

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

**CRM-A-1013-2019 (O&M)
Date of Decision: July 09, 2019**

State of Haryana

.....APPELLANT

VERSUS

Taar Singh and another

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Raj Kumar Makkar, Sr. D.A.G., Haryana.

SURINDER GUPTA, J.(Oral)

Heard.

As per case of the prosecution on 17.01.2015, SI Brij Lal of police station Kalanwali with his police party on reaching village Kamaal witnessed two persons coming out from a house, out of whom, one was a young boy and other was an old man. On seeing the police party, both ran inside the house. The young boy handed over the polythene bag in his hand to the old person and fled away from the rear gate of the house. That old man was apprehended by the police, who disclosed his name as Taar Singh and name of young boy as Harbans Singh. The polythene bag in his possession was found containing 1 kg of opium. Two samples of 10 grams each were drawn from the contraband and remaining opium along with samples were duly sealed by the Investigating Officer with the seal 'BL'. After completion of investigation, the challan was presented in Court.

Learned trial Court acquitted both the accused on the grounds

as follows:

- (i) The prosecution has failed to prove that Taar Singh was having conscious possession of the opium. In the absence of any evidence that he was aware of the contents of polythene bag alleged to have been handed over to him by young boy while fleeing, he could not be held guilty for possession of the same.*
- (ii) The identity of accused Harbans Singh has not been established and the disclosure statement of Taar Singh recorded by police is not admissible in his evidence;*
- (iii) The version of the prosecution is improbable that accused Harbans Singh fled away from the spot despite the fact that the police party comprised of four persons and were in government vehicle.*

Learned State counsel has argued that both the accused were coming out of their house when they were seen by the police party. Accused Harbans Singh fled away from the spot after handing over the bag of opium to accused Taar Singh. The inference can be drawn that accused Taar Singh was aware of the contents of the bag and was in conscious possession of opium recovered from him. Identity of accused Harbans Singh was disclosed to the police party by Taar Singh in his disclosure statement and the trial Court has committed error while discarding it.

The above submissions of learned State counsel have no merits. There is no evidence that Taar Singh was aware of the contents of the bag handed over to him by accused Harbans Singh. As per the prosecution, on seeing the police party, Harbans Singh, who was carrying a polythene bag handed over the same to Taar Singh and fled away from the spot. The Court has committed no error while holding that in these circumstances accused

Taar Singh may not be having any knowledge as to what were the contents of the bag and has rightly observed that the prosecution has failed to prove the conscious possession of Taar Singh over the contraband recovered from him.

To establish the identity of co-accused Harbans Singh, the prosecution has relied on the disclosure statement of Taar Singh. He was not identified by any member of the police party and learned trial Court has committed no error while holding that the statement of co-accused against Harbans Singh recorded during his police custody is not admissible in evidence.

In view of the above facts, I find no infirmity in the judgment passed by the learned trial Court calling for any interference in this appeal.

The application seeking leave to appeal is declined.

(SURINDER GUPTA)
JUDGE

July 09, 2019
Jyoti-II

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No