

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

CRA-S--2250-SB-2007(O&M)

Date of decision:-10.8.2022

Kashmir Kaur and another

...Appellants

Versus

The State of Punjab

...Respondent

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

Present: Ms.Anmol, Advocate for
Mr.SPS Sidhu, Advocate
for the appellants.

Mr.Sandeep Vermani, Addl.A.G., Punjab.

H.S. MADAAN, J.

1. This appeal is directed against judgment dated 3.11.2007, vide which appellants Kashmir Kaur, aged 28 years w/o Gurdev Singh, Labourer, resident of village Lalle, District Ferozepur and Jasvir Singh, aged 24 years, s/o Banta Singh, Labourer, resident of Sadde Shah, District Moga, alongwith co-accused Surinder Singh and Paramjit Singh, were tried by Special Judge, Moga, in case FIR No. 60 dated 18.5.2002, for offence under Section 15 (b)/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), registered at Police Station Kot Ise Khan, District Moga, and on conclusion of trial,

only Kashmir Kaur and Jasvir Singh were convicted for the offence under Section 15(b) of the Act, whereas the other two accused were acquitted and in terms of order dated 6.11.2007, the convicts were sentenced to undergo rigorous imprisonment for 2 years each and to pay a fine of Rs.5,000/- each, in default of payment of fine to undergo further rigorous imprisonment for 2 months each,

2. Briefly stated, facts of the case, as per the prosecution story are that on 18.5.2003, a Police Party from Temporary Police Station Fatehgarh Panjtoor, headed by SI/SHO Nachhattar Singh, was doing patrolling, going from village Takhtuwala to Muadarpur Sanghera via metalled link road. When the Police Party was about one furlong short of village Mudarpur, a Maruti car bearing registration No. DAQ-2490 came from the opposite direction, it was stopped by the Police Party. In the meanwhile, one Joginder Singh riding a cycle came there. He was joined with the Police Party. The Maruti car was being driven by Jasvir Singh and Kashmir Kaur was sitting by his side. A gunny bag was lying in between them on the front seat of the car. Since, SI/SHO Nachhattar Singh, the Investigating Officer, suspected some intoxicant material being carried in the bag, he wanted to search the same. He informed both the accused of their legal right to opt for their search conducted in the presence of some Gazetted Officer or a Magistrate. However, both the accused did not exercise that option and rather opted to get the search carried out by SI Nachhattar Singh. Two separate consent memos in that regard were executed by both the accused and attested by the witnesses.

3. The Investigating Officer then carried out search of the bag,

which was found to contain poppy husk. He took out two samples of 250 grams each from the recovered poppy husk, converted those into two separate parcels. On being weighed the residue poppy husk in the gunny bag, came out to be 29 kgs 500 grams. It was also converted into a parcel. All the parcels were sealed by the Investigating Officer with his seal having impression 'NS'. He prepared sample of the seal and the seal after use was handed over to ASI Balwinder Singh. Constable Amarjit Kaur was called at the spot by sending a telephonic message. The case property was taken into possession vide recovery memo. The Maruti car and other documents recovered therefrom were also taken into police possession. *Ruqa* was sent to the Police Station, which formed basis for registration of the formal FIR. Personal search of accused Jasvir Singh was conducted, whereas personal search of accused Kashmir Kaur was got conducted from lady constable Amarjit Kaur. Grounds of arrest were furnished to the accused. Rough site plan of the place of recovery was prepared. The Investigating Officer recorded the statements of the witnesses.

4. On reaching the Police Station, Kot Ise Khan, the Investigating Officer handed over the entire case property to SI/SHO Balkar Singh. SI/SHO Balkar Singh sealed all the parcels with his seal having impression 'BS'. He too prepared sample seal impression of his seal and took into possession the entire case property by preparing a separate handing over memo.

5. On the next day, the case property was produced before the Judicial Magistrate and retention order was obtained. SI/SHO Balkar Singh sent report under Section 57 of the Act to the DSP of the area.

Section 52-A of the Act was complied with. During the course of investigation, the sample parcels alongwith specimen seal impressions, were sent to the office of Chemical Examiner, Punjab and as per report received therefrom the sample was found to be that of Poppy Husk. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

6. On presentation of challan in the Court, copies of documents as relied upon in the challan were supplied to the accused free of costs as required under Section 207 C.r.P.C. Observing that prima facie charge for an offence under Section 15(b) of the Act was disclosed against the accused Jasvir Singh and Kashmir Kaur, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. During the trial, on an application having been moved under Section 319 Cr.P.C. by the prosecution, accused Surinder Singh and Paramjit Singh were summoned as additional accused and after procuring their presence, amended charge was framed against all the accused under Sections 15(b) and 25 read with Section 15 of the Act, to which, they pleaded not guilty and claimed trial.

