

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

CRA-1018-SB-2005 (O&M)

Date of decision: 15.01.2020

Jagsir

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. G.S. Bawa, Advocate for the appellant.

Ms. Dimple Jain, AAG, Haryana.

H.S. MADAAN, J.

Briefly stated the prosecution story is that on 23.07.2001, a police party headed by ASI Madan Lal (for short 'the IO') from Police Station Ratia was present at T-point Nimri-Hanspur road for patrolling and crime checking, where Jagan Nath, a resident of Haroli, HC Khayali Ram and some other police officials met him. The IO received a secret information that accused Jagsir son of Jang Singh, resident of Village Nimri was indulging in drug peddling by way of selling poppy straw and he had brought huge quantity of that contraband to his house, which could be recovered, if a raid was conducted. Finding the information to be reliable, the IO reduced the same into writing, sending it to the police station for making

necessary entry in the roznamcha and for informing the higher officers. He also sent a request for deputing a Gazetted Officer to come to the spot. Therefore, the police party led by the IO with which DW1 Jagan Nath had been associated, reached the house of the accused. Accused Jagsir was found to be present in his house. After some time, Sh. Ashok Kumar, DSP along with his staff reached there. The IO served a notice under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act') upon the accused, informing that he suspected contraband to be lying in his house and wanted to search the same, therefore, if so desired by the accused, the search could be conducted in the presence of a Magistrate or a Gazetted Officer or in the presence of Sh. Ashok Kumar, DSP who was present there. The accused appended his thumb impression on notice in token of its receipt and having been made aware of contents thereof. The accused, however, reposed full faith in Sh. Ashok Kumar, DSP. Accordingly, as per directions of Sh. Ashok Kumar, DSP, house of the accused was searched, during the course of which, 04 bags were found lying in a room, situated in front of main gate of the house near the northern wall. On being searched, those bags were found to contain poppy husk. The IO separated two samples of 100 gms each from each of the bag and the residue on weighment in each bag came out to be 40 kg 800 gms. All the eight samples and four bags containing remaining poppy husk,

were converted into sealed parcels, sealed with seal of the IO, having impression 'ML' and that of Sh. Ashok Kumar, DSP having impression 'AKS'. Then the case property was taken into possession, vide seizure memo attested by the witnesses. The IO handed over his seal after use to HC Chhattarpal, whereas, Sh. Ashok Kumar, DSP retained his seal with himself. The IO sent information in writing to the police station for the purpose of registration of formal FIR. The IO prepared a rough site plan of the place of recovery with correct marginal notes. He recorded the statements of witnesses and completed the proceedings at the spot. The accused was formally arrested in this case. On return to the police station, the IO produced the accused along with the case property and witnesses before Sh. Shamsher Singh, SHO who verified the facts from the accused and the witnesses and thereafter, affixed his own seal on each of the parcels constituting the case property. The IO submitted his report under Sections 55 & 57 of the Act before SHO, who appended his endorsement on that very report. As per directions of SHO, the IO deposited the case property and samples with MHC of the police station and put the accused in lockup.

During the course of investigation, the samples were sent to the office of Chemical Examiner for the purpose of analysis. On receipt of report therefrom and after completion of investigation and other formalities, the challan against accused was prepared and filed

in the Court of Chief Judicial Magistrate, Fatehabad, who supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C and thereafter, since the offence under Section 15 of the Act was found to be exclusively triable by Judge, Special Court, Fatehabad, it was sent there.

Finding a prima facie case, charge for offence under Section 15 of the Act was framed against the accused, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, the prosecution examined in as many as 08 witnesses i.e. PW1 Sh. Ashok Kumar, DSP, PW2 ASI Madan Lal, PW3 HC Gopal Ram, PW4 Constable Dharmpal, PW5 ASI Ram Chander, PW6 SI Shamsheer Singh, PW7 SI Ishwar Singh and PW8 HC Chhatter Pal.

After completion of prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him but he denied the same, contending that he was innocent and had been falsely involved in this case. In his defence evidence, the accused examined DW1 Jagan Nath, DW2 Surender Kumar, DW3 Manjeet Kaur and DW4 Nand Lal and thereafter closed it.

After hearing arguments, learned Addl. Sessions Judge-cum-Judge Special Court, Fatehabad, vide judgment dated 28.04.2005, convicted the accused for an offence under Section 15

(c) of the Act and vide order dated 30.04.2015, he was sentenced to undergo the minimum sentence provided under Section 15 (c) of the Act for possession of contraband amounting to commercial quantity i.e. rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/-, in default of payment of fine, to undergo further simple imprisonment for a period of two years.

The accused/convict felt aggrieved by the said judgment and has approached this Court by way of filing the present appeal, which was admitted and notice of the same was issued to the State. The State has put in appearance through Ms. Dimple Jain, AAG, Haryana.

I have heard learned counsel for the parties besides going through the record.

The main thrust of the arguments advanced by learned counsel for the appellant/accused was that the place of recovery is a residential house, where the accused along with his family had been residing; the house was open at that time, therefore, it could not be said that the appellant/accused was in exclusive possession of the house and the contraband was recovered from his possession. In that regard, he has drawn my attention to statement of DW3 Manjeet Kaur, wife of accused Jagsir, who had stated that they were living in a joint family and her brother in-law Jagbir was also residing with them in the house.

Learned counsel for the appellant has submitted that when the accused was examined under Section 313 Cr.P.C., no question was put to him that he was in exclusive possession of the house in question, therefore, the prosecution had failed to establish its case against the accused beyond a shadow of reasonable doubt and the accused should be given benefit by way of acquittal from the charge framed against him. He submitted that the trial Court had committed a wrong in convicting and sentencing the accused. In support of his contentions, he has referred to judgment by the Apex Court **Asraf Ali Vs. State of Assam, 2008 (3) RCR (Criminal) 835.**

Whereas, learned State counsel has vehemently contended that it is clearly established on record that the accused had been in exclusive conscious possession of the contraband, which he had stored in his house and now he cannot take the plea that his exclusive possession of contraband is not proved or that no specific question in that regard was put to him, while being examined under Section 313 Cr.P.C.

After hearing the learned counsel, I find that the contentions raised by learned counsel for the appellant/accused are absolutely without any merit. If we see the facts and circumstances of the case, it comes out that the exclusive conscious possession of the contraband by the accused stands fully proved on the file. Not only the witnesses examined by the prosecution have stated so, even

the witness examined by the accused i.e. DW3 Manjeet Kaur, wife of the accused admitted in her cross examination that apart from her husband, no other member of the family is responsible for the management of the house. When the accused was examined under Section 313 Cr.P.C., all the incriminating circumstances appearing against him were put to such accused but he denied the allegations. Though, a specific question had not been put to him that he was in exclusive possession of the contraband but then it is matter of evidence and such inference is to be drawn from the facts and circumstances of the case and evidence adduced by the prosecution as well as the plea taken by the accused, where exclusive possession of the accused comes out to be abundantly clear. The accused is not shown to have suffered any prejudice by non putting of a specific question to him that he was in exclusive possession of the contraband. As regards the authority referred to by learned counsel for the appellant **Asraf Ali (supra)** by the Apex Court, wherein it was observed that when in a murder case, the accused was examined under Section 313 Cr.P.C. but the circumstances which were relied upon by the trial Court to find the accused guilty were not specifically brought to the notice of the accused, therefore, in essence, his examination under Section 313 Cr.P.C. was rendered an empty formality and on that count alone, conviction recorded by the High Court was set aside. In this case, I find all the incriminating

circumstances relied upon by the trial Court had been put to the accused and there is no such omission found to be there, which might have resulted in causing any prejudice to the accused in the process vitiating the trial. The recovery of heavy contraband from the possession of the accused stands adequately established. The witnesses of recovery in this case i.e. PW2 ASI Madan Lal and PW8 HC Chhatterpal have duly proved the recovery of contraband from the possession of the accused and when sample parcels were sent to office of Chemical Examiner, those were found to be poppy husk. No previous enmity between the prosecution witnesses and the accused has been alleged or proved which might have gone to show that the accused has been involved in this case wrongly. The heavy quantity of contraband rules out the possibility of false plantation upon the accused.

The investigation has been conducted in an impartial and fair manner. The IO had no motive to challan the accused wrongly and then to depose against him to secure his conviction. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt in a convincing manner. The judgment of conviction and order of sentence are result of proper appraisal of evidence and correct interpretation of law. There is no ground to set aside the judgment either on the point of conviction or on sentence. The judgment and order of sentence are upheld. The

appeal is found to be without any merit and is dismissed accordingly.

The accused is said to be on bail in terms of an order passed by this Court. He be taken into custody at once and send to jail to undergo the remaining sentence.

The Chief Judicial Magistrate, Fatehabad, is directed to get the needful done.

15.01.2020
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(H.S. MADAAN)
JUDGE

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