

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

(1) CRA-S-1817-SB-2007 (O&M)

Binder Singh

...Appellant

Versus

State of Punjab

...Respondent

(2) CRA-S-2281-SB-2007 (O&M)

Mohinder Pal Singh

...Appellant

Versus

State of Punjab

...Respondent

Date of pronouncement: 05.09.2022

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

Present: Mr. Harsh Aggarwal, Advocate for the appellant
in CRA-S-1817-SB-2007.

Mr. Chandan Singh, Advocate for the appellant
in CRA-S-2281-SB-2007.

Mr. G.S. Dhillon, AAG, Punjab.

H.S. MADAAN, J.

1. By this judgment, I intend to dispose of above mentioned
two appeals arising out of the same judgment, passed by Judge, Special
Court, Patiala in FIR No.692 dated 01.12.2000, for offences under

Sections 15 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Kotwali, Patiala. Appeal No.CRA-S-1817-SB-2007 has been filed by appellant-accused Binder Singh whereas, appeal No.CRA-S-2281-SB-2007 has been filed by appellant-accused Mohinder Pal Singh.

2. Briefly stated the facts of the case, as per prosecution story are that on 01.12.2000, a police party from Police Station Kotwali, Patiala headed by SI Satpal Singh of CIA Patiala (hereinafter referred to as the Investigating Officer/IO) while travelling in an official vehicle, was present at Modi College Chowk, Patiala in connection with checking of bad elements; there the IO received a secret information that accused Binder Singh, Mohinder Pal, Gopal Singh and Harbhajan Singh were involved in sale and purchase of poppy husk and on that day, they were bringing poppy husk for sale in Maruti 1000, having registration No.DL-5C-4169 and if a picket was laid, then huge quantity of poppy husk could be recovered from such accused; the IO sent ruqa Ex.PB to police station on the basis of which formal FIR Ex.PB/1 was recorded.

In the meanwhile, one Sham Lal son of Jiva Lal, R/o Pinjola arrived at that place and he was joined with the police party; after some time, the Maruti 1000 car regarding which secret information had been received was spotted coming from NIS Chowk, Patiala; the IO signalled the car to stop; the driver of the car and one

person sitting by his side managed to run away, whereas the other occupants of the car who were sitting on the rear seat namely Binder Singh and Mohinder Pal were apprehended by the police officials; the IO revealed his identity to Binder Singh and Mohinder Pal, accused informing them that he suspected that some contraband was being carried in the car and he wanted to search the car; he apprised both the accused about their right to get the search conducted in the presence of a Gazetted Officer or a Magistrate; both the accused vide separate memos Ex.PC and PD opted to get the search conducted in the presence of a Gazetted Officer; the IO sent a wireless message; accordingly, Sh. Varinder Singh, DSP (City) arrived at the spot along with his gunmen; he disclosed his identity as a Gazetted Officer to both the accused and also informed them that they had a right to be searched before any other Gazetted Officer or a Magistrate, however, both the accused reposed faith in the DSP; then on direction of the DSP, IO conducted search of the car, from which two bags containing poppy husk were recovered lying in between the back seat and the driver seat, whereas, three bags containing poppy husk were recovered from dickey of the car; two samples of 250 gm each were separated from each bag and remaining poppy husk on being weighed came out to be 29.5 kg in each bag; the samples and the bags containing residue poppy husk were converted into parcels and sealed with seal having impression 'SPS' of the IO and with seal having inscription 'VS' of the DSP; specimen impression of the seal Ex.P1 was prepared; seal of IO

after use was handed over to independent witness Sham Lal, whereas the DSP had retained his seal with himself.

Both the accused were accordingly arrested in this case as per rules; their jamatalashi was conducted and memos were prepared in that regard; grounds of arrest were served upon both the accused; information regarding their arrest was given to their relatives and memos were prepared in that respect; the case property was taken into police possession, vide a recovery memo; ruqa was sent to the police station on the basis of which formal FIR was recorded; rough site plan Ex.PN of the place of recovery was prepared; report under Section 57 of the Act Ex.PO was sent by the IO; statements of witnesses were recorded; during investigation, names of the accused who had managed to run away came to be known as Gopal Singh and Harbhajan Singh.

On return to the police station, the IO produced both the accused along with case property and witnesses before SHO Varinder Singh, who verified the facts and affixed his seal having impression 'VS' on all the parcels as well as sample seal chit Ex.P1; thereafter, the IO deposited the case property with MHC on directions of the SHO.

On 02.12.2000, the IO produced both the accused along with case property before Illaqa Magistrate vide application Ex.PP; the Court passed requisite orders on the application and there the case property was redeposited with MHC on the same day; during the course of investigation, sample parcels were sent to the Office of Chemical Examiner, Punjab and as per report received therefrom

Ex.PX, those were found to be samples of chura poppy heads; the investigation revealed that the car from which the contraband had been recovered was owned by one Harjinder Kaur.

On completion of investigation and other formalities, challan against accused Binder Singh, Mohinderpal Singh, Harbhajan Singh and Gopal Singh was filed in the Court whereas supplementary challan for an offence under Section 25 of the Act was filed against Harjinder Kaur.

3. On presentation of the challan before Judge, Special Court Patiala, copies of documents relied upon therein were supplied to the accused free of costs as provided under Section 207 Cr.P.C., and then finding a prima facie case, charge for an offence under Section 15 of the Act was framed against accused Binder Singh, Mohinder Pal Singh, Harbhajan Singh @ Bhajan Singh and Gopal Singh @ Kaka whereas for an offence under Section 25 of the Act against Harjinder Kaur accused. All the accused pleaded not guilty to the charge and claimed trial.

4. During the course of prosecution evidence, it examined the following witnesses:-

PW-1 HC Sudh Singh, a formal witness tendered in evidence his affidavit Ex.PA. He had testified with regard to safe custody of the case property so long as it remained in his possession.

PW-2 ASI Punit Singh, a witness of recovery supported the prosecution story on material aspects.

PW-3 Constable Jaswinder Pal, another formal witness who had taken the sample parcels to FSL, Punjab stated that till the parcels remained in his custody, no tampering therewith had taken place.

PW-4 Varinder Singh Brar, DSP, supported the case of prosecution with regard to recovery as well as on the other aspect.

PW-5 SI Gurmail Singh who had carried out the investigation of this case partly inasmuch as he had arrested Bhajan Singh accused in case on 17.12.2000 preparing the necessary documents deposed in that regard.

PW-6 SI Satpal Singh a witness of recovery as well as the IO deposed regarding his part toeing the line of prosecution, proving various documents.

The prosecution relied upon several documents.

With that, the prosecution evidence got concluded.

5. Since no incriminating evidence was found to be there against accused Harjinder Kaur, therefore, in terms of Section 232 Cr.P.C., she was acquitted, vide judgment dated 15.01.2007.

When the other four accused were examined under Section 313 Cr.P.C., all the incriminating circumstances appearing in prosecution evidence against the accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

Accused Binder Singh raised a plea that he was picked up by the police from Village Samundgarh Chhanna, where his in-laws reside and then falsely involved in this case.

Accused Mohinderpal Singh took up a plea that he was picked up from H.No.2 Tej Colony near Officers Colony, Patiala at about 7.20 am and false recovery has been planted upon him.

Accused Harbhajan Singh stated that nothing was recovered from him; he was falsely implicated in this case due to political rivalry; on 01.12.2000 he was present at his residence in village Rongla but he has been falsely involved.

Accused Gopal Singh took up a plea that he is a close friend of Ripjit Singh Brar, who is real brother of Jagmit Singh Brar Ex.MP of Muktsar; he has been falsely involved at the instance of interested persons due to political rivalry being a close friend of Ripjit Singh Brar and on the alleged day of occurrence, he was attending the marriage ceremony of his friend Nachhatar Singh at Village Bhure Kalan near Mamdoot, District Ferozepur. He remained present there on 01.12.2000 for whole of the day. The distance between the place of alleged occurrence and village Bhure Kalan is about 250 km.

6. During their defence evidence, the accused examined the following witnesses:-

DW-1 HC Bagh Singh brought the original DDR register of PS Kotwai, Patiala and proved copies of relevant entries regarding

this case as entry No.25 and 29 as Ex.DA and DB respectively.

DW-2 Shamsher Singh, a neighbour of accused Mohinderpal Singh, residing in Teg Colony, Patiala stated that on 01.12.2000, while he was present at his house, at about 7/7.30 a.m, he heard hue and cry in the mohalla. Then, he came out and saw that a white Zen Car was standing in front of the house of Mohinderpal and 3/4 persons were pulling him; when he asked the persons about the matter, they replied that Mohinderpal was required for some investigation; he and other co-neighbour asked the persons that we would produce Mohinderpal before the SHO but they refused their request and forcibly took Mohinderpal in the said Zen car. At that time Baldev Singh was also present alongwith the other neighbourers; he along with co-neighbourers and his father Kishan Singh went to the P.S. Civil Lines, Patiala for lodging a report and a rough report had been lodged by the official. On the next day, he came to know from news paper that Mohinderpal was involved in a poppy husk case. According to this witness, nothing was recovered from him on 01.12.2000 and Mohinder Pal has not done any criminal activity against the society.

DW-3 Baldev Singh another neighbour of Mohinder Pal also deposed on these lines.

DW-4 Sher Singh, a resident of village Sumandgarh stated that he knew accused Binder had married with daughter of Melu; about six years earlier, the police came to their village and called him (this

witness) asking him about the residence of Melu; he accordingly informed the police about location of house of Melu and returned back; only in the morning, he came to know that son in-law of Melu namely Binderpal was taken away by the police.

DW-5 Sita residing in neighbourhood of in-laws house of Binder Singh also deposed in that regard and so did DW-6 Gola.

DW-7 Sham Lal, an independent witness said to have been joined with the police party stated that the accused present in the Court were not arrested in his presence. The police officials had not told him that his signatures had been obtained in any case regarding the accused. No recovery was effected from the accused in his presence. He stated that he used to visit PS Sadar, Patiala and CIA Patiala from the last 20/30 years, since the police officials used to sit in his shop at bus stand Pinjola and due to that reason, most of the police officials were known to him. He stated that he did not remember if he went to police station on 01.12.2000, volunteer to state that he used to visit there.

DW-8 Nachhattar Singh, a resident of village Abul Khurana, District, Sri Muktsar Sahib stated that on 01.12.2000, his marriage ceremony was solemnized and on that day, they went to village Bhurekalan, District Ferozepur; accused Gopal Singh is his close friend; he came to his house one day prior to the marriage and remained with him till the next day of his marriage, attended the

Baraat; he proved photograph as Mark D1 showing him in his marriage along with Gopal Singh; he further proved photograph Mark D2 showing Gopal Singh therein; he stated that Gopal Singh is a man of good character and does not indulge in sale and purchase of narcotic drugs substance.

DW9 Gurpal Singh stated that he was running a studio for making video film and still pictures during marriage ceremonies; in the year 2000, he covered the function regarding marriage of one Nachhattar Singh son of Babu Singh of village Abul Khurana, District Muktsar; the shagun ceremony was held on 30.11.2000; Nachhattar Singh and his friends were acquainted with him previously; Gopal Singh was also known to him; Gopal Singh was present in the marriage of Nachhattar Singh on 30.11.2000; he proved copies of CDs prepared during marriage ceremony as Mark D4 to D6 respectively; he identified Gopal Singh in various pictures Mark D1 to D3 shown to him, stating that those photographs were to be the same which were clicked by him in the marriage ceremony.

8. After hearing arguments, learned trial Court, vide impugned judgment dated 22.08.2007, acquitted accused Harbhajan Singh and Gopal Singh, giving them benefit of doubt whereas accused Binder Singh and Mohinder Pal were convicted for the offence under Section 15 of the Act and vide order of even date, they were sentenced to undergo rigorous imprisonment (RI) for a period of 10

years each and to pay a fine of Rs.1 lakh each; in default of payment of fine, to further undergo RI for 02 years each

9. Feeling aggrieved by the said judgment of their conviction and order of sentence, accused/appellants Binder Singh and Mohinder Pal Singh had approached this Court by way of filing the appeals. The appeals were Admitted for hearing. On applications under Section 389 Cr.P.C., having been filed, remaining sentence of the appellants was suspended on their furnishing requisite bonds to the satisfaction of CJM, Patiala. Notice of the appeals was given to the State, which has put in appearance

Now the appeals have come up for final hearing.

10. I have heard learned counsel for the appellants/accused, learned State counsel besides going through the record.

11. In this case, learned counsel for the appellants have made several submissions, first being was that when the accused were examined under Section 313 Cr.P.C., no question was put to them regarding they having been found in conscious possession of the contraband, therefore, such circumstance cannot be used against the accused. Resultantly, the prosecution had been unable to prove its charge against the accused beyond a shadow of reasonable doubt, therefore, accused be given benefit of doubt and acquitted of the charge. Learned counsel for the appellants has referred to judgment

State of Punjab Vs. Hari Singh & Ors., 2009(2) RCR (Criminal) 143

in support of such contention.

Whereas, learned State counsel has vehemently opposed this contention.

After pondering over the issue, I find that this argument by learned counsel for the appellants is without merit. The prosecution by bringing enough cogent and convincing evidence especially in the form of recording statements of ASI Punit Singh who appeared as PW2, PW-6 SI Satpal Singh who had a witness of search and seizure besides IO, Sh. Varinder Singh Brar, DSP in whose presence the search had taken place had successfully proved that accused were found to be in possession of the contraband as accused have failed to account for such possession. Thus in terms of Sections 35 and 54 of the Act, they are to be taken in conscious possession of the contraband.

When their statements were recorded under Section 313 Cr.P.C., all the incriminating circumstances in the prosecution evidence were put to such accused, which they had denied. No prejudice of any type is shown to have been caused to the accused in any manner. The accused cannot take advantage of any lacuna, loophole in the investigation of the case so as to try to escape from conviction and sentence. The judgment referred to by learned counsel for the appellants **Hari Singh's** (supra) had different facts and context in which observations have been made was also distinct.

Similarly other judgment **Gurmail Singh & Anr. Vs. State**

of Punjab, 2019 (2) RCR (Criminal) 223 by a Single Judge of this Court also does not come to rescue of the appellants.

As regards the next authority pressed into service by learned counsel for the appellants Kewal Singh Vs. State of Punjab, 2018 (4) RCR (Criminal) 580, by a Single Judge of this Court is not applicable due to different facts, circumstances and context in which such observations have been made.

12. Though, learned counsel for the appellants has raised argument that the independent witness Sham Lal joined with the police party was not examined by the prosecution, rather he appeared as a witness for the defence and denied that the accused were arrested in this case or any recovery was effected from them, rather he stated that the police had taken his signatures on blank papers. Therefore, a serious dent is caused in the prosecution story, making it unreliable and unworthy of reliance, therefore, benefit should be given to the accused and they be acquitted of the charge framed against them.

Whereas, learned State counsel has countered the argument, stating that the accused have been able to win over the independent witness who resiled from the statement made by him to the police during investigation of the case in an attempt to help the accused in earning acquittal. Therefore, statement of Sham Lal appearing as DW7 does not help the defence much.

After hearing the rival contention, I find that merely because independent witness Sham Lal was not examined by the

prosecution and he rather opted to appear as a witness for defence does not cause any damage to the prosecution story. Human beings have tendency to succumb to temptation or tend to depose wrongly for some allurements under coercion, pressure or for any other reason. However, such conduct of a human being does not result in demolishing the entire case of prosecution. Dealing with such type of a situation, a Division Bench of this Court in case **Sucha Singh Vs. State of Punjab**, 2015 (4) RCR (Crl.) 25 had observed that where the independent witness joined by the police party during search and recovery appeared as a defence witness; he had denied his joining as witness to search and recovery, stating that his signatures were procured on blank papers when he had visited police station in drunkard condition. His such account was rejected holding that it cannot be believed that numerous signatures on various papers having different writing material could be signed by a witness on blank papers and that when recovery of contraband otherwise stood proved by consistent and reliable testimonies of IO and DSP who were present at the spot, the defence witness was held to be unreliable whose testimony was rightly discarded. This judgment is fully applicable in the present case.

13. With regard to submission made by learned counsel for the appellants that there was delay in sending sample to the office of Chemical Examiner. Again in judgment **Sucha Singh's** (supra), this

aspect was dealt with and it was observed that instructions/standing orders issued by Narcotic Control Bureau are the only guidelines to regulate and control their internal working. Section 78 of the Act did not make any provision of sending sample to FSL within 72 hours but provided only to send the same within reasonable time. Therefore, delay of 72 hours in sending the sample of poppy husk to the office of Chemical Examiner, Punjab was not held to be fatal to the prosecution case.

14. As regards non-compliance of Section 50 of the Act. The law is well settled that Section 50 of the Act applies to personal search only and not otherwise. Nevertheless, the IO had informed accused Binder Singh and Mohinder Pal Singh of their right to get the search conducted in the presence of a Gazetted Officer or a Magistrate and accused opted to get the search conducted in the presence of a Gazetted Officer, therefore, Sh. Varinder Singh Brar, DSP (City) had been called to the spot, who had again apprised the accused to their right of search before some other Gazetted Officer or a Magistrate. Both the accused reposed faith in the DSP. Necessary documents in that regard have been proved on record by the prosecution. Therefore, due compliance of Section 50 of the Act seem to have been made. In this case, no mandatory provision of law is shown to have been violated.

Accused were travelling in the maruti car sitting on the rear seat. Two bags containing poppy husk were recovered lying

between the back seat and the driver seat. Each bag contained 30 kg of poppy husk. It is not the case of the accused that they had been taken lift in the car for some distance. It is certainly not their case that they were made to sit in the car against their wishes. The accused travelling in the car with at least two bags visible, they cannot come up with straight faces saying that they were not aware of contents. Similarly with regard to three bags containing contraband placed in the dickey of the car is also to be attributed to them. In that way, they were to be taken in conscious possession of the recovered contraband. The appellants/accused cannot take advantage of the fact that owner of the car has since been acquitted. The main thing to be seen in this case is the possession of contraband and in view of enough cogent, convincing and reliable evidence brought on record by the prosecution, accused being in conscious possession of the contraband stands proved.

15. Although, learned counsel for the appellant, namely, Sh. Harsh Aggarwal, had pointed out that PW6 SI Satpal Singhy stated that case property produced in the Court did not relate to the case in question, therefore, accused cannot be connected with the recovery. Again I do not find myself in agreement with learned counsel on this point. The entire case is to be seen in totality and not in bits and pieces. From the prosecution case which is duly proved by the prosecution witnesses, it comes out that five bags of poppy husk each containing 30 kg had been recovered from the maruti car in question and both the

accused are to be taken in conscious possession thereof. As such, PW6 SI Satpal Singh saying something contrary to the record or some wrong case property being produced in the Court does not demolish the case of the prosecution.

16. As regards DSP not being examined. Again that does not make much difference, since the other witnesses SI Satpal Singh, PW2 Punit Singh had successfully proved the recovery of contraband from the possession of the accused. Statement of Sh. Varinder Singh Brar, DSP if recorded would have lent more credence to the prosecution case but his non-examination by itself does not give any jolt to the prosecution case.

17. The judgment of conviction passed by the trial Court is quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein. No ground is there to interfere therewith on conviction or sentence part.

The trial Court has already been very lenient with the accused awarding them minimum punishment prescribed for the offence. There is no scope for further reduction in the sentence.

18. The appeals are found to be without merit and same are hereby dismissed accordingly.

19. As a result, the orders passed by this Court suspending their sentence and grant of bail during pendency of the appeals come to

an end and are withdrawn. The appellants/accused are ordered to surrender before Chief Judicial Magistrate, Patiala within a week from today, failing which learned CJM, would issue warrants of arrest to secure their presence and send them to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned for information and compliance.

05.09.2022
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(H.S. MADAAN)
JUDGE

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