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

PW1 Constable Balwinder Singh stated that he had taken the sample parcels and sample seal impressions chit to the office of Chemical Analyst deposited those articles there, in intact condition and so long as the articles remained in his possession neither he tampered with the same nor allowed anybody else to do so.

PW2 SI Nachhattar Singh, Investigating Officer of the case deposed regarding the investigation conducted by him as well as recovery of contraband from the possession of accused.

PW3 HC Gurdarshan Singh deposed that on 19.5.2003, SI Balkar Singh deposited the case property with him and subsequently he had sent a sample parcel and sample of seal impression to the office of Chemical Analyst through Constable Balwinder Singh and so long as the material remained with him no tampering of seals had taken place.

PW4 HC Baldev Singh, a witness of recovery supported the prosecution story on material aspects.

PW5 SI Balkar Singh testified that on 18.5.2003, SI Nachhattar Singh produced before him the case property and he put his seal bearing impressions BS on all the parcels, prepared sample of his seal on the same chit and took into possession the entire case property vide a separate handing over memo and on the next day, he got produced the case property before learned Judicial Magistrate and obtained the retention order.

PW6 SI Jaspal Singh deposed that he had produced the parcel of bulk poppy husk before Judicial Magistrate after preparing inventory report. The Magistrate took out one representative sample of 250 gms. and converted it into a separate parcel. The representative sample parcel was sealed and the bulk parcel was resealed with the seal of the Court. The photographs of the case property were also taken in presence of learned Magistrate and learned Magistrate had passed the authentication order. He further stated that on return to the police station,

he deposited the case proeprty with the MHC and so long as the material remained with him, neither he tamperd with the same nor allowed anybody else to do so.

8. The prosecution had relied upon various documents including report from the office of Chemical Examiner as Ex.P21 and thereafter the prosecution evidence stood closed.

9. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances in the prosecution evidence appearing against them were put to the accused but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Accused Surinder Singh and Paramjit Singh stated that they had already sold the car in question to Gurdev Singh son of Bachan Singh, resident of village Lalle, District Ferozepur on 18.11.2002 by executing an affidavit regarding such sale and they were having no control over the car in question at the time of the alleged recovery.

10. Accused did not lead evidence in their defence.

11. After hearing arguments, learned trial Court acquitted accused Surinder Singh and Paramjit Singh of the charge framed against them, whereas convicted and sentenced accused Jasvir Singh and Kashmir Kaur as mentioned above, which left them aggrieved and they have filed the present appeal, which was taken up on 15.11.2007, 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 appellants/accused for suspension of their

sentence of imprisonment during the pendency of appeal, the same was allowed vide order dated 28.2.2008.

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

13. I have heard learned counsel for the appellants – accused – convict, learned Additional A.G., for the State of Punjab besides going through the record.

14. The prosecution by bringing enough cogent and convincing evidence has been able to prove its charge against both the appellants. PW2 SI Nachhattar Singh and PW4 HC Baldev Singh fully supported the prosecution story with regard to the accused having been apprehended along with 30 kgs. of poppy husk in a gunny bag, which they were carrying in a Maruti car bearing registration No.DAQ-2490. These PWs 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 those PWs 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 them falsely to secure their conviction.

15. The appellants/accused come out to be in conscious possession of the contraband since they failed to furnish any reasonable or plausible explanation to show that they were not aware of contents of the gunny bag or that it was placed in the car without their knowledge by some other person. The gunny bag containing poppy husk being placed in between the two accused in the front seat of the maruti car, both the accused cannot possibly wash the hands in the matter and state that they were not aware of the contents of the gunny bag. All the necessary

mandatory provisions are shown to have been complied with in the present case. The link evidence was there to show that no tampering of seals had taken place with the case property and that the sample parcel had reached the office of Chemical Examiner, Punjab with seals intact.

16. As a result of analysis, the sample was found to be that of poppy husk. Report from the office of Chemical Examiner, Punjab is very clear in that regard.

17. The prosecution had successfully proved its charge against the the appellants/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 appellants/accused stood proved. No violation of any mandatory provision of law could be pointed out by learned counsel for the appellants. The appellants/accused were rightly convicted by the trial Court.

18. As regards the sentence part, the appellants/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 increase drug trafficking. Therefore, the sentence awarded to the appellants/accused is not found to be on very high side and does not call for any reduction.

19. 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.

20. Appellants Kashmir Kaur and Jasvir Singh are stated to be on bail granted to them by this Court. Their bail is cancelled. Chief Judicial Magistrate, Moga is directed to issue arrest warrants to get them arrested so as to make them undergo the remaining sentence.

10.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes