

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

CRA-S-716-SB-2007 (O&M)

Date of pronouncement: 16.09.2022

Surjit Singh @ Seet and another

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Mr. Rishu Mahajan, Advocate
for the appellants.

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

H.S. MADAAN, J.

1. Appellants Surjit Singh @ Seet and Inderjit Singh @ Kuldeep Singh @ Sabhi, both of them being accused in FIR No.252 dated 26.10.2004, for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Baghapurana, District Moga were tried by Special Judge, Moga on the allegations that on 26.10.2004 in the area of Baghapurana, both the accused along with one sarpanch (since absconding) were found in conscious possession of 17 bags of poppy straw containing 35 kg of poppy straw in each bag, total weighing 595 kg placed in a Matador bearing No.DL1C-D-7472 belonging to Joginderpal, since absconding, without any license or permit thereby committed an offence punishable under Section 15(c) of the Act.

Vide judgment dated 07.03.2006, both the accused were convicted for the offence for which they were charged and in terms of the order passed on 08.03.2006, they were sentenced to undergo rigorous imprisonment 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 one year each.

3. Briefly stated facts of the case, as per prosecution story are that on 26.10.2004, SI Satpal Singh, SHO of Police Station Baghapurana [hereinafter referred to as the Investigating Officer/IO] heading a police party comprising ASI Jaspat Rai and others was present at Bhagat Singh Chowk, Baghapurana for the purpose of checking; there the IO received a secret information that accused Surjit Singh and Kuldeep Singh @ Sabhi, residents of Shahkot along with one sarpanch were coming from the side of Kot Kapura in a Matador bearing No.DL-1C-D-7472 with poppy straw loaded in that Matador and if it was checked, a large quantity of poppy straw could be recovered therefrom; being of the view that secret information so received was reliable, the IO sent ruqa Ex.P14 to the police station on the basis of which formal FIR Ex.P15 was recorded; the IO informed Sh. Raghbir Singh, DSP Baghapurana in that regard telephonically; Sh. Raghbir Singh, DSP also arrived at the spot; a Matador coming from the side of Kot Kapura was spotted and it was signalled to stop; the Matador driver got nervous and stuck it against road divider; when the Matador came to a halt, it was found that the same was being driven by Surjit Singh accused with Kuldeep Singh accused sitting

by his side on the front seat; accused Kuldeep Singh jumped out of the Matador and managed to escape; one more person was sitting in the Matador who also jumped off and ran away, however, accused Surjit Singh was apprehended; in the meanwhile one Darshan Singh had arrived at the spot and he was joined with the police party.

Sh. Raghbir Singh, DSP disclosed his identity to Surjit Singh accused informing him that he suspected that there was some intoxicant material in the Matador and wanted to search the same and that the accused had a right to get the search conducted in the presence of some Gazetted Officer or a Magistrate; the said accused gave option of search in the presence of a Gazetted Officer; a consent memo Ex.P9 in that regard was prepared, signed by the accused and attested by the witnesses; thereafter, the Matador was searched which resulted in recovery of 17 bags of poppy straw; those were given serial Nos. 1 to 17; the IO drew sample of 250 gm each from each of the recovered bag, converting those into separate parcels which were given Sr. Nos. 1 to 17; as per serial number of the bags from which they had been drawn; the residue poppy straw in each bag was found to be 34 kg 750 gm; the sample and the bags containing residue poppy straw were converted into parcels, which were then sealed with seal of IO having impression 'SS'; Sh. Raghbir Singh DSP had also affixed his seal having inscription 'RS' on all the parcels; sample seal impressions of both the seals were taken on chit Ex.P10; the IO handed over the seal after use to SI Jugraj Singh, whereas, DSP retained his seal with himself; the IO took case property into possession,

vide recovery memo Ex.P11 attested by the witnesses; Surjit Singh @ Seet accused was accordingly arrested in this case; while arresting him, his jamatalashi was conducted which resulted in recovery of currency notes worth Rs.100/- and a memo in that respect was prepared as Ex.P12, signed by the accused and attested by witnesses; grounds of arrest were served upon that accused and a memo in that regard was prepared; the Matador in question along with its RC Ex.P17 were taken into police possession vide separate memo Ex.P18; the IO prepared rough site plan of the place of recovery as Ex.P20 and recorded statements of witnesses; he sent special report Ex.P13 to DSP Baghapurana which was received by him on 27.10.2004, vide endorsement Ex.P13/A.

On return to the police station, the IO kept the case property in his safe custody while lodging Surjit Singh @ Seet accused in lockup; on 27.10.2004, the IO produced Surjit Singh @ Seet accused along with case property before learned Magistrate, moving an application Ex.P21 and learned Magistrate, Moga had passed retention order Ex.P21/A on that application; the IO had brought back the case property to the police station and handed over the same to MHC Balwinder Singh for depositing it in the malkhana.

The IO had produced the entire case property before learned Magistrate by submitting inventory Ex.P22; photographs of the case property were also taken in the presence of Magistrate by Jaspal Singh, photographer; the relevant orders in that regard passed by the Magistrate are Ex.P22/A, P22/B and P22/C.

On return to the police station, the IO again deposited the case property with MHC Balwinder Singh; on 01.11.2004, the IO signed CFSL form Ex.P23 at the time of sending parcel and sample seal chit to the office of Chemical Examiner, Punjab, Chandigarh; the samples drawn by learned Magistrate MO-1 to MO-17 were ordered to be deposited in the judicial malkhana under charge of CJM, Moga; on receipt of report from Chemical Examiner Ex.P25 and Ex.P25/A and on completion of investigation and other formalities, challan against accused Surjit Singh @ Seet was prepared and filed in the Court.

4. On receipt of the challan, the trial Court of Special Judge, Moga supplied copies of documents relied upon therein 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 (c) of the Act was framed against Surjit Singh @ Seet accused, to which he pleaded not guilty and claimed trial.

Subsequently, supplementary challan was filed against accused Inderjit Singh @ Kuldeep Singh @ Sabhi, who had also been arrested in this case. As such fresh charge was framed against Surjit Singh @ Seet and Inderjit Singh @ Kuldeep Singh @ Sabhi for an offence under Section 15(c) of the Act on 29.10.2005, to which both of them pleaded not guilty and claimed trial.

5. During the course of prosecution evidence, prosecution examined in as many as nine PWs as detailed below:-

PW-1 Jaspal Singh, Photographer, Prince Photo Studio, Old

Court Road, Moga stated that on 11.12.2004 on being summoned to the Court of Sh. Munish Arora, Judicial Magistrate Ist Class, Moga, he took photographs of the case property for inventory proceedings in the presence of Ld. JMIC, Moga and subsequently handed over photographs Ex.P1 to Ex.P3 along with negatives Ex.P4 and Ex.P5 to the police of the concerned police station.

PW-2 MHC Balwinder Singh, who at relevant time was posted at Police Station Baghapurana, a formal witness tendered in evidence his affidavit as Ex.P5 to the effect that so long as the case property remained in his custody, no tampering therewith had taken place.

PW-3 Constable Mewa Singh, who had taken the special repots to Illaqa Magistrate and higher police officers on 26.10.2004 as per instructions of ASI Baldev Singh through his affidavit Ex.P7 deposed that he had handed over the special reports to Illaqa Magistrate and higher police officers in correct condition.

PW-4 HC Ashok Kumar, the carrier of the sample parcels, stated that on 01.11.2004, he was posted at PS Baghapurana. He tendered in evidence his affidavit Ex.P8 to the effect that so long as the sample parcels remained in his possession, no tampering therewith had taken place.

PW-5 Sh. Raghbir Singh, DSP Mullan Pur Dhakhan in whose presence the contraband had been recovered from the accused deposed in that regard besides narrating about his role in the matter which has been mentioned in detail in the earlier part of the judgment.

PW-6 SI Baldev Singh deposed that on 26.10.2004 while he was posted at PS Baghapurana, on that day, on receipt of ruqa Ex.P14 from SHO Satpal Singh through PHG Swaran Singh, he had recorded formal FIR Ex.P15 and sent special reports to the Illaqa Magistrate and other senior police officers through Constable Mewa Singh, whereas, PHG Swaran Singh was handed over ruqa and FIR number to convey the same to the IO.

PW-7 Sh. Padam Singh, Clerk/Record Keeper, Motor Licence Office, Mal Road, Delhi had brought the summoned record regarding registration of Matador No.DL-1CD-7472, stating that it is registered in the name of Joginder Pal son of Pyare Lal, R/o 12-A, Rajori Garden, New Delhi. He proved the registration certificate in that regard as Ex.P7.

PW-8 SI Satpal Singh, the IO supported the prosecution story as regards the recovery of contraband from the possession of the accused besides narrating about the other acts performed by him with regard to the investigation of the case, proving various documents.

PW-8 ASI Jaswant Singh (wrongly renumbered) stated that on 17.04.2005 while posted as ASI at PS Baghapurana, on that day, he had recorded statement of ASI Gursewak Singh, Reader DSP Baghapurana and on 18.04.2005, he had recorded statement of Constable Mewa Singh whereas recorded statement of photographer Jaspal Singh on 21.04.2005 and in addition to that, he had taken into possession the photographs.

PW-9 SI Jugraj Singh, who was member of the police party led by SI/SHO Satpal Singh and in whose presence, the contraband had been recovered from the accused deposed in that regard, toeing the line of prosecution.

The prosecution relied upon various documents also.

6. After closure of evidence of prosecution, statements of the accused were recorded under Section 313 Cr.P.C., in which 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 Surjit Singh @ Seet took up a plea that he was not owner of the Matador in question, though, the Matador was earlier purchased by him but he could not pay the entire sale consideration, therefore, about 1½ months prior to the present recovery, the Matador was taken away by the registered owner from him. He was picked up from his house by the police in the presence of respectables of the village and later on involved in this case. As a matter of fact, no recovery was effected from him.

Accused Kuldeep Singh @ Inderjit Singh had pleaded innocence and false implication in this case.

None of the accused led any evidence in defence.

7. The trial Court had formulated the following points for determination:-

1. Whether conscious possession of the accused is proved beyond any doubt?

2. What is the effect of non joining of the owner of the Matador by the Investigating Officer?
3. What is the effect of delay in sending the sample parcels and sample of seal to the office of Chemical Analyst?
4. What is the effect of non preparation of CFSL form at the spot?
5. Whether Section 50 of the Act was complied with? If not, its effect?
6. What is the effect of non examination of the only independent witness and non handing over of seal to him by the Investigating Officer?
7. Whether identification of accused Inderjit Singh @ Kuldeep Singh has been proved by the prosecution?
8. What is the effect of contradictions in the statements of witnesses of recovery?

8. After hearing arguments, the trial Court convicted and sentenced the accused as mentioned supra.

9. Feeling aggrieved by the judgment of their conviction and order of sentence, the accused had filed an appeal before this Court, which was Admitted for regular hearing and recovery of fine was stayed during pendency of appeal. On applications having been filed, the remaining sentence of the appellants were suspended during the pendency of the appeal, subject to their furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Moga.

Now the appeal has 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, the witnesses of recovery namely PW-5 Sh. Raghbir Singh, DSP, PW-8 SI Satpal Singh, PW-9 SI Jugraj Singh fully supported the prosecution story with regard to recovery of contraband from the accused. These PWs were subjected to lengthy cross-examination on behalf of the accused but they stuck to their guns and could not be shattered on any material point. All of them deposed in a natural and convincing manner and the account given by them inspire confidence. No previous enmity between these PWs and the accused has been alleged or proved prompted by which they might have involved the accused in this case wrongly or deposed against him to secure his conviction.

12. From the statements PW-2 MHC Balwinder Singh, PW-4 HC Ashok Kumar and PW-8 SI Satpal Singh, coupled with inventory report Ex.P22 under Section 52-A of the Act and order passed by learned JMJC, Moga dt. 11.12.2004 on application Ex.P22/A and Ex.P22/B, testimony of PW-1 Jaspal Singh, Photographer, besides photographs proved by him Ex.P1 to P3, it comes out that the case property remained in safe custody and the sample parcels had reached the office of Chemical Examiner, Punjab, Chandigarh with seals intact. Report from the office of Chemical Examiner, Punjab Chandigarh Ex.P25 clearly shows that when the sample parcels were received there with seals having impressions 'RS' and 'SS', the seals were intact and tallied with the specimen seal impression sent and on analysis, the samples were found to be those of poppy head.

13. Learned counsel for the appellants has, however, attacked the

impugned judgment on various grounds, first being that Darshan Singh who as per the prosecution story was joined with the police party during search and seizure was not examined by the prosecution, which causes a dent in the case of prosecution giving rise to a doubt in the mind about truthfulness of the prosecution case.

However, I am not impressed by this contention. As discussed in detail above, the official witnesses of recovery are not shown to have any previous enmity with the accused promoted by which they might have ganged up against the accused to involve them in a false case or deposed against them to secure their conviction. Such official witnesses must have been aware of the fact that if at any stage, it was found that they had involved the accused in this case falsely, then they would run a risk of not only suffering in their career but would have to face prosecution for indulging in such type of crime. Therefore, there was no occasion for the official witnesses to depose falsely against the accused and their statements are to be taken at par with those of the independent witnesses.

14. A Single Judge of this Court in judgment **Krishan Kumar Vs. State of Punjab, 2016(2) RCR (Crl.) 707**, has observed that testimonies of the official witnesses carry the same evidentiary value as that of any other witness and their statements cannot be discarded simply on account of their official designation.

Furthermore, independent corroboration is a rule of caution and not requirement of any law. Therefore, non-examination of Darshan

Singh as a prosecution witness does not affect the credibility of the prosecution story.

15. Learned counsel for appellants has pointed out certain variations and contradictions between the statements of witnesses of recovery with regard to time when the police party had reached the place of recovery, the time when the Matador was spotted and the accused were arrested, the span of time for which the police party remained at the spot and the time when the police party returned to the police station as well as with regard to distance of place of recovery from police station, distance from which the police party had seen the Matador etc.

However, these contradictions and variations do not go to the root of the matter. Those are bound to occur on account of lapse of memory, due to passage of time and as a result of difference in power of observation and perception of various individuals.

The Apex Court in judgment **Mritunjoy Biswas Vs. Pranab @ Kuti Biswas & Anr, 2013(12) SCC 796**, had observed that minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. Therefore, such minor contradictions and variations in statements of official witnesses do not go to the root of the matter and do not put a question mark over their creditworthiness.

16. Another argument put-forward by learned counsel for appellants was that owner of the Matador was not examined by the prosecution. May it be so, the prosecution had examined PW-7 Sh. Padam

Singh, Clerk/Record Keeper, Motor Licence Office, Mal Road, Delhi who had brought the summoned record, stating that Matador in question is registered in the name of Joginder Pal son of Pyare Lal, R/o 12-A, Rajori Garden, New Delhi. He had proved the registration certificate in that regard as Ex.P7.

Accused Surjit Singh @ Seet while being examined under Section 313 Cr.p.C., stated that the Matador was earlier purchased by him but since he could not pay the entire sale consideration, therefore, about 1 ½ months prior to the present recovery, the Matador was taken away by the registered owner from him. Thus, Surjit Singh admits that he had purchased the Matador in question, however, later on, part of his plea that since he could not pay the entire sale consideration, therefore, the registered owner had taken away the Matador, does not come out to be plausible and convincing. He had not led any evidence in that regard. Furthermore, the main thing to be seen is that the possession of the vehicle and the ownership of the vehicle is only an ancillary matter. As per prosecution story, Surjit Singh @ Seet was driving the Matador and he had been arrested at the spot whereas Inderjit Singh was sitting besides him on the front seat, though, he had managed to run away from the spot but was arrested later on. The recovery had been effected from the Matador in question which is on very high side. Matador is not a passenger vehicle. Inderjit Singh could not render any reasonable or plausible explanation as to under what circumstances, he was sitting in the Matador. It is not his case that he had simply taken a lift in that

vehicle for a short distance when it was intercepted by the police party. He has simply pleaded that he is innocent and had been falsely implicated in this case. Once it is established that both the accused were there in the Matador from where the contraband had been recovered, they are to be taken in conscious possession of the contraband in view of Sections 35 and 54 of the Act.

17. In judgment **Krishan Singh's** (supra), it was observed that when 35 bags containing 35 kgs poppy husk in each bag were recovered from the possession of the appellant and his co-accused, such a huge quantity of the contraband could not be planted by the police from its own source, that too, just for the false implication, the conviction and sentence of the accused given by the trial Court was upheld.

18. One more argument advanced by learned counsel for appellants was that here Section 42 of the Act was applicable but such provision had not been complied with, causing prejudice to the accused, rendering search and seizure vitiated, entitling the accused to acquittal.

Again, this objection is without any element of merit. Though, as per prosecution story, the IO had received a secret information but on receipt thereof, he had informed the DSP, who had reached at the spot and recovery was effected in his presence. Any delay might have resulted in accused making an escape and recovery not effected.

19. In judgment by a Single Judge of this Court **Lakha Singh Vs. State of Punjab, 2015(1) RCR (Criminal) 842**, it was observed that

when ruqa had been sent from the spot narrating all the facts and on the basis of which formal FIR was recorded and copy thereof were also sent to the Illaqa Magistrate i.e. due compliance of Section 42 of the Act.

20. One more argument put-forward by learned counsel for appellants was that there has been 06 days delay in sending the sample to FSL.

However, this objection does not carry any weightage. The Apex Court in judgment **Jarnail Singh Vs. State of Punjab, 2011 AIR (Supreme Court) 964**, had observed that mere delay in sending the sample of the narcotic to the office of Chemical Examiner would not be sufficient to conclude that the sample had been tampered with, when the evidence on record indicate that delay was wholly was unintentional. The delay of 12 days in sending the sample was not held to be fatal to the prosecution.

In this case also, as discussed in detail above, there is enough evidence adduced by the prosecution that the sample parcels had reached the office of Chemical Examiner in an intact condition. Therefore, some delay in sending the sample does not affect the merits of the prosecution case.

21. I find that the impugned judgment of conviction passed by the trial Court is quite detailed, well reasoned, does not suffer from any illegality or infirmity. It is based upon proper appraisal of evidence and correct interpretation of law. There is illegality or infirmity therewith, which might have called for interference by this Court while exercising

appellate jurisdiction.

Keeping in view the quantity of contraband recovered, I find that the trial Court has been quite lenient with the accused in granting them minimum punishment prescribed. Neither that punishment can be reduced legally nor the accused deserve any reduction in sentence, considering the facts and circumstances of the case. Therefore, the impugned judgment of conviction and order of sentence are upheld.

The appeal is found to be without merit and is dismissed accordingly.

22. The appellants/accused are directed to surrender before Chief Judicial Magistrate, Moga 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.

16.09.2022

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(H.S. MADAAN)
JUDGE

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