

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

CRA-S-2013-SB-2004 (O&M)

Date of pronouncement: 14.07.2022

Ravinder Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. A.S. Virk, Advocate for the appellant.

Mr. Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Accused Ravinder Singh son of Sh. Karnail Singh, resident of Village Gumthala Garhu Tehsil, Pehowa, Distirct Kurukshetra, an accused in FIR No.147 dated 03.10.2002, for an offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Sadar, Nabha, was tried by Judge, Special Court, Patiala, and in terms of judgment dt. 19.08.2004, he was convicted for offence under Section 18 of the Act, and by virtue of order passed on that very day, he was sentenced to undergo rigorous imprisonment for 10 years, and to pay a fine of Rs.1 lakh; in default of payment of fine, to undergo RI for one year.

Feeling aggrieved by his such judgment of conviction and

order of sentence, appellant Ravinder Singh has filed the instant appeal.

2. Briefly stated the facts of the case, as per prosecution story are that on 03.10.2002, a police party headed by SI Kuldip Singh was present at canal bridge of Village Kotli within jurisdiction of Police Station Sadar, Nabha, in connection with patrolling and checking of bad elements'; when Diwan Singh son of Sajan Singh came there and started having talks with SI Kuldip Singh, in the meanwhile, accused Ravinder Singh riding a Vespa LML scooter of Grey metallic colour without registration number was spotted coming from the side of Rohti bridge; on seeing the police party, the accused got perplexed and tried to turn back but he was apprehended on the basis of suspicion; since SI Kuldip Singh suspected that accused was carrying some contraband, he informed such accused about his right to get his search conducted in the presence of some gazetted officer or Magistrate; the accused was given an option of being searched in the presence of some gazettted officer; a memo in that regard was prepared as Ex.PC; Sh. Shamer Singh Boparai, DSP Samana was requested to come to the spot, who accordingly arrived there and gave his introduction to the accused informing him that he had got a right to be searched in the presence of some other gazetted officer, however, the accused reposed confidence in Sh. Shamsher Singh Boparai, DSP; thereafter, under supervision of Sh. Shamsher Singh Boparai, DSP, SI Kuldip Singh carried out search of the accused; the dicky of scooter, which the accused was riding, was found to have a plastic bag containing opium; two samples of 10 gms each were drawn therefrom and placed

into two small tin boxes, whereas the residue on being weighed came out to 4 kg 980 gms; it was put in a separate plastic box; the sample parcels and residue opium container were sealed with the seal of Investigating Officer having impression 'KS' and 'SSB' of Sh. Shamsher Singh Boparai, DSP; after use, the seal of SI Kuldip Singh was handed over to Sh. Diwan Singh independent witness; the case property was taken into possession, vide recovery memo; personal search of the accused was conducted, and a memo was prepared in that respect; grounds of arrest were served upon the accused; a separate memo was prepared in that regard; information about arrest of the accused was given to his relatives, vide memo Ex.PG; LML scooter of accused was taken into possession, vide recovery memo; ruqa was sent to the police station on the basis of which, formal FIR was recorded; rough site plan of the place of recovery was prepared; on return to the police station, the IO produced the accused along with the case property and the PWs before SHO, who had verified the investigation, affixing his own seal having impression 'HS' on the case property etc., the case property was deposited with MHC of the police station; on the next day, the accused and the case property were produced before Illaqa Magistrate; during investigation of the case, sample of the contraband seized was sent to the office of Chemical Examiner and as per the report received therefrom, it was found to be that of opium.

3. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court; on presentation

of the challan, 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 18 of the Act was framed against the accused, to which he pleaded not guilty and claimed trial.

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

PW-1 Inspector Harbhajan Singh who was posted as SHO Police Station Sadar, Nabha on 03.10.2002 deposed that on that day, SI Kuldeep Singh, In-charge CIA Staff, Nabha had produced before him accused Ravinder Singh along with case property and PWs and after verification of the investigation, he had affixed his seal bearing impression 'HS' on the case property parcels as well as on specimen impression of seal used Ex.P1. He further stated that on his direction, SI Kuldeep Singh had deposited the case property with MHC Jaswant Singh.

PW-2 HC Jaswant Singh, a formal witness tendered his affidavit Ex.PA in evidence.

PW-3 HC Gulzar Singh who was member of the police party which had intercepted the accused and effected recovery of contraband from him deposed in that regard as well as the other proceedings, which had taken place in his presence.

PW-4 SI Kuldeep Singh, who had arrested the accused and effected recovery from him deposed in that respect, besides the other part played by him in the investigation of the case.

PW-5 Constable Boota Khan, a formal witness, who had taken the sample given to him by MHC of the police station to FSL, Chandigarh, submitted his affidavit Ex.PN to the effect that no tampering of sample had taken place during the period it remained in his possession.

With that, the prosecution evidence got concluded.

5. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused, were put to him but he denied the same, contending that he is innocent and no recovery was effected from him and further, he has been involved in a false case.

6. During his defence evidence, the accused examined in as many as 03 DWs. DW-1 Janpal Singh, a co-villager of the accused stated that accused is a person of good character and reputation and on 01.10.2002 at about 5.00 PM, Ravinder Singh (accused) was picked up by Punjab police officials from his house in his presence; no recovery of any contraband had been effected from him; he stated that he along with Sarpanch and village Panchayat went to Police Station Julkan; they were informed that police of that police station had not arrested Ravinder Singh, then they had approached SSP, Patiala who gave them assurance that he would enquire into the matter but nothing was done; then they came to know that Ravinder Singh (accused) was in custody of Nabha police; he stated that two persons from village Saplani were also picked up by the police, one of them being Jagtar Singh and he did not know the name of the other person.

DW-2 Constable Raja Singh produced a photocopy of entry No.22 dt. 03.10.2002 of DDR register of Police Station Sadar Nabha as Ex.DA.

DW-2 Diwan Singh who was cited as an independent witness by the prosecution and in whose presence the recovery of contraband had statedly been effected from the accused, appeared as a witness for the accused instead and stated that he does not know Ravinder Singh accused, who was never arrested by the police in his presence and no recovery was effected from him; the witness stated that he usually goes to CIA Staff, Nabha in connection with public grievances, and for that reason the police knew him; that he is Ex.Sarpanch of his village and there is no other person by name of Diwan Singh son of Kesar Singh in his village; he stated that he knows Punjabi and signs in Punjabi, after seeing documents Ex.PB to PH, he stated that those do not bear his signatures and were not prepared in his presence; he further stated that his statement was not recorded by the police in this case.

DW-3 Sh. R.V. Vashishta, Hand Writing and Finger Print Expert, Patiala stated that he had critically and minutely examined 06 questioned signatures purported to be of Diwan Singh marked as Q1 to Q6, the details of which are mentioned in his report dt. 03.06.2004 Ex.D1 comparing those with 16 signatures of Diwan Singh marked as S1 to S16 mentioned in his report Ex.D1, and he is of the opinion that questioned signatures marked Q1 to Q6 have not been signed by one and the same individual, who had signed standard signatures Mark S1 to S16; he

proved his report giving detailed reasons as Ex.D1, photographs Ex.D/1/A upto Ex.D/1/K, negatives Ex.D.1L-1 to Ex.D.1/L-22.

7. After hearing arguments, the trial Court convicted and sentenced the accused as detailed supra, which left him aggrieved and he has filed the present appeal. The appeal came up for hearing on 14.10.2004, when it was admitted and recovery of fine was stayed.

Now the appeal has come up for final hearing.

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

9. The main ground of attack by learned counsel for the appellant has been that Diwan Singh cited by the prosecution as an independent witness was not present at the spot at the time when the accused was allegedly arrested and recovery effected from him and signatures on the documents prepared by the IO purporting to be those of Diwan Singh are not by him. He has stated that Diwan Singh was not examined by the prosecution, since it nursed an apprehension that if examined, he would spill the beans and state that the accused had neither been arrested nor any recovery effected from him in his presence, and the documents do not bear his signatures. Diwan Singh was rather examined by the accused who categorically stated that neither the accused was arrested by the police in his presence nor any contraband was recovered from him and the documents prepared by the IO purportedly bearing his signatures do not in fact have his signatures.

10. According to learned counsel for the appellant, the statement

of DW Diwan Singh and DW-3 R.V. Vashishta, Hand Writing Expert completely demolish the prosecution story, creating a doubt in mind about truthfulness of the prosecution version. He has further submitted that the trial Court did not appreciate the factual and legal position properly and wrongly held the appellant to be guilty of the charge framed against him. He argued that undoing the said wrong, the appeal be accepted, and accused be acquitted of the charge framed against him.

11. On the other hand, these contentions were strongly repelled by the State counsel, who contended that the accused had been arrested and recovery effected from him by the police in the presence of independent witness Diwan Singh, the seizure memo and other relevant documents bear signatures of Diwan Singh, who wrongly denied those while appearing as DW-2 for the reason that he had been won over by the accused and wanted to help him in earning acquittal. However, from the other evidence by the prosecution, charge against the accused stands proved beyond shadow of reasonable doubt.

12. After considering the rival contentions, I find little merit in the submission by learned counsel for the appellant. Merely because Diwan Singh was not examined by the prosecution, and rather he appeared as a witness for the accused is not such a fact which may result in demolition of the entire prosecution case. The Court cannot lose sight of the fact that many a times people do not speak truth, and rather tell lies for various reasons, may be to help another individual in escaping punishment for monetary consideration or under threat or coercion or

such like reason. The trial Court has dealt with this aspect in detail in para No.16 of the judgment whereas the testimony of the hand writing expert has been discussed in para No.17. The trial Court has observed that defence had not set up a case that signatures of Diwan Singh had been fabricated. It has been observed that depositions of PW1 Harbhajan Singh, PW-4 SI Kuldip Singh and PW-3 Gulzar Singh have not been challenged giving suggestions that signatures of Diwan Singh were not genuine or that he was not present at the spot at the time of recovery, and further in his statement under Section 313 Cr.P.C., the accused had not taken any specific plea in that regard. It has been taken note of that, there could be variations in signatures which depends upon the manner, placed circumstances, mental setup of the writer and there were variations even in the specimen signatures of Diwan Singh. Even otherwise, the science of comparison of hand writing is not a perfect one. The accused had examined a private hand writing expert, and as has been generally noticed, such experts tend to give favourable opinion to help the persons hiring their services, who are their paymasters. Therefore, too much weightage cannot be attached to the deposition of the hand writing expert, and it cannot be left to discretion of Diwan Singh to demolish the prosecution story. If we see cross-examination of PW-3 HC Gulzar Singh, a witness of recovery, he was thoroughly cross examined with regard to the presence of Diwan Singh and his having signed the documents but he remained unshaken giving replies, which appears to be convincing and plausible. A very crucial suggestion put to him was that signatures of

Diwan Singh were already on the papers when Ex.PD recovery memo was prepared, in that way, the accused admitted that signatures of Diwan Singh were there. It being so then how could accused start taking a different defence that signatures of Diwan Singh on police papers were not genuine but were forged examining a witness in that regard. Accused while being examined under Section 313 Cr.P.C., has also not taken a specific plea in that respect. The defence witnesses examined do not inspire any confidence. DW-1 Janpal Singh, a co-villager of the accused seems to have come forward to depose in his favour to screen him from punishment. In his cross-examination, he stated that no resolution was written in the panchayat proceedings book regarding picking up of Ravinder Singh by the police, and no written request was submitted to SSP, Patiala for conducting enquiry.

13. Now coming to statement of DW-2 in his examination in-chief, he stated that he usually goes to CIA Staff, Nabha in connection with public grievances, and he is known to the police officials, and further he is Ex.sarpanch of the village. In this case, no cogent and convincing reason could be explained on behalf of the accused as to why the police should plant a heavy recovery of 05 kg of opium upon the accused without any rhyme or reason, and then the prosecution police officials come forward to depose against him. The heavy recovery involved in this case minimize the chances of false implication. There is nothing on record to show that the Investigating Officer had any previous enmity with the accused, and to settle that score, he might have embarked

upon the dangerous path, planting contraband upon the accused, putting his service career in jeopardy lest that alleged game plan was detected. In the absence of any motive of false implication and wrong deposition, the statements of police officials are to be taken at par with those of independent witnesses, more particular when they have specifically stood the test of cross-examination.

14. From the statements of PW-3 HC Gulzar Singh and PW-4 SI Kuldeep Singh which I find to be cogent and convincing, the recovery of contraband from the possession of accused as per prosecution story stands established and from report of chemical examiner, it comes out that the sample was found to be that of opium. The necessary link evidence is also found to be there. Learned counsel for the appellant could not point out any procedural lapse or infirmity while apprehending the accused and effecting recovery from him. Although, he has relied upon a judgment titled as **Hanif Khan @ Annu Khan Vs. Central Bureau of Narcotics through Inspector L.P. Ojha** by the Apex Court in CrI. Appeal No.1206 of 2013 in support of his arguments that when independent witness does not support the prosecution story, a reasonable doubt is created about truthfulness of the prosecution case, benefit of doubt should be given to the accused but I find that this judgment does not help the appellant much. The facts and circumstances of that case were quite different, though one of the factors taken into consideration was that both the independent witnesses to the search and seizure had turned hostile, denying their presence during search and seizure but then

search and seizure memo looked to be suspicious in view of large gap in space between signatures of appellant and that of independent witness. Counsel for the appellant had pointed out that appellant had not been informed of his legal right to be searched before a Magistrate and his father's name had been recorded incorrectly; there was inordinate long delay of one year in producing seized sample before the Court etc.

15. The Apex Court had observed that the prosecution under the Act carries a reverse burden of proof with a culpable mental state of the accused inasmuch as he is presumed to be guilty consequent to recovery of contraband from him, and it is for the accused to establish his innocence because of Sections 35 and 54 of the Act. However, no such factors are found to be there in the present case, and the judgment referred to does not help the appellant/accused in any manner.

16. The judgment of conviction recorded by the trial Court is quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law, and no fault can be found with the same. Similarly, sentence awarded is the minimum prescribed for the offence, and it cannot be reduced any further. The trial Court has been quite lenient with the accused in awarding the minimum sentence in the light of the fact that the recovery of contraband effected from him is quite heavy i.e. 05 kg of opium, when the commercial quantity of opium is 2.5 kg, that means, the recovery effected is double thereof. The appeal is found to be without merit, and is dismissed accordingly.

17. Necessary intimation be sent to the Chief Judicial

Magistrate, Patiala to issue necessary warrants of arrest against the accused, so as to make him undergo the remaining sentence.

14.07.2022
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(H.S. MADAAN)
JUDGE

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