

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

Criminal Appeal No.S-2526-SB of 2004 (O&M)

Date of Decision: 30.08.2019

Choona Ram

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Ms. Divya Godara, Advocate for the appellant.

Mr. Harpreet Singh Multani, Asstt. Advocate General, Punjab
for the respondent/State.

MAHABIR SINGH SINDHU, J.

Present appeal has been preferred against the impugned judgment and order dated 30.11.2004 & 01.12.2004, respectively, passed by learned Special Judge, Jalandhar (*hereinafter referred as 'trial Court'*), vide which, appellant was convicted for an offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'the Act'*) and sentenced to undergo rigorous imprisonment for a period of two and a half years along with fine of ₹ 10,000/- with a default clause to further undergo rigorous imprisonment for two months.

Brief facts of the prosecution case are that on 11.06.2000, Sub-Inspector/SHO Dharam Pal (PW-3) along with S.I. Amarjit Singh (PW-4), H.C. Sukhdev Singh and other police officials were going on patrolling duty in the official vehicle, being driven by C. Rattan Lal, from Village Lamba to Suchi. Appellant was spotted coming from Village Suchi side, carrying a polythene bag in right hand. On seeing the police party, he

tried to turn back, but on suspicion, PW-3 with the help of other police officials apprehended him. On asking, he disclosed his name as Choona Ram and in the meantime, one Puran Chand also came there and he was joined as a public witness. PW-3 asked the appellant that there is a suspicion of some contraband in his possession, therefore, his search was to be conducted. Consequently, appellant was given an offer as to whether he wanted his search to be conducted in the presence of a Gazetted Officer or a Magistrate. In response thereto, appellant opted to be searched before a Gazetted Officer, vide his consent memo (Ex.PC), duly signed by him and attested by public witness-Puran Chand as well as S.I. Amarjit Singh (PW-4). PW-3 sent a wireless message to DSP Rajjit Singh of City-I, Jalandhar (PW-5), requesting him to come at the spot and he reached there within 20 minutes. PW-5 disclosed his identity to the appellant and made an offer for his search either before him or Magistrate or any other Gazetted Officer, but the appellant reposed confidence in him. Thereafter, under the supervision of DSP, search of the appellant was conducted by PW-3, leading to the recovery of 1.5 Kgs. *Opium*, wrapped in a glazed paper from a plastic container in the polythene bag, carried by him in the right hand. Out of which, one sample of 50 grams was separated for chemical examination by converting it into a small parcel. Remaining contraband i.e. 1 Kg. 450 grams was put into the same container and converted as a separate parcel. The sample along with the residue were sealed separately with the seal impression 'DP' and 'RS' of PW-3 and PW-5, respectively. After use, seal of PW-3 was handed over to the public witness, namely, Puran Chand; whereas DSP retained his seal 'RS' with himself. Both

the parcels were taken into police possession, vide memo (Ex.PE). Appellant was taken into custody, vide memo (Ex.PE/1). On his personal search, ₹ 135/- were recovered, vide memo (Ex.PE/2). Ruqa (Ex.PF) was sent to the Police Station, on the basis of which, formal FIR No.130 dated 11.06.2000 (Ex.PF/1), under Section 18 of the Act was registered at Police Station Division No.8, Jalandhar. Rough Site Plan (Ex.PG) of the place of recovery was prepared and case property was deposited with the MHC Nanak Singh (PW-2). Appellant was produced before the Illaqa Magistrate along with case property at 09:30 PM on the same day and again, the case property was deposited with the MHC. After completion of investigation and on receipt of Chemical Examiner's report (Ex.PH), challan under Section 173 of the Code of Criminal Procedure (*Cr.P.C.*) was submitted before the Court of competent jurisdiction on 09.09.2000. Copy of challan papers were supplied to the appellant free of cost in terms of Section 207 Cr.P.C. FSL report (Ex.PH) was received with the result as '*Opium*'.

Learned trial Court *prima facie* found that the offence under Section 18 of the Act was made out and thus, the appellant was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined following five witnesses:-

<i>PW-1</i>	:	<i>Constable Sewa Singh;</i>
<i>PW-2</i>	:	<i>H.C. Nanak Singh;</i>
<i>PW-3</i>	:	<i>I.O./S.I./SHO Dharam Pal;</i>
<i>PW-4</i>	:	<i>S.I. Amarjit Singh;</i>
<i>PW-5</i>	:	<i>DSP Rajjit Singh</i>

S.I. Sukhjit Singh, member of the police party, was given up being unnecessary by learned A.P.P. on 13.11.2000. Thereafter, public witness, namely, Puran Chand was also given up on 15.04.2002 as having been won over by the appellant.

Prosecution also produced the following documentary evidence in support of their case:-

<i>Ex.PA</i>	:	<i>Affidavit of PW-1 C. Sewa Singh</i>
<i>Ex.PB</i>	:	<i>Affidavit of PW-2 H.C. Nanak Singh</i>
<i>Ex.PC</i>	:	<i>Consent memo of appellant, prepared by S.I. Dharam Pal (PW-3)</i>
<i>Ex.PD</i>	:	<i>2nd consent memo, recorded by DSP Rajjit Singh (PW-5)</i>
<i>Ex.PE</i>	:	<i>Recovery Memo</i>
<i>Ex.PE/1</i>	:	<i>Arrest Memo</i>
<i>Ex.PE/2</i>	:	<i>Recovery Memo of ₹ 135/-</i>
<i>Ex.PF</i>	:	<i>Ruqa</i>
<i>Ex.PF/1</i>	:	<i>F.I.R.</i>
<i>Ex.PG</i>	:	<i>Rough Site Plan</i>
<i>Ex.PH</i>	:	<i>Chemical Examiner Report</i>

The entire incriminating material was put to the appellant under Section 313 Cr.P.C., but he denied the same and claimed innocence. He claimed false implication by the police in connivance with his employer under whom he was working as labourer in the factory, namely, Aggarwal Hand Tools, Industrial Estate, Jalandhar and his explanation is as under:

“I am innocent and I was working as a labourer in the factory, namely, Aggarwal Hand Tools, Industrial Estate,

Jalandhar. On 10.06.2000, I quarrel with owner of the factory regarding wages of my labour in the presence of Prem, another labourer of the factory. But the owner of the factory did not make any payment of my labour. He handed over me to the P.S. Division No.8 and police implicated me in this case.”

To support the above explanation and in his defence, co-worker Prem was produced as DW-1 by the appellant.

After taking into consideration the entire material available on record, learned trial Court came to the conclusion that prosecution has duly proved the charge against the appellant; held him guilty under Section 18 of the Act and sentenced in the terms as mentioned in the opening para of this order.

It is contended on behalf of the appellant that impugned judgment of conviction and order of sentence are not legally sustainable while raising the following points:-

- (i) there is non-compliance of Section 50 of the Act;*
- (ii) independent witness-Puran Chand, who was joined with the raiding party, had not been examined by the prosecution, thus, the prosecution case becomes doubtful;*
- (iii) since the seal of PW-3 bearing impression 'DP', after its use, was handed over to above independent witness-Puran Chand, thus, due to his non-examination, recovery becomes suspicious;*
- (iv) prosecution has failed to prove the recovery of contraband from the appellant as the column of Form M-29 regarding the serial number as well as date are left blank by the SI/SHO (PW-3) as well as Senior Superintendent of Police, Jalandhar while forwarding the sample to the Chemical Examiner.*

(v) Appellant, who was working as a labourer, originally belonged to State of Rajasthan and can read and write only Hindi language, but the entire police proceedings were conducted in Punjabi language. Even learned trial Court also recorded the statement of appellant under Section 313 Cr.P.C. as well as testimonies of prosecution witnesses only in Punjabi and English language, thus, a great prejudice has been caused to the appellant.

On the other hand, learned State Counsel has vehemently opposed the contentions raised on behalf of the appellant and prayed for dismissal of the appeal while submitting that there is due compliance of Section 50 of the Act. Further submitted that charge against the appellant has been duly proved beyond reasonable doubt and mere non-examination of the independent witness will not help him in any manner.

Heard learned Counsel for the parties and perused the record.

PW-1 Constable Sewa Singh and PW-2 HC Nanak Singh are formal witnesses, who produced their affidavits (Ex.PA and Ex.PB), respectively.

