

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

CRA-S-2040-SB-2003

Date of decision:-7.3.2018

Khazan Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Aman Dhir, Advocate as
Legal Aid counsel
for the appellant.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

H.S. MADAAN, J.

This appeal is directed against the judgment/order dated 15.10.2003 passed by Judge, Special Court, Kapurthala vide which accused Khazan Singh was convicted for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*the Act*') and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.25,000/- and in default thereof, to further undergo rigorous imprisonment for three months.

The accused-convict – Khazan Singh, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that on 15.7.2000, when a police party from Police Station Sultanpur Lodhi led by ASI Surinder Singh was present at culvert of Bein in the area of village Kalewal in connection with patrolling and for checking of anti-social elements then accused Khazan Singh was spotted coming carrying a plastic bag on his back; that when he was asked to stop for checking, he opened the mouth of the plastic bag and it was found to contain poppy husk; that the accused could not produce any licence for keeping poppy husk; that ASI Surinder Singh, the Investigating Officer took out a sample of 250 gms. from the bag and on being weighed, the remaining contents came out to be 7 kgs. ; that separate parcel of the sample and that of bulk were prepared, which were sealed; that sample seal impressions were taken; that the case property was taken into police possession. Ruqa was sent to the police station, on the basis of which formal FIR was registered. Accused was arrested in this case. On return to the police station, the Investigating Officer produced the case property before SHO Sarup Singh, who affixed his own seal on sample parcel and bulk parcel. Specimen seal impression of SHO were prepared and then the SHO had deposited the case property with the MHC. During the course of investigation, sample was sent to the office of Chemical Examiner, Jalandhar and as per report received therefrom, it was to be of poppy head.

After completion of investigation and other formalities, challan against accused Khazan Singh, who was arrested at the spot was prepared and filed in the Court of Judge, Special Court, Kapurthala.

On presentation of challan in the Court of Judge, Special Court, Kapurthala, he supplied copies of documents relied upon in the challan to the accused Khazan Singh free of cost as provided under Section 207 Cr.P.C.

Learned Judge, Special Court, Kapurthala finding that charge for offence under Section 15 of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as six witnesses, namely Constable Surjit Singh as PW1, Constable Varinder Kumar as PW2, ASI Surinder Singh as PW3, ASI Davinder Singh as PW4, ASI Sakattar Singh as PW5 and ASI Salwinder Singh as PW6.

With that the prosecution evidence stood closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case and nothing was recovered from him.

During his defence, accused examined Piara Singh as DW1, Diwan Singh as DW2 and Rajiv Kumar as DW3.

With that defence evidence was closed.

After hearing arguments, learned Judge, Special Court, Kapurthala convicted and sentenced the accused as mentioned supra,

which left appellant – accused Khazan Singh aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Punjab besides going through the record.

Here ASI Surinder Singh appearing as PW3 and ASI Salwinder Singh appearing as PW6 supported the prosecution story on material aspects as regards recovery of contraband from the accused on 15.7.2000 in the area of culvert of Bein village Kalewal. Both of them were cross-examined at length on behalf of the accused but they remained unshattered and unanimous regarding material details of the episode. A few minor contradictions in their statements do not go to root of matter since those are bound to occur due to different power of perception and retention of events, lapse of memory due to passage of time etc. The PWs are not shown to have any previous enmity with the accused so as to involve him in this case wrongly or to depose against him falsely. Due credibility is attached to their testimonies. As per report Ex.PG by Assistant Chemical Examiner, Jalandhar, the sample sent was found to be of poppy head/poppy husk. From the affidavit Ex.PA of PW2 Constable Varinder Kumar, it comes out that no tampering of seals had taken place during the case property remained in his possession, therefore adequate link evidence is there. PW1 Constable Surjit Singh happened to be formal witness, who on 15.7.2000 had delivered the special report to Illaqa Magistrate and higher police officers. PW4 ASI Davinder Singh had recorded formal FIR Ex.PC/1 on receipt of ruqa Ex.PC. A perusal of the

impugned judgment goes to show that during the course of arguments, learned defence counsel had raised various objections with regard to violation of Section 50 of the Act, link evidence being missing and non-examination of independent witness etc. However, the trial Court has dealt with all such aspects in a proper and appropriate manner. As regards the contention with regard to violation of Section 50 of the Act, it has been observed that since it happened to be a chance recovery, which as a matter of fact had not effected as a result of personal search of accused, therefore, there was no occasion to give offer to the accused in terms of Section 50 of the Act. The case law in that regard had been discussed observing that Section 50 applies to personal search only and since in the present case recovery was not effected as a result of personal search and as per prosecution story accused himself had opened the mouth of the bag, which he was carrying, there was no requirement of giving offer to the accused of his search in presence of a gazetted officer or a Magistrate etc. and the prosecution story does not suffer in any manner. In para No.11 of the impugned judgment, in light of the case law it is observed that provisions of Section 55 of the Act are directory in nature and not mandatory, therefore non-compliance of Section 55 is of no help to the accused. I do not find anything wrong with such observations.

In para No.12 of the impugned judgment, the objection regarding missing of link evidence has been discussed finding that it was not borne out from the record and in para No.13 objection with regard to non-examination of independent witness has been discussed in detail observing that the prosecution story is not adversely affected in any

manner.

The impugned judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas the appeal is found to be without any merit and the same is dismissed accordingly.

Khazan Singh appellant – accused is stated to be on interim bail granted to him by this Court. His bail is cancelled and he is directed to surrender forthwith. However, Chief Judicial Magistrate, Kapurthala is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

7.3.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No