

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

CRA-S-140-SB-2006(O&M)

Date of decision:-6.9.2022

Hem Raj

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.G.N. Malik, Advocate for the appellant.

Mr.G.S. Dhillon, A.A.G., Punjab.

H.S. MADAAN, J.

1. Appellant Hem Raj, an accused in case FIR No.243 dated 12.8.2004 for an offence under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Dhuri was tried by learned Judge, Special Court, Sangrur, on the allegations that on 12.8.2004 at about 4:00 p.m. in the area of city Dhuri, he was found in possession of 2 kgs. of opium. Vide judgment dated 16.11.2005, the appellant/accused was convicted in that case for the offence for which he was booked and in terms of order passed on that very date, he was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- and in default thereof to undergo further

rigorous imprisonment for a period of 1 ½ years.

2. In nutshell, the case of the prosecution is that on 12.8.2004, a police party from Police Station Dhuri headed by ASI Pritam Singh (hereinafter referred to as the Investigating Officer/IO) travelling in an official vehicle bearing No.PB-13-M-2032 was on official duties of patrolling and checking of suspicious persons. They were going from T-point of village Dhuri from Maanwala road towards Dohla Phatak; when the vehicle carrying the police party reached near grain market, Dhuri and was in the vicinity of eastern wall of the office of Market Committee, Dhuri, then the accused was spotted coming on foot by the side of wall from Dhuri side having a JHOLA(bag) of blue colour slung on his left shoulder; the accused was limping; on seeing the police vehicle, he got perplexed and stopped by the side of the wall; he was apprehended on the basis of suspicion; in the meanwhile, Jaswant Singh son of Hari Singh, resident of Ram Nagar Basti, Dhuri came and he was joined with the police party; the name and other particulars of the accused were inquired about, which he disclosed; the IO told the accused that he suspected him to be carrying some intoxicant substance in his JHOLA slung on his right shoulder and that accused had get a legal right to get the search of JHOLA conducted in presence of a gazetted officer or a Magistrate; the accused opted to get the search conducted in the presence of a gazetted officer; his consent statement in that regard was recorded as Ex.PA, which was signed by the accused and attested by the witnesses. Thereafter, Sh.Paramvir Singh Gill, DSP, Dhuri was requested through a wireless message to reach at the spot.

3. On receipt of message DSP Paramvir Singh Gill came to the spot, reaching there at about 4.30 p.m. in official gypsy; the accused along with the bag in his hand was produced before the DSP Paramvir Singh Gill, who disclosed his identity to the accused stating that he was a gazetted officer of Punjab Government and further he intended to search the bag but the accused had a right to be searched before some other gazetted officer or a Magistrate; however, the accused reposed confidence in that DSP; consent memo Ex.PB in that regard was prepared, which was executed by the accused and attested by the witnesses including DSP Paramvir Singh Gill; then on instructions from DSP Paramvir Singh Gill, the bag being carried by the accused was searched by ASI Pritam Singh and it was found to contain opium wrapped in glazed paper; the Investigating Officer drew two samples of 10 grams each from the recovered opium and the samples were placed in small tin boxes, which were converted into parcels and on being weighed, the remainder opium came out to 1 kg. 980 grams, which was also put into a tin container and converted into a parcel; then the sample parcels and bulk parcel were sealed with the seal of Investigating Officer bearing impressions 'PS' and that of DSP also having inscription 'PS'; the sample seal impression chit Ex.P1 was prepared and the IO handed over the seal after use to ASI Gurbhajan Singh. Then the case property was taken into police possession vide a recovery memo Ex.PC attested by the witnesses. The accused was arrested in this case as per law preparing requisite documents. His jamatalashi was conducted and articles recovered as a result thereof were taken into police possession vide personal search memo of the accused

signed by him and attested by the witnesses including DSP Paramvuir Singh Gill. The grounds of arrest were furnished to the accused vide memo Ex.PE. Jarnail Singh son of Gurdev Singh, resident of Grain Market, Dhuri was informed about arrest of the accused.

4. The IO sent ruqa Ex.PF to the police station, on the basis of which, formal FIR Ex.PF/1 was recorded. The Investigating Officer prepared the rough site plan of the place of recovery as Ex.PG and recorded statements of witnesses. He also prepared special report under Section 57 of the Act at the spot as Ex.PH.

5. On return to the police station, the Investigating Officer produced the accused along with the case property and witnesses before SI Jograj Singh, SHO of Police Station Dhuri. SI Jograj Singh verified the facts, interrogated the accused and after his satisfaction put his own seal having inscription 'JS' on all the parcels and he had attested sample seal chit Ex.P1. SI Jograj Singh then deposited the case property with MHC Nirmal Singh. During the course of investigation, a sample parcel was sent to the office of FSL, Punjab, Chandigarh and as per report Ex.PK received therefrom, it 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.

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

7. 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.

8. During the course of its evidence, the prosecution examined ASI Pritam Singh as PW1, DSP Paramvir Singh Gill as PW2, HC Nirmal Singh as PW3, SI Jograj Singh as PW4, ASI Gurbhajan Singh as PW5 and C-II Manoj Kumar as PW6.

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

9. 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 no recovery was effected from him; as matter of fact he was returning home from sugar mill, however he was brought to police station by ASI Pritam Singh. He further stated that he used to work in the sugar mill and ASI Pritam Singh wanted him to show favour to Jarnail Singh son of Gurdev Singh, resident of Sherpur Sodhian and ASI Pritam Singh also belongs to that very village. According to the accused, he had arranged one PARCHI of sugarcane for giving the same to said Jarnail Singh but he was having 5 to 6 more PARCHIS for which he was not able to get him the payment made and due to this reason, he had been falsely involved in this case by ASI Pritam Singh, who was the class fellow of Jarnail Singh as they had passed matric together from Government High School, Meemsa. The accused further stated that his signatures were obtained on many blank papers in the police station.