PW-3 S.I. Dharam Pal deposed that on 11.06.2000, he was posted as SHO, Police Station Division No.8, Jalandhar. On that day, he along with S.I. Amarjeet Singh, HC Sukhdev Singh and other police officials were on patrolling duty and going from *Pind* (Village) Lamba to Suchi, then appellant was spotted coming from Suchi side, carrying a polythene bag in right hand. Upon noticing the police party, he tried to turn back, but on suspicion, was stopped with the help of other police officials. On asking, appellant disclosed his name as Chuna Ram s/o Harkha Ram and in the meantime, one independent person, namely, Puran Chand also came there and he was joined with the police party. PW-3 asked the appellant that there is a suspicion of

some contraband in his possession, therefore, his search was to be conducted. Consequently, an offer was given to the appellant as to whether he would like to be searched before a Gazetted Officer or a Magistrate. In response thereto, appellant gave his consent to be searched in the presence of a Gazetted Officer and consent memo (Ex.PC) was signed by Puran Chand as well as S.I. Amarjit Singh. Thereafter, a wireless message was sent to DSP City-1, namely, Rajjit Singh (PW-5) to reach at the spot and he came there within 20 minutes. PW-5, after disclosing his identity to the appellant, made an offer whether he wanted his search to be conducted in the presence of any other Gazetted Officer or a Magistrate. The appellant reposed confidence in PW-5 by way of consent memo (Ex.PD) in the presence of both the above witnesses i.e. S.I. Amarjit Singh and Puran Chand. Ultimately, under the supervision of PW-5, search of the appellant was conducted by PW-3, leading to the recovery of 1.5 Kgs. *Opium*, wrapped in a glazed paper, concealed in a plastic container, lying in the polythene bag. Out of the total contraband, one sample of 50 grams was drawn, put into a small container and parcel was prepared; whereas the residue weighing 1 Kg. 450 grams was put in the same container, from which, the contraband was recovered and converted in a separate parcel. Both the parcels were sealed separately with the seal impressions 'DP' and 'RS' of PW-3 and PW-5, respectively. Specimen seals were also prepared. Seal of PW-3, after its use, was handed over to public witness-Puran Chand, while PW-5 retained his seal with himself. Parcels were taken into possession, vide recovery memo (Ex.PE) and which were attested by Puran Chand, PW-5 as well as PW-4. Appellant was arrested, vide memo (Ex.PE/1) and his personal search was also

conducted, leading to the recovery of ₹ 135/-, vide memo (Ex.PE/2). Thereafter, *Ruqa* (Ex.PF) was sent to the Police Station and on the basis of which, formal FIR (Ex.PF/1) was registered by S.I. Sukhjit Singh. Rough Site Plan of the place of recovery was prepared as Ex.PG with correct marginal notes. Statements of PWs were recorded at the spot and after coming to the Police Station, case property was deposited with MHC Nanak Singh (PW-2). Report of the chemical examiner was received, which was brought on record as Ex.PH and challan in this case was prepared by S.I. Swaran Singh.

During cross-examination, this witness admitted that it was not mentioned in the *Ruqa* as to whether appellant wanted his search to be conducted from any Magistrate or Gazetted Officer, however, he stated that appellant was orally apprised about his rights to be searched before a Magistrate or Gazetted Officer, but this fact has not been incorporated in the *Ruqa* (Ex.PF) or Consent Memo (Ex.PC). He further stated that the consent memo (Ex.PD), prepared by PW-5, was not attested by him. He also acknowledged that in the recovery memo (Ex.PE), it is not mentioned that appellant was given an offer to be searched either from Gazetted Officer or a Magistrate.

This witness candidly stated that there is no *Haveli* (residential house) near the *Naka* (barricade), but only an electric bulb was there on a Tubewell *Kotha* when the police proceedings were conducted. He acknowledged that in the Site Plan (Ex.PG), Tubewell *Kotha* is mentioned as *Haveli* of Ajit Singh. This witness candidly stated that appellant had put his signatures in Hindi on consent memos. After seeing the case property, this

witness admitted that it does not bear any seal or signature of the Illaqa Magistrate. Police did not call any Sarpanch or Lambardar from the Village to join the investigation. On one hand, this witness stated that it was sunlight at the time of recovery, but on the other hand, deposed that police party remained on the spot till 10:00 PM. He again stated that writing work was done in the day light as well as during night with the help of electric bulb on the tubewell *Kotha*, which was switched on by them as the switch board was outside the *Kotha*.

PW-4 S.I. Amarjit Singh stated that on 11.06.2000, he was posted at Police Station Division No.8 and on that day, he along with SI/SHO Dharam Pal as well as other police officials were on patrolling duty. While going from *Pind* (Village) Lamba to Suchi, they had put a barricade on the *katcha* path (passage), then appellant was seen coming from Canal side in the area of Suchi *Pind*. Upon noticing the police party, he tried to turn back, but on suspicion, he was apprehended. PW-3 asked him that there is a suspicion of some contraband in his possession, therefore, his search was to be conducted. Appellant was informed that he has a right to be searched either before some Gazetted Officer or a Magistrate, but he opted to be searched in the presence of Gazetted Officer. Consequently, his Consent Memo (Ex.PC) was prepared. A wireless message was sent to PW-5 with the request to come at the spot by PW-3. Thereafter, PW-5 reached on the spot and after disclosing his identity to the appellant, he asked him as to whether the appellant wanted his search to be conducted by him (PW-5) or any other Gazetted Officer or Magistrate. The appellant reposed confidence with PW-5, vide his consent memo (Ex.PD).

Thereafter, on the direction of PW-5, the search of appellant was conducted by PW-3, leading to the recovery of 1.5 Kg. *Opium*.

During cross-examination, this witness stated that *Naka* (barricade) was held at about 2:30 PM on the fateful day and *Suchi Pind* is at a distance of 100/150 yards from that place. He further stated that before arrival of the appellant, number of persons passed through the place of recovery and were checked, but he cannot tell the names or vehicle numbers. No one from *Suchi Pind* was joined during investigation. He acknowledged that *Puran Chand* belongs to *Chugitti Village*, which is at a distance of 6/7 Kms. from the place of recovery and he is neither a *Namberdar*; nor a Member Panchayat, but an ordinary person. This witness again stated that there is a *Haveli* of *Ajit Singh* near the place of recovery and someone was sent to call said *Ajit Singh*, but he was not present at that time. This witness has seen the Site Plan (Ex.PG), but candidly stated that there is no light shown in the *Haveli* of *Ajit Singh*. Further stated that Canal was on the western side of the appellant from where he was coming, whereas *Suchi Pind* was on the eastern side. This witness denied that appellant came from *Suchi Pind* side, but his attention was drawn towards Ex.DA, wherein it is so recorded and even in the Site Plan (Ex.PG) also, it is shown that appellant came from *Suchi Pind* side. He further stated that in the consent memos (Ex.PC and Ex.PD), it is not mentioned that appellant was told about his legal right to be searched before some Gazetted Officer or Magistrate. He also admitted that FIR number and other details are mentioned on both the consent memos (Ex.PC and Ex.PD) as well as recovery memo (Ex.PE). According to this witness, *Puran Chand* arrived at the spot after 10

minutes of spotting the appellant. This witness stated that he had neither seen Form M-29/CFSL Form; nor aware as to whether the same was filled up on the spot or not? This witness specifically admitted that he has neither seen the case property; nor ₹ 135/- recovered from the appellant during trial. According to this witness, writing work was done in the *Haveli* of Ajit Singh with the help of electric light, but Ajit Singh was not there. Further stated that some persons were residing in the *Haveli*, however, none of them was joined during investigation.

PW-5 deposed that on 11.06.2000, he was posted as DSP, City-1, Jalandhar and on that day, he received a wireless message from PW-4 to come at the spot. Upon this, he reached there and found that he (PW-4) along with other police officials including PW-3 and appellant were present. Puran Chand was also there with the police party. After disclosing his identity, PW-5 informed the appellant that he has a legal right to be searched either from any other Gazetted Officer or Magistrate, vide consent memo (Ex.PD), attested by PW-4 and Puran Chand. He directed PW-3 to conduct the search of appellant and that led to the recovery of 1.5 Kgs. *Opium*, wrapped in a glazed paper, kept in a plastic container. Out of total contraband, one sample of 50 grams was drawn and after putting it into a container, parcel was prepared, whereas residue weighing 1 Kg. 450 grams was put in the same container, from which, the contraband was recovered and that was put in a separate parcel. Both the parcels were sealed separately with the seal bearing impressions 'DP' and 'RS' of PW-3 and PW-5, respectively. Further deposed that seal after use bearing impression 'RS' was retained by him, whereas seal of PW-3 was handed over

to independent person-Puran Chand and these parcels were taken into police possession, vide recovery memo (Ex.PE).

