

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

CRA-S-908-SB-2007 (O&M)

Date of pronouncement: 18.08.2022

Sukha Singh @ Sukhdev Singh and another

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Mr. Rajpreet Singh Brar, Advocate/Legal Aid Counsel
for the appellants.

Mr. Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. In nutshell, the facts of the case, as per prosecution story are that on 04.01.2004, a police party from CIA Staff Barnala was travelling in official vehicle having registration No.PB-13K-1791 and was on duty in connection with patrolling and detection of suspects; such vehicle carrying the police party was stopped on kutchra rasta, which goes from link road Badra towards village Bhaini Fatta and bifurcates towards village Dhur Kot in area of village Bhaini, where they met Balbir Singh chowkidar, who was associated with the police party; at about 1.30 pm, both the accused riding a scooter at a very high speed came there from village Bhaini Fatta side; the scooter was signaled to stop and it came to a halt; it was being driven by Sukha Singh @ Sukhdev Singh accused whereas Megha Singh accused was pillion riding; between two of them, a

plastic bag was placed.

Since the IO suspected the bag to be containing some contraband, as such, he informed the accused in that regard stating that he wanted to get searched the bag and the accused had a right to get the search conducted in the presence of some Gazetted Officer or a Magistrate; both the accused gave their consent for the search to be carried out by the IO; their consent memos in that regard were prepared and thumb marked by the respective accused and attested by the witnesses; thereafter, the IO searched the plastic bag; it was found to contain poppy husk; the IO took out two samples of 250 gm each from the recovered contraband, preparing parcels thereof; on being weighed the residue poppy husk in the bag was found to be 15 kg 500 gm; it was re-transferred into the same bag and converted into a parcel; two sample parcels and the bulk parcel were then sealed with seal of IO having impression 'SS'; the specimen of seal impression was prepared; seal after use was handed over to ASI Baljit Singh; thereafter all the parcels besides scooter of the accused were taken into police possession, vide a recovery memo; jamatalashi of both the accused was conducted and memos prepared in that regard; accused were arrested in this case; necessary documents were prepared in that respect; ruqa was sent to the police station on the basis of which formal FIR was recorded; the IO prepared rough site plan of the place of recovery, recorded statements of witnesses.

On return to the police station, the IO produced the accused along with recovered contraband and the witnesses before Inspector Atma

Singh, SHO, who verified the facts from the accused and witnesses and thereafter affixed his own seal having impression 'AS' on all the parcels; thereafter, under his instruction, the case property was deposited with Randhir Singh, MHC; the accused were put in the lockup; during the course of investigation, a sample parcel was sent to FSL, Punjab and as per report received there from, it was found to be that of poppy husk.

2. 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 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') was framed against the accused, to which they pleaded not guilty and claimed trial.

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

PW-1 MHC Randhir Singh, a formal witness submitted his affidavit Ex.PA to show that the case property was deposited with him on 04.01.2004 and at that time, seals were intact and then he had given a sample parcel to Constable Balwinder Kumar who took the same to FSL, Punjab.

PW-2 Constable Balwinder Kumar another formal witness tendered his affidavit Ex.PB regarding safe custody and deposit of sample parcel handed over to him by MHC Randhir Singh in the office of FSL,

Punjab.

PW-3 Inspector Atma Singh who was posted as SHO at relevant time deposed regarding his part.

PW-4 ASI Sham Singh, the IO of this case deposed regarding the investigation conducted by him as well as recovery of contraband from possession of the accused, he otherwise supported the prosecution story on material aspects.

PW-5 ASI Baljit Singh, another witness of recovery supported the prosecution story on important points with regard to recovery of contraband from the accused.

With that, the prosecution evidence got concluded.

4. Statements 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 them but they denied the allegations contending that they were innocent and had been falsely implicated in this case. They were picked up from their houses and then a false case was planted upon them.

The accused did not lead any evidence in defence.

5. After hearing arguments, the trial Court, vide judgment dated 23.03.2007 convicted the accused for which they had been booked and in terms of the order dated 24.03.2007, they were sentenced to undergo rigorous imprisonment (RI) for a period of 03 years and 06 months each and to pay a fine of Rs.25,000/- each; in default of payment of fine, to further undergo RI for 07 months each.

6. This judgment and order left both the accused aggrieved and they have filed the present appeal, notice of which was given to the State.

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

8. Here both the witnesses of recovery PW-4 ASI Sham Singh and PW5 ASI Baljit Singh have fully supported the prosecution story on material aspects. They were cross-examined at length on behalf of the accused but they could not be shattered on any material point except for a few minor discrepancy with regard to time, distance etc. as pointed out by learned counsel for the appellants but those are with regard to inconsequential details of the incident and do not go to the root of the matter. Those are bound to occur due to difference in power of observation and perception and lapse of memory due to passage of time. 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 them falsely to secure their conviction. They have stood the test of cross-examination well.

From statements of PW1 MHC Randhir Singh and PW2 Constable Balwinder Kumar as well as perusal of report from FSL, it comes out that no tampering of seals had taken place and the sample parcel had reached the office of Chemical Examiner with seals intact. On analysis, it was found to be that of poppy husk. The accused have failed to render any reasonable or plausible explanation for possession of the poppy husk. No convincing explanation is coming as to why a false case

was planted upon the accused. No violation of any mandatory provision of law is found to be there.

9. Although learned counsel for the appellants has submitted that there has been inordinate delay between recovery and dispatch of the sample parcel but that by itself does not constitute any suspicious circumstance. A Division Bench of this Court in judgment **Sucha Singh Vs. State of Punjab**, 2015 (4) RCR (CrL) 25 has dealt with that aspect, observing that delay in sending the sample of contraband to FSL cannot result in prosecution and conviction getting vitiated.

In this case, as discussed above recovery of contraband from possession of accused stands proved, so is the fact the sample parcel had reached FSL, Punjab without any tampering. No prejudice to the accused is shown to have been caused, therefore, this argument put-forward by learned counsel for the appellants is rejected.

10. As regards another argument by learned counsel for the appellants that no independent witness was examined by the prosecution during its evidence rendering the prosecution case doubtful. Again I am not convinced by this argument. The statements of official witnesses are to be taken at par with those of independent witnesses, unless some motive for the official witnesses to depose falsely against the accused is found to be there. In this case, as discussed above, no such motive comes out to be there. Furthermore, independent corroboration is a rule of prudence and not requirement of law.

A Single Judge of this Court while dealing with various

aspects of the case including weightage to be given to depositions of official witnesses 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.

With regard to aspect of delay for sending samples to FSL, in this very judgment, it was observed that once it is established that the case property remained intact throughout and was never tampered with at any point of time, mere delay of 14 days in sending the sample parcels to Chemical Examiner is of no consequence.

Furthermore, dealing with Sections 54 and 35 of the Act with regard to conscious possession and mental state, it was observed that once it is established that the appellant was in possession of the contraband, it was for him to show that he was not in conscious possession thereof. Since Section 54 of the Act creates a legal fiction and presumes that the person in possession of the illicit article, to have committed the offence in case he fails to account for the possession. It was further observed that once the possession is established, the Court can presume that the accused has culpable mental state and has committed the offence.

In this case also, the accused have failed to render any satisfactory or plausible explanation for possession of the contraband. the bag containing poppy husk being placed in between two accused riding a

scooter, they cannot possibly come up with a plea that they were not aware of the contents of the bag. Therefore, they are to be taken to be in conscious possession of the contraband.

11. The judgment of conviction passed by the trial Court is quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein. The same is upheld as regards the conviction.

With regard to sentence, although, learned counsel for the appellants has pleaded for taking of lenient view in the matter, stating that both the appellants are poor persons and only earning members in the family. Both the appellants have been sentenced to undergo RI for a period of three years. As far as Megha Singh is concerned, as per custody certificate placed on record by the State counsel, he is shown to be involved in 15 more criminal cases under NDPS Act/Punjab Excise Act and in 06 cases, he has been convicted; that means he is a habitual criminal, therefore, no leniency can be shown to him in the matter of sentence. Therefore, his sentence is upheld.

Coming to the second accused, Sukha Singh who is shown to have undergone 02 years and 15 days, though, as reflected in custody certificate, he was convicted in a case under Punjab Excise Act, 1914 and sentenced to RI for 03 months but that was about 15 years back to be precise on 27.09.2007. He is not shown to be involved in any other case under the Act or under provisions of IPC for some heinous crime. There is nothing on record to show that he has indulged in any criminal act after

being granted the concession of suspension of sentence and release on bail vide order dated 16.08.2007. Therefore, in my considered view, ends of justice shall be adequately met if the sentence awarded to him is reduced to one already undergone by him while in judicial custody, whereas, keeping the fine intact. It is ordered accordingly.

12. The appellant/accused Megha Singh is directed to surrender before Chief Judicial Magistrate, Barnala within a week from today, failing which learned CJM, would issue warrants of arrest to secure his presence and send him to jail to undergo the remaining sentence.

Whereas accused Sukha Singh is directed to pay fine within one month from today, failing which, CJM shall issue warrants of arrest so as to make him pay either fine amount or to undergo remaining part of sentence. Necessary intimation be sent to the Court concerned for information and compliance.

13. The appeal stands disposed of accordingly.

18.08.2022

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(H.S. MADAAN)
JUDGE

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