

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2149-SB of 2003
Date of Decision: December 03, 2019

Nazar Singh

Appellant

Versus

State of Punjab

Respondent

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr.J.S. Chahal, Advocate for
Mr.S.S. Rangi, Advocate for the appellant.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present appeal has been preferred by appellant against the impugned judgment of conviction and order of sentence dated 10.11.2003 passed by learned Special Judge, Fatehgarh Sahib (hereinafter referred as 'Special Judge'), whereby, he was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'Act') and sentenced to undergo Rigorous Imprisonment (RI) for a period of three years along with fine of Rs.3000/-; with a default clause to further undergo RI for a period of three months.

Brief facts of the case are that on 07.08.1998 Sub-Inspector, Purshotam Singh (PW4), alongwith other police officials were on patrol in a private vehicle. At about 12:15 AM, when they were proceeding through Kachha passage from Village Bilaspur to Ranwan, then one Rulda Singh son of Hazara Singh met the Police party. The moment, they moved a little ahead of Village Bilaspur, one pedestrian was spotted coming from

opposite side with a jute bag on his head. Upon noticing the lights of the vehicle, he abruptly turned left side in the fields, but due to suspicion was asked to stop and apprehended with the help of fellow police officials. On asking, the person disclosed his name as Nazar Singh son of Mohinder Singh (appellant). PW4 asked the appellant that there is suspicion of some contraband in the jute bag, therefore, he was given an offer to be searched in the presence of a Gazetted officer or a Magistrate. The appellant consented vide memo (Ex.PA) that he is ready to be searched in the presence of DSP, Khamano (PW6). Consequently, PW4 made a request to PW6 through wireless for reaching at the spot and he arrived there immediately in a Government vehicle. PW6 after introducing himself to the appellant asked for the search of his jute bag. Thereafter, on directions of PW6, jute bag was opened by PW4 and upon checking its contents, the same was found to be poppy husk. Out of that, two samples of 250 grams (each) were drawn separately and the residue weighing 24.5 kg. was again put in the same bag and a separate parcel was prepared. All the samples were duly sealed with the seal impression bearing 'PS' and 'LPS' of PW4 and PW6, respectively and taken into police possession vide memo (Ex.PB). Specimen of seals (Ex. PG) was also prepared. Seal of PW4 after use was handed over to ASI Malkiat Singh; whereas PW6 gave his seal to PW4. Ruqa (Ex.PC) was sent to police station and on the basis of which, formal FIR (Ex.PC/1) was registered. Appellant was formally arrested and from his personal search vide memo (Ex.PE) nothing was recovered. PW4 recorded the statements of witnesses under Section 161 Cr.P.C. and also prepared rough site plan

(Ex.PD). One sample of 250 grams was sent for chemical examination and report dated 21.10.1998, (Ex.PF) in this regard was received. After completing the investigation in usual course, report under Section 173 Cr.P.C. was presented before the Special Court and copy of the same was supplied to the appellant free of cost as per provisions of Section 207 Cr.P.C. After taking into consideration the material available on record, prima facie an offence under Section 15 of the Act was made out and accordingly, he was charge-sheeted on 11.11.1998, to which appellant pleaded not guilty and claimed trial.

Prosecution, in order to prove its case, examined following 6(six) witnesses:-

PW1 Constable Surinder Singh No.831, Malkhana Guard;

PW2 Head Constable Harjinder Singh, MHC;

PW3 Constable Darbara Singh, No.105;

PW4 SI/SHO Purshotam Singh, (Investigating Officer);

PW5 ASI Nirmal Singh;

PW6 DSP Lakhwinder Pal Singh.

Prosecution in support of their case, brought on record following documentary evidence also:-

Ex.PA Consent Memo dated 07.08.1998.

Ex.PB Recovery Memo dated 07.08.1998.

Ex.PC Ruqa dated 07.08.1998

Ex.PC/1 Formal FIR dated 07.08.1998

Ex.PD Site plan dated 07.08.1998

Ex.PE Personal Search memo dated 07.08.1998

Ex.PG Specimen seals dated 07.08.1998

Ex.PF Form No. M(29) dated 11.08.1998 along with report of Chemical Examiner dated 21.10.1998.

On the other hand, in defence, appellant produced 3(three) witnesses, namely Rulda Singh son of Phuman Singh, Kulwinder Singh, Ex-Sarpanch , Ms.Jassy Anand, Fingerprint expert, as DW1, DW2 and DW3, respectively. In addition to above, appellant also produced the following documentary evidence:-

Ex.DA Statement of ASI Nirmal Singh under Section 161 Cr.P.C.

Ex.D1 Representation to DGP, Punjab, Chandigarh, dated 13.08.1998.

Exs.D2 to D6: Postal receipts dated 18.08.1998

Ex.D7: Fingerprint expert opinion dated 15.08.2003

Exs.D8 to Ex.D11 Photographic Thumb impressions

Exs.D12 to D15: Negatives of Ex.D8 to Ex.D11.

Entire incriminating material was put to the appellant by learned Special Judge under Section 313 Cr.P.C., but he denied the same and claimed innocence while raising the plea of false implication by the police.

After hearing both sides and taking into consideration the entire material available on record, learned Special Judge found the appellant guilty under Section 15 of the Act and sentenced him to undergo RI for a period of three years along with a fine of Rs.3000/-; with a default clause to further undergo RI for a period of three months.

Hence, the present appeal.

It is contended on behalf of the appellant that impugned judgment of conviction and order of sentence are not legally sustainable in as much as there are material contradictions in the version of prosecution

witnesses and recovery of the alleged contraband from the appellant is not proved. Further contended that there is non-compliance of Section 50 of the Act, as the offer was given to the appellant to be searched only in the presence of a Gazetted Officer and there was no such offer for his search to be conducted before a Magistrate. The independent person, namely, Rulda Singh who is alleged to have witnessed the entire police proceedings, was not examined as a prosecution witness.

On the other hand, learned State counsel submitted that recovery of the contraband from the appellant was effected at a public place, therefore, provisions of Section 50 of the Act are not attracted. Further submitted that charge against the appellant is duly proved by the prosecution, therefore, the appeal is liable to be dismissed.

Heard both sides and perused the record.

PW4, Investigating Officer deposed that on 07.08.1998 he was posted as SHO, Khamano. On that day, he along with PW5 and other police officials were going from Village Bilaspur to Ranwan for patrolling, then Rulda Singh was joined with the Police party. When they reached ahead of Village Bilaspur, then appellant was seen coming from the opposite direction carrying a jute bag on his head. Upon noticing the lights of the vehicle, he turned left, but on suspicion of having some narcotic in the bag, was asked to stop and apprehended on the spot. The appellant was given an offer to be searched in the presence of a Gazetted officer or a Magistrate, but he opted to be searched before PW6 vide consent memo (Ex.PA), duly attested by Rulda Singh and other police officials. Consequently, a wireless message was sent to PW6 and after

some time he reached on the spot. PW6 gave his introduction to the appellant and he reposed faith in him regarding the search of the jute bag. It is necessary to mention here that this witness had not stated as to whether PW6 gave any offer to the appellant for his search before any other Gazetted Officer or a Magistrate. Further stated, that on the directions of PW6, he (PW4) searched the jute bag which contained poppy husk. Two samples of 250 grams each were drawn and residue 24 kg. was put in same bag as Ex.MO-1. Bag and the samples were sealed with his seal as 'PS' and that of PW6 bearing impression as 'LPS'. Seal of this witness after use was handed over to ASI Malkiat Singh; whereas PW6 retained his seal with himself. It is necessary to observe here that in ruqa (Ex.PC), it is specifically mentioned that PW6 after using his seal bearing impression 'LPS' handed over the same to this witness i.e. PW4. He further stated that entire case property was taken into possession vide recovery memo. (Ex.PB). Ruqa (Ex.PC) was sent to police station on the basis of which formal FIR (Ex.PC/1) was registered by ASI Mohan Singh. Site plan (Ex.PD) with marginal notes was prepared and thereafter statements of witnesses were recorded under Section 161 Cr.P.C. Personal search of the appellant was also conducted vide memo (Ex.PE) and case property was deposited with MHC and thereafter appellant was put into lock-up. On the same day, PW4 after withdrawing the case property from MHC produced the same along with the appellant before Chief Judicial Magistrate, (for short 'the CJM'). Thereafter again, he deposited the case property with MHC. After receipt of chemical examiner's result (Ex.PF), report under Section 173 Cr.P.C. was submitted.

During cross-examination, this witness acknowledged that he did not prepare the CFSL form i.e. M-29 at the time of effecting the recovery. Further stated that Village Ranwa is at a distance of 3 kms from Bilaspur. According to this witness, Rulda Singh was known to him for the last 20/25 days and he met him in Village Bilaspur. He denied the suggestion that there is no person in the name of Rulda Singh son of Hazara Singh in Village Bhambri. He also denied that father's name of Rulda Singh is Phuman Singh and not Hazara Singh. He voluntarily stated that independent witness disclosed the name of his father as Hazara Singh. Witness also stated that he did not mention in the ruqa that Rulda Singh met him in Village Bilaspur. This witness specifically stated that he only offered the appellant regarding his search to be conducted before the gazetted officer. He candidly admitted that word "Gawah Rulda Singh" had been written with different ink, however, denied the suggestion that word in the consent memo was written by different handwriting. He acknowledged that on recovery memo (Ex.PB) name of DSP Lakhwinder Singh has not been mentioned. Site plan was prepared by ASI Malkiat Singh on his asking. He further stated that surroundings and boundaries of the place of recovery were inquired from a native of Village Bilaspur, but he was not aware about the name of any such person. He also stated that Rulda Singh was an illiterate person. As per the testimony of this witness, case property was weighed with the help of Farshi Kanda (weighing machine) brought from Village Bilaspur, but he did not tell the name of the person from whom the machine was brought. This witness had shown

ignorance about any market in Village Bilaspur and was not able to disclose the name of person by whom the weighting machine was brought.

PW5-ASI Nirmal Singh reiterated the version of PW4 in his examination-in-chief, but during cross-examination, stated that Rulda Singh was not known to him earlier, but stated that PW4 might be knowing him. Rulda Singh met them in Village Bilaspur, however, he did not notice as to whether Rulda Singh was having any Scooter or Cycle. He further stated that ASI Malkiat Singh was sent to bring Farshi Kanda (weighing machine), but he did not know the place from where it was brought. He also acknowledged that private vehicle used by the police party was driven by him, but was not able to disclose its registration number or name of its owner. He further stated that police did not try to join any Lambardar or Sarpanch or Panch from Village Bilaspur as well as from Village Ranwa at the time of recovery. He stated that some of the writing work was done by ASI Malkiat Singh, whereas remaining by PW4 himself.

PW6 deposed that on 07.08.1998 he was posted as DSP Khamano. On that day, upon receipt of wireless message from PW4, he went to Village Bilaspur, where PW4, PW5, ASI Malkiat Singh as well as other police officials along with appellant were present there. After disclosing his identity he asked the appellant for his search to be conducted in his presence or in the presence of any other gazetted officer or Magistrate. He further stated that the option was given to the appellant orally and he reposed confidence in him (PW6). Thereafter, on the directions of PW6, gunny bag was searched by PW4, from which poppy husk was recovered. After taking two samples of 250 grams each

remaining poppy husk of 24.5 kg was again put in the same bag (MO-1). He further stated that MO1, MO2 and other samples were sealed with the seal bearing impressions 'PS' and 'LPS' of PW4 and PW6, respectively and specimen of seal (Ex.PG) was also prepared . This witness specifically stated that seal of PW4 was handed over to ASI Malkiat Singh, however, he retained his seal with himself. Entire case property was taken into possession vide recovery memo (Ex.PG) (Sic. Ex.PB), attested by ASI Malkiat Singh, ASI Nirmal Singh and independent witness Rulda Singh .

During cross-examination, this witness admitted that in his statement recorded under Section 161 Cr.P.C., it had not been mentioned that he told the appellant about his name and designation or that appellant agreed to get his search conducted before him. He further admitted that it is not mentioned in his statement under Section 161 Cr.P.C. that he told the appellant to get his search conducted before Magistrate or any other Gazetted Officer, but voluntarily stated that offer was made to the appellant orally.

PW1 Constable Surinder Singh, No. 831 deposed by way of his affidavit Ex.P1, that on 11.08.1998, he was posted on general duty at Police Station, Khamano and PW2 handed over him one sample parcel of 250 grams for preparing the docket from the Office of SSP and submitted the same with the Chemical Examiner, Patiala. He further deposed that as per the instructions of MHC, he got prepared the docket from the office SSP on the same day and deposited the sample with the Chemical Examiner, Patiala, and a receipt in this regard was handed over to MHC.

PW2 HC Harjinder Singh, who was posted as MHC deposed by way of his affidavit Ex.P2 that PW1 handed over the receipt issued by Office of Chemical Examiner, Patiala, after depositing the sample of the contraband.

During cross-examination, this witness stated that seal was not deposited by SHO, along with the case property. He further deposed that case property was sent to be produced before the Illaqa Magistrate on the same day.

PW3 Constable Darbara Singh, No.105, by way of his affidavit Ex.P3 deposed that on 07.08.1998, he was posted at Police Station, Khamano and he handed over the special report to the learned Illaqa Magistrate as well as to senior police officers.

On the other hand, appellant, in order to prove his innocence, produced Rulda Singh son of Phuman Singh resident of Village Bhambri as DW1, who categorically deposed that there is no person with name of Rulda Singh son of Hazara Singh in Village Bhambri and he is the only person with this name. Specifically deposed that no recovery was effected in his presence from the appellant.

DW2 Kulwinder Singh, Ex-Sarpanch deposed that appellant is known to him being a co-villager. In the year 1998, appellant was picked-up by the police and upon inquiry, they were informed that he had already been taken to CIA Staff, Sirhind. On 04.08.1998, appellant was released to attend the Court hearing, but on 05.08.1998, again he was taken into custody by the police in their presence. He further deposed that they came to know that a case had been registered against the appellant under NDPS

Act and an application(Ex.D1) in this regard was made to DGP, Punjab and other officers. He further deposed that no recovery was effected from the appellant. He identified his signatures on Ex.D1 and also produced postal receipts Exs.D2 to D6.

During cross-examination, this witness stated that registered letters were sent through Post Office, Fatehgarh Sahib, by Lambardar. He denied the suggestion that application Ex. D1 and postal receipts Exs. D-2 to Exs.D6 were forged by them. He further deposed that neither they received any summons; nor were called by any officer to whom the application was made. He denied the suggestion that on 07.08.1998 any contraband was recovered from the appellant.

DW3-Ms.Jassy Anand, Handwriting and Fingerprint expert deposed that she examined three disputed thumb impressions marked as Q-1 on the consent memo (Ex.PA), Q-2 on recovery memo (Ex.PB) and Q-3 on personal search memo of the appellant (Ex.PE) dated 07.08.1998, respectively and compared them with standard thumb impression marked as 'S-1' in the statement of DW1 Rulda Singh. After comparison and examination of the disputed and standard thumb impressions, she opined in her report (Ex.D7) that disputed thumb impressions have not been affixed by Rulda Singh whose standard thumb impression is 'S-1'. She produced photographic enlargement of the thumb impressions as Ex.D8 to Ex.D11 and their negatives as Ex.D.12 to D15

During her cross-examination, she denied the suggestion that thumb impressions Q-1 to Q-3 are similar as that of S-1. She also denied that there is no dis-similarity between Q-1 to Q-3 and S-1.

As per the allegations of the prosecution, the appellant was apprehended by PW4 with the help of other police officials at 12.15 AM on 07.08.1998. Thereafter, his consent memo (Ex.PA) was recorded by PW4 and according to which, an offer was made to the appellant by PW4 for search of jute bag from a Gazetted Officer or a Magistrate and he agreed for the search to be conducted in the presence of DSP, Khamano(PW6). PW4 deposed that a wireless message was sent to PW6 and he reached at the place of recovery. However, perusal of ruqa (Ex.PC), prepared by PW4 reveals that offer was made to the appellant for his search to be conducted only before Gazetted Officer and he acknowledged this fact during his testimony before learned Special Judge also. Still further, there is no document available on record to substantiate that any offer was made by PW6 to the appellant for his search to be conducted in the presence of any other Gazetted Officer or a Magistrate. Although PW6 in his testimony before learned Special Judge, stated that offer was made orally to the appellant, but there is no recital to that effect either in the consent memo (Ex.PA) or in the recovery memo (Ex.PB) regarding such oral offer. Also necessary to mention here that neither PW4; nor PW5, during their testimonies deposed that any oral offer was made by PW6 to the appellant for his search in the presence of any other gazetted officer or a Magistrate. Thus, in the opinion of this Court, there was no proper compliance of provisions of Section 50 of the Act by the prosecution which are mandatory in nature as held by the Hon'ble Supreme Court in **Vijay Sinh Chandubha Jadeja VS State of Gujarat**, (2011) 1 SCC 609, and para 29 thereof, reads as under:-

“29. In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.”

Since there was non-compliance of Section 50 of the Act by the prosecution, therefore, the appellant suffered great prejudice on that count. There is no evidence on record which substantiates that sealed samples and residue of the contraband were produced before the Magistrate or that any representative sample was drawn by the concerned Magistrate in terms of Section 52A of the Act. As per the testimony of PW4, his seal after use bearing impression ‘PS’ was handed over to ASI Malkiat Singh, but he was never examined as a prosecution witness to prove that seal remained in his safe custody. Thus, in such a scenario the possibility of misuse of seal cannot be ruled out in view of the fact that form M-29 was not filled up on the spot, rather it was prepared subsequently on

11.08.1998 (Ex.PF). It has also come in the testimony of PW4 as well as PW5 that seal bearing impression 'LPS' of PW6 was handed over to PW4, but PW6 during his cross-examination stated that he himself retained his seal after its use. Therefore, there is a material contradiction on this point.

Apart from above, it is the conceded position that independent witness, namely Rulda Singh, remained present throughout the complete process of recovery of contraband from the appellant and he witnessed all the police papers including consent memo (Ex.PA), recovery memo (Ex.PB) and personal search (Ex.PE). Thus, being a material witness his name finds mention in the list of witnesses at Sr. No.1, furnished by the prosecution, which is as under:-

- i) Rulda Singh son of Hazara Singh, resident of Village Bhambri. (eye-witness).

Despite the significance of this witness to prove the recovery of contraband in the present case, he was allowed to be given up by learned Special Judge, on mere asking of prosecution, as having been won over. Undisputedly, examination-in-chief of Rulda Singh had not been recorded and despite that learned Special Judge acceded to the request of the prosecution in routine manner and permitted to give-up this most material witness. It seems that learned Special Judge, instead of going to the root of the case to find out the truth, simply proceeded to follow the course suggested by the prosecution. Undoubtedly, prosecution of a suspect under Section 15 of the Act entails serious consequences; thus, every person facing criminal trial in such like cases, entitled to a fair treatment before the Court of law and that will include his right of cross-examination of an independent witness cited to the recovery of contraband by the

seizing officer and depriving of such an opportunity may violate his valuable rights enshrined under Article 21 of the Constitution .

No doubt, in each and every case it may not be relevant to examine the independent witness, but where the circumstances so demands and more particularly, in a given situation like the present one, where the testimony of independent witness becomes the decisive factor to reveal the true facts of the case, then examination of such witness would be of utmost relevance and failure thereof, would certainly cause a prejudice to the defence of the person charged. Needless to say, that if the offence is grave in nature, like under Section 15 of the Act, then obligation of the prosecution becomes more onerous to produce the independent witness at the time of trial, so that the witness can face the cross-examination at the instance of the defence to prove his innocence in terms of Sections 35 and 54 of the Act, and thereafter, the Court may form a just opinion regarding the recovery of contraband.

The Hon'ble Supreme Court in **The State of U.P. and another versus Jaggo alias Jagdish and others**, AIR 1971 SC, 1586 while dealing with the case regarding giving up of a material witness by the prosecution held that witness, whose evidence is essential to unfold the narrative and elicit the correct facts, should be called for examination and mere presentation of an application to the effect that the witness has been won over was not conclusive to the question that the witness was won over and 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.”

Still further, in view of the testimony of DW1-Rulda Singh, the examination of independent witness was of much importance as this witness has specifically deposed that he is resident of Village Bhambri and there is no person known as Rulda Singh son of Hazara Singh in their village and he is the only person with this name. He categorically deposed that no recovery of contraband was effected in his presence from the appellant.

DW2, who happened to be an ex-Sarpanch of Village Bilaspur from 1993-97, deposed that he knew Nazar Singh- appellant, being co-villager and he was picked up by the police in the year 1998 and taken to CIA Staff, Sirhind. He also disclosed about the making of representation dated 13.08.1998, (Ex.D1) to the DGP, Punjab, regarding false implication of the appellant as well as copies to other authorities under registered covers, (Ex.D2 to Ex.D6). During his cross-examination, he categorically stated that appellant was picked up by Inspector Bharpoor Singh in a false case planted against him.

Even the appellant, while answering a question at the time of recording his statement under Section 313 Cr.P.C., stated as under:-

“I am innocent. No recovery was effected from me on 2.8.98 at 7 AM. CIA Staff Sirhind took me from my house and on the same day panchayat of Village Bilaspur came to enquire about me as to why I have been taken by the police, Panchayat met the concerned Inspector Bahrapur Singh of CIA Staff who told the panchayat to meet the high officers and the panchayat was assured by SSP, Fatehgarh Sahib that after investigation, I will be sent back. On 4.8.98 police left me as I was to attend my case in the court at Fatehgarh Sahib. Again on 5.8.98 CIA Staff came to my house but I could not meet them and the police officials directed my family members to send me to CIA Staff Sirhind, on the next day. On the next day, when the panchayat and the residents of the village were coming to take me at Sirhind and then again CIA Staff, Sirhind took forcibly me from my house. Again the panchayat met SP (D) and SSP, Fatehgarh Sahib, who assured the panchayat that after enquiry I will be left, but the police produced me in the court by involving me in the false case. I have no concern or connection with the said case. False case was planted against me.

Residents of the village and panchayat moved an application to Director General of Police, Pb., Chief Justice Pb. And Haryana High Court, DIG, Patiala Rang, Chief Minister, Pb., and Deputy Commissioner, Fatehgarh Sahib, regarding the false case planted against me on 13.8.98.”

DW3 being a finger print expert, also supported the defence version that three disputed thumb impressions marked as Q1 on the consent memo (Ex.PA), Q2 on recovery memo (Ex.PB) and Q3 on physical search memo (Ex.PE), dated 07.08.1998 are not tallying with the standard thumb impression ‘S1’ of DW1-Rulda Singh.

In view of the discussion made herein above, the irresistible conclusion is as under:-

- i) Prosecution has failed to prove that there was due compliance of Section 50 of the Act which is mandatory in nature;
- ii) There is no cogent evidence on record to prove that seal bearing impressions 'PS' and 'LPS' of PW4 and PW6 remained in the safe custody and thus, their misuse cannot be ruled out;
- iii) Material contradictions have been noticed in the testimonies of PW4, PW5 and PW6 on the point of offer of search in terms of Section 52 of the Act as well as handing over of seal bearing impression 'LPS' of PW6 to PW4;
- iv) Due to non-examination of ASI Malkiat Singh, it is not proved that seal of PW4 bearing impression 'PS' remained in his safe custody;
- v) There is no evidence on record to prove that form M-29 was filled up at the spot on 07.08.1998; or that any representative sample was drawn by the concerned Magistrate in terms of Section 52 A of the Act;
- vi) Concededly police party was on patrol duty in a private vehicle, but neither PW4; nor PW5 were able to disclose its registration number and name of the owner;

- vii) Giving up of the independent witness- Rulda Singh by the prosecution, creates a doubt about the recovery of poppy husk from the appellant, on 07.08.1998;
- viii) In view of the convincing and credible defence evidence, possibility of false implication of appellant by the police, cannot be ruled out.

In view of the above, this Court is left with no option except to allow the present appeal and set aside the impugned judgment of conviction and order of sentence dated 10.11.2003 passed by learned Special Judge, Fatehgarh Sahib and acquit the appellant of the charge under Section 15 of the Act.

Ordered accordingly.

Since the appellant is stated to be on bail, therefore, his bail bonds/ surety bonds stand in this case stand discharged.

**[MAHABIR SINGH SINDHU]
JUDGE**

December 03, 2019

sanjay

Whether speaking/reasoned
Whether reportable?

yes/no
Yes/no