During cross-examination, this witness stated that he received the information at about 05:10 PM to the effect that a suspect has been apprehended by PW-3 and his search was to be conducted. He reached on the spot at about 05:30 PM and place of recovery was stated to be agricultural land, away from the village *abadi*. As per the testimony of this witness, he did not enter into the *Haveli* of Ajit Singh and unable to say as to whether somebody resides inside the Haveli or not? He also stated that no one was sent to *Haveli* to enquire as to who was residing inside, but he acknowledged that *Haveli* is at a distance of 15 yards from the place of recovery. This witness candidly stated that he did not mention in the consent memo (Ex.PD) that appellant was informed about his right to be searched in the presence of a Gazetted Officer or a Magistrate. He had also not mentioned in the consent memo (Ex.PD) that appellant was asked for his search to be conducted from some other Gazetted Officer. He categorically admitted that FIR number and particulars of the case were duly mentioned in the consent memos (Ex.PC and Ex.PD) as well as recovery memo (Ex.PE). He also stated that in his presence, neither any police official(s) offered his search to be conducted before searching the appellant; nor anything in this regard was recorded in the recovery memo (Ex.PE). During trial, this witness had neither seen the case property; nor currency notes, recovered from the appellant. He acknowledged that no other documents except consent memo and recovery memo were signed by him. He did not conduct the personal search of the appellant.

According to this witness, neither he had seen Form M-29; nor the same was filled up on the spot. He also stated that writing work was done outside the *Haveli* in the street light.

DW-1 Prem deposed that he was working as a Labourer in Aggarwal Hand Tools, Industrial Estate, Jalandhar and he knew appellant-Chuna Ram. He stated that appellant was working with him in the same factory at a salary of ₹ 4500/- per month. On 10.06.2000, appellant demanded his wages from the owner, which were pending for the last three months, but he did not pay the same. Consequently, there were exchange of words between appellant and the owner. Thereafter, appellant was caught hold by the owner and after calling the police, was taken into custody. Also stated that appellant was falsely implicated in this case at the instance of factory owner and no contraband was ever recovered from him.

During cross-examination, this witness stated that he is not a summoned witness, but at the same time, denied the suggestion that he is close relative of the appellant or deposing falsely.

As per the case of the prosecution, the recovery in this case was effected from a polythene bag, carried by the appellant in his right hand and as per cross-examination of PW-5, he was not informed about his right to be searched before any other Gazetted Officer or a Magistrate. Thus, it cannot be said that there was a due compliance of Section 50 of the Act.

Careful perusal of the records reveal that appellant originally belonged to State of Rajasthan, but engaged as a labourer in the factory, namely, Aggarwal Hand Tools, Industrial Estate, Jalandhar and getting

monthly salary of ₹ 4500/-. It transpires that entire police proceedings leading to the recovery of contraband were conducted by PW-3 as well as PW-5 in Punjabi language, but appellant was not able to read the Punjabi language. Nothing has been brought to the notice of this Court on behalf of the State to substantiate that consent memos and recovery memos (Ex.PC, Ex.PD, Ex.PE & Ex.PE/2), which were recorded in Punjabi language, had ever been explained to the appellant in Hindi language, which he was only able to read and write.

Even the statement of the appellant under Section 313 Cr.P.C. as well as testimonies of the prosecution witnesses were recorded by learned trial Court in Punjabi and English language as a routine matter, but there is no specific indication that he was properly explained about the contents of the same. Undoubtedly, prosecution of an accused for possession of *Opium* under the Act entails serious consequences, thus, every suspect must be afforded fair treatment by the Investigating Officer as well as during trial so that there may not be any prejudice caused to him in any manner on account of his lack of awareness about the recording of police proceedings, statement under Section 313 Cr.P.C. and evidence during trial.

