

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

CRA-S-1485-SB of 2006

DATE OF DECISION :- September 05, 2022

Sukhdev Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present:- Mr. Ashish Grover, Advocate for the appellant.

Mr. G.S. Dhillon, Assistant Advocate General, Punjab.

1. Appellant Sukhdev Singh, son of Kehar Singh, Labourer, resident of village Habuana, District Sirsa, an accused in F.I.R No. 44 of 4.5.2004 for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act) registered with Police Station Raman, was tried by Judge Special Court, Bathinda on the allegations that on 4.5.2004 in the area of village Seikhu, he was found in conscious possession of 30 kgs 200 gms of poppy husk without licence or permit. The trial ended in his conviction for the offence for which he was booked vide judgment dated 3.8.2006 and in terms of the order passed on that very day, he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.50,000/- and in default of payment of fine to undergo further rigorous imprisonment for six months.

2. Briefly stated the facts of the case as per prosecution story are that on 4.5.2004, a police party from Police Station Raman led by ASI Nachhatar Singh, the investigating officer (hereinafter referred to as the Investigating Officer/IO) was travelling in a vehicle performing the official

duties in the form of patrolling and checking of crime. One Gurdev Singh met with ASI Nachhatar Singh and was joined with the police party. While the police party was going from village Seikhu to Village Chathe via katcha passage and had reached bridge of canal minor, the time was about 12 noon, then the accused carrying a bag with contents on his head was spotted. On seeing the police party, the accused got nervous, threw the bag on ground and started running in the fields. He was over powered by the police. The mouth of the bag had got opened on account of the fall on the ground and poppy husk had come out of it. The investigating officer served notice upon the accused with regard to search of the bag. The accused was informed that he had a right to get the search conducted in presence of some Gazetted Office or a Magistrate, however, the accused opted to get the search carried out by the investigating officer.

3. The investigating officer drew two samples of 100 gm each from the contents of the bag and on being weighed the residue poppy husk in the bag came out to 30 kgs. Residue poppy husk in the bag and the samples were converted into parcels which were sealed with the seal of the investigating officer having impression 'NS'. Photographs of the recovery proceedings were got taken at the spot. Specimen seal inscription was prepared and the seal after use was handed over to independent witness Gurdev Singh.

4. The accused was arrested in this case as per law, preparing requisite documents. Ruqa Ex.PF was sent to police station, on the basis of which formal F.I.R Ex.PF/1 was recorded. The investigating officer prepared rough site plan of place of recovery as Ex. PG. He recorded statement of witnesses. Special reports were sent to higher officers on

4.5.2004 itself.

5. On return to the police station the investigating officer produced the accused along with the case property and the witnesses before Inspector Arshdeep Singh, SHO. The SHO found the case property to be in intact condition. He put his seal having impression 'AS' on all parcels and took into police possession case property vide memo Ex.PE. Station House Officer prepared inventory Ex.PL and produced the same before the Magistrate on 5.5.2004. The Magistrate vide order Ex.PL/1 found case property in intact condition. He offered the accused to take another sample in his presence but the accused did not exercise the option. The police moved another application under Section 52A of the Act for pre-trial disposal of the case property. The Magistrate had withdrawn sample of 100 gm of poppy husk and residue poppy husk being 29 kg 900 gm was returned to the SHO. Learned Magistrate had accepted the application vide order Ex.PM/1. During the course of investigation two sample parcels were sent to office of Chemical Examiner, Punjab vide docket Ex.PI from where report Ex.PJ was received observing that both the samples were of chura poppy heads.

6. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court. On presentation of challan in the Court copies of documents relied upon therein were supplied to the accused free of cost under Section 207 Cr.P.C. Finding a prima facie case for offence under Section 15 of the Act, charge was framed against the accused to which he pleaded not guilty and claimed trial.

7. During the course of prosecution evidence prosecution examined PW1 ASI Randhir Singh, a witness of recovery, PW2 ASI

Nachhatar Singh, the investigating officer, both of them supported the prosecution story on material aspects particularly with regard to the accused having been found in conscious possession of 30 kg 200 gms of poppy husk on the date, time and place as alleged in the prosecution story.

8. In addition ASI Nachhatar Singh deposed regarding investigation conducted by him proving various documents. PW3 HC Balwant Singh, the carrier of sample parcel to the office of Chemical Examiner stated that so long such sample parcels remained in his possession, no tampering there with had taken place. PW4 Inspector Arshdeep Singh, the then SHO Police Station, Raman deposed regarding his part which has been discussed in detail above. The prosecution relied upon various documents. Thereafter its evidence stood closed.

9. Statement of accused was recorded under Section 313 Cr.P.C in which all the incriminating circumstances appeared against him in the prosecution evidence were put to the accused but he denied the same contending that he was innocent and had been falsely involved in this case; he has a maternal uncle by the name of Makhan Singh at village Bagha; he had gone to meet him and while he was returning from Bagha to his village on bicycle, the police met him in the area of village Seikhu and asked him to accompany police officials on the pretext that some labour work was there to be done in the police station; he worked for whole of the day and when he asked the police for permission to leave then they falsely involved him in this case.

10. During his defence evidence the accused examined Sh. Raj Kumar, photographer as DW1.

11. After conclusion of trial, the accused was convicted and

sentenced as detailed above.

12. Feeling aggrieved by the judgment of his conviction and order of sentence, the accused had approached this Court by way of filing an appeal which was taken up on 11.8.2006 when it was Admitted for regular hearing and recovery of fine was stayed during pendency of the appeal. In terms of the order passed on 7.9.2006, the sentence of the accused was suspended and he was granted bail during pendency of the appeal subject to his furnishing bonds to the satisfaction of Chief Judicial Magistrate, Bathinda. Now the appeal has come up for final hearing.

13. I have heard learned counsel for the appellant and learned State counsel besides going through the record.

14. In this case, both the witnesses of recovery namely PW1 ASI Randhir Singh and PW2 ASI Nachhatar Singh have fully supported the prosecution story with regard to recovery of contraband in the form of 30 kgs and 200 gms of poppy husk from the possession of accused without any licence or permit on 4.5.2004 at about 12 noon in the area of near bridge of canal minor within jurisdiction of Police Station, Raman. Both the PWs were cross examined at length on behalf of 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. Therefore, recovery of contraband from the possession of accused in terms of prosecution version stand adequately proved.

15. Since the accused had failed to render any reasonable or plausible explanation for possession of the contraband he is to be taken in

conscious possession of the same in terms of Section 35 and 54 of the Act.

16. The requisite link evidence in this case was provided by PW3 HC Balwant Singh, carrier of the sample parcels to the office of Chemical Examiner, Punjab and PW4 Inspector Arshdeep Singh. The orders passed by learned Magistrate duly proved in evidence also lend corroboration to the prosecution story and go to show that the case property had remained in safe custody and no tampering there with had taken place and further the sample parcels had reached the office of Chemical Examiner, Punjab with seals intact.

17. On being analyzed those were found to be of chura poppy heads. The plea taken by the accused in defence does not seem convincing. There is nothing on record to show that either the accused or any of his relatives had submitted any representation to the higher police officers or other wings of the administration complaining against any alleged false implication of the accused. Therefore, the plea seems to have been after thought.

18. Learned counsel for the appellant has contended that Gurdev Singh, an independent witness said to have been joined with the police was not examined by the prosecution and further more seal was not handed over to him. This contention does not come out to be convincing. As already discussed, the official witnesses of the recovery were not found to have any motive to involve the accused in this case wrongly or to depose against him during the trial. Therefore, their statements are to be taken at par with independent witnesses. Independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided that without independent corroboration the depositions of the official witnesses are to be rejected.

Here already observed the deposition of official witnesses of recovery inspire confidence and I do not see any reason to disbelieve the same. In the judgment Sucha Singh versus State of Punjab 2015 (4) RCR (Criminal) 25 passed by a Division Bench of this Court wherein 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. As 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 story.

19. With regard to second contention that the sample parcels had been sent to the place of chemical examiner from where they were returned with objection and then they had been sent there again after removal of objection which created a doubtful circumstance since there is no explanation that what was the objection and where the sample parcels had been kept, this aspect had been dealt by the trial Court in detail and it has been concluded in para No. 15 that entire case property remained intact and in the same condition without any alteration and scope of tampering with

and the sample Ex.P1 which was drawn before the Court of Magistrate was sent to Chemical Examiner whereas remaining poppy husk had been destroyed. Though certified copy of such report is available on record, however, it was not tendered in evidence by the State counsel but as the things stand, the remaining case property had been destroyed on 6.1.2005 by the Chairman, Narcotic Drugs and Psychotropic Substances Disposal Divisional Committee. Therefore, it cannot be said that any tampering with the seals had taken place with the sample parcel when it reached the office of Chemical Examiner. With regard to the contention that Raj Kumar, Photographer appearing as DW1 had stated that he had not taken the photographs and the police officials had taken his camera themselves taking the photographs. That deposition does not cause any dent in the prosecution story. This aspect has been dealt with by the trial Court in a very proper and appropriate manner in para No. 18 of the judgment and a conclusion has been reached that in the photographs accused is also shown to be present at the spot and calling on the spot of the photographer and taking of photographs stands established. Therefore, deposition of DW1 Raj Kumar does not help the accused in any case.

20. The judgment passed by the trial is quite detailed, well reasoned, based on proper appraisal and correct interpretation of law. There is no illegality or infirmity there with which might have called for interference by this Court. As regard the verdict of conviction handed over to the accused and on the point of sentence, the recovery involved in this case was substantial i.e. 30 kgs 200 gms of poppy husk for which he was sentenced to undergo rigorous imprisonment for two years, which seems to be some what on lower side. However, there is absolutely no scope for

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

21. Since the accused is lodged in Central Jail, Bathinda after concession of suspension of sentence and grant of bail to him was withdrawn vide order dated 20.7.2022, as per custody certificate filed by the State counsel, he has undergone total imprisonment for 4 months and 23 days. He be made to undergo the remaining substantives sentence and fine be recovered from him. In default of payment of fine he be made to undergo imprisonment in terms of the impugned judgment.

(H.S. MADAAN)
JUDGE

September 05, 2022
p.singh

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