

CRA No.S-4002-SB of 2016 (O & M) and
CRA No.S-3954 of 2016 (O & M)

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

CRA No.S-4002-SB of 2016 (O & M)
Date of decision :15.06.2018

Kamaljit Singh

...Appellant

Versus

State of Punjab

...Respondent

CRA No.S-3954-SB of 2016 (O & M)

Manmohan Singh @ Bittu

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Gaurav Saini, Advocate (Legal Aid Counsel)
for the appellant in both the appeals.

Mr. Kirat Singh Sidhu, DAG, Punjab.

ANIL KSHETARPAL, J.

By this judgment, CRA No.S-4002-SB of 2016 and CRA No.S-3954 of 2016 shall stand disposed of as both the appeals are arising from the common judgment passed by the learned trial Judge dated 08.09.2016 whereby both the appellants have been convicted under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo imprisonment which is extracted as under:-

Sr. No.	Name of the accused	Offence under Section	Sentence
1.	Manmohan Singh	22 of NDPS Act	Convicted is sentence to undergo rigorous imprisonment for a period of <u>TEN YEARS</u> and to pay fine of <u>RS.ONE LAC</u> only. In default of payment of fine to further undergo rigorous imprisonment for <u>ONE YEAR</u> .
2.	Kamaljit Singh	22 of NDPS Act	Convicted is sentence to undergo rigorous imprisonment for a period of <u>TEN YEARS</u> and to pay fine of <u>RS.ONE LAC</u> only. In default of payment of fine to further undergo rigorous imprisonment for <u>ONE YEAR</u> .

Facts of the case have been noticed by the learned trial Judge
are as under:-

“2 The brief facts of the prosecution case are that on 24.8.2014, ASI Satnam Singh along with ASI Narinder Singh 1285, HC Amrik Singh 406, C Raj Sukhwant Singh 27/494/1, C Gurinder Singh 1279 and PHG Balwinder Singh were on patrolling duty and going from village Barodi to Block Marji. At around 2 pm, police party reached near petrol pump of HP company near village Barodi, where two young persons bearing patka on their head and having two bags on their shoulders were standing. On seeing the police party, they tried to slip away towards the fields on the left side. Both the said persons were nabbed. The persons who was elder in age disclosed his name as Manmohan Singh @ Bitu, son of Surjit Singh caste Khatri resident of Sanoli Majra, PS Una, Distt. Una, Himachal Pardesh and the other person disclosed his name as Kamrajit Singh @ Babu son of Mohinder Singh, caste Julaha,

resident of H. no. 13 Hajipur, PS Nangal. ASI Satnam Singh disclosed them his name and designation and his place of posting at PS Sadar Kurali. He told that he had suspicion that they were carrying some intoxicant in their bags and wanted to search their persons as well as the bags being carried by them. They were apprised of their legal right to get themselves searched in the presence of Gazetted officer or magistrate. However, both accused reposed faith in him and then he recorded their consent memos on which both the accused along with witnesses signed. They tried to join independent witnesses but none was ready to join the same. Thereafter, the bag of Manmohan Singh was searched by ASI Satnam Singh in the presence of witnesses and out of it 585 strips of proxyvan plus spasmo company were recovered. Each strip was containing 8 capsules. Thus, 4680 capsules were recovered from the bag of Manmohan Singh. 34 plastic bottles rexcof 100 ml each Cipla company were recovered from his bag. Accused could not produce any permit for the possession of the same. Two strips of intoxicating proxyvan capsules were taken out as samples and two sample parcels were prepared and two bottles rexcof were taken out as samples. Thereafter, ASI Satnam Singh searched the bag of accused Kamaljit Singh @ Babu. Out of the

said bag, 540 strips of intoxicating proxyvan plus spasmo company capsules, each strip containing 8 capsules and thus, total 4320 capsules were recovered. 33 plastic bottles rexcof containing 100 ml each cipla company were recovered. Accused Kamaljit Singh could not produce any permit or bill for the same. Two strips of intoxicating proxyvan plus and two bottles rexcof were taken out as samples. The four strips taken as samples from both the accused were put into four plastic containers and similarly four bottles rexcof recovered from both the accused were put into four different plastic containers. The sample parcels were prepared and sealed with seal 'SS'. Thereafter, remaining 4664 capsules were put into one plastic container, 4304 capsules in the second plastic container. 32 bottles rexcof were put into third plastic container and 31 bottles rexcof in forth plastic container. The parcels were prepared and sealed with seal 'SS' Sample seal was prepared. Form no. 29-M was completed. The sample seal was handed over to ASI Narinder Singh no1285. The recovered articles were taken into police possession. Ruqa was sent through C Raj Sukhwant 27/494 for registration of FIR. The inventory was prepared. The accused along with case property was produced before the Ilaqa Magistrate on the next day."

There were three accused including appellants and Surinder Kumar. However, Surinder Kumar has been acquitted, that is how these two appeals have come up for final hearing. Both the appellants are represented by counsel appointed by legal aid.

Prosecution in order to prove its case and bring home the guilt of the appellants have examined Constable Raj Sukhwant Singh (PW1); Head Constable Anmol Singh (PW2); Investigating Officer Satnam Singh Assistant Sub Inspector (PW3); Assistant Sub Inspector Narinder Singh (PW4); Arnavir Singh, Photographer (PW5) and Harpreet Singh, Assistant Sub Inspector, Officiating SHO at Police Station Kurali (PW6).

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgment passed by the Court below and the record.

Learned counsel for the appellant(s) has submitted that prosecution carried out a very shoddy investigation. He drew the attention of the Court to the statement of the Satnam Singh Investigating Officer who has appeared as PW3 in Court in evidence. The relevant parts of the statement of Satnam Singh are extracted as under:-

“During investigation Manmohan Singh accused told me that Surinder Kumar S/o Ram Asra pays them money for bringing the intoxicants. So, accused Surinder Kumar was nominating in the present case u/s 29 of NDPS Act and his arrest warrants were obtained from court then I conducted raid at village sonali District Una from where he was arrested on 4.9.2014. His arrest memo is

Ex.Pw3/L. His personal search memo is EXPw3/M. I identify all the accused present in the court today. I have seen the case property today in court ie parcel ExMO-1 to ExMO-8. Photographs were also got clicked by me in the court room during inventory.”

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“It is incorrect that accused Surinder Kumar runs a chemist shop voltd that brother of accused Surinder Kumar runs a chemist shop however accused Surinder Kumar sit at the chemist shop along with his brother. On the day when accused was arrested the raid was conducted at the chemist shop of brother of accused Surinder Kumar. No recovery was effected from the aforesaid chemist shop. No effort was made to take the accused to the magistrate or Gazetted officer voltd the accused was given option to get the search conducted in the presence of any magistrate or Gazetted officer. Joint consent memo of both the accused was recorded and no separate consent memos were prepared. Efforts were made to join the independent witnesses from public but none was ready. I cannot tell the names of the person who were asked to join the investigation. I did not take any action against the persons who refused to join the investigation. Village Barodi was nearest place from the spot of recovery. I did not sent any official to call a public witness from village

Barodi. I interrogated the accused about the origin of the contraband but he did not disclose the same. The contraband/medicines recovered from the accused were bearing the name of the company, manufacturing date, date of expiry, batch number etc. I did not inquire from the concerned company as to where they have delivered the medicines/drugs in question, throughout my investigation. The ruqa carrier came back to the spot at 7 pm. The information was given to the wife of accused on mobile. I interrogated the accused about the place from where he started before reaching the spot. The accused was on foot. No vehicle was with the accused. No intimation was given from the spot to any senior officer. I did not try to hand over the investigation to any other official after sending the ruqa. The house of the accused was not searched. Surinder Kumar accused was arrested on 4.9.2014.”

While drawing attention of the Court to the aforesaid statement, learned counsel for the appellant(s) has submitted that proper investigation has not been carried out either against Surinder Kumar or his brother who runs a Chemist shop. While elaborating, he submitted that the contraband/medicines recovered were bearing the name of the company, manufacturing date, date of expiry, batch number etc. However, the prosecution did not make any effort to inquire from the concerned company as to where these medicines/drugs were supplied. He hence submitted that the case against the

appellant(s) is not proved beyond reasonable doubt.

He has further submitted while drawing attention of the Court to the Statement of PW4 Assistant Sub Inspector Narinder Singh wherein he admits that there is overwriting of date on Ex.PW3/D, Ex.PW3/L and statement of Constable Raj Sukhwant recorded under Section 161 Cr.P.C. It is apparent from careful examination of Ex.PW3/D that the date under the signature of SHO was originally 23.08.2014 which was converted by overwriting into 24.08.2014. Further on careful examination of Ex.PW3/L, it is apparent that the date 05.09.2014 has been converted into 04.09.2014 by overwriting under the signatures of the Assistant Sub Inspector. Further statement of Constable Raj Sukhwant under Section 161 Cr.P.C. the date has been changed from 29.08.2014 to 30.08.2014. These over-writings as noticed above have been admitted by PW4 Narinder Singh. However, no explanation has been given as to how and why these over-writings over the dates on the respective documents took place.

Learned counsel for the appellant(s) has further submitted that as per the case of the prosecution, the alleged drugs/medicines were carried by both the appellants in separate bags. However, the aforesaid bags have not been named in the case property and the prosecution has failed to explain as to where these bags have gone.

Apart therefrom learned counsel has also pointed out certain minor contradictions which are not required to be discussed.

On the other hand, learned counsel for the State has supported the judgment passed by the learned trial Court and has submitted that both the accused were produced before the learned Judicial Magistrate on

Judicial Magistrate after examining the recovered drugs had passed a detailed order certifying the case property and Assistant Sub Inspector was allowed to break open the seal of the bulk parcel and draw another sample and thereafter representative sample was sealed. Hence he submitted that the argument of learned counsel for the appellant(s) does not have substance.

This Court with the able assistance of learned counsel for the parties has gone through the judgment passed by the learned trial Court and the record.

This Court after evaluating the evidence available on the file is of the considered opinion that in the present case, the prosecution has not fairly conducted the investigation. It has been stated by Satnam Singh Investigating Officer that during interrogation Manmohan Singh (appellant) had disclosed that Surinder Kumar son of Ram Asra (accused No.3), who has been acquitted, used to pay them money for bringing the intoxicants. Surinder Kumar was made accused and his arrest warrants were obtained from the Court. It is alleged that on 04.09.2014 raid was conducted at village Sonali District Una from where he was arrested. In cross examination Satnam Singh also states that brother of Surinder used to run a Chemist shop and Surinder Kumar (accused) used to sit on the aforesaid Chemist shop along with his brother. A raid was also conducted as per the Investigating Officer on the shop of Chemist, which was being run by brother of Surinder Kumar, however, no recovery was effected from the aforesaid Chemist shop. It must be remembered that recovery in the present case is of huge quantity of proxyvan plus sapsmo company capsules and plastic bottles of 100 ml rexcof of cipla company. However, Investigating

company particularly when the contraband/medicines recovered from the accused were bearing name of the company, date of manufacturing, date of expiry, batch number etc. The Investigating Officer ought to have inquired from the manufacturing company or its wholesaler as to who had purchased this huge quantity of medicines which contained contraband. However, Investigating Officer failed to collect the evidence.

Still further the overwriting in the file as submitted by learned counsel for the appellant(s) have remained unexplained. No doubt both the appellants were produced before the learned Judicial Magistrate on 25.08.2014. However, it is the duty of the prosecution to explain as to why there are overwritings of the date in the material documents, which is noting of officiating SHO on the information sent for registration of FIR Ex.PW3/D. Similarly, Ex.PW-3/L, which is arrest memo of Surinder Kumar, again there is an overwriting of the date i.e. 5.9.2014 has been converted into 04.09.2014. Same is the position in the statement of Constable Raj Sukhwant Singh.

Still further, in the present case no independent witness has been associated by the police at the time when the appellants were apprehended and recovery was made. It is the case of the prosecution that the appellants were standing near the road from village Barodi to village Block Majri at 2.00 pm. There was nearby fuel station of HP Company. This area falls in District SAS Nagar, Mohali, which is adjoining town of Chandigarh. Area falls in the jurisdiction of police station Sohana. This entire area is thickly populated being near to Chandigarh. In such circumstances, this Court is required to scrutinize the evidence more

Without repetition, it is apparent that the prosecution has failed to prove its case against the appellants beyond any reasonable doubt. Investigating Officer has even gone on to admit that he did not inform any senior officer and he did not search the house of the accused.

Still further, it is the case of the appellants that they have been falsely implicated due to their dispute between Kamaljit Singh, appellant in CRA-S-4002-SB-2016 and Paramjeet Singh. Suggestions as given to the Investigating Officer are as under:-

“I do not know Paramjit Singh S/o Sham Singh R/o near Railway station Kurali. I also do not know that he has relation at village Badhal Tehsil Anandpur Sahib. I further do not know there was a dispute between Kamaljit Singh who is brother in law of Darshan Singh S/o Sohan Singh. On 24.8.2014 there was a dispute between Kamaljit Singh and Paramjit Singh at their residence. It is also wrong to suggest that at the instance of Paramjit Singh we arrested Kamaljit Singh in his house of Paramjit Singh in the morning and later on at his instance involved in this false case. It is wrong to suggest that no recovery was effected from the accused. It is wrong to suggest that I am deposing falsely.”

Taking into consideration the evidence which has been produced on file and submissions made by the respective counsel for the parties, this Court is of the considered opinion that the prosecution has

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failed to prove its case beyond reasonable doubt.

As per the custody certificate produced, Manmohan Singh (appellant) was involved in another case i.e. FIR No.199 dated 03.09.2008 under Sections 452, 323, 504, 506 and 34 IPC and was acquitted on 30.09.2015 by the learned Judicial Magistrate Ist Class, Una. Appellants Manmohan Singh and Kamaljit Singh is not involved in any other case.

For the reasons recorded above, the appeals are allowed. The judgment passed by the learned trial judge is set aside and the appellants be released forthwith if not wanted in any other case.

15.06.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No