

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

CRA-S-744-SB-2007(O&M)

Date of decision:-20.9.2022

Surjit Singh @ Bittu

...Appellant

Versus

The State of Punjab

...Respondent

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

Present: Mr.Rahul Vats, Advocate
for the appellant.

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

H.S. MADAAN, J.

1. Appellant Surjit Singh @ Vittu was tried by learned Judge, Special Court, Muktsar in case FIR No.14 dated 11.1.2005 for an offence under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), registered with Police Station Sadar, Muktsar. The trial ended in his conviction and vide judgment dated 12.1.2007, he was convicted in that case for the offence for which he was booked in terms of order passed on 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 undergo further rigorous imprisonment for a period of one year.

2. In nutshell, the case of the prosecution is that on 11.1.2005, SI Jagroop Singh, SHO of Police Station Sadar, Muktsar (hereinafter referred to as the Investigating Officer/IO) along with ASI Shavinderpal

Singh and other police officials while travelling in an official Tempo-Trax being driven by Constable Babu Singh had held a special NAKA at T-point Burra Gujjar-Ferozepur Road, Muktsar on account of a fair, where one Gurtej Singh came and he started talking with the IO; at about 4:30 p.m., the accused came from the side of Muktsar riding a scooter bearing No.PB02-L-3965 mark Vespa; the IO signalled him to stop at which the accused became nervous and tried to turn his scooter towards *KATCHA PATRI* on his left hand side; he was apprehended and on being inquired, he disclosed his name and other particulars; the IO informed the accused that he suspected the accused to be in possession of some contraband, as such wanted to conduct search of the accused and that of his scooter and the accused had a legal right to be searched in presence of a gazetted officer or a Magistrate; the accused opted to get his search conducted in presence of a gazetted officer; a memo Ex.P7 in that regard was prepared, which was thumb marked by the accused and attested by the witnesses.

Then the IO sent a wireless message to Sh.Gurmit Singh, DSP with a request to reach at the spot along with a photographer; after some time DSP Gurmit Singh along with Constable Sukhpal Kumar, Official Photographer arrived at the spot; the IO apprised DSP Gurmit Singh about the facts of the case; thereafter DSP Gurmit Singh disclosed his identity to the accused and the accused gave his consent for his search by DSP Gurmit Singh; a consent memo in that regard was prepared, thumb marked by the accused and attested by the witnesses.

Thereafter, on instructions of DSP Gurmit Singh, the IO conducted the search of the scooter and from the polythene bag, which

was hanging from the hook of the scooter, opium was recovered; 10 grams of the opium was separated as a sample and put in a small plastic box, which was converted into a parcel; on being weighed the residue opium came out to 9 kgs. 990 grams; it was wrapped in the same polythene bag and placed in a plastic box, which was converted into a parcel; both the parcels were then sealed by the IO with his seal having inscription 'JS' and by the DSP Gurmit Singh with his seal having inscription 'GS'; sample seal chit Ex.P3 was prepared and the IO handed over his seal after use to ASI Shavinder Pal Singh, whereas the DSP Gurmit Singh retained his seal with himself; then the case property was taken into police possession by the IO vide memo Ex.P4 attested by the witnesses; the scooter along with its RC was also taken into possession vide recovery memo Ex.P8. The accused was arrested in this case as per rules. While arresting him, his personal search was conducted, which resulted in recovery of currency notes of Rs.500 and a driving licence from the wallet of the accused, which were taken into possession vide recovery memo Ex.P5; grounds of arrest were also furnished to the accused and a memo Ex.P12 was prepared in that regard.

The IO sent ruqa Ex.P9 to the police station through Constable Bachittar Singh on the basis of which formal FIR Ex.P10 was recorded by ASI Surjit Singh at Police Station Sadar, Muktsar. The IO also prepared the rough site plan of the place of recovery (Ex.P11) and recorded statements of witnesses.

On return to the police station, IO kept the case property in MALKHANA under his supervision. On the next day, he produced the

accused along with the case property in the Court of Illaqa Magistrate moving application Ex.P13 on which Illaqa Magistrate passed order Ex.P14. Learned Illaqa Magistrate after breaking open the seals of the bulk parcel separated 10 grams of opium as representative sample and converted it into a separate parcel; thereafter the bulk parcel and representative sample parcel were sealed by the Illaqa Magistrate with his seal having impressions 'HS'.

On return to the police station, IO kept the case property in MALKHANA under his own supervision. He also sent detailed report Ex.P6 to DSP Halqa. During the course of investigation, the sample parcel was sent to the office of Chemical Examiner, Punjab, Chandigarh and as per report Ex.P15 received therefrom, the sample was found to be that of opium. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

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

4. Then on observing that prima facie charge for an offence under Section 18 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 HC Bashir Singh, who was posted as MHC at Police Station Sadar, Muktsar, a formal witness, tendered in evidence his affidavit Ex.P1. *Interalia*, he had contended that on 12.1.2005 when he

was posted as such, SI Jagroop Singh, SHO of the police station had deposited with him bulk parcel of opium sealed with the seals having impressions 'JS' and 'GS' along with specimen seal impression chit, docket and other articles after producing the case property in the Court of Sh.HS Gill, JMIC, Muktsar and on 17.1.2005 he had handed over a sample parcel containing 10 grams of opium sealed with the seal having impressions 'JS' and 'GS' along with specimen seal impression chit and docket to LC Bagh Chand with a direction to deposit these articles in the office of Chemical Examiner, Punjab, Chandigarh after getting a docket issued from the office of SSP, Muktsar and that LC Bagh Chand accordingly did so and on return handed over the receipt to him and that during the period the case property in his custody neither he tampered with the same nor he allowed anyone else to do so.

PW2 DSP Gurmit Singh, on whose instructions the search of scooter of the accused had been carried out resulting in recovery of contraband narrated in details the sequence of events, deposing in consonance with the prosecution story.

PW3 SI Jagroop Singh, who had apprehended the accused and effected recovery from him in presence of the DSP Gurmit Singh deposed in that regard besides the other investigation conducted by him, proving various documents.

PW4 HC Sukhpal Kumar, Photographer, Police Line, Muktsar deposed that on 11.1.2005, while posted as such, on receipt of message from SI Jagroop Singh through MHC Police Line, he had gone to the spot along with DSP Gurmit Singh and prepared video movie of the

proceedings. He stated that he handed over video movie cassette to SI Jagroop Singh on the spot.

PW5 LC Bagh Chand, the carrier of the sample parcel to the office of Chemical Examiner, Punjab, Chandigarh tendered in evidence his affidavit Ex.P16 and deposed with regard to safe custody of the sample parcel till its deposit in the office of Chemical Examiner, Punjab, Chandigarh.

PW6 ASI Sawinderpal Singh, a witness of recovery supported the prosecution story on material aspects.

Learned Public Prosecutor had given up PW Gurtej Singh having been won over by the accused.

6. After closure of prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence against him were put to such accused but he denied the allegations contending that he was innocent and had been falsely involved in this case.

7. During his defence evidence, the accused examined DW1 Resham Singh, who stated that on 10.1.2005 at about 11/12 noon, Surjit Singh accused along with certain other persons came to him at Darbar Sahib, Muktsar for serving in the LANGAR; at that time some police officials came and arrested the accused from the place of LANGAR near Gurudwara Shahidan Sahib for the reason that they suspected him to be having links with terrorists. According to this witness, he inquired from the police about the matter and the police told him that after inquiry, the

accused would be released. The police had took accused with them in his presence and nothing was recovered from his possession.

8. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he had filed the present appeal, which was taken up on 16.4.2007, when it was admitted for regular hearing and recovery of fine was ordered to remain stayed. 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 on 29.10.2009 and remaining sentence of appellant/accused was suspended during the pendency of the appeal and he was ordered to be released on bail on furnishing requisite bonds to the satisfaction of CJM, Muktsar.

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

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

11. Here all the witnesses of recovery namely PW2 DSP Gurmit Singh, PW3 SI Jagroop Singh and PW6 ASI Sawinderpal Singh have fully supported the prosecution story with regard to accused having been found in conscious possession of contraband. They 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 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. Though they are official

witnesses but merely for that reason, their depositions cannot be suspected. Learned Single Judge of this Court in case Jaswant Singh alias Jassa Versus State of Haryana, 2005(1) RCR(Criminal) 802 has observed that where recovery is supported by the official witnesses only, that per se is no ground to discard their testimonies and that the only rule of caution is that their statements should be examined with extra care in order to find out whether they inspire confidence and are worthy of reliance. In this case after carefully perusing the depositions of these witnesses, I do not find any reason to doubt the same, rather they deserved to be accepted and relied upon.

More so the prosecution story finds considerable strength from the statement of PW4 HC Sukhpal Kumar, who had prepared the video movie of the proceedings at the spot. This movie is a very important piece of document and goes a long way in proving that recovery of contraband had been effected from the accused as claimed by the prosecution.

12. The link evidence in this case has been provided by PW3 SI Jagroop Singh, PW1 HC Bashir Singh with whom the case property had been deposited by the IO after producing the same before the Illaqa Magistrate and PW5 LC Bagh Singh, carrier of the sample to the office of Chemical Examiner, Punjab, Chandigarh. All of them deposed with regard to safe custody of the sample parcel and other articles so long as those remained in their possession. The report from the office of Chemical Examiner, Punjab, Chandigarh Ex.P15 goes to show that the sample parcel was received in that laboratory along with docket on

25.1.2005 and seals on the sample parcel tallied with the specimen seal impressions i.e. 'JS' and 'GS' sent and on analysis the sample was found to be that of opium.

13. Learned counsel for the appellant has however tried to find faults with the impugned judgment contending that there are many loopholes and infirmities therein giving rise to a doubt in the mind about the truthfulness of the prosecution story but the trial Court conveniently ignored those factors and wrongly convicted and sentenced the appellant.

The points so raised by learned counsel for the appellant in that regard are as under:

(1) An independent witness Gurtej Singh in whose presence the recovery had been effected as per the prosecution story was not examined as a prosecution witness with the result in absence of independent corroboration the version given by the official witnesses becomes doubtful and should not be relied upon.

I find that this contention of learned counsel for the appellant to be devoid of any merit. Gurtej Singh was given up by the prosecution for the reason of this witness having been won over by the accused. As already discussed in detail, the official witnesses of recovery had no reason to involve the accused in this case wrongly and depose against him falsely to secure his conviction. Their depositions had been found to be worthy of reliance. A Single Bench of this Court in judgment **Krishan Kumar Versus State of Punjab, 2016(2) RCR(Criminal)707** had 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.

A Division Bench of this Court in case ***Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25*** 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, had observed that 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. Even otherwise, the depositions of official witnesses are at par with that of independent witness. Furthermore, 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.

(2) The seal after use was not handed over to independent witness but to ASI Sawinderpal Singh.

There is no provision of law that after use the IO is to hand over his seal to the independent witness. Therefore, the IO in this case not doing so, does not give rise to any doubt in the mind about the truthfulness of the prosecution story. In case **Krishan Kumar Versus State of Punjab**(supra), it was held that when in a case under Narcotic Drugs and Psychotropic Substances Act, 1985 of recovery of contraband, the seal was handed over to the police official instead of independent witness, it will not create any dent in the prosecution case.

In view of the detailed discussion above observing that the case property had remained in safe custody and the sample parcel had reached office of Chemical Examiner, Punjab, Chandigarh in an intact condition, this objection pales into insignificance.

(3) Only one sample of opium was drawn.

It is difficult to understand as to how the appellant/accused was prejudiced in any manner for the reason of the IO drawing only one sample of opium from the recovered opium. But at the same time it has to kept in view that when on the next day of recovery, the case property was produced before Illaqa Magistrate, he had opened the bulk parcel and drawn 10 grams of opium as representative sample, then such sample and bulk parcel had been sealed with the seal of Illaqa Magistrate having inscription 'HS'. There is nothing on record to show that the accused had moved any application for sending such representative sample for analysis. It also needs to be mentioned here that when the case property had been produced before the Illaqa Magistrate, an inventory of the property recovered from the accused on 11.1.2005 had been submitted to

learned Magistrate, who had passed an order thereon finding the seals on the case property to be intact tallying with the inventory report. Photographs of the case property had also been got taken in the Court. Learned Magistrate had passed order that the case property except the sample be disposed of as per Section 52-A of the Act and in the meanwhile the case property be kept in judicial MALKHANA as per rules. That also fortifies the claim of the prosecution that no tampering with the case property had taken place at any point of time.

14. 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 possession of the contraband without any licence or permit thereby showing that he was in conscious possession of such contraband. In case **Krishan Kumar Versus State of Punjab**(supra), it was also held that when there was recovery of 35 kilograms poppy husk in each bag from the possession of the appellant and his co-accused, such a huge quantity of the contraband cannot be planted by the police from its own source, that too, just for the false implication, the conviction and sentence of appellant/accused were upheld.

15. As regards the sentence part, the accused/appellant was sentenced to undergo rigorous imprisonment of ten years and to pay a fine of Rs.1,00,000/- and in default thereof to undergo further rigorous imprisonment for a period of one year, which is the minimum prescribed sentence for possession of commercial quantity of the contraband. Though keeping in view the quantity of the contraband recovered from the

appellant, which is four times commercial quantity, sentence more than the minimum prescribed could have been awarded to the appellant. However, the trial Court showed leniency towards him. Neither there is any occasion to reduce the sentence of imprisonment awarded to the appellant nor it is legally permissible to do so.

16. 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.

17. Appellant Surjit Singh alias Bittu is stated to be on bail granted to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Sri Muktsar Sahib is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

20.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes