

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

CRA-S-1028-SB-2007(O&M)

Date of decision:-9.9.2022

Chhota Singh

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr.Ramesh Goyat, Advocate
for the appellant.

Mr.Vijesh Sharma, Addl.A.G., Haryana.

H.S. MADAAN, J.

1. Appellant/accused Chhota Singh was tried by learned Additional Sessions Judge, Fatehabad in a case FIR No.17 dated 12.2.2005 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Sadar, Tohana and vide judgment dated 6.3.2007, he was convicted for the offence for which he was booked and in terms of order of that very date, he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default thereof to further undergo simple imprisonment for a period of one year.

2. Briefly stated, the facts of the case, as per the prosecution version are that on 12.2.2005, SI Rajbir Singh, Incharge Special Staff, Tohana (hereinafter referred to as the Investigating Officer/IO) accompanied by other police officials was on routine patrolling and checking of crime duty, going towards village Fatehpuri side and when

the police party reached at bus stand of village Fatehpuri, one Ajaib Singh, Ex-Sarpanch son of Gurbachan Singh, resident of village Fatehpuri came; he was joined with the police party and in the meanwhile IO received a secret information that Chhota Singh son of Ram Lal, resident of Fatehpuri was indulging in selling of poppy husk in an abandoned house in dilapidated condition located in the middle of the village and if a raid was conducted, he could be apprehended; as such the IO prepared a raiding party, joining Ajaib Singh, Ex-Sarpanch therewith and proceeded towards the disclosed place; when the raiding party had reached near Baba Khara Mandi, the accused was seen sitting on the bags having contents; on seeing the police party, the accused stood up and started walking away briskly; he was apprehended on the basis of suspicion and his name and other particulars were inquired about, which he disclosed; there was four bags in his possession.

3. The IO suspected that those bags contained some contraband, therefore the IO served notice under Section 50 of the Act Ex.PE upon the accused that since he (IO) suspected the bags in his possession to contain some contraband, he wanted to search the same and if the accused so desired, the search could be conducted in presence of a Magistrate or a gazetted officer; the accused put his thumb impressions on that notice and in response Ex.PF, the accused desired that search be got conducted in presence of a gazetted officer, as such the IO requested Sh.Balbir Singh, DSP through his mobile phone to come to the spot; after some time Sh.Balbir Singh, DSP along with his staff arrived there; the IO apprised him about the facts of the case; then on instructions of the said DSP, the

IO searched gunny bags, which were found to contain poppy husk; the accused could not produce any licence or permit for possession of the contraband.; the IO took samples of 100 grams each from each of the four gunny bags, converting those into parcels, whereas the remaining poppy husk in the gunny bags came out to be 34.800 kgs.; the bags containing residue poppy husk were also converted into parcels; the sample parcels as well as the bulk parcels were sealed by the IO with his seal bearing impressions 'RB'; DSP Balbir Singh also put his seal having inscription 'BS' on all the parcels; samples seal impressions were taken on a chit; DSP Balbir Singh kept his seal with himself, whereas the IO after use handed over his seal to ASI Ram Bhaj; then the entire case property was taken into police possession vide a recovery memo.

4. The Investigating Officer sent ruqa Ex.PI to the police station, on the basis of formal FIR Ex.PJ was recorded. Accused was accordingly arrested in this case as per rules, preparing requisite documents. The Investigating Officer prepared rough site plan of the place of recovery as Ex.PK and recorded statements of witnesses.

5. On return to the police station, the Investigating Officer produced the accused along with the case property and witnesses before ASI Rampal Singh, SHO of the Police Station Sadar, Tohana, who verified the facts and sealed the case property with his seal having inscription 'RPS'. Thereafter, on his instructions the IO deposited the case property with MHC and lodged the accused in lock up. He put his endorsement Ex.PB on report by IO Ex.PA.

During the course of investigation, the sample parcels were

sent to the office of FSL, Haryana Madhuban and as per report Ex.PL received therefrom, those were found to be of poppy straw (Chooru Post) of *Papaver somniferum* L.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of SDJM, Tohana.

6. On presentation of challan in the Court of learned SDJM, Tohana, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

7. Then finding that the offence under Section 15 of the Act is exclusively triable by Court of Sessions, learned SDJM, Tohana committed the case to the Court of learned Additional Sessions Judge (I), Fatehabad.

8. On receipt of the case in the Court, learned Additional Sessions Judge, Fatehabad, observing that prima facie charge for an offence under Section 15 of the Act was disclosed against the accused charge-sheeted him accordingly, to which, he pleaded not guilty and claimed trial.

9 During the course of its evidence, the prosecution examined the following witnesses:

PW1 Constable Parkash Chand deposed that on 14.2.2005 while he was working as Reader to DSP, Tohana, on that day, he had received report Ex.PA having endorsement Ex.PB and he had put up the said report before DSP, Tohana, who after going through the same put his signatures thereon at Point A.

PW2 HC Mahender Singh, a formal witness tendered in evidence his affidavit Ex.PC to the effect that on 12.2.2005, he was posted as MHC at Police Station Sadar, Tohana and was Incharge of the Malkhana; on that day, SI Rajbir Singh, Incharge, Special Staff, Tohana deposited the case property duly sealed with him and he had handed over the sample parcels to Constable Mahender Singh for depositing those in FSL, Madhuban, Haryana vide RC No.24 dated 15.2.2005; Constable Mahender Singh accordingly did so and handed over receipt to him and so long as the case property remained in his possession, no tampering therewith had taken place.

PW3 Constable Mahender Singh, the carrier of the sample parcels numbering four to FSL, Madhuban, Haryana vide his affidavit Ex.PD testified that on receipt of four sample parcels duly received by him from MHC Mahender Singh, he had deposited those in the office of FSL, Madhuban, Haryana and on return had handed over receipt to MHC Mahender Singh and so long as the case property remained in his custody, no tampering therewith had taken place.

PW4 SI Veer Singh stated that on 5.4.2005 while he was posted as SHO, P.S. Sadar, Tohana, on completion of investigation, he had prepared challan in this case, which was then filed in the Court.

PW5 ASI Ram Bhaj, who was member of the police party, which had apprehended the accused and effected recovery of contraband from him, deposed in that regard.

PW6 DSP Balbir Singh, on whose instructions the IO had searched the four bags found in possession of the accused, which were

containing poppy husk, deposed in that regard.

PW7 ASI Rampal, who while posted at Police Station Sadar, Tohana had registered formal FIR on receipt of ruqa sent by SI Rajbir Singh and before whom SI Rajbir Singh had produced the case property along with the witnesses and accused since he was officiating SHO of the police station deposed regarding his part as narrated above in the earlier part of the judgment in detail.

PW8 SI Rajbir Singh, who was heading the police party, which had apprehended the accused and effected recovery from him under supervision of DSP Balbir Singh, deposed in that respect.

The Public Prosecutor had tendered in evidence report of FSL, Haryana, Madhuban as Ex.PL and closed the prosecution evidence.

10. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances in the prosecution evidence appearing against the accused were put to him but he denied the allegations contending that he was innocent and no recovery was effected from him and he had been falsely involved in this case.

11. During the defence evidence, the accused examined Ajaib Singh, who had been allegedly joined as independent witnesses by the police party and in whose presence the recovery was statedly effected, as DW1. However, he stated that he is Sarpanch of village Fatehpuri and on 12.2.2005, his status was that of Ex-Sarpanch of the village. He stated that on 12.2.2005, he never joined the raiding party of police headed by SI Rajbir Singh and further no recovery was effected from accused Chhota Singh in his presence; the police had obtained his signatures on

some papers in the Police Station Sadar, Tohana since he usually visited the police station regarding disputes of the village. He stated that Chhota Singh had never indulged in selling poppy straw.

12. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he had filed the present appeal, which was taken up on 19.7.2007, when it was admitted for regular hearing and recovery of fine was stayed during the pendency of the appeal. On an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the same was allowed vide order dated 16.7.2009 and remaining sentence of the appellant was suspended during the pendency of the appeal and he was admitted to bail on furnishing bonds, to the satisfaction of learned CJM/Duty Magistrate, Fatehabad.

13. Now the appeal has come up for final hearing.

14. I have heard learned counsel for the appellant – accused – convict, learned Addl. Advocate General for the State of Haryana besides going through the record.

15. Here the witnesses of recovery namely PW5 ASI Ram Bhaj, PW6 DSP Balbir Singh and PW8 SI Rajbir Singh have fully supported the prosecution story with regard to accused having been found in conscious possession of contraband. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. No previous enmity between them and the accused – convict has been alleged or proved prompted by which they

might have involved the accused in this case wrongly and deposed against him falsely to secure his conviction. The account given by these PWs come out to be worthy of reliance.

16. From the statements of PW2 HC Mahender Singh, PW3 Constable Mahender Singh, it stands duly proved that the case property remained in safe custody and the sample parcels had reached FSL, Haryana, Madhuban, in an intact condition. Report from FSL Ex.PL also goes to show that when the sample parcels had reached there then the seals were intact and tallied with the specimen seal as per forwarding authority letter and on analysis, the samples were found to be that of poppy straw (Chooru Post).