To support the above reasoning, learned Counsel for the appellant produced the judgment of a Single Bench of Madhya Pradesh High Court, reported as **2005(3) MPLJ 208, 'Ramaswamy Versus State of M.P.'**, where conviction of a person under Section 8(c) and 21 of the Act was set aside in view of the fact that the proceedings were conducted in Hindi language by the Investigating Officer as well as during trial; whereas the convict was resident

of Chennai (Tamil Nadu) and the relevant observations made in para 13 of the above judgment read as under:-

“There is no material on record in order to show that whatever the procedure of investigation was adopted by the Investigating Officer was explained to accused/appellant in his own language or in English language. Thus, the entire proceedings and investigation which was conducted against the appellant is one sided and it cannot be said that the appellant was acquainted or was informed that what is being done against him.”

This Court fully agreed with the opinion expressed by learned Single Judge of Madhya Pradesh High Court in the above cited case and moreover, no contrary precedent has been cited by learned State Counsel in this regard. Even otherwise, it is well settled law that fair trial is the cardinal principle of criminal jurisprudence in a civilized society and the suspect must be made aware about the criminal proceedings inflicted upon him/her right from the initial stage upto the conclusion of trial, otherwise, that would be complete travesty of justice.

There is another important aspect of the matter that as per the prosecution case itself, one independent witness, namely, Puran Chand was joined from the very beginning by PW-3 to conduct the search of the appellant, leading to the recovery of the contraband, but he had been given up merely on the asking of the Public Prosecutor stating that independent witness was won over by the appellant. Concededly, even the examination-in-chief of independent witness-Puran Chand was not recorded in the matter, therefore, it is not conceivable as to on what basis, learned trial Court formed an opinion that he was won over by the appellant. In every police-paper i.e. consent

memos and recovery memos (Ex.PC, Ex.PD, Ex.PE and Ex.PE/2), Puran Chand was stated to be a witness, more importantly, the seal bearing impression 'DP' of PW-3, after its use, was handed over to this independent witness, thus, his presence was most material to prove the factum of recovery of contraband from the appellant.

In view of the facts and circumstances, discussed hereinabove, this Court is of the firm opinion that the course adopted by learned trial Court while acceding to the request of the prosecution to give up this material witness is wholly unacceptable. It seems that learned trial Court just preferred to concentrate on the prosecution evidence, which was relevant to secure the conviction of the appellant instead of searching for the truth, which is ultimate purpose of a criminal trial.

While dealing with the consequences of giving up of a material witness in a criminal trial, the Hon'ble Supreme Court in '**State of U.P. and another versus Jaggo alias Jagdish and others**', AIR 1971 SC, 1586 held that witness, whose evidence is essential to unfold the narrative as well as to elicit the correct facts, should be called for examination and mere presentation of an application to the effect that a witness had been won over was not conclusive of the question that the witness has been won over. Reference, in this regard, can be made to Paragraphs 14, 15 and 16 thereof, which read as under:-

“14. The High Court was also correct in referring to two other features of the prosecution case. The first is that Ramesh who was mentioned in the first information report was not examined. The second was about the medical evidence.

- 15.** *Ramesh is the person with whom Lalu was talking at the time of the alleged occurrence. Ramesh was mentioned in the first information report. It is true that all the witnesses of the prosecution need not be called but it is important to notice that the witness whose evidence is essential to the “unfolding of the narrative” should be called. This salutary principle in criminal trials has been stressed by this Court in the case of Habeeb Mohammad v. The State of Hyderabad, 1954 SCR 475 = (AIR 1954 SC 51), for eliciting the truth. The absence of Ramesh from the prosecution evidence seriously affects the truth of the prosecution case.*
- 16.** *This Court in Habeeb Mohammad's case, 1954 SCR 475 = (AIR 1954 SC 51) (supra) referred to the observations of Jenkins, C. J. in Ram Ranjan Roy v. Emperor, ILR 42 Cal 422 = (AIR 1915 Cal 545) that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a public prosecutor is to represent the administration of justice so that the testimony of all the available eye-witnesses should be before the Court. Lord Roche in Stephen Seneviratne v. The King, AIR 1936 PC 289, referred to the observations of Jenkins, C.J. and said that the witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution. That is why this Court in Habeeb Mohammad's case, 1954 SCR 475 = (AIR 1954 SC 51) (supra) said that the absence of an eye-witness in the circumstances of the case might affect a fair trial. On behalf of the appellant it was said that Ramesh Chand was won over and therefore the prosecution could not call Ramesh. The High Court rightly said that the mere presentation of an application to the effect that a witness had been won over was not conclusive of the question that the witness has been won over. In such a case Ramesh could have been produced*

for cross-examination by the accused. That would have elicited the correct facts. If Ramesh was an eye-witness the accused were entitled to test his evidence particularly when Lalu was alleged to be talking with Ramesh at the time of the occurrence.”

Apart from the above, PW-5 had candidly acknowledged while recording his testimony that FIR number was already recorded in both the consent memos (Ex.PC and Ex.PD), respectively, as well as recovery memo (Ex.PE). Even PW-4 S.I. Amarjit Singh also admitted during his cross-examination that FIR number and other details of the case were duly recorded in both the consent memos as well as recovery memo. Therefore, this Court has no hesitation to observe that recovery of the contraband from the appellant is wholly doubtful and seems to be planted which was satisfactorily explained by the appellant while recording his statement under Section 313 Cr.P.C. before learned trial Court and duly supported by DW-1.

Again, neither PW-4; nor PW-5 have seen the case property in the Court during trial. Even both these witnesses are self contradictory to each other about the recording of police proceedings in the *Haveli* of Ajit Singh. According to PW-4, the writing work was done inside the *Haveli*, but he candidly acknowledged that as per Site Plan (Ex.PG), there is no light shown in the *Haveli*. On the other hand, PW-5 deposed that he neither entered the *Haveli* of Ajit Singh; nor anybody was sent to enquire as to who was residing in the *Haveli*. Thus, it seems that no writing work was done on the spot as alleged by the prosecution; rather the papers were completed just sitting in the Police Station.

In view of the facts and circumstances, discussed hereinabove, the irresistible conclusion is as under:-

- 1). giving up of the independent witness-Puran Chand had caused a great prejudice to the case of the appellant and deprived him right of cross-examination of the prosecution witnesses on the point of recovery of contraband;*
- 2). due to non-examination of independent witness, prosecution has failed to prove the seal bearing impression 'DP' of S.I. Dharam Pal (PW-3), affixed on the case property, thus, recovery becomes doubtful;*
- 3). there is no serial number and date entered by PW-3 and Senior Superintendent of Police while sending Form M-29 to the Forensic Laboratory;*
- 4). there are material contradictions in the testimonies of PW-4 and PW-5 regarding the recording of police proceedings;*
- 5). since particulars of FIR were already recorded on the top of the consent memos (Ex.PC and Ex.PD) as well as recovery memo (Ex.PE), thus, the prosecution case becomes wholly doubtful;*
- 6). learned trial Court did not properly consider the explanation of appellant under Section 313 Cr.P.C. and the testimony of defence witness (DW-1 Prem), who seems to be thoroughly trustworthy.*
- 7). entire police proceedings were recorded by PW-3 and PW-5 in Punjabi language and learned trial Court also recorded the statement of appellant under Section 313 Cr.P.C. as well as testimonies of prosecution witnesses in Punjabi and English languages, knowing fully well that appellant was merely a labourer, migrated from Rajasthan, who could read and write only Hindi language, thus, a great prejudice has been caused to him.*

In view of above, this Court has no option except to allow the present appeal and set aside the impugned judgment of conviction and order of

sentence dated 30.11.2004 and 01.12.2004, respectively, passed by learned Special Judge, Jalandhar and acquit the appellant from the charge under Section 18 of the Act.

Ordered accordingly.

Appellant is stated to be on bail, therefore, his bail bonds as well as surety bonds stand discharged.

Before parting with the order, this Court feels it obligatory in the interest of justice that appellant, a poor labourer, who travelled from Rajasthan to Punjab for earning his livelihood, was implicated in such a serious case only on asking of his wages and waiting for his graceful acquittal for the last 20 years, deserves an ointment to his sufferings. Consequently, State of Punjab is burdened with costs of ₹ 50,000/- (fifty thousand only) to be paid to the appellant.

August 30, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>