

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

(1) CRA-D-133-DB of 2016

Lachhman Singh

.... Appellant

Versus

State of Punjab

..... Respondent

(2) CRA-D-385-DB of 2016

Mandir Singh

.... Appellant

Versus

State of Punjab

..... Respondent

Reserved on : 31.10.2019

Date of decision : 10.12.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate,
for the appellants.

Mr. H.S. Grewal, Addl. A.G., Punjab.

* * *

RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both these appeals, i.e. CRA-D-133-DB of 2016 and CRA-D-385-DB of 2016, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against the judgment and order dated 08.01.2016, rendered by learned Judge, Special Court, Moga, in Sessions Case No. 151 dated 02.09.2014, whereby appellants Lachhman Singh and Mandir Singh, who were charged with and tried for the offence punishable under Section 15 (c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'), were convicted and sentenced thereunder to undergo rigorous imprisonment for a period of twelve years and to pay a fine of ₹ 1,25,000/- each, and in default of payment of fine to further undergo rigorous imprisonment for one year.

3. The case of the prosecution, in a nutshell, is that on 21.07.2014, Inspector Prem Singh, In-charge CIA Staff, Moga, along with ASI Baljinder Singh, ASI Sukhwinder Singh and other police officials, was on patrolling. At about 2.00 PM, when the police party reached on canal minor bridge, situated on link road leading from village Attari to village Chuhar Chak, then from the side of village Chuhar Chak, one Gypsy of white colour, came at a high speed. The driver got perplexed. He applied brakes. He tried to turn back the vehicle. The Investigating Officer with the help of his companions managed to stop the vehicle. On interrogation, driver of Gypsy bearing registration No. CH 01G 1005 disclosed his name as Lachhman Singh. The person sitting by driver's seat disclosed his name as Mandir Singh. On search of back side of Gypsy, five plastic bags containing something were found lying in it. The Investigating Officer told them that there was some intoxicant substance in the plastic bags lying in their Gypsy. Their search and search of the plastic bags was to be conducted. They had legal right to get their search and search of the bags conducted in the

presence of some Gazetted Officer or Magistrate. The accused opted to get the search conducted in presence of some Gazetted Officer. In this regard, separate non-consent memos were prepared. It was about 2.30 PM, when the Investigating Officer requested Shri Harpal Singh, Deputy Superintendent of Police (D), Moga, to reach at the spot. The Deputy Superintendent of Police (D), Moga, reached the spot. He disclosed his identity to the accused. He told them that some intoxicant substance was suspected to be there in the plastic bags loaded in their Gypsy. Search of the Gypsy was to be conducted. They were apprised that they had legal right to get their search and search of their Gypsy conducted in presence of some Magistrate or some other Gazetted Officer. The accused reposed confidence in Deputy Superintendent of Police. Their separate consent memos were prepared. On search of plastic bags, poppy husk was recovered. The plastic bags were given serial No.1 to 5. From each bag, two samples of 250 grams each were taken out and made into parcels. Samples were also given serial No.1 to 5, which in all were ten in number. Each bag was found to be containing 29 Kgs. 500 grams of poppy husk. Sample parcels and bulk parcels were sealed by the Investigating Officer with his seal bearing impression "PS". Sample seal impression on form M-29 was prepared separately. The Investigating Officer handed over his seal to ASI Baljinder Singh. Sample parcels, bulk parcels and sample seal impression were taken into police possession through separate memo. Accused were arrested. The sample parcels were sent to the office of Chemical Examiner for analysis. After receipt of report of the Chemical Examiner and completion of investigation, the challan was put up.

4. The prosecution examined as many as six witnesses in support of its case. The appellants were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated. They examined two witnesses in their defence.

5. The appellants were convicted and sentenced, as noticed herein-above. Hence, these appeals.

6. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case against his clients. Learned counsel appearing on behalf of the State has supported the judgment and order of the learned Court below.

7. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

8. PW.1 Constable Harjit Singh led his evidence by filing affidavit Ex.P1. According to the averments made in the affidavit, on 24.07.2014, he was posted in Police Station Kot Ise Khan. MHC Mohkam Singh had handed over to him five sample parcels of poppy husk, each weighing 250 grams, duly sealed with the seals PS+HS+KK along with Form No. 29M to be deposited in the office of Forensic Science Laboratory, Mohali. He reached the office of SSP, Moga, on the same day. After getting the docket dispatched, he reached the office of Forensic Science Laboratory, Mohali, and deposited the sample parcels.

9. PW.2 ASI Krishan Kumar deposed that he was posted as officiating SHO of Police Station Kot Ise Khan on 21.07.2014. He had received ruqa sent by Inspector Prem Singh. Inspector Prem Singh had produced the accused along with case property i.e. fifteen parcels (ten

sample parcels and five bulk parcels) duly sealed with seal bearing impression “PS” and “HS” along with CFSL form. He verified the facts of the case. He affixed his seal bearing impression “KK” on all the parcels and CFSL form Ex.P4. The case property was taken into possession. He recorded statement of Inspector Prem Singh. He produced the accused along with case property before the Judicial Magistrate Ist Class, Moga, on 22.07.2014, for inventory proceedings. The court had withdrawn five representative samples of 250 grams poppy husk each from each bulk parcel. The bulk parcels and representative samples were sealed with seal of the court bearing impression “AK” and an order Ex.P9 was passed. He deposited the case property in police malkhana with MHC Mohkam Singh. In his cross-examination, he deposed that the case property and the accused were produced before him at about 10.15 PM on 21.07.2014.

10. PW.3 HC Mohkam Singh led his evidence by filing affidavit Ex.P14. According to the averments made in the affidavit, ASI Krishan Kumar had deposited with him the case property i.e. ten sample parcels of poppy husk, each weighing 250 grams, duly sealed with seals PS+HS+KK along with Form No. M-29, on 22.07.2014. He handed over the case property to Constable Harjit Singh on 24.07.2014, to be deposited in the office of Forensic Science Laboratory, Chandigarh. In his cross-examination, he deposed that the case property was deposited with him in the evening on 21.07.2014.

11. PW.4 Inspector Prem Singh deposed that he was posted as Inspector in CIA Staff, Moga, on 21.07.2014. He along with ASI Baljinder Singh and other police officials was on patrol duty. At about 2.00 PM, the

police party reached near bridge of minor canal in the area of village Chuhar Chak. One Gypsy bearing registration No. CH-01-G-1005 was seen coming from the side of village Chuhar Chak. On seeing the police party, driver of the said vehicle applied brakes. He tried to run away. He was apprehended. On enquiry, driver of the vehicle disclosed his name as Lachhman Singh. The person sitting by the side of driver seat disclosed his identity as Mandir Singh. He disclosed his identity to the accused and told them that he suspected some intoxicant substance in their possession as well as in their Gypsy. Search of the accused as well as their vehicle was required to be conducted. He apprised the accused about their legal right to get their search as well as search of their vehicle conducted in presence of Gazetted Officer or Magistrate. They opted for their search to be conducted in the presence of some Gazetted Officer. He prepared non-consent memos of the accused vide Ex.P15 and Ex.P16. He sent wireless message to Shri Harpal Singh, DSP (D), Moga, and requested him to reach at the spot. Shri Harpal Singh, DSP (D), Moga, reached the spot along with his staff. He disclosed his identity to the accused. He told the accused that he suspected some intoxicant substance in their possession as well as in their Gypsy and their search as well as the search of their vehicle was required to be conducted. He then apprised the accused about their legal right to get their search as well as search of their vehicle conducted in presence of Magistrate or any other Gazetted Officer. Both the accused reposed their confidence in DSP. DSP prepared consent memos of the accused vide Ex.P17 and Ex.P18. Thereafter, he conducted search of Gypsy on the directions of the DSP (D), Moga. Five plastic bags, which were lying on the back side of Gypsy, were

alighted from the vehicle. These were found to be containing poppy husk. He had drawn two samples of 250 grams each from each bag and converted into sample parcels. He made serial No. 1 to 5 and 1A to 5A on sample parcels. Thereafter, each bag was found to be containing 29 Kgs. 500 grams poppy husk. These bags were converted into bulk parcels. He sealed all sample parcels as well as bulk parcels with his seal bearing impression "PS". He prepared sample seal on CFSL form vide Ex.P19. Seal was handed over to ASI Baljinder Singh. He also attested CFSL form. He had prepared site plan Ex.P25. He produced both the accused along with entire case property and CFSL form before ASI Krishan Kumar, officiating SHO of Police Station Kot Ise Khan. ASI Krishan Kumar verified facts of the case and had taken into possession entire case property along with CFSL form. His statement was recorded by ASI Krishan Kumar. In his cross-examination, he deposed that the consent memos were got written by DSP. Writing on sample as well as on bulk parcels was undertaken by him at the spot. He denied the suggestion that accused Lachhman Singh was apprehended from his house on 21.07.2014 at about 11.00 AM/12.00 noon by ASI Baljinder Singh. He also denied the suggestion that ASI Baljinder Singh was friend of Gursewak Singh son of Gurdeep Singh resident of village Chuhar Chak, and he had implicated accused Lachhman Singh at the instance of said Gursewak Singh. He also denied the suggestion that the accused were taken from village Chuhar Chak in the presence of Ranjit Singh and Harmit Singh.

12. PW.5 Harpal Singh testified that he was posted as DSP (D) Moga on 21.07.2014. On that day, he had received wireless message at

about 2.30 PM from Inspector Prem Singh. He along with his staff reached at the spot, where Inspector Prem Singh along with his police party was present. On inquiry, driver of Gypsy disclosed his name as Lachhman Singh. Other person disclosed his name as Mandir Singh. He disclosed his identity to accused present in the court that he was DSP (D) and posted in Moga. He was Gazetted Officer. He told the accused that he suspected some intoxicant substances in their possession as well as in their vehicle. Their search as well as search of their vehicle was required to be conducted. He apprised the accused about their legal right to get conduct their search in presence of any Magistrate or any other Gazetted Officer. Accused reposed faith in him. He prepared their consent memos Ex.P17 and Ex.P18. Then Inspector Prem Singh conducted search of Gypsy on his directions. Five bags, which were lying on back side of Gypsy were checked. These bags contained poppy husk. The Investigating Officer completed all the codal formalities at the spot. The Investigating Officer prepared sample seal impression on CFSL form Ex.P19 in his presence. On personal search of accused Lachhman Singh, currency notes of ₹ 500/- were recovered from left pocket of his *kurta*. Currency notes of ₹ 300/- were recovered from left pocket of *kurta* of accused Mandir Singh.

13. PW.6 ASI Baljinder Singh deposed that he was posted in CIA Staff, Moga, on 21.07.2014. He was member of police party headed by Inspector Prem Singh. He also deposed the manner in which Gypsy was intercepted, accused were apprehended and were apprised of their legal right to be searched in presence of a Gazetted Officer or Magistrate. The Investigating Officer prepared their non-consent memos. Thereafter, the

Investigating Officer sent wireless message to Shri Harpal Singh, DSP (D), Moga. He reached the spot along with his staff. He again apprised the accused of their legal right to get their search as well as search of their vehicle conducted in presence of Magistrate or any other Gazetted Officer. Accused reposed faith in DSP. The DSP prepared their consent memos. The Investigating Officer conducted search of the Gypsy. Five bags containing poppy husk were recovered. All the codal formalities were completed on the spot. The Investigating Officer took into possession the entire case property including CFSL form and Gypsy. In his cross-examination, he deposed that the place of recovery was at a distance of 3-1/2 Kms. from village Attari towards village Chuhar Chak. He denied his friendship with Gursewak Singh. He also denied the suggestion that accused Lachhman Singh was apprehended from his house on 21.07.2014 at about 11.00 AM/12.00 noon.

14. DW.1 HC Baldev Singh brought register No. 19 for the year 2014 regarding deposit of case property of this case in police malkhana at Sr. No. 1444 dated 22.07.2014. He proved attested copy of the same vide Ex.D1. He deposed that at point A of the road register, wherein entry regarding sending of samples of the present case to the office of FSL was made on 24.07.2014, word "Panj Palende" was written after erasing some other word.

15. DW.2 Harmit Singh deposed that he knew Lachhman Singh accused. Navjot Singh, grand-son of Lachhman Singh, told him on 21.07.2014 at about 11.00 Am that some police official had come to arrest his grand-father. He along with Ranjit Singh went to the house of Lachhman Singh. Lachhman Singh was lying on bed. ASI Baljinder Singh along with

2-3 other police officials was present there. Accused Mandir Singh was also present. ASI Baljinder Singh asked Lachhman Singh that he was to be taken to CIA Staff, as he used to deal in poppy husk. Gursewak Singh had contested election of Sarpanch against Lachhman Singh and he was inimical towards Lachhman Singh. He was friend of ASI Baljinder Singh and got planted this false case against accused. In his cross-examination, he admitted that he did not know names of other police officials, except ASI Baljinder Singh, who had come to the house of accused Lachhman Singh. He could not tell registration number of the jeep. He was not office bearer of Gram Panchayat of village Chuhar Chak. No resolution was passed in proceeding book of the Gram Panchayat about false case.

16. The FSL report is Ex.P27. According to this report, on the basis of analysis, poppy husk was found in the contents of parcels No.1 to 5.

17. PW.4 Inspector Prem Singh deposed the manner in which the accused were apprehended. He apprised them of their legal right to be searched either before Gazetted Officer or Magistrate. They opted for the search to be conducted in presence of a Gazetted Officer. He informed PW.5 Harpal Singh, DSP (D), Moga, who reached at the spot. Harpal Singh also apprised the accused of their legal right to be searched before a Magistrate or any other Gazetted Officer. They reposed faith in him. Their consent memos were prepared. Their personal search and search of the Gypsy was carried out. Five bags containing poppy husk were recovered from the Gypsy. All the codal formalities were completed on the spot, including preparation of samples. The site plan Ex.P25 was also prepared. The Investigating Officer produced both the accused along with case property

before ASI Krishan Kumar. He verified the facts and affixed his seal bearing impression “KK” on all the parcels and CFSL form. Statement of the Investigating officer was recorded. Statement of PW.4 Inspector Prem Singh is duly corroborated by PW.5 Harpal Singh. He deposed that he reached the spot and disclosed his identity to the accused. He apprised the accused about their legal right to be searched before a Magistrate or any other Gazetted Officer. They reposed faith in him. Their consent memos were prepared. Search of the Gypsy was conducted and five bags, containing poppy husk, were recovered. PW.6 ASI Baljinder Singh also duly corroborated the statement of PW.4 Inspector Prem Singh.

18. PW.4 Inspector Prem Singh has denied that accused Lachhman Singh was arrested from his house. He also denied the suggestion that ASI Baljinder Singh was friend of Gursewak Singh. ASI Baljinder Singh also denied the suggestion that he was friend of Gursewak Singh.

19. PW.3 HC Mohkam Singh in his affidavit Ex.P14 deposed that that ASI Krishan Kumar had deposited the case property with him on 22.07.2014. However, PW.2 ASI Krishan Kumar deposed that on 21.07.2014 itself, Inspector Prem Singh had produced both the accused along with case property before him. He duly sealed the parcels with his seal bearing impression “KK”. He had produced both the accused along with the case property before the court of Ms. Amandeep Kaur, Judicial Magistrate Ist Class, Moga, for inventory proceedings on 22.07.2014. In his cross-examination, he also reiterated that case property and both the accused were produced before him at about 10.15 PM on 21.07.2014.

20. PW.1 Constable Harjit Singh, in his affidavit Ex.P1, deposed

that MHC Mohkam Singh had given him the case property on 24.07.2014 to be deposited in the office of Forensic Science Laboratory, Mohali. He deposited the same in the office of Forensic Science Laboratory, Mohali, on 25.07.2014. The case property had reached the office of the FSL with all the seals intact. PW.3 HC Mohkam Singh, in his cross-examination, deposed that the case property was deposited with him in the evening on 21.07.2014. Merely because in his affidavit, he had stated that the case property was deposited with him on 22.07.2014 would not in any manner effect the case of the prosecution.

21. There is no merit in the contention of learned counsel for the appellants that accused Lachhman Singh was falsely implicated. Lachhman Singh has relied upon the statement of DW.2 Harmit Singh. In his cross-examination, DW.2 Harmit Singh admitted that he could not tell the registration number of the government jeep. His statement does not inspire confidence. The matter was not even discussed/placed before the Gram Panchayat of the village. The search of the Gypsy was conducted strictly in accordance with Section 50 of the Act. Consent memos Ex.P17 and Ex.P18 of both the accused were prepared, which were duly attested by the witnesses. The statements made by the official witnesses inspire confidence.

22. Learned counsel for the appellants has also argued that Rakesh Kumar, who was stated to be present on the spot, was not examined. Mere non-examination of Rakesh Kumar would not effect the case of the prosecution. The prosecution has proved its case against the accused beyond reasonable doubt. There is no occasion for us to interfere with the well reasoned judgment and order of the trial court.

23. Accordingly, there is no merit in these appeals and same are dismissed. The impugned judgment and order dated 08.01.2016 are upheld. Appellant Lachhman Singh is on bail. His bail bond and surety bond are cancelled. He is directed to surrender before the concerned Chief Judicial Magistrate forthwith to undergo remaining part of his sentence. Appellant Mandir Singh is already in custody.

(RAJIV SHARMA)
JUDGE

December 10, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No