

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

CRA-S-2365-SB-2007(O&M)

Date of decision:-26.8.2022

Naib Singh and another

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Appeal qua Appellant No.1 – Naib Singh
stands abated vide order dated 22.8.2022.

Mr.H.S. Rakhra, Advocate
for the appellant No.2 – Kulwant Singh.

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

H.S. MADAAN, J.

1. Accused/Appellant No.1 Naib Singh (since dead) and accused/appellant No.2 Kulwant Singh were tried by learned Judge, Special Court, Bathinda in case FIR No.174 dated 29.11.2003 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Talwandi Sabo and vide judgment dated 23.11.2007, they were convicted in that case for the offence for which they were booked and in terms of order passed on that very date, they were sentenced to undergo rigorous

imprisonment for three years each and to pay a fine of Rs.3,000/- each and in default thereof to undergo further rigorous imprisonment for a period of 3 months each.

2. In nutshell, the case of the prosecution is that on 29.11.2003 at about 4:30 p.m., a police party from P.S. Talwandi Sabo, District Bathinda led by SI Roop Singh (hereinafter referred to as the Investigating Officer/IO) was present on culvert of paved water course in the area of village Fatehgarh Nau Abad in connection with patrolling, one Sai Singh son of Harnam Singh, resident of village Lelewala came there and he was joined with the police party; a scooter bearing No.PB-37-4378 was spotted coming from the side of village Gurusar; a gunny bag was placed in between the driver of the scooter and the pillion rider; on seeing the police party, the riders became nervous and tried to ran into the cotton crop towards their left hand side; they were apprehended on the basis of suspicion; on being asked, the person driving the scooter disclosed his name as Naib Singh, whereas the pillion rider gave his name as Kulwant Singh; the mouth of the gunny bag in their possession had got opened and poppy husk spilt out of it; the accused could not produce any permit or licence for possession of the poppy husk; the Investigating Officer took out 100 grams as a sample from the bulk and on being weighed, the residue came out to be 29 kgs. 900 grams; the sample and the gunny bag containing residue poppy husk, were converted into parcels and sealed by the Investigating Officer with his seal having impressions RS; the seal after use was handed over to HC Dilbag Singh; sample seal chit was also prepared; the entire case property along with the scooter were taken into

police possession vide a separate recovery memo attested by the witnesses. Personal search of accused was conducted, however, nothing was recovered as a result thereof.

3. The accused were arrested in this case as per rules and requisite documents were prepared in that regard. Ruqa was sent to the police station, on the basis of which formal FIR was recorded. The Investigating Officer prepared the rough site plan of the place of recovery and recorded statements of witnesses.

4. On return to the police station, the Investigating Officer produced the entire case property along with the accused before SI Davinder Kumar, SHO of the police station, who verified the facts of the case and then put his own seal having impressions DK on the sample parcel and bulk parcel besides sample seal chit. The SHO received the case property and sample seal chit in his custody and then he had produced the accused along with the case property before the Illaqa Magistrate, moving an application for inventory report and another application under Section 52-A of the Act; the Illaqa Magistrate passed orders on the applications. The case property was then kept in the safe custody. During the course of investigation, sample parcel was sent to the office of Chemical Examiner, Patiala and as per report received therefrom the sample was found to that of chura poppy heads. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judge, Special Court, Bathinda.

5. On presentation of the challan, copies thereof were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C.

6. Then on observing that prima facie charge for an offence under Section 15 of the Act was disclosed against both the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

7. During the course of its evidence, the prosecution examined PW1 CII Paramjit Singh, PW2 SI Roop Singh, PW3 SI Davinder Kumar, PW4 Rajiv Kumar, Clerk DTO Office and PW5 HC Dilbag Singh.

The prosecution relied upon several documents and then its evidence was closed.

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

9. In their defence evidence, the accused examined HC Balbir Singh as DW1 and closed their evidence.

10. After hearing arguments, learned trial Court convicted and sentenced both the accused as mentioned above, which left them aggrieved and they had filed the present appeal, which was taken up on 30.11.2007, when it was admitted for regular hearing. 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 on 26.5.2008 and remaining sentence of appellants/accused was suspended during the pendency of the appeal and they were ordered to be released on bail on their furnishing requisite bail

bonds/surety bonds to the satisfaction of the CJM, Bathinda.

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

12. It is pertinent to mention here that during the pendency of the appeal, appellant No.1 Naib Singh has expired and the present appeal qua him stands abated vide order dated 22.8.2022. Now the surviving appellant is Kulwant Singh - appellant No.2.

13. I have heard learned counsel for the appellant No.2 – accused - convict, learned Addl.A.G., for the State of Punjab besides going through the record.

14. Here the witnesses of recovery namely PW2 SI Roop Singh and PW5 HC Dilbag Singh have fully supported the prosecution story with regard to accused having been found in conscious possession of contraband without any permit or licence. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material points. 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.

15. As regards the contention of learned counsel for the appellant that the independent witness Sai Singh cited was not examined thereby putting a question mark over credibility of the prosecution story, that does not have any merit since 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 rejected outrightly. Even otherwise, the deposition of an official witness is at par with that of an independent witness. Furthermore, learned State counsel has placed reliance upon judgment ***Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25*** by a Division Bench of this Court. It was a case 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, however such contention was not accepted 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.

16. Similarly the aspect of non-examination of independent witness Sai Singh was considered by the trial Court and it was found that the same does not make the prosecution case doubtful.

17. As regards another submission made by learned counsel for the appellant that seal after use was not handed over to independent witness but to HC Dilbag Singh, a police official, creating a doubt over

the truthfulness of the prosecution, learned trial Court has dealt with this aspect in detail in para No.8 of the judgment and relying upon Full Bench judgment this Court referred to as **Piara Singh Versus State of Punjab, 1982(2) CLR 447** wherein it was observed that it was not incumbent upon the prosecution to hand over the seal after use to an independent witness, nor prosecution is bound to examine independent witness in the Court. Such argument was rejected. I find myself in agreement with the trial Court with regard to this aspect.

18. As far as the plea that the accused were not in conscious possession of the contraband, this plea had been raised before the trial Court as well and has been dealt in a detailed and appropriate manner in para No.10 of the judgment. The gunny bag containing contraband was placed in between accused Naib Singh, who was driving the scooter and accused Kulwant Singh, who was pillion rider and on seeing the police party, both of them had tried to run away throwing the scooter and the bag. Therefore, they cannot deny their possession of bag containing poppy husk. No explanation for possession of poppy husk could be rendered by the accused, therefore in light of Sections 35 and 54 of the Act, they were rightly taken to be in conscious possession of the contraband. Rather from the testimony of DW1 HC Balbir Singh, a witness examined by the accused, who had produced the correct photocopies of entries of DDR No.33 dated 29.11.2003 and entry No.16 dated 29.11.2003 as Ex.DA, it comes out that the case property was deposited in MALKHANA and requisite entry was made in register No.19 regarding that.

19. With regard to the contention that Sai Singh, an independent witness is a stock witness of the police and reference being made to previous FIRs No.DE to Ex.DH, the trial Court had also dealt with that aspect in a proper manner holding that Sai Singh is Chowkidar of the village and it is the duty of the Chowkidar to assist the police, therefore no stigma is attached to him in case he is cited by the prosecution as witness in some of the cases. In any case Sai Singh was not examined by the prosecution as a witness on its behalf. Therefore, this argument put forward pales into insignificance.

20. In addition to examining the witnesses of recovery, the remaining evidence adduced by the prosecution is of corroborative in nature supporting its version. It comes out that no tampering with the case property had taken place and it remained in safe custody. Furthermore, the sample parcel had reached the office of Chemical Examiner, Patiala with seals intact and on analysis it was found to be that of poppy husk. From the testimony of PW4 Rajiv Kumar, Clerk DTO Office, it comes out that the scooter which was being driven by Naib Singh on which Kulwant Singh was pillion riding and on which they were carrying gunny bag containing poppy husk, is registered in the name of Naib Singh as per the registration certificate Ex.P2. Therefore, it cannot be said that the accused had nothing to do with the scooter in question. Furthermore, the important thing to be seen is possession of the contraband and not the ownership of the scooter.

21. Learned counsel for the appellant could not show any violation of any mandatory provision, which might cause some prejudice

to the appellant/accused.

22. 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 in possession of the poppy husk without any licence or permit thereby showing that he was in conscious possession of such contraband. Report from the Asstt. Chemical Examiner, Punjab, Patiala Ex.PL proves that the sample received there was of Chura Poppy Husk.

23. As regards the sentence part, keeping in view the quantity of the contraband recovered to the extent of 30 kgs. of poppy husk, which is quite substantial, the accused were sentenced to undergo rigorous imprisonment for three years each and to pay a fine of Rs.30,000/- each and in default thereof to undergo further rigorous imprisonment for a period of 3 months each, which cannot be said to be on higher side. 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 increase 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.

24. 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.

25. Since appellant No.2 Kulwant Singh is in custody on account of the concession of suspension of sentence and grant of bail having been withdrawn by this Court vide order dated 13.7.2022 as it was observed that Kulwant Singh was trying to prolong the proceedings in the appeal by not putting in appearance either in person or through counsel, in that way misusing that concession. As per the custody certificate placed on record by the State counsel, he has undergone 8 months and 15 days of imprisonment till 20.8.2022. Let him undergo the remaining sentence of imprisonment and pay the requisite fine. In case he fails to make payment of fine, he would undergo the imprisonment awarded to him in default of payment of fine.

Necessary information be sent to CJM, Bathinda, who is to issue necessary warrant informing Superintendent Jail, Bathinda in that regard.

26.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes