

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Criminal Appeal-S-1020-SB of 2005

Date of Decision: March 17, 2020.

Mukhtiar Singh alias Mukha

.....Appellant

versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR.JUSTICE VIVEK PURI.**

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Present: Mr.Naresh Kumar, Advocate, for  
Mr.K.S.Dadwal, Advocate, for the appellant.

Ms.Sakshi Bakshi, AAG, Punjab.

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**Vivek Puri, J.**

[1] The present appeal has been preferred against the judgment of conviction and order of sentence dated 23.04.2003 passed by the learned Judge, Special Court, Hoshiarpur, vide which the appellant has been convicted for having committed the offence punishable under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and sentenced to undergo rigorous imprisonment for a period of 1½ year and to pay a fine of Rs.1,000/-, in default whereof to further undergo rigorous imprisonment for a period of three months. It was also directed that the period undergone by the appellant during investigation, inquiry and trial, shall be set-off from the substantive sentence of imprisonment imposed upon him.

[2] Briefly, the FIR No.126 dated 22.06.2002, Police Station Bulloval under Section 15 of the Act was registered on the allegations that

Bullocal received a secret information to the effect that the appellant is carrying poppy husk in the truck bearing registration Number HR 38D 2007 and is coming from Jammu and Kashmir to sell the same in the villages and the truck was coming to village Patharalian. Relying upon the information ruqqa was recorded and dispatched to the police station, on the basis whereof FIR was registered. S.I Balbir Singh alongwith fellow police officials raised Nakabndi near choe bridge, Khadiala Sehian and information was sent to Charanjit Kumar DSP (R) with the request to arrive at the spot. At about 9.00 a.m., the truck came from Tanda side. It was signaled to stop. It was being driven by the appellant and his identity was verified. DSP Charanjit Kumar gave his introduction to the appellant and told him that search of the truck is to be conducted as it was suspected that he was carrying narcotics substance. The appellant was further asked if he intends to get the search conducted in the presence of any other gazetted officer or a Magistrate but the appellant reposed confidence upon him. The consent statement was reduced into writing. The search of the truck was carried out but no incriminating article was recovered. However, in the presence of DSP Charanjit Kumar, the appellant made disclosure statement exhibit PE to the effect that he has concealed the poppy husk in the empty chamber of the second part of the diesel tank of the truck which was in his exclusive knowledge and can get the same recovered. Consequently in pursuance of the disclosure statement, the appellant opened the clump with help of a plier which led to the recovery of 10 packets of poppy straw. Two samples weighing 250 gm each were separated and the remaining poppy straw weighed 9 kg 500 gm. Separate parcels of both the samples and the bulk were prepared and sealed with the seal bearing impression CK and BS.

The specimen seal was prepared and the incriminating articles were taken into possession vide separate recovery memo. The truck alongwith the registration certificate and insurance certificate were taken into possession. The personal search of the appellant was also conducted. On receipt of the report of the Chemical Examiner and conclusion of investigation, the challan was presented against the appellant. On presentation of challan the copies of documents were supplied to the appellant. A prima facie case under section 15 of the Act was made out to which the appellant pleaded not guilty and claimed trial.

[3] In support of its allegations, the prosecution has examined five witnesses namely HC Nirmal Singh PW1, Constable Sukhwinder Singh PW2, S.I. Balbir Singh PW3, HC Harjinder Singh PW4 and DSP Charanjit Kumar PW5 besides producing documentary evidence.

[4] The statement of the appellant under section 313 Cr.P.C. was recorded but he has not led any defence evidence.

[5] Vide judgment of conviction and order of sentence dated 23.04.2005 the appellant was convicted and sentenced as aforesaid.

[6] Aggrieved by the aforesaid judgment, the present appeal has been preferred by the appellant.

[7] I have heard learned counsel for the parties and perused the record.

[8] While assailing the judgment of the trial Court, it has been contended by learned counsel for the appellant that no independent witness has been joined at the time of recovery. The appellant was not in custody of the police and in such circumstances the recovery effected in pursuance of the disclosure statement becomes inconsequential. Furthermore, the

appellant is not in any manner connected with the truck from which the contraband was allegedly recovered.

[9] On the contrary, while supporting the judgment of the learned trial Court, it has been argued by the learned State counsel that there cannot be any bar to base the conviction on the statements of the official witnesses only. Further, the appellant was in the deemed custody of the police at the time when recovery was effected in pursuance to his disclosure statement and furthermore the appellant was working as driver on the truck from which the contraband was recovered.

[10] It is no doubt true that the case of the prosecution hinges upon the deposition of official witnesses only but it cannot be construed as a circumstance to disbelieve the version of the prosecution in entirety. There is no provision of law which requires the presence of independent witness at the time of search of the suspect. The deposition of the official witnesses cannot be viewed with distrust merely because of official status of the witnesses, unless and until there are cogent grounds therefor. Moreover it is emerging in the cross-examination of SI Balbir Singh PW3 that he made efforts to join public witness but no one was willing to join the police party. It is a matter of common observation that there is general reluctance on the part of the people not to join investigation of the case to avoid enmity or for any such other reason. By no stretch of imagination, it can be said that the case of the prosecution is liable to be disbelieved solely on the score that it hinges upon the deposition of official witnesses only. In **In Surinder Kumar versus State of Punjab, 2020(1) RCR (Criminal) 576**, it has been held by the Hon'ble Supreme Court of India as follows:-

“14. Further, it is contended by learned senior counsel appearing for the appellant that no independent witness was

examined, despite the fact they were available. In this regard, it is to be noticed from the deposition of Devi Lal, Head Constable (PW-1), during the course of cross-examination, has stated that efforts were made to join independent witnesses, but none were available. The mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed.

15. The judgment in the case of *Jarnail Singh v. State of Punjab*, (2011) 3 SCC 521: 2011(1) R.C.R. (Criminal) 925, relied on by the counsel for the respondent-State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status. In the case of *State, Govt. of NCT of Delhi v. Sunil & Anr.*, (2001) 1 SCC 652: 2001(1) R.C.R. (Criminal) 56, it was held as under:-

“It is an archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Courts cannot start with the presumption that the police records are untrustworthy. As a presumption of law, the presumption would be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature”.

[11] It may be recapitulated here that the truck was being driven by the appellant when it was signaled to stop. Secret information was received that there were narcotic substance being carried in the truck. However, at

normal search. Subsequently, the appellant was interrogated and he made disclosure statement, in pursuance whereof the recovery has been effected from an empty chamber with the diesel tank of the vehicle.

[12] Much emphasis have been laid by the Id. Counsel for the appellant on the aspect that the arrest of the appellant was effected subsequent to the recording of disclosure statement and as such any recovery effected in pursuance of said disclosure statement becomes inconsequential and immaterial. It is significant to note that the appellant was apprehended in pursuance of the secret information received against him. He was kept under restraint as the search of the vehicle was being conducted. Moreover, the custody does not mean the police custody. In the event the appellant was in some kind of surveillance and restraint on the movement, it has to be presumed that he was in custody and merely because the formal arrest has been effected at subsequent stage will not render the disclosure statement and the recovery effected in pursuance thereof to be inconsequential and immaterial. In this regard reference can be made to the Division Bench decision of this court in **Subhash Chand @ Kukku versus State of Haryana, 2003 (1) CLJ (Criminal) 97,** wherein he has been laid down as following:-

“9. The question which arises is whether the disclosure statement made by the accused during his interrogation when he was in judicial custody is admissible in evidence as a statement made by a person accused of any offence in custody of a police officer. Custody is not defined either in the Code of Criminal Procedure or in the Evidence Act. The term custody and arrest are not synonymous terms. It is true that after every arrest there is custody but not vice versa. The question is whether the accused can be considered to be in custody at any time earlier when he has not been formally

arrested but is interrogated by the police for the purpose of investigation. Ordinarily information coming from an accused person, who is liable to be influenced by the police will be open to suspicion. But if the information leads to the discovery of relevant facts that discovery is considered to be a guarantee of the truth of information and is made relevant by Section 27 of the Act. If information is reliable when it comes from a person in the custody of the police, there seems no good reason why it should not be so when it comes from an accused person who is not in the custody of police and, therefore, not under the influence of police. The real intention of the section very probably is to make information from an accused person which leads to discovery relevant even when the person is in police custody. As a matter of fact the Full Bench of Lahore High Court in ***Hakam Khuda Yar v. Emperor, AIR 1940 Lahore 129*** has interpreted word "custody" to mean that "the police custody" does not necessarily mean custody after formal arrest and it also includes "some form of police surveillance and restriction on the movements of the person concerned by the police." It was further held that

"The language used in the Section thus leads to the curious result probably never intended - that when such information is given by an accused person, who is not in the "custody" of the police, it will not be covered by the Section. However, apart from the above anomaly, the intention of the Section seems, I think, clear enough and that is to make information leading to a discovery relevant, even when it comes from an accused person who is in the custody of the police and thus subject to police influence. Ordinarily information coming from an accused person, is liable to be influenced by the police will be open suspicion. But if the information leads to the discovery of a relevant fact, that discovery is considered to be a guarantee of

the truth of the information as has been pointed out already and hence such information is made relevant by Section 27. Now there can be little doubt, that even before his formal arrest, as accused person, who is detained by the police owing to suspicion against him, is liable to be influenced by the police. This court has therefore put a wide interpretation on the words "custody" as used in Section 27. In AIR 1933 Lahore 609, it was held by a Division Bench of this Court consisting of Sir Shadi Lal and Coldstream, JJ. that police custody does not necessarily mean custody after formal arrest and that it also includes some form of police surveillance and restriction on the movements of the person concerned by the police.

In 15 Lah 310 it was held by another Bench (Sir Abdul Qadir and Rangi Lal, JJ., following I Rang 609) that as soon as an accused or suspected person comes into the hands of a police officer, he is, in the absence of clear and unmistakable evidence to the contrary, no longer at liberty and is therefore in custody within the meaning of Sections 26 and 27, Evidence Act. The interpretation placed in these rulings on the words "custody" seems to be a keeping with the spirit and intention of Section 27 and in the absence of any definition of the words "custody", limiting it to detention after arrest, I see no reason for departing from this interpretation."

10. A Division Bench of Madhya Pradesh High Court in ***Onkar v. State of Madhya Pradesh, 1974 CrL.L.J. 1200*** has also drawn distinction between the word custody and arrest and it has been held that when a person is called to the police station and is interrogated as an accused in connection with the investigation of a crime, he must be deemed to be in the custody of the police while he is so interrogated and no formal arrest is necessary, it was held further held as

follows:-

"There is a distinction between custody and arrest. Custody does not mean formal custody but includes any sort of surveillance or restriction or restraint by the police. In *Chhotelal v. State of U.P., AIR 1954 Allahabad 687 : 1954 Cri. L.J. 1445* it was held that the word "custody" in Section 27, Evidence Act does not mean formal custody and the accused can be said to be in custody when he is under surveillance of the police. A similar view was expressed in *Allah Ditt v. Emperor, AIR 1937 Lahore 620 : 1937(38) Crl.L.J. 1082* and *Maharani v. Emperor, AIR 1948 Allahabad 7 : 1947(48) Crl.L.J. 939*. In the Allahabad case it was held that the word "custody" in Section 27, Evidence Act does not mean formal custody but includes such state of affairs in which the accused can be said to have come into the hands of a police officer or can be said to have been under some sort of surveillance or restriction : vide paragraph 17. In *Shiv Charan v. State of M.P., 1968 Civ App R. 268 (SC)* their Lordships constructed the expression "custody" in Section 27, Evidence Act as connoting some restraint on the freedom of movement of the person whether by word or action. It was held that it did not mean custody after formal arrest. The following observations of their Lordships at p. 271 are pertinent:-

"As soon as a person is suspected for the commission of an offence, and the police officer in charge of the investigation exercises some control over his movements, for the purpose of the investigation, in the absence of clear evidence to the contrary, he is no longer at liberty and may be taken to be in custody within the meaning of Section 27."

28. When a person is called to the police station and is interrogated as an accused in connection with the

investigation of a crime, he must be deemed to be in the custody of the police while he is so interrogated and no formal arrest is necessary."

11. Thus, it is apparent that disclosure statement Ex.PD made by accused while he was in judicial custody in the Court premises to the police officials interrogating him is admissible in evidence. We do not find any illegality in interrogating the accused in court premises with the permission of the Magistrate in pursuance of which accused has made disclosure statement which led to recovery of contraband on the next day after the accused was expressly permitted by the Magistrate to be arrested in the present case as well at 6.50 p.m."

[13] In these set of circumstances merely because the formal arrest of the appellant has been effected subsequent to the recovery, cannot be termed to be a circumstance to render the disclosure statement made by the appellant and consequential recovery effected after he was apprehended by the police in pursuance of the secret information to be inconsequential.

[14] The last contention raised on behalf of the appellant is to the effect that the appellant is not in any manner connected with the truck in which the contraband was recovered. It is no doubt true that the appellant was not owner of the said vehicle but it may be mentioned here that the appellant was working as driver on the truck in question. Merely because the owner of the truck has not been associated during investigation cannot be termed to be a circumstance to disbelieve the version of the prosecution particularly because the appellant was driving the truck and the version against him is emerging in the statement of the witnesses to the recovery.

[15] In the case in hand the recovery has been effected by SI Balbir Singh PW3 in the presence of HC Harjinder Singh PW-4 and DSP Charajit Singh PW-5. All the witnesses have given a detailed and satisfactory count with regard to recovery and sequence of events leading to the recovery of incriminating articles from the possession of the appellant. No ill-will, bias or animosity is made out against the appellant by the police officials and no reason is made out for his false implication. All witnesses to the recovery have deposed in a fairly satisfactory manner and with regard to all the material aspects of the case. Their deposition inspires confidence and forms valid ground for founding the conviction of the appellant. The prosecution has successfully proved and established the guilt of the appellant beyond the shadow of any reasonable doubt. The trial Court has recorded the findings of conviction on the basis of reliable and satisfactory evidence establishing the guilt of the appellant beyond the shadow of any reasonable doubt. The judgment of conviction, as recorded by the learned trial Court is on the basis of satisfactory and reliable evidence and the same does not suffer from any illegality or irregularity which may call for any interference by this Court. As such, the findings of conviction, as recorded by the trial Court, are affirmed.

[16] With regard to quantum of sentence, it may be mentioned here that adequate sentence commensurate to the guilt of the appellant has been imposed and the same does not call for any interference by this Court.

[17] For the aforesaid reasons, finding no merit in the present appeal, the same is dismissed.

[18]           The appellant is on bail and necessary steps be initiated for effecting his re-arrest so that he may undergo the sentence imposed upon him.

March 17, 2020

*mohinder*

(VIVEK PURI)  
JUDGE

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|---------------------------|---|-----|
| Whether speaking/reasoned | : | Yes |
| Whether Reportable        | : | Yes |