

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

CRA-S-130-SB-2005

Date of decision: 19.2.2020

Mohd. Imran

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Mr.Pawandeep and Mr.Balwant Singh, Advocates  
for Mr.AS Kalra, Advocate for the appellant

Mr.AA Pathak, Addl.AG, Punjab

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**JITENDRA CHAUHAN, J.**

Appellant Mohd. Imran has filed the present appeal having been convicted and sentenced by the learned trial Court vide judgment and order dated 11.12.2004 to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. One lakh and in default of payment of fine to further undergo RI for one year under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

The facts necessary for adjudication of the matter as narrated in para no.2 of the impugned judgment are as under:-

“The case of the prosecution, in brief, is that on 24.1.2004, ASI Baldev Singh alongwith other police officials in Govt. vehicle was going from city Dhuri to bridge of minor canal via Laxmi Bagh. When the police party reached at the said bridge, Charan Singh son of Niranjan Singh caste Harijan resident of Sherpur

Sodhian met the police party. He was joined in the police party. They were going on the bank of minor canal. When they had gone 200 yards from the bank of canal then on the left side in ditches a clean shaven person was found sitting on two bags. He on seeing the police party got perplexed. He was apprehended. On asking the above said apprehended person disclosed his name as Mohd Imran son of Nizamudeen caste Insari Musalman resident of Mohalla Khalpar Gujrwali Gali Muzafar Nagar Police Station City Muzzafar Nagar, District Muzzafar Nagar (U.P.). ASI asked him that he was suspecting some intoxicants in the bag on which he was sitting. So his search and the search of his two bags were to be conducted. If he wanted the search could be conducted from Gazetted Officer or Magistrate, who could be called at the spot. Above said Mohd. Imran replied that he wanted that the search be conducted from Gazetted Officer. His statement was recorded. ASI Baldev Singh was requested on the wireless set fitted on the Govt. vehicle. Shri Paramvir Singh Gill DSP, Dhuri to reach at the spot after narrating facts of the case to him. After some time, Shri Paramvir Singh Gill, DSP Dhuri came at the spot on Govt. Gypsy bearing No.PB-13B 1645 alongwith his gunmen and driver. DSP asked the above said person about his name, parentage. DSP introduced himself to above said Mohd. Imran that he was Paramvir Singh Gill PPS. He was Gazetted Officer of the Punjab State and was posted as DSP, Dhuri. His search and search of his two bags on which he was sitting were to be conducted. Since he was suspecting some intoxicants in the said bags. If he wanted some other Gazetted Officer or Magistrate could be called at

the spot. After giving thought, the above said Mohd. Imran replied in Hindi and asked DSP to conduct his search and search of his two bags himself. His statement was recorded, which was explained to him in his own language. As per direction of DSP, Dhuri search of the bags was conducted. Both the bags on which Mohd. Imran was sitting were found containing poppy husk. Contents of the bags were taken out on cloth sheet and were mixed. Two samples of 250 grams each were separated and remaining poppy husk was put into the bags. On weightment bag No.1 was found 30 ½ kgs including bag and bag No.2 was found 30 kgs including bag. Both the bags were converted into parcels. Both the sample parcels and the bulk parcels were sealed by ASI with seal bearing impression 'BS', and same were taken into possession vide separate recovery memo alongwith the sample seal chit separately prepared. Seal after use was handed over to Charan Singh. Personal search of the accused was conducted. Ruqa was sent on the basis of which instant case was registered.”

After completion of the investigation, the challan was presented in the Court. The appellant was charged under Section 15 of the Act, to which, he did not plead guilty and claimed trial.

In order to substantiate the charges, the prosecution had examined Rajinder Singh PW-1, SI/SHO Mangal Singh as PW2, HC Karamjit Singh PW3, ASI Baldev Singh PW4, HC Om Parkash PW5 and DSP Paramvir Singh Gill as PW6.

When examined under Section 313 of the Code of Criminal Procedure, the accused-appellant denied all the incriminating

circumstances appearing in the prosecution evidence against him and pleaded false implication and innocence. In defence, he examined PHG Satpal Singh as DW1, Mohd. Ali as DW2, Gurdeep Singh Criminal Ahlmad as DW3, MHC Nirmal Singh as DW4, Constable Jaswinder Singh as DW5, HC Pal Singh as DW6, MHC Jagjit Singh as DW7, Karnail Singh as DW8.

After analysing the entire evidence and hearing the learned counsel for the parties, the learned Trial Court convicted and sentenced the accused-appellant as noticed at the outset.

Feeling dissatisfied with the same, the accused- appellant has preferred the present appeal.

It is submitted by learned counsel for the appellant that Charan Singh, independent witness, to whom the seal was allegedly entrusted after use, has not been cited as a witness, has been withheld by the prosecution, with the result, the accused has lost his right to examine him; as per the prosecution evidence, Form 29 M was neither filled up on the spot nor was deposited in the malkhana, which causes a dent in the prosecution case. The prosecution has failed to prove the place of recovery and also as to how the said contraband was transported to the said place. There is no ambiguity with regard to the source of the contraband. Learned counsel refers to FIR No.5 dated 6.1.1995 registered under Section 18 of NDPS Act at Police Station Sadar, Panipat (Ex.D-13) to contend that PW Charan Singh, independent witness, is a stock witness of the police.

Learned State counsel submits that the prosecution case is fully

established and based on evidence and therefore, the learned trial Court has rightly convicted and sentenced the accused-appellant.

Heard.

As per the case of the prosecution, one Charan Singh s/o Naranjan Singh was joined by the police party while they were going on the bank of adjacent minor canal. A clean shaven person was found sitting over two bags. The said person on seeing the police party got perplexed and on asking by the police, he disclosed his name as Mohd. Imran. ASI Baldev Singh confronted him that he was suspecting some intoxicant substance in the bags on which he was sitting and was conveyed that his search and the search of his two bags were to be conducted and an offer as per the section as envisaged under the Act was given to him. After search, the bags were found to be containing poppy husk. The contraband was weighed and one was found 30½ kg including bag and another was 30 kg. Two sample parcels and the bulk parcels were sealed by ASI Baldev Singh with seal bearing impression 'BS' and the seal was handed over to independent witness Charan Singh.

As per the facts of the case, the accused was found sitting over the bags and his conviction was recorded on the ground that he failed to give satisfactory explanation as to how he had acquired the possession of the contraband. From the facts, it emerges that site plan of the place of recovery Ex.D14 was also prepared and proved by DW8 Karnail Singh, draftsman, wherein there was no open space at the distance of 200 yards from the bridge. From the facts it also emanates that the Investigating

Officer did not enquire with regard to the ownership of the bags or the mode of transportation to the alleged place of recovery or the source of the contraband.

The defence version that PW Charan Singh is a stock witness of the police and that he is involved in different cases including FIR under Section 18 of NDPS Act (Ex.D13) proved by DW4 MHC Nirmal Singh, appears probable inasmuch as another glaring fact which has emerged in the cross-examination of PW4 Baldev Singh investigating officer of the case is that PW- Charan Singh is a retired police officer and no other independent witness was joined by the police, despite availability. PW6 DSP Paramvir Singh Gill has admitted in his cross-examination that there were 10-12 shops near the place of recovery besides a school. The Court feels that giving up of PW Charan Singh, the lone independent witness cited by the prosecution, makes the prosecution case mysterious. It is well settled that the testimony of the police witness is as good as the independent witness but in a case under NDPS Act where independent witnesses despite availability are not joined the Court must scrutinise the prosecution evidence with care and caution.

It is interesting to note that the seal after use was handed over to said Charan Singh, who was withheld by the prosecution. Had PW Charan Singh been produced in the Court, his cross-examination would have probably brought to the fore the infirmities of the prosecution case. Admittedly, he had been kept off the witness box. A Division Bench of this Court in State of Punjab vs. Surjit Singh, 2008(1) Recent Criminal

Reports (Crl.), 266, has held that when the prosecution alleged that a material witness has been won over by the accused, it is still necessary that such witness must be examined to reveal the truth. Further in **Baldev Singh vs. State of Punjab**, 2005(1) Recent Criminal Reports (Crl.), 823, the seal was given to an independent witness, who was not examined. It was held that till the case property has not been despatched to the office of the Forensic Science Laboratory, the seal should not be available to the Prosecution Agency and in absence of such safeguard, the possibility of seal being tampered with, substance being changed and the containers being re-sealed, cannot be ruled out.

In the instant case, in the absence of examination of independent witness Charan Singh, an adverse inference deserves to be drawn against the prosecution that the seal was tampered with before the despatch of the sample parcels for chemical analysis. Only his examination would have unfolded the true facts with regard to recovery, handing over and retention the seal by him. In the circumstances, the Court feels that non-examination of the crucial independent witness Charan Singh and the fact that the description of the site plan does not match with the story of the prosecution, are fatal to the case of the prosecution. Thus, the material link in the chain of evidence is not complete.

Moreover, there are various other infirmities in the prosecution version. In his cross-examination, PW6 DSP Paramvir Singh Gill has deposed that nothing was recovered in the personal search of accused.

However, as per memo of personal search Ex.PE, a sum of Rs.100/- was

found from the person of the appellant. It is highly improbable that a person, who hails from Uttar Pradesh and has come to Punjab was carrying no money or a paltry sum of Rs.100/- with him.

Furthermore, when SI Mangal Singh, alleged recovery witness, appeared in the witness box as PW2, he was shown one bulk parcel but at the time of recording of statement of PW4 ASI Baldev Singh, Investigating Officer, two parcels were shown. Why both bulk parcels were not shown to PW2 Mangal Singh, has not been explained.

In this fact situation, a serious prejudice has been caused to the appellant and adverse inference is drawn against the prosecution that the so-called independent witness was actually never joined by the prosecution.

Considering the infirmities catalogued hereinbefore coupled with the fact that there is no investigation with regard to the source of contraband and in view of the fact that as per the prosecution case, the appellant was found sitting on the gunny bags, the conscious possession of the contraband by the appellant is not established.

Consequently, this appeal succeeds and is hereby accepted. As such, the impugned judgment of conviction/order of sentence is set aside and the appellant is acquitted of the charge framed against him.

19.2.2020  
gsv

(JITENDRA CHAUHAN)  
JUDGE

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|------------------------------|-----|---|----|
| Whether speaking / reasoned? | Yes | / | No |
| Whether reportable?          | Yes | / | No |