10. In his defence evidence, the accused examined Prem Singh as DW1, who stated that on 12.8.2004, he was posted as Pump Operator

at Water Tank, New Grain Market, Dhuri and his duty hours were from 9:00 a.m. To 5:00 a.m. and that he remained posted at the same place since the year 1992 and now he is working as such at Sunam w.e.f. 1.4.2005. Going further, this witness stated that on 12.8.2004, he remained present throughout the day at Water Tank near office of Market Committee, Dhuri and that no police party had stayed for 4 to 5 hours and that he had not seen Hem Raj on that day near their water tank.

DW2 Jaswant Singh, an independent witness joined with the police party, who was not examined by the prosecution identified his signatures on documents Ex.PA to Ex.PE stating that he had not joined any police party and nothing was recovered from the accused in his presence. He further stated that his signatures were obtained on the papers regarding jamatalashi of the accused at the police station. The witness denied recovery of 2 kgs. of opium from the accused in the area of Grain Market, Dhuri.

11. 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 23.1.2006 when it was admitted for regular hearing. 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 18.4.2006 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 bonds to the satisfaction of the CJM, Sangrur.

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

13. I have heard learned counsel for the appellant – accused – convict, learned A.A.G., for the State of Punjab besides going through the record.

14. Here the witnesses of recovery namely PW1 ASI Pritam Singh, PW2 DSP Paramvir Singh and PW5 ASI Gurbhajan 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 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.

15. The link evidence has been provided by PW3 HC Nirmal Singh, the then MHC of Police Station Dhuri, a formal witness, who had tendered in evidence his affidavit as well as PW4 SI Jograj Singh, SHO of Police Station before whom the accused along with the case property had been produced and who had put his own seal on the case property. PW6 CII Manoj Kumar carrier of the sample parcel, who had taken the sample parcel to FSL, Punjab, Chandigarh submitted his affidavit Ex.PF. It comes out that the case property had remained in safe custody with no tampering having taken place therewith and that the sample parcels had reached the office of FSL, Punjab Chandigarh with seals intact and as per

the report Ex.PK received therefrom, the sample was found to be that of opium.

16. Although the accused has denied any recovery having been effected from him and had led evidence in defence in that regard but I find that the plea taken by accused does not seem to be convincing. Similarly, the evidence adduced by the accused in defence does not inspire confidence. DW1 Prem Singh simply denied that the police party had arrived near his place of duty or had apprehended the accused therefrom. The evidence in the form of denial does not help the accused much in view of enough cogent and convincing evidence adduced by the prosecution with regard to accused having been apprehended and recovery of contraband in the form of 2 kgs. of opium having been effected from him. This witness does not claim to have written to his superior officers or higher police officers with regard to alleged innocence of the accused.

17. Coming to the statement of DW2 Jaswant Singh, he was confronted with documents Ex.PA to Ex.PE on which he had identified his signatures. The plea taken by him that his signatures were obtained on papers at police station does not come out to be plausible. A Division bench of this Court in judgment **Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25.**, which 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, had observed that such contention was not acceptable

and 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.

18. Learned counsel for the appellant has contended that in the documents prepared at the spot FIR number is mentioned, which goes to show that the documents had been prepared earlier and the prosecution has not explained as to how the IO was aware of the FIR number when ruqa had been sent to the police station and it was yet to be received back along with the FIR number.

19. However, I do not find much merit in this contention. On the documents prepared at the spot, blank was left initially and thereafter FIR number was filled up and FIR number has not been mentioned in running. Therefore, it cannot be said that the IO mentioned the FIR number even before the same was registered or its number was conveyed to him by the officer recording the FIR, who had made endorsement on the ruqa, which had been returned to the IO for further investigation.

20. One more argument put forward by learned counsel for the appellant was that IO had not handed over his seal after use to the

independent witness. I do not find any weightage in this argument. No provision of any law requires that seal after use be handed over to an independent witness. In this case, the IO had handed over his seal after use to ASI Gurbhajan Singh, a police officer, though DSP Paramvir Singh Gill a gazetted officer had kept his seal with himself. There is nothing to show that those seals had been put on the parcels again after removal of the earlier seals, causing any type of prejudice to the accused.

21. Learned counsel for the appellant could not show any violation of any mandatory provision, which might caused 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 possession of the opium without any licence or permit thereby showing that he was in conscious possession of such contraband.

23. The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity in the impugned judgment as far as conviction part is concerned and the same is upheld.

24. As regards the sentence part, it has been contended by learned counsel for the appellant that he is a handicapped person to the extent of 40% and is presently aged about 62 years and further that more than 18 years have elapsed from the date of recovery; the appellant is not

shown to be involved in any other criminal case, therefore leniency be shown to him as regards the sentence part.

25. Considering the abovesaid the facts and circumstances, I am of the view that ends of justice would be squarely met if the sentence of imprisonment of seven years of appellant – accused Hem Raj is reduced to five years, whereas the part of conviction relating to payment of fine is kept as intact.

26. As such the appeal challenging the impugned judgment stand disposed of with above modification in sentence.

27. Hem Raj appellant – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Sangrur is directed to issue non-bailable warrant to get him arrested so as to make him undergo the remaining sentence.

6.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes