

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

228

Criminal Appeal-S-2868-SB of 2017 (O&M)

Date of Decision: February 06, 2020.

Melo and others

.....Appellants

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.K.P.S.Virk, Advocate, for
Mr.K.S.Dhaliwal, Advocate, for the appellants.

Ms.Jasleen Kaur, AAG, Punjab.

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Vivek Puri, J.

The present appeal has been preferred against the judgment of conviction and order of sentence dated 05.06.2017 vide which the appellants have been convicted for having committed offence under Section 15 of the N.D.P.S. Act (for short, 'the Act') and each of them have been sentenced to undergo rigorous imprisonment of 10 years and to pay a fine of Rs.1.00 lakh each and in default of payment of fine, to further undergo rigorous imprisonment of 2 years and 6 months.

Briefly, the facts as put-forth by the prosecution are to the effect that on 28.04.2013, the police party headed by Inspector Fakir Fateh Singh was patrolling in an official vehicle and were proceeding from village Chatt towards Mcdonalds restaurant. At about 3.30 P.M., they reached near Macdonalds restaurant. They spotted the appellants. One of the appellants was carrying one bag and other two appellants were carrying one bag in

their hands. The appellants were apprehended on suspicion and their identify was verified. Inspector Fakir Fateh Singh apprised the appellants of their legal right to get themselves searched before a Gazetted Officer or a Magistrate as it was suspected that they were carrying intoxicant substances in their bags. The appellants opted to get themselves searched before a Gazetted Officer. The consent memo was prepared and Anil Kumar, Superintendent of Police, Derabassi was requested to arrive at the spot and on his arrival, he gave his introduction to the appellants who gave their consent in getting the search conducted in his presence. Meanwhile, Harbans Singh appeared at the spot and he was joined in the police party. The consent memo of the appellants was prepared. Search of the bags was conducted by Anil Kumar, Superintendent of Police, Derabassi. Melo-appellant No.1 was carrying one plastic bag having 25 Kg. and 500 grams of poppy husk. He took two samples of 250 grams of poppy husk from the said bag. On the search of appellant Nos.2 & 3, namely, Rani and Meeto, it was found that they were carrying one plastic bag having 25 Kgs. of poppy husk. Anil Kumar, Superintendent of Police took two samples each of 250 grams poppy husk from the said bag. Both the bulk samples and four sample parcels were sealed vide seal bearing impression of 'FFS' and 'AK' of Inspector Fakir Fateh Singh and Anil Kumar, Superintendent of Police, Derabassi, respectively. The seals after use were handed over to Harbans Singh. Specimen seal was prepared. Personal search of the appellants was conducted by LC Gurjit Kaur and the articles recovered were taken into possession vide separate personal search memos.

On completion of the investigation, challan was presented in the Court. *Prima-facie*, case under Section 15 of the Act was made out

against the appellants. The charge was accordingly framed to which they pleaded not guilty and claimed trial.

To substantiate its case, the prosecution has examined as many as six witnesses, namely, PW-1 MHC Kuldeep Singh, PW-2 C. Pardeep Singh, PW-3, Anil Kumar, Superintendent of Police, PW-4 Inspector Tarlochan Singh, PW-5 ASI Paramjit Singh and PW-6 Inspector Fakir Fateh Singh. The statements of the appellants under Section 313 Cr.P.C. were recorded and they have examined DW-1 Harbhajan Kaur in their defence evidence.

Vide the judgment of conviction and order of sentence dated 05.06.2017, the appellants have been convicted and sentenced as mentioned above.

Aggrieved by the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

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

It is contended on behalf of the appellants that Harbans Singh, a public witness, was also joined at the time of recovery but he was not examined at the time of trial. Furthermore, it is contended that there is lack of satisfactory and reliable evidence to indicate that the sample parcels analyzed by the Chemical Examiner were the same which were actually prepared at the spot. Further, there are significant discrepancies emerging in the statements of the witnesses which render the version of the prosecution to be doubtful.

On the contrary, it is argued by the learned State counsel that Harbans Singh has been given up having been won over by the appellants

and there cannot be any bar to base the conviction on the deposition of the official witnesses only. The link evidence in the instant case is complete and the discrepancies are inconsequential in nature.

At the very outset, it may be mentioned here that Harbans Singh was joined during the course of proceedings at the spot and his name and signatures also appear on the recovery memo exhibit PC. His name has also been mentioned in the list of witnesses but subsequently, he was not examined and given up being won over by the appellants. Though a public witness was joined at the time of recovery but he was not examined during the course of trial. However, it cannot be termed to be a sole circumstance to raise any doubt with regard to genuineness of the deposition of all the official witnesses. Moreover, it is not the case of the appellants that Harbans Singh has stepped up in the witness box as defence witness to dispute the version of the prosecution. Further, in such like circumstance, the Court is required to scrutinize the evidence adduced on record with more care and caution.

In the instant case, the version of the prosecution is to the effect that at the time of effecting the recovery, the parcels were sealed with the seal impression 'FFS' and 'AK'. The case property was also produced before the Inspector Tarlochan Singh PW-4 who was working as Station House Officer at Police Station Zirakpur. He has specifically and categorically stated that he had verified the fact of recovery of poppy husk from the appellants as well as examined the case property. He has also deposed that he has affixed his seal bearing the impression 'TS' on all the parcels and has also prepared the specimen seal exhibit P-2. Besides, Inspector Fakir Fateh Singh PW-6 had produced the case property before the Inspector Tarlochan

Singh PW-4. He has also testified to the effect that Inspector Tarlochan Singh PW-4 attested the bulk parcels as well as FSL form No.29M with the seal bearing impression 'TS'. Even during the course of cross-examination, he has testified to the effect that Inspector Tarlochan Singh PW-4 has also appended his seal on the samples and the bulk case property. A perusal of the specimen seal exhibit P-2 also indicates that it bears the impression of the seal of Inspector Tarlochan Singh PW-4 besides the impression of seal of the Inspector Fakir Fateh Singh PW-6 and Anil Kumar, Superintendent of Police-PW-3.

Now, it has to be seen as to whether sample parcels bearing the aforesaid three seals, i.e., 'FFS', 'AS' and 'TS' had reached the office of the Chemical Examiner and analyzed by it. It is significant to note that further movement of the case property depicts a different picture.

After production of the case property before the Inspector Tarlochan Singh PW-4, the same was deposited with the MHC Kuldeep Singh PW-1, Incharge of the Malkhana. A perusal of his affidavit exhibit PW-1/A indicates that the parcels were sealed vide seal bearing impressions 'FFS' and 'AK'. The affidavit is silent with regard to the seal bearing impression 'TS' of Inspector Tarlochan Singh PW-4. It is also emerging in the cross-examination of MHC Kuldeep Singh that specimen seal (exhibit DA) was bearing three seal impressions, i.e., 'FFS', 'AK' and 'TS'. Furthermore, no objection was raised by the Chemical Examiner and he has further deposed to the effect that all the three seals were not affixed on the case property and the samples and voluntarily added that only two seals bearing the impressions 'FFS' and 'AK' were affixed on the case property and the samples. Thereafter, the case property was produced before the

learned Judicial Magistrate alongwith the inventory report exhibit PW-6/H. A perusal of the same indicates that the descriptions of the seal on the parcels have been mentioned as 'FFS' and 'AK' without any mention of seal bearing impression as 'TS'. The order of learned Judicial Magistrate dated 29.04.2013 also indicates that the parcels were bearing the seals impressions of 'FFS' and 'AK'. Thereafter, the sample parcels were sent to the office of the Chemical Examiner. The affidavit of PW-2 Constable Pardeep Singh exhibit PA, who carried the sample parcels to Chemical Examiner, also indicates that the parcels were bearing the seals impression of 'FFS' and 'AK' and the same were deposited in the office of the Chemical Examiner. Now, coming to the report of the Chemical Examiner, exhibit PW-6/J, it has been mentioned in the report that the samples were bearing the seal impressions of 'FFS' and 'AK'.

In these circumstances, the material on record indicates that on the date of recovery, when the case property was produced before Inspector Tarlochan Singh PW-4, he had put his seal bearing the impression 'TS' on the parcels. Further, the subsequent movement of the case property till the sample parcels reached to the office of the Chemical Examiner, indicates that the case property was bearing the seals impression as 'FFS' and 'AK' without any mention of seal impression 'TS'. In such circumstances, it becomes highly doubtful that the sample parcels, which were actually prepared at the spot and counter-sealed by the Station House Officer, have reached the office of the Chemical Examiner and analyzed by it. As such, it emanates that samples actually drawn at the spot and produced before the Inspector Tarlochan Singh PW-4, had ultimately not reached to the office of the Chemical Examiner. In such circumstances, the link evidence in the

instant case cannot be termed to be reliable and possibility of tampering with the parcels cannot be ruled out. Consequently, it cannot be safely concluded that the parcels which were actually prepared at the spot had reached the office of the Chemical Examiner and as such the contents in the bags being carried by the appellants were that of poppy husk.

Learned counsel for the appellants has also pointed out that there are discrepancies appearing in the statements of the witnesses. It has been stated by Anil Kumar, Superintendent of Police PW-3 that Harbans Singh had already joined the police party before his arrival, whereas, Inspector Fakir Fateh Singh has testified to the effect that Harbans Singh arrived at the spot after the samples were drawn from the bulk parcels. On the contrary, in the report under Section 173 Cr.P.C., it has been mentioned that Harbans Singh had arrived at the spot at the point of time when consent memos were prepared by the police party. Another discrepancy pointed out by learned counsel for the appellants is with regard to the manner of procuring the weighing scale. Inspector Fakir Fateh Singh PW-6 has stated that a computerized weighing scale was available with him, whereas Anil Kumar, Superintendent of Police PW-3 and ASI Paramjit Singh PW-5 another witness of the recovery have testified that weighing scale was brought by HC Ramesh Lal. It may also be mentioned here that the version of the prosecution is that appellant No.1-Melo was holding one bag. Even as per the version put-forth by Inspector Fakir Fateh Singh PW-6, firstly the bag being carried by appellant No.1-Melo was searched which led to recovery of 25 Kgs. and 500 grams of poppy husk and thereafter, the bag being carried by appellant Nos.2 & 3 namely, Rani and Meeto was searched which led to recovery of 25 Kgs. of poppy husk. On the contrary, it has

been deposed by PW-5 ASI Paramjit Singh that one plastic bag was held by Melo and Rani, whereas one bag was held by Meeto. The discrepancies as pointed out by learned counsel for the appellants cannot be termed to be inconsequential and insignificant in the peculiar circumstances of the instant case. These discrepancies assume glaring significance as the independent witness though joined in the investigation but has not been examined during the course of trial and furthermore, the link evidence in the instant case is unreliable.

The cumulative effect of the aforesaid observation lead to the conclusion that the case of the prosecution cannot be said to be free from reasonable doubt and the appellants become entitled to the benefit of doubt and consequently entitled to acquittal.

For the aforesaid reasons, the instant appeal is accepted; the judgment of conviction and order of sentence dated 05.06.2017 are set-aside. The appellants/accused are acquitted and are ordered to be released forthwith, if not confined in any other case. The amount of fine, if deposited by the appellants, be refunded to them.

February 06, 2020
mohinder

(VIVEK PURI)
JUDGE

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