

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-714-DB-2016

Amartej Singh and another

... Appellants

Versus

State of Punjab

... Respondent

2. CRA-D-785-DB-2016

Rinku Singh

... Appellant

Versus

State of Punjab

... Respondent

3. CRA-D-787-DB-2016

Kanwarpaljot Singh

... Appellant

Versus

State of Punjab

... Respondent

Reserved on : 20.05.2019
Date of decision : 24.05.2019

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Anmol Rattan Sidhu, Senior Advocate with
Mr.L.S.Sekhon, Advocate
for the appellants in CRA-D-714-DB-2016.

Mr.Harkirat Singh Randhawa, Legal Aid Counsel
for the appellant in CRA-D-785-DB-2016 and
CRA-D-787-DB-2016.

Mr.S.P.S.Tinna, Addl.A.G. Punjab.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid appeals, therefore, these are taken up together and disposed of by a common judgment.

2. These appeals are instituted against judgment and order dated 04.07.2016 rendered by the Judge, Special Court, Ludhiana, in Sessions Case No.115 of 15.11.2013 whereby the appellants, who were charged with and tried for offences punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and Sections 465, 471, 482 read with Section 34 of the Indian Penal Code (in short 'IPC'), were convicted and sentenced as under:-

Name of convict	Under Section	Sentence
Rinku Singh	15 of the NDPS Act	To undergo rigorous imprisonment for a period of fifteen years and to pay a fine of Rs.1,50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 2 years.
Amartej Singh	15 of the NDPS Act	To undergo rigorous imprisonment for a period of fifteen years and to pay a fine of Rs.1,50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 2 years.
Gurjot Singh	15 of the NDPS Act	To undergo rigorous imprisonment for a period of fifteen years and to pay a fine of Rs.1,50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 2 years.
Kanwar Pal Jot Singh	15 of the NDPS Act	To undergo rigorous imprisonment for a period of fifteen years and to pay a fine of Rs.1,50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 2 years.

The appellants were acquitted of the charges framed under Sections 482, 465, 471 read with Section 34 IPC.

3. The case of the prosecution, in a nutshell, is that on 17.05.2013 Investigating Officer PW-4 Rachhpal Singh along with SI Sarabjit Singh and other police officials was going on main road Moga, Jagraon Gurusar

Kaunke, Gate from village Galib Kalan via link road on official vehicle in connection with patrolling. When the police party was short of half kilometer from village Galib Kalan, from main road side, one canter 1109 bearing No.HR-04GA-1099 came. Four persons were occupying the same. Investigating Officer stopped the vehicle. He ascertained the identity of the occupants of the canter. All the four accused disclosed their identity. Tarpaulin was laid on the body of canter. Bags were noticed lying inside the canter. Investigating Officer disclosed his identity. He apprised them of their legal right about search. Their non consent memos were recorded vide Ex.PW2/A to Ex.PW2/D. Investigating Officer made call to DSP(D) on mobile phone. DSP(D) Tarun Rattan reached the spot. Consent memos Ex.PW2/E to Ex.PW2/H were signed. Canter was searched. It contained 91 bags of poppy husk. Bags were marked as Sr.No.1 to 91. Two samples of 100 grams each were taken out from said bags. 182 sample parcels were prepared and marked as Sr.No.1A, 1B to 91A, 91B. Remaining poppy husk weighing 39 kg. 800 grams in each bag was also converted into parcels. Investigating Officer sealed sample parcels and bulk parcels with his seal bearing impression 'RS'. DSP also put his seal bearing impression 'TR'. Form No.29 was filled at the spot. Investigating Officer sent ruqa through HC Kabal Singh. He prepared rough site plan. Investigating Officer produced the case property along with accused before ASI Nirbhai Singh, officiating SHO. The case property was taken into possession. He put his seal bearing impression 'NS'. On 18.05.2013 SI Sarabjit Singh took whole case property from MHC Kuldeep Singh for inventory purpose. SDJM passed order Ex.PW2/6 in the presence of accused. Case property was

brought back to the police station. Disclosure statements were made by the accused. One Bolero car was separately taken into possession. An application was filed for verification of the canter. The case property was sent for chemical examination. Challan was put up in the Court after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The accused also examined four witnesses in their defence. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

5. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

6. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

8. PW-1 HC Kuldeep Singh has led his evidence by filing affidavit Ex.PW1/A. According to the averments made in Ex.PW1/A, on 17.05.2013, ASI Nirbhai Singh had deposited 182 parcels of poppy husk weighing 100/100 grams each sealed with seal RS+TR+NS, 91 plastic sacks weighing 39.800/39.800 kgs. each sealed with seal RS+TR+NS along with sample seal, Form No.29 and 8 mobile phones of different companies, with him in the Malkhana. He withdrew the case property, i.e. 182 parcels of poppy husk weighing 100/100 grams each sealed with seal RS+TR+NS, 91 plastic sacks of poppy husk weighing 39.800 /39.800 kgs. each sealed with

seal RS+TR+NS along with sample seal, Form No.29 and 8 mobile phones and handed over the same to SI Sarabjit Singh. SI Sarabjit Singh after producing the case property in intact condition before the court of SDJM, Jagraon, deposited the same with him in Malkhana on 18.05.2013. He handed over the case property, i.e. 91 parcels of poppy husk weighing 100/100 grams each sealed with seal RS+TR+NS through road certificate No.55/21 to C.Sandeep Singh for getting docket from the office of SSP, Ludhiana Rural issued on 21.05.2013. He deposited the same with the Chemical Examiner, Punjab Government, Kharar. On 21.05.2013, SI Sarabjit Singh after producing the case property in intact condition before the Court of SDJM, Jagraon and after proceedings under Section 52-A of the NDPS Act, the case property, i.e. 91 parcels of poppy husk weighing 100/100 grams each sealed with seal PJK, 91 parcels of sacks of poppy husk weighing 39.700/39.700 kgs. sealed with seal PJK, was deposited in Malkhana in intact condition. On 22.05.2013, he sent SI Sarabjit Singh to deposit 91 parcels of poppy husk weighing 100/100 grams sealed with seal RS+TS, 91 plastic sacks of poppy husk weighing 39.700 /39.700 kgs. sealed with seal PJK to District Nazar. The same were deposited by SI Sarabjit Singh on 22.05.2013 with the District Nazar through road certificate No.56/21. In his cross-examination, he deposed that canter was put in the Malkhana with him on 17.05.2013. It was recovered from the possession of Rinku Singh accused.

9. PW-2 SI Sarabjit Singh testified that on 17.05.2013 he was posted at Police Station Sadar Jagraon. He was member of police party. He along with other police officials was going from main road Jagraon Gurusar Kaunke Gate towards village Galib Kalan via link road on official vehicle in

connection with patrolling. When they were short of half kilometer from village Galib Kalan, one canter 1109 bearing No.HR-4GA-1099 came from main road side. Four persons were occupying the same. Investigating Officer ascertained their identity. Tarpaulin was laid on the body of canter. It was checked. They saw weighty bags lying inside the canter. Investigating Officer disclosed his identity and apprised the accused of their legal right to get themselves searched in the presence of a gazetted officer or a Magistrate. Non consent memos Ex.PW2/A to Ex.PW2/D were recorded. Thereafter he informed DSP(D), Ludhiana. He reached the spot. DSP also apprised them about their legal rights. They reposed faith in DSP. Consent memos Ex.PW2/E to Ex.PW2/H were signed. Canter was searched. Bags lying in the canter were unloaded. These were 91 in numbers. Bags contained poppy husk. These bags were marked properly. 182 sample parcels were prepared marked as Sr.No.1A, 1B to 91A 91B. Remaining bulk bags weighed 39.800 kgs. each Investigating Officer put his seal 'RS' and the DSP put his seal 'TR'. On 18.05.2013 he moved an application Ex.PW2/5 before the SDJM. He passed the order Ex.PW2/6. He interrogated accused Amartej Singh. He disclosed that he had concealed one vehicle Bolero No.PB-10DS(T) 4425 at Pardesi Dhaba Moga Road, Jagraon. He could get the same recovered. Two number plates of number HR-38P-0404 were got recovered. These were taken into possession. In his cross-examination, he deposed that on 18.05.2013 the Court had not extracted samples from the bags of poppy husk which were produced by him in the Court. They had taken back whole of the case property to the police station from the Court on 18.05.2013. Inquiry was got conducted by Harjit Singh Pannu, SP(D), Ludhiana Rural. His statement was recorded by

the Inquiry Officer. Accused Gurjot Singh, Kanwarpaljit Singh and Amartej Singh were arrested on 17.05.2013. Bolero was taken into possession. HC Kabal Singh was sent to bring weighing machine.

10. PW-3 C. Sandeep Singh has led his evidence by filing affidavit Ex.PW3/A. He had deposited the case property with the Chemical Examiner, Kharar.

11. PW-4 Varinder Giri had verified invoices Ex.P1 to P3.

12. PW-5 Rachhpal Singh deposed the manner in which canter was apprehended, contraband was recovered from canter and all the codal formalities including search and seizure were completed on the spot. He produced the entire case property before ASI Nirbhai Singh, officiating SHO. He verified the facts. He put his seal impression 'NS'. The case property was weighed with denomination of 10 kg., 20 kg., 5 kg., 100 gm and 250 gm. When the accused were arrested, Akali party was in power. He denied the suggestion that accused were falsely implicated due to political rivalry.

13. PW-6 Jagdish Singh deposed regarding ownership of canter. According to him, stamp paper Ex.PW5/1 was purchased by him at Rampura Phul on 17.05.2013.

14. PW-7 Tarun Rattan was summoned on the spot to carry out search and seizure. In his presence, canter was searched. Contraband was recovered. Search and seizure formality was completed on the spot. He put his seal impression. In his cross-examination, he deposed that the case property was weighed for 273 times. The denomination of weights were 20 kg., 10 kg, 5 kg, 2 kg, 1 kg and 500 grams for weighing the case property.

Samples were drawn. These were 182 in numbers.

15. DW-1 Surjit Singh deposed that he was Lambardar of village Killa Raipur. Gurjot Singh and Kanwarpaljot Singh were sincere and honest residents of their village. They had never indulged in any criminal activities. On 16.05.2013 at about 11.30 P.M., Jagpal Singh visited the house of Sarpanch Gurcharan Singh. Jagpal Singh told that at about 6.00 P.M., he along with his wife Javir Kaur, daughter Ranjodh Kaur, son-in-law Amartej Singh, sons Gurjot Singh and Kanwarpaljot Singh went to Raikot to pay obeisance at Tali Sahib Gurdwara on vehicle bearing No.PB-10CD-4425. Thereafter they all went to Kot Issekhan and meet Malkiat Singh. When they reached near Galib Kalan, Inspector Rachhpal Singh along with other police officials laid a barricade. The vehicle was stopped. Inspector Rachhpal Singh and other police officials took away Gurjot Singh, Kanwarpaljot Singh and Amartej Singh to Police Station Sadar Jagraon. They requested Inspector Rachhpal Singh to release them. In his cross-examination, he deposed that his statement was never recorded by the police. According to him, accused Gurjot Singh and Kanwarpaljot Singh were having enmity with Inspector Rachhpal Singh since when he was posted as SHO, P.S. Delhon.

16. DW-2 Gurcharan Singh deposed that accused Gurjot Singh and Kanwarpaljot Singh were honest citizens. He also deposed that when the vehicle bearing No.PB-10CD-4425 was coming back, it was intercepted. Inspector Rachhpal Singh arrested Gurjot Singh, Kanwarpaljot Singh and Amartej Singh. They requested him to release them. However they were not released.

17. DW-3 Manpreet Singh also corroborated the statements of DW-1 Surjit Singh and DW-2 Gurcharan Singh the manner in which three

accused were arrested.

18. DW-4 Piara singh deposed that he was working as Painter in the Police Station Sadar Jagraon on 16.05.2013. He had seen accused Kanwarpaljit Singh, Amartej Singh and Gurjot Singh in the lock up of police station Sadar Jagraon at about 8.00/9.00 P.M. on 16.05.2013. Accused were brought by the police officials in the Police Station Jagraon along with Bolero on 16.05.2013 at about 8.00/9.00 P.M. He had denied his statement Mark X made to the police earlier.

19. The Chemical Examiner's report is Ex.PX. The appellants' case is that Inspector Rachhpal Singh was inimical towards them. However the appellants have not led any evidence as to what was the animosity between them and Rachhpal Singh. Police officer is posted at various places, merely on that basis it cannot be said that he had animosity with the accused. Statement of DW-4 Piara singh does not inspire confidence. He had no business in the police station on 16.05.2013 at 8.00/9.00 P.M. The version of DW-1 Surjit Singh, DW-2 Gurcharan Singh and DW-3 Manpreet Singh is hearsay since the story had been narrated to them by Jagpal Singh and Harvinder Singh. Neither Jagpal Singh nor Harvinder Singh have been examined as defence witnesses.

20. Their Lordships of the Supreme Court in ***State of Himachal Pradesh vs. Pardeep Kumar and others, (2019) 1 Supreme Court Cases (Crl.) 420*** have held that when there is absence of any animosity between police party and accused, the examination of independent witnesses will not be fatal to the prosecution case, more particularly when large quantity of contraband was recovered (18.85 kg.) unlikely to have been planted /foisted in vehicle of accused persons. Their Lordships have held as under:-

“5. We have considered the matter and have heard the learned counsels for the parties. So far as examination of independent witnesses in support of the prosecution case is concerned all that would be necessary to say in this regard is that examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case. In the present case, according to the prosecution, independent witnesses were not available to witness the recovery of the contraband due to extreme cold. The fact that the incident took place at about 6.30 p.m. on 27-01-2009 and that too on the Manali-Kulu road may lend credence to the prosecution version of its inability to produce independent witnesses. In the absence of any animosity between the police party and the accused and having regard to the large quantity of contraband that was recovered (18.85 kgs.), we are of the view that it is unlikely that the contraband had been planted/foisted in the vehicle of the accused persons. In so far as the condition of the contraband parcel is concerned, the materials on record indicate that the said parcel was brought to the learned trial Court on 15-9-2009 in a torn condition. The prosecution witnesses examined in this regard had testified that the parcel was in a torn condition due to its bulky nature and also due to nails on the stool on which it was kept. In this regard, it may also be noted that the samples from the contraband parcel were sent to the Forensic Laboratory on 23.7.2010. No suggestion was given to the witnesses (PWs 12 and 13) who had taken the samples to the laboratory that the contraband parcel has been tampered with. PW-16, who had chemically examined the contraband samples, was fully cross-examined by the defence. There is nothing in his evidence to suggest that the sample(s) came to him in a torn or otherwise

doubtful condition. In view of all the above, we are of the opinion that the grounds on which the High Court have reversed the findings of conviction of the accused-respondents ought not to be accepted.”

In the present case even though the independent witness was not examined but version of the police official inspire confidence.

21. The appellants were apprehended with huge cache of poppy husk. All the codal formalities including search and seizure were carried out strictly in accordance with law. The case property was produced before SDJM. It was sent for chemical examination. All the samples have been received in CFSL in intact condition. No tampering was done to them. The appellants were travelling in the canter. All of them knew about the contraband being carried in canter, even though canter was driven by Rinku Singh. Section 50 of the NDPS Act was not required to be complied with since the contraband was recovered from the canter and not from the person. The canter was sold to Prem Singh for a sum of Rs.3,50,000/-, as per statement of PW-6 Jagdish Singh. The learned trial Court has rightly invoked Section 35 of the NDPS Act. It was for the accused to show that they were not in conscious possession of canter carrying poppy husk.

22. Their Lordships of the Supreme Court in ***Baldev Singh vs. State of Haryana, (2015) 17 Supreme Court Cases 554*** have held that once the possession of contraband by accused has been established, it is for accused to discharge the onus of proof that he was not in conscious possession. Their Lordships have held as under:-

“12. The testimony of Ram Singh-PW-1 and evidence on record amply establishes physical possession of the contraband by the appellant. The appellant being the driver of the vehicle by all probabilities must have been

aware of the contents of the bags transported in the trolley attached to the tractor. Once the physical possession of the contraband by the accused has been proved, [Section 35](#) of the NDPS Act comes into play and the burden shifts on the appellant-accused to prove that he was not in conscious possession of the contraband. [Section 35](#) of the NDPS Act reads as under:-

“35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section “culpable mental state” includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.”

The Explanation to sub-section (1) of [Section 35](#) expanding the meaning of ‘culpable mental state’ provides that ‘culpable mental state’ includes intention, knowledge of a fact and believing or reason to believe a fact. Sub-section (2) of [Section 35](#) provides that for the purpose of [Section 35](#), a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of the probability. Once the possession of the contraband by the accused has been established, it is for the accused to discharge the onus of proof that he was not in conscious possession. Burden of proof cast on

the accused under Section 35 of the NDPS Act can be discharged through different modes. One of such modes is that the accused can rely on the materials available in the prosecution case raising doubts about the prosecution case. The accused may also adduce other evidence when he is called upon to enter on his defence. If the circumstances appearing in the prosecution case give reasonable assurance to the Court that the accused could not have had the knowledge of the required intention, the burden cast on him under Section 35 of the NDPS Act would stand discharged even if the accused had not adduced any other evidence of his own when he is called upon to enter on his defence.”

23. Their Lordships of the Supreme Court in ***Kulwinder Singh and another vs. State of Punjab, (2015) 6 Supreme Court Cases 674*** have explained the meaning of 'conscious' and 'possession'. Their Lordships have held as under:-

“16. The next ground of assail pertains to factum of conscious possession. The submission of the learned counsel for the appellants is that they were only moving in the truck and had no knowledge what the bags contained. As the evidence on record would show, two of the accused persons were sitting by the side of the driver and the rest of the accused persons were sitting on the body of the truck. 110 bags of poppy husk weighing 4180 kg were in the truck. At the instance of the police when the truck was stopped, had the appellant-accused no knowledge about the contents of the bags, they would not have run away from the spot. That apart, they absconded for few days from their village. They have not taken the plea that they were taking any lift in the truck and their presence in the truck has been proven by the prosecution. It is not a small bag lying in the corner of

the truck that the appellant-accused can advance the plea that they were not aware of it. In the instant case, there were 110 bags of poppy husk being carried in the truck. Their presence which has been proven, establishes their control over the bags. The circumstances clearly establish that they were aware of the poppy husk inside the bags and in such a situation, it is difficult to accept that they were not in conscious possession of the said articles.

17. In this context reference to the decision in [Madan Lal v. State of H.P](#) 2003 7 SCC 465 would be fruitful wherein it has been held thus: (SCC p. 472, paras 22-25)

“22. The expression ‘possession’ is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja](#) 1979 4 SCC 274 to work out a completely logical and precise definition of ‘possession’ uniformly applicable to all situations in the context of all statutes.

23. The word ‘conscious’ means awareness about a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in [Gunwantlal v. State Of Madhya Pradesh](#) . 1972 2 SCC 194 possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

*25. The word ‘possession’ means the legal right to possession (see **Heath v. Drown**1973 AC 498). In an interesting case it was observed that where a*

*person keeps his firearm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See **Sullivan v. Earl of Caithness** 1976 QB 966.)”*

18. In [Dharampal Singh v. State Of Punjab](#) 2010 9 SCC 608, it has been ruled that the expression “possession” is not capable of precise and complete logical definition of universal application in the context of all the statutes. Recently, in [Mohan Lal v. State Of Rajasthan](#). 2015 6 SCC 222, after referring to certain authorities, this Court has held as follows: (Mohan Lal case, SCC pp. 238-39, paras 21-22)

“21. From the aforesaid exposition of law it is quite vivid that the term ‘possession’ for the purpose of section 18 of the ndps act could mean physical possession with animus, custody or dominion over the prohibited substance with animus or even exercise of dominion and control as a result of concealment. The animus and the mental intent which is the primary and significant element to show and establish possession. Further, personal knowledge as to the existence of the ‘chattel’ i.e the illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others.

22. In the case at hand, the appellant, we hold, had the requisite degree of control when, even if the said narcotic substance was not within his physical control at that moment. To give an

example, a person can conceal prohibited narcotic substance in a property and move out thereafter. The said person because of necessary animus would be in possession of the said substance even if he is not, at the moment, in physical control. The situation cannot be viewed differently when a person conceals and hides the prohibited narcotic substance in a public space. In the second category of cases, the person would be in possession because he has the necessary animus and the intention to retain control and dominion.”

*19. In view of the aforesaid enunciation of law, once possession is found, the accused is presumed to be in conscious possession as has been held in [Ram Singh v. Central Bureau Of Narcotics](#) 2011 11 SCC 347. If the accused takes a stand that he was not in conscious possession, he has to establish the same, as has been held in *Dharampal Singh*. As the materials brought on record would show, the appellant-accused were sitting in the truck; their presence in the truck has been clearly established; and they had run away from the spot and absconded for some days from the village. It is proven that there were 110 bags of poppy husk in the truck and the appellant-accused were in control of the articles in the truck. Therefore, there can be no iota of doubt that they were in conscious possession of the same. In view of the aforesaid analysis, we do not find any force in the submission of the learned counsel for the appellants.”*

In the present case also, the appellants were travelling in the canter and circumstances clearly proved that poppy husk was being carried inside the bags.

24. Their Lordships of the Supreme Court in ***Gian Chand and others vs. State of Haryana, (2013) 14 Supreme Court Cases 420*** have

held that once possession of contraband articles is established, burden shifts on accused to establish that he had no knowledge of same. Their Lordships have held as under:-

“11. The High Court dealt with the issue elaborately regarding knowledge i.e. conscious possession, and held as under:

“There were only three occupants in the jeep, at the relevant time. As many as 10 bags, each containing 41 kgs. Poppy husk, were lying in the jeep. It was not a small quantity of poppy husk,..... and could escape the notice of the accused. It was a big haul of poppy husk,The accused were having special means of knowledge, with regard to the bags, containing poppy husk, lying in the jeep. It was for the accused to explain, as to how the bags, containing poppy husk, were being transported. Not only this, the conduct of the accused, is also relevant, in this case. They instead of stopping the jeep, when the signal was given, by the police party, accelerated the speed thereof and sped away towards Village Keharwala. It was only after hot chase, given by the members of the police party, in their jeep, that the driver of the jeep got nervous, could not properly negotiate the turn and lost control, as a result whereof, the said jeep struck against the wall and stopped. In case, there was no contraband, in the jeep, and the accused were not in the knowledge of the same then what was the necessity of speeding away the jeep, was for them to explain. This material circumstance goes against them. Under these circumstances, it could be said that they were in possession of, and in control over the bags, lying in the jeep.

Once the possession of the accused, and their

control over the contraband, was proved, then statutory presumption under [Section 54](#) and [35](#) of the Act, operated against them, that they were in conscious possession thereof. Thereafter, it was for them, to rebut the statutory presumption, by leading cogent and convincing evidence. However, the appellants, failed to rebut the said presumption either during the course of cross- examination of the prosecution witnesses, or by leading defence evidence.”

(Emphasis supplied)

xxx xxx xxx

16. *The appellants were found travelling in a jeep at odd hours in the night and the contraband material was found. Therefore, the question arises whether they can be held to have conscious possession of the contraband substances.*

17. *This Court dealt with this issue in [Madan Lal & Anr. v. State of Himachal Pradesh](#), observing that:*

“20. [Section 20\(b\)](#) makes possession of contraband articles an offence. [Section 20](#) appears in Chapter IV of the Act which relates to offences and penalties for possession of such articles.”

Undoubtedly, in order to bring home the charge of illicit possession, there must be conscious possession. The expression ‘possession’ has been held to be a polymorphous term having different meanings in contextually different backgrounds. Therefore, its definition cannot be put in a straitjacket formula.

“23. The word ‘conscious’ means awareness about a particular fact. It is a state of mind which is deliberate or intended.

24.Possession in a given case need not be actual physical possession and may be

constructive i.e. having power and control over the article in case in question, while the person to whom physical possession is given holds it subject to that power or control.

18. *The Court further held as under:*

“26. Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. [Section 35](#) of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of [Section 54](#) where also presumption is available to be drawn from possession of illicit articles.

27....It has not been shown by the accused-appellants that the possession was not conscious in the logical background of [Sections 35](#) and [54](#) of the Act.”

(Emphasis supplied)

19. From the conjoint reading of the provisions of [Section 35](#) and [54](#) of the Act, it becomes clear that if the accused is found to be in possession of the contraband article, he is presumed to have committed the offence under the relevant provisions of the Act until the contrary is proved. According to [Section 35](#) of the Act, the court shall presume the existence of mental state for the commission of an offence and it is for the accused to prove otherwise.”

25. Their Lordships of the Supreme Court in ***Dharampal Singh vs. State of Punjab (2010) 9 Supreme Court Cases 608*** have expressed that “possession” under Section 54 is not capable of precise and completely logical definition of universal application in context of all statutes.

“Possession” is polymorphous word and cannot be uniformly applied. It

assumes different colours in different contexts. Their Lordships have held as under:-

"13. It needs no emphasis that the expression possession is not capable of precise and completely logical definition of universal application in context of all the statutes. Possession is a polymorphous word and cannot be uniformly applied, it assumes different colour in different context. In the context of [Section 18](#) of the Act once possession is established the accused, who claims that it was not a conscious possession has to establish it because it is within his special knowledge.

14. [Section 54](#) of the Act raises presumption from possession of illicit articles. It reads as follows :

"54. Presumption from possession of illicit articles. - In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of-

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

15. *From a plain reading of the aforesaid it is evident that it creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence in case he fails to account for the possession satisfactorily. Possession is a mental state and [Section 35](#) of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact. The possession, therefore, has to be understood in the context thereof and when tested on this anvil, we find that the appellants have not been able to satisfactorily for the possession of opium.”*

26. As per orders dated 18.05.2013 and 21.05.2013 Ex.PW2/6, Ex.PW2/15, Ex.PW2/16, Ex.PW2/17, it is duly established that case property was produced before the SDJM. The representative parcel was also taken on 21.05.2013 and seal impression PJK was put. Photographs were also taken. The testimony of PW-2 SI Sarabjit Singh proved that accused were present on the spot. PW-2 Sarabjit Singh has categorically admitted that documents were taken into possession at 8.00 P.M. Memos were prepared at 10.45 P.M. Ruqa was sent at 6.15 P.M. He has admitted that FIR was not registered when the memo Ex.PW2/K to Ex.PW/N were prepared by the Investigating Officer. PW-5 Rachhpal Singh also admitted that they left the police station at 10.00 A.M. on 17.05.2013. Accused were apprehended at 10.30 A.M. Non consent memos were prepared. DSP Tarun Rattan reached at the spot at 12.15 P.M. Recovery memo was prepared at 5.30 P.M. PW-7 DSP Tarun Rattan admitted that he reached the spot at 12.15 P.M. The minor contradictions are bound to be there when statements were recorded after considerable period. The affidavit was sworn by HC Kuldeep Singh. He was identified by the APP. The entire evidence has to be read in totality and not in piecemeal. Accused were arrested on 17.05.2013

and an application was filed by Harvinder Singh father of Kanwarpaljot Singh on 30.08.2013. He had occasion to file application when the accused were produced before the SDJM on 18.05.2013 and 21.05.2013. When the accused were examined under Section 313 Cr.P.C., specific question was put to them that on the direction of DSP, I.O. conducted search of canter. 91 bags were recovered. Two samples of 100/100 grams each were separated and same were numbered as 1A, 1B to 91A, 91B.

27. Accordingly, there is no merit in the appeals and the same are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 24, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No