17. Learned counsel for the appellant has however attacked the impugned judgment on various grounds. The first submission made by him in that regard is with regard to discrepancies in the statements of official witnesses, namely, PW5 ASI Ram Bhaj, PW6 DSP Balbir Singh and PW8 SI Rajbir Singh with regard to time when the police party had observed the accused; the time when DSP had arrived at the spot; the time spent by the police party at the spot and the time of return of police party along with the accused and case property to police station etc. and further regarding the distance of the place of recovery from the police station and the exact location of the place of recovery etc. According to the learned counsel for the appellant, such discrepancies make the prosecution story doubtful.

18. However, I am not convinced by this submission. It has to be kept in mind that the recovery had taken place on 12.2.2005, whereas

statements of the witnesses of recovery were recorded after a considerable time thereof i.e. of ASI Ram Bhaj on 13.12.2005, after a period of 10 months, DSP Balbir Singh and SI Rajbir Singh on 22.2.2006, after a period more than one year. A few minor contradictions in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events of various persons and so also due to lapse of memory on account of passage of time.

19. The next contention put forward by learned counsel for the appellant was that independent witness said to have been joined with the police party, namely, Ajaib Singh, Ex-Sarpanch was not examined by the prosecution, rather he appeared as a witness in defence and denied having joined the police party or any recovery having been effected from the accused in his presence, which creates a serious dent in the prosecution story causing a reasonable doubt in the mind about its truthfulness. Therefore, benefit of doubt should be given to the accused and he deserves to be acquitted of the charge framed against him.

20. Again I am not impressed by this contention. It has to be kept in mind that many a times human beings do get influenced by various factors like close proximity with a person, accused of an offence, considerations like caste, creed religion and factors like the person, accused belonging to the same village or town, which make them hesitant to speak the truth and rather presenting a wrong version to help the accused. Merely because the independent witness had chosen not to support the prosecution story, the prosecution story does not get adversely

affected for that reasons since as already observed, the official witnesses did not have any motive to involve the accused in this case wrongly or depose against him to secure his conviction. There is nothing on record to show that such official witnesses of recovery examined by the prosecution had any previous score to settle with the accused. Therefore, their statements are to be taken at par with those of independent witnesses. An independent witness showing hostile tendency towards the prosecution, his deposition cannot be taken to be gospel truth so as to discard the voluminous incriminating evidence adduced by the prosecution both oral as well as documentary, which is found to be cogent, convincing and reliable. A Single Bench of this Court in judgment **Krishan Kumar Versus State of Punjab, 2016(2) RCR(Criminal)707** had observed that testimonies of the official witnesses carry the same evidentiary value as that of any other witness and their statements cannot be discarded simply on account of their official designation.

21. A Division Bench of this Court in case **Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25** when an independent witness had been joined during the search and recovery of contraband. He had appeared as a witness for the defence stating that his signatures were procured on blank papers when he had visited the police station in drunken condition, had observed that such contention was not acceptable holding that it cannot be believed that numerous signatures on various papers having different written material could be signed by a witness on blank papers. The testimony of that witness was held to be unreliable and was discarded. In that very judgment, credibility of official/police

witnesses was considered and it was observed that when there is no allegation of any enmity against the police officials to falsely implicate the appellants and there was no reason for them to depose against the appellants, the trial Court had rightly concluded that non-examination of independent witness of search and recovery being won over by the accused does not raise any doubt in the prosecution case.

22. Learned counsel for the appellant has further stated that presence of DSP at the spot is doubtful, keeping in view the reply given by him in his cross-examination that place of recovery is of 4-5 kms. from Fatehabad, whereas the distance is much more.

23. However, I do not find myself in agreement with this contention. The presence at the spot of DSP Balbir Singh stands adequately established from the record. All the parcels bear his seal and the remaining witness of recovery also deposed about DSP Balbir Singh having arrived at the spot and IO having searched the bags under his instructions.

24. The prosecution has proved its charge against the accused conclusively and affirmatively. The accused could not render any reasonable or plausible explanation for his alleged false implication nor could he account for possession of the contraband without any licence or permit thereby showing that he was in conscious possession of the contraband.

25. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for ten years, which is the minimum prescribed sentence for possession of commercial quantity of the

contraband. Even otherwise, the appellant/accused for a pecuniary benefit opted to play with lives and health of people of the area by making them addict to taking drugs. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increased drug trafficking. Therefore, the sentence awarded to the appellant/accused is not found to be on very high side and does not call for any reduction.

26. The impugned judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas the appeal is found to be without any merit and the same is dismissed accordingly.

27. Appellant Chhota Singh is stated to be on bail granted to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Fatehabad is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

9.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes