.09.2009 has been filed.

In the present case, recovery of the narcotic drug as alleged was recovered from the room of the house of Kashmir Singh. As per lay out plan prepared by the prosecution Ex.P7, it is shown that the house had three residential rooms and one open area for keeping/storing the fodder. It is the case of the prosecution that Nanak Singh was found present in the room where fodder was stored and on search of the fodder, recovery was made. However, when prosecution examined in evidence the witnesses, Harpreet Singh Investigating Officer submits that recovery was effected from an open place in the 'verandah' where children and wife of the accused were present. On further cross examination, Investigating Officer stuck to the stand that bags were recovered from the 'verandah' as both were lying open in the 'verandah' so no offer was given to the accused to be searched from gazetted officer or a Magistrate. Personal search of Nanak Singh was not conducted at the spot. However, when one examines the evidence of ASI Manjit Singh (PW2), he submits that search was conducted by the investigating officer of the room meant for keeping the fodder and Nanak Singh accused was seen

sitting in the room. During cross examination, he states that there is only one room in the house of the accused including one kitchen and one 'verandah' and he states that the recovery was effected from the residential room. Deputy Superintendent of Police Jasbir Singh who has been examined as PW4 has stated that there were two residential rooms, one kitchen and one room for fodder. Thus the evidence of the prosecution even with regard to place of recovery and construction available in the house where raid was conducted is contradictory. Still further Investigating Officer has stated that children and wife of the accused were present in the house whereas Jasbir Singh (PW4) has stated that there was no member from the family in the house of the accused when he visited the house. Still further Harpreet Singh Investigating Officer when cross examined has admitted that seals on the parcels are in broken condition and not legible. He also admitted that bags in which the alleged intoxicant stored are in torn condition. Still further when Head Constable Baljinder Singh who took the sample and forwarded it to FSL has stated as under:-

“It is correct that there is no date bearing 5.10.2010 as told by me in my affidavit for forwarding the sample to the office of Chemical Examiner. It is correct that some officials might have gone on 24.9.2009 with samples to the office of Chemical Examiner and these may have returned with some objections. I have not gone with these samples on 24.9.2009 to the office of Chemical Examiner. There might be some other docket/CFSL Form dated 5.10.2009 which I got forwarded to the office of Chemical Examiner.”

Hence the witnesses produced by the prosecution itself have failed to prove the case beyond any reasonable doubt. Still further Jasbir Singh Deputy Superintendent of Police has stated that three forms meant for sending it to Central Forensic Science Laboratory were filled at the spot and sample seals were affixed on those CFSL forms and all three CFSL forms were prepared separately. However, Ex.P1 is the only of one CFSL form which has been produced by the prosecution.

In view of the aforesaid discussion, this Court is of the view that the prosecution has failed to prove the alleged offence of the appellants beyond any reasonable doubt and, therefore, appellants are entitled to the benefit of doubt.

Hence judgment under appeal is set aside and the appeal is allowed.

05.05.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No