

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

CRA-D No. 779-DB of 2018 (O&M)

Reserved on : 13.2.2019

Date of decision : 21.2.2019

Resham Singh and another

.... Appellants

versus

State of Punjab

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Kuldip Singh**

Present Mr. N. S. Sodhi, Advocate, for the appellants.
Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment dated 13.7.2018 and order dated 17.7.2018, rendered by learned Judge Special Court, Moga, in Sessions Case No. 243/2015 dated 26.10.2015 by appellants Resham Singh and Tarsem Singh. Accused Resham Singh, Tarsem Singh, Bhajan Singh and Balkar Singh were charged with and tried for the offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') and Sections 420/ 467/468/471/120-B IPC. Accused Resham Singh, Tarsem Singh were acquitted of the charges under Sections 420/ 467/468/471/120-B IPC, however, were convicted and sentenced under Section 22 of the NDPS Act to undergo rigorous imprisonment for 12 years and to pay a fine of ₹ 1,25,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years each. The other two

accused Bhajan Singh and Balkar Singh were acquitted of all the charges by the learned trial Court.

2. The case of the prosecution in a nutshell is that on 19.4.2013, Inspector Jasvir Singh, SHO, Police Station, Kot Ise Khan, along with other police officials was on patrol duty. He was present on the bridge of Canal Gagra. He came to know from reliable sources that Resham Singh son of Hazara Singh, Gursharan Singh alias Saran Singh, Balkar Singh, Nishan Singh, Resham Singh son of Bant Singh, Joginder Singh alias Tarsem Singh, Bhajan Singh alias Bhaji, Harbans Singh alias Raja, Jagdev Singh alias Nihang, Resham Singh alias Rishi, were indulging in supply of poppy husk, opium, smack, heroin, etc. and used to supply such contrabands. Considering the information to be reliable, Inspector Jasvir Singh sent an intimation memo to the police station on the basis of which formal FIR was registered. During the course of investigation, 100 grams of intoxicant powder was recovered from the conscious possession of two of the accused, namely, Tarsem Singh and Resham Singh on 25.11.2014 and 28.11.2014. Samples were drawn. The accused were also apprised about their legal right that they could get their search conducted in the presence of Magistrate or any Gazetted Officer. The contraband was sent for chemical examination. Investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statement of the accused were also recorded under Section 313 Cr.P.C. According to them, they were falsely implicated in the case. Accused Resham Singh and Tarsem Singh were convicted and sentenced, as noticed

above, whereas accused Bhajan Singh and Balkar Singh were acquitted of the charges framed against them. Feeling aggrieved against the verdict of conviction and sentence, appellants Resham Singh and Tarsem Singh came up in appeal to this Court.

4. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

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

6. PW1 ASI Major Singh deposed that on 28.11.2014, he was working as officiating SHO at Police Station, Kot Ise Khan. On that day, ASI Kashmir Singh produced before him case property i.e. one bulk parcel measuring 95 gram intoxicant powder sealed with seal KS and one sample parcel of 5 gram of intoxicant powder sealed with seal KS along with Form No. 29 and accused Resham Singh and witnesses of the case. He verified the facts and put his seal bearing impression MS on the said parcels and also attested the sample seal slip. Ex.1. The case property was handed over to him by the Investigating Officer, vide memo. Ex.P2. He moved an application, Ex.P3, before the learned Magistrate for inventory proceedings. The learned Magistrate passed the order, Ex.P4. In his cross-examination, he admitted that the sample was sent to the Laboratory on 4.12.2004 by Inspector Ram Singh and he had no prior acquaintance with the accused.

7. PW2 ASI Baljit Singh deposed that on 25.11.2014, he was posted at Police Station, Kot Ise Khan. On that day, he was member of the police party headed by ASI Kashmir Singh. At about 9.00 A.M., when police party reached near bridge canal, then from opposite side one person was seen coming. On seeing the police party, he got perplexed and tried to turn back. On suspicion, he was apprehended by the police party. He disclosed his name as Tarsem Singh alias Sema alias Joginder Singh son of Sohan Singh. IO apprised him about his legal right that search could be conducted in the presence of any Magistrate or Gazetted Officer. They could be called on the spot. The accused reposed his confidence in IO. His consent statement, Ex.P7, was recorded, which was signed by accused Tarsem Singh. On search of the accused, intoxicant powder was recovered wrapped in a polythene paper from the right hand side pocket of his worn pant. From the recovered quantity of intoxicant powder, IO separated one sample of 5 grams, which was converted into parcel. The remaining intoxicant powder on weighment came out to be 95 grams. It was also converted into bulk parcel. Both the parcels were sealed with the seal of IO bearing impression KS. The case property along with Form No.29 was taken into police possession vide Memo. Ex.P8. In his cross-examination, he has admitted that the offer to the accused was given to be searched in the presence of Gazetted Officer or Magistrate or IO himself.

8. PW4 Constable Prabhjot Singh tendered his evidence by filing affidavit, Ex.PW4/A. He deposed in the affidavit that on 4.12.2014, he was posted on general duty at Police Station, Kot Ise Khan. He was directed to get the docket forwarded and dispatched from the office of SSP, Moga, and

then to deposit in the office of Forensic Science Laboratory, Mohali. He deposited the sample parcel weighing 5 grams intoxicant powder, duly sealed with the seal RS along with docket on 5.12.2014 in the office of Forensic Science Laboratory, Mohali. On return, he handed over the receipt to MHC, Mohakam Singh.

9. PW5 Constable Harjit Singh tendered his evidence by filing affidavit, Ex.PW5/A. He deposed in his affidavit that on 27.11.2014, MHC Mohakam Singh handed over to him one parcel weighing 5 grams intoxicant powder. He deposited the same on 28.11.2014 with Forensic Science Laboratory, Mohali.

10. PW6 ASI Mohakam Singh has also tendered his evidence by filing affidavit, Ex.PW6/A. He deposed that on 25.11.2014, ASI Kashmir Singh deposited with him one parcel weighing 5 grams intoxicant powder, duly sealed with seal KS along with Form No. 29. On 27.11.2014, one sample parcel weighing 5 grams intoxicant powder, duly sealed with seal KS along with Form No. 29 was produced before Inspector Ram Singh, SHO Police Station, Kot Ise Khan, for sending the same to FSL, Mohali, after taking them out from the malkhana of police station, who after converting it into parcel, sealed the same with his seal impression RS. It was handed over to Constable Harjit Singh for depositing the same in the office of FSL, Mohali. According to his directions, the samples were deposited with FSL, Mohali.

11. PW7 ASI Kashmir Singh deposed that on 25.11.2014 at about 9.00 A.M., when police party reached near bridge canal then from opposite side one person was seen coming. On seeing the police party, he got

perplexed and tried to turn back. On suspicion, he was apprehended. He disclosed his name as Tarsem Singh alias Sema alias Joginder Singh. He (ASI Kashmir Singh) tried to join public witness but nobody agreed for the same. Accused Tarsem Singh was apprised about his legal right that search could be conducted in the presence of any Magistrate or Gazetted Officer, however, the accused reposed confidence with him. On search of the accused intoxicant powder was recovered wrapped in a polythene paper from the right hand side pocket of his worn pant. From the recovered intoxicant, he separated one sample of 5 grams, which was converted into parcel. The remaining intoxicant weighed 95 grams. It was also converted into bulk parcel. Both the parcels were sealed with his seal bearing impression KS. Sample seal slip on Form No. 29 was prepared separately and seal was handed over to HC Baljit Singh after use. He also prepared site plan, Ex.P11, of the place of recovery. On 28.11.2014, he along with HC Gurmej Singh and other police officials was in search of other accused persons. When the police party reached at T-Point Bypass, GT Road, Moga, then from the side of bypass one person was seen coming. On seeing the police party, he got perplexed. On suspicion, he was apprehended. He disclosed his name as Resham Singh son of Bant Singh. He tried to join public witnesses but nobody agreed for the same. He was apprised of his legal rights to be searched in the presence of a Gazetted Officer or Magistrate. But he reposed confidence in him (IO). His consent statement, Ex.P17, was recorded, which was signed by accused Resham Singh and witnessed by the police officials. On search of the accused Resham Singh, intoxicant powder was recovered wrapped in a polythene paper from the

right hand side pocket of his worn pajama. From the recovered contraband, he separated one sample of 5 grams, which was converted into parcel. The remaining contraband weighed 95 grams. Both the parcels were sealed with his seal bearing impression KS. Sample seal slip on Form No. 29, Ex.P18, was prepared separately and seal was handed over to HC Gurmej Singh after use. In his cross-examination, he admitted that he had no prior acquaintance with accused Resham Singh son of Bant Singh and accused Tarsem Singh son of Sohan Singh. In his cross-examination, he admitted that offer was given to the accused to be searched in the presence of Magistrate or any Gazetted Officer.

12. FSL Report is Ex.PX. According to the result of examination in Ex.PX, the powder contained in the parcel was analyzed by chemical annalist. It was found to be Diphenoxylate hydrochloride with quantity of 2.9%. As per FSL Report, Ex.PY, the ingredients were found to be of Diphenoxylate hydrochloride with quantity of 2.7%.

13. Learned counsel for the appellants vehemently argued that no independent witness was associated during the time of search and seizure.

14. The statements of the official witnesses inspire confidence. There is no reason for us to disbelieve the sworn testimony of the official witnesses. It has come in the statement of PW7 ASI Kashmir Singh that he tried to join public witness but nobody agreed for the same. There is even no suggestion that any of the witnesses had any ill-will or motive to falsely implicate the appellants in this case.

15. According to learned counsel for the appellants, the prosecution case was liable to be thrown out even due to non-compliance of the provisions of Section 50 of the NDPS Act, which are mandatory. In the

instant case, we have gone through the consent memos, Ex.P7 and Ex.P17, in respect of appellants Tarsem Singh and Resham Singh, respectively. It has come in the statements of PW2 ASI Baljit Singh and PW7 ASI Kashmir Singh that accused were apprised about their legal rights that search could be conducted in the presence of any Magistrate or Gazetted Officer. However, the accused reposed confidence with the Investigating Officer. The sworn testimony of the witnesses, who had no motive to falsely depose against the appellants, is sufficient to hold the prosecution case as proved against them, in all respects.

16. The contraband was recovered from the possession of the appellants. All the codal formalities i.e. search, seizure, sealing were conducted in accordance with law. The case property remained intact and deposited in the *malkhana* along with Form No. 29. It was taken out from the *malkhana* and deposited with the Forensic Science Laboratory, Mohali. PW4 Constable Prabhjot Singh and PW5 Constable Harjit Singh deposited the case property with the Forensic Science Laboratory, Mohali. The case property was found to be intact throughout till it was produced before the Forensic Science Laboratory. According to the FSL Report, Ex.PX, and Ex.PY, the contraband was found to be Diphenoxylate hydrochloride with quantity of 2.9% and 2.7%, respectively.

17. The argument of the learned counsel for the appellants that informant and the investigating officer was the same person is merely to be noticed and rejected for the reason that the appellants have not shown that any prejudice has been caused to them and how and in what manner their defence was affected by the complainant being the Investigating Officer

(See judgment of this Court in CRA-D No. 917-DB of 2011 - Baljinder Singh vs State of Punjab, decided on 22.1.2019).

18. The prosecution has proved the case against the appellants beyond reasonable doubt. Thus, there is no merit in the appeal. Accordingly, the same is dismissed affirming the judgment and order under challenge.

(Rajiv Sharma)
Judge

21.2.2019
vs

(Kuldip Singh)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No