

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

CRA-S-2169-SB-2007(O&M)

Date of decision:-10.8.2022

Shamsher Singh alias Seera

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.D.S. Sidhu, Advocate
for the appellant.

Mr.Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant/accused Shamsher Singh @ Seera was tried by learned Special Judge, Moga in case FIR No.170 dated 16.8.2004 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Dharamkot and in terms of judgment dated 16.10.2007, he was convicted in that case for the offence for which he was booked and vide 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 rigorous imprisonment for a period of 1 year and six months.

2. Briefly stated, the facts of the case, as per the prosecution version are that on 16.8.2004, a police party from Police Station Dharamkot led by SI Bachan Singh was carrying out patrolling in a Government vehicle make Allwyn Nishan bearing registration No.PB-04C-7206; it was going from village Kot Sadar Khan towards village Jafar Wala and when the vehicle carrying the police party was about one furlong short of bridge of canal within revenue limits of village Nurpur Hakima, the accused was spotted sitting on the gunny bags in the ditches, where there was a cluster of trees; on seeing the police party, the accused got perplexed and he was apprehended and his name and other particulars were inquired about, which he disclosed; the Investigating Officer suspected that some narcotic substance was there in the gunny bags, as such those were required to be searched; he informed the accused that he had a legal right to get the search of the bags conducted in presence of a gazetted officer or a Magistrate; the accused opted that the search be got conducted in presence of a gazetted officer; accordingly on being informed on mobile phone, Sh.Gurjit Singh Romana, DSP Dharamkot arrived at the spot; in the meanwhile, an independent witness Dharam Dev was joined with the police party; at about 4:50 p.m. when Sh.Gurjit Singh Romana, DSP reached at the spot, he after disclosing his identity to the accused informed him that the gunny bags were to be searched; the accused reposed confidence in Sh.Gurjit Singh Romana, DSP and a consent memo in that regard was prepared, which was thumb marked by the accused and signed by the witnesses; thereafter, on directions of Sh.Gurjit Singh Romana, DSP, the gunny bags four in number, were

checked; those were found to contain poppy straw; a sample of 250 gms. each was drawn separately from all the four bags and on being weighed, the residue poppy straw in each gunny bag came out to be 30 kgs.; four samples and the gunny bags were sealed and converted into parcels; all the parcels were sealed with the seal bearing impression 'BS' of SI Bachan Singh and seal of Sh.Gurjit Singh Romana, DSP having inscription 'GS'. The sample seal impressions were taken. The case property was taken into possession vide recovery memo. The ruqa Ex.P8 was sent to the police station, on the basis of which formal FIR Ex.P8/A was recorded. Rough site plan of the place of recovery Ex.P9 was prepared. Statements of witnesses were recorded.

3. On return to the police station, the accused along with the case property were produced before SHO Kirpal Singh, who verified the facts from the accused and witnesses, thereafter, he affixed his own seal having impression 'KS' on all the parcels. The sample seal impression was also prepared. The case property was taken into police possession vide memo Ex.P11 and the same was deposited with MHC of the police station and accused was put up in the lock up. During the course of investigation, the sample parcels were sent to the office of Chemical Examiner, Punjab and on receipt of report Ex.P12 therefrom to the effect that the samples were those of poppy straw and on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Special Judge, Moga.

4. On receipt of the case in the Court, observing that prima facie charge for an offence under Section 15 of the Act was disclosed

against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

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

PW1 ASI Darshan Singh, a formal witness deposed that he had registered formal FIR Ex.P8/A in this case.

PW2 ASI Sarabjit Singh, a witness of recovery supported the prosecution story on material aspects.

PW3 SI Bachan Singh, Investigating Officer of the case deposed regarding the investigation conducted by him in this case besides as regards the recovery of contraband effected from the possession of the accused. He proved various documents.

PW4 HC Gurpreet Singh filed his affidavit Ex.P13 deposing that on 17.8.2004 the case property was deposited with him with seals intact and on 23.8.2004, he had handed over four sealed parcels along with sample seal impression to Constable Mohinder Singh with a direction to get the docket prepared from the office of SSP, Moga and to deposit the same in the office of Chemical Examiner. Constable Mohinder Singh accordingly did so on 24.8.2004 and on return to the police station handed over receipt to him.

PW5 DSP Gurjit Singh deposed regarding his part in the investigation and supported the prosecution story with regard to the search of gunny bags in possession of the accused having been conducted in his presence, which revealed that those contained contraband in the form of poppy straw. He also proved various memos.

PW6 Retd. SI Kirpal Singh deposed that on 16.8.2004 while he was posted as SHO at Police Station Dharamkot, on that day SI Bachan Singh of that very police station produced the accused along with witnesses and the case property before him and he verified the facts from the accused as well as witnesses and put his seal bearing impression 'KS' on all the parcels. He further stated that as per his directions, the case property was deposited with MHC and accused was put up in the lock up.

PW7 CII Mohinder Singh, who had taken the sealed sample parcels along with seal impression from PW HC Gurpreet Singh on 23.8.2004 and had then deposited the same in the office of Chemical Examiner, Punjab after getting docket issued from the office of SSP, Moga, deposed in that regard. In his affidavit, he deposed with regard to the sample parcels remaining in his safe custody and having not been tampered with.

The prosecution has relied upon various documents including report from the office of Chemical Examiner as Ex.P12 and thereafter the prosecution evidence stood closed.

6. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances in the prosecution evidence appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case further stating that on 16.8.2004 while he was working in the house of Ajit Singh, resident of Nurpur Hakima at about 2:00 p.m., some police officials came there and took him along with them to police station on the pretext that they were to inquire into some matter from him and

subsequently he was involved in this case falsely; as a matter of fact, no recovery was effected from him.

7. In his defence evidence, the accused examined Ajit Singh as DW1, who supported his version.

8. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal, which was taken up on 1.11.2007, 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 17.2.2012.

9. Now the case has come up for regular hearing.

10. I have heard learned counsel for the appellant – accused – convict, learned AAG for the State of Punjab besides going through the record.

11. The trial Court by proper analysis of the evidence and correct application of law in light of the facts and circumstances of the case has come to a categorical conclusion that the accused was found in possession of the 121 kgs. of poppy straw. The witnesses of recovery namely PW2 ASI Sarabjit Singh, PW3 SI Bachan Singh and PW5 DSP Gurjit Singh were unanimous in saying so. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material contents. 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.

12. The proper link evidence in this case is there in the form of statement of PW4 HC Gurpreet Singh and PW7 CII Mohinder Singh and it comes out that no tampering of seals had taken place during the period the case property remained in their possession. From the report given by the office of Chemical Examiner Punjab, it transpires that the sample parcels had reached there with seals intact. The report also reveals that on analysis the samples were found to be that of poppy straw. As against that no plausible or convincing explanation could be furnished by the accused with regard to his alleged false implication in the case.

13. Learned counsel for the appellant has made several submissions attacking the impugned judgment stating that there were many flaws and lapses in the case of prosecution, which could not be explained satisfactorily but despite that the trial Court has gone ahead to convict the accused.

14. The first ground of attack by learned counsel for the appellant that Dharam Dev, an independent witness was not examined by the prosecution, which creates a doubt over veracity of the prosecution story.

15. However, I am not impressed by that contention. Independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided in any statute that independent corroboration is a must and in absence thereof, the case of the prosecution is to be rejected outrightly. Therefore, non-examination of the independent witness does

not make any difference.

16. One more argument by learned counsel for the appellant was that seal after use was not handed over to the private witness, which is a suspicious circumstance.

17. Again, I am not convinced by this contention. There is no provision of law that seal after use must be handed over to the independent witness. The independent witness may or may not be available during all searches and seizures and it depends upon circumstances of each case. Here non handing over of seal by the Investigating Officer to any independent witness does not create any suspicious circumstance.

18. Learned counsel for the appellant further contended that though search of accused was done in presence of DSP, however, any other gazetted officer was not called, which puts a question mark over the truthfulness of the prosecution story.

19. Again this argument lacks merit. The accused in this case was properly apprised of his right to get the search conducted in presence of a gazetted officer or a Magistrate. He opted to get the search conducted in presence of a gazetted officer, therefore DSP Gurjit Singh Romana, who is a gazetted officer was summoned to the spot, who on arrival had disclosed his identity to the accused. The accused gave his consent to get his search conducted in his presence. There was no necessity of calling any other gazetted officer to the spot for the purpose of carrying out search of the gunny bags, which were in possession of the accused.

20. One more argument put forward by learned counsel for the

appellant was that link evidence in this case is missing. However, in view of the detailed discussion above, this argument is also rejected.

21. Learned counsel for the appellant has further submitted that sample was drawn on 16.8.2004, whereas it was sent to the office of Chemical Examiner, Punjab on 24.8.2004 i.e. after 8 days, which is also a suspicious circumstances.

22. However, since as discussed in detail above, the prosecution had successfully proved that the sample parcels had remained in safe custody of PW4 Gurpreet Singh, MHC of the police station with whom those had been deposited on that day of recovery itself i.e. 16.8.2004 and on 23.8.2004, he had handed over four sealed parcels along with sample seal impression to Constable Mohinder Singh (PW7) with a direction to get the docket prepared from the office of SSP and to deposit the same in the office of Chemical Examiner. Constable Mohinder Singh accordingly did so on 24.8.2004 and on return to the police station handed over receipt to him and further report from Chemical Examiner also shows that. Therefore, no said suspicious circumstance comes out to be there.

23. Learned counsel for the appellant further argued that the Investigating Officer had given offer of search to the accused in presence of gazetted officer or Magistrate orally. Again there is nothing wrong with that. Offer may be in writing or given orally, the requirement of law is that accused should be apprised of his right to get the search conducted in presence of a Magistrate or a gazetted officer. From the statement on oath of Investigating Officer PW3 SI Bachan Singh, it comes out that the accused was in fact apprised of that right, which is a due compliance of

the legal requirement.

24. Another argument raised by learned counsel for the appellant that the Investigating Officer had not collected any document with regard to ownership of the land from where the contraband had been recovered, also comes out to be lacking merit. As per the prosecution story, the accused was sitting on the gunny bags in the ditches, where there was a cluster of trees. The crucial thing to be seen is as to whether accused was in conscious possession of the contraband, the answer comes out to be in affirmative. The accused sitting at a secluded place in ditches on the bags, which were found to contain poppy straw can certainly not deny that he was not aware of the contents of the gunny bags or that gunny bags did not belong to him.

25. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt by producing enough cogent, convincing and reliable evidence. The trial Court has rightly come to the conclusion that charge against the accused stood proved. The recovery involved in this case is on very high side ruling out the possibility of any plantation on accused that too without any rhyme or reason. No violation of any mandatory provision of law could be pointed out by learned counsel for the appellant. As per the report received from the office of Chemical Examiner, the samples were found to be those of poppy straw. The accused was rightly convicted by the trial Court.

26. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for ten years each, which is the minimum conviction 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.

27. 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.

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

10.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes