

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

**Criminal Appeal No. 394-DB of 2018
Date of Decision: 10.03.2022**

Shinderpal @ Shinda

... Appellant

versus

State of Haryana

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Ms. Manpreet Ghuman, Advocate
for the appellant.

Mr. Ankur Mittal, Addl.A.G, Haryana with
Mr. Saurabh Mago, AAG, Haryana

RITU BAHRI, J.

This appeal is against the judgment and order dated 27/28.03.2018 passed by the learned Special Judge, Kurukshetra (herein after to be referred as 'the trial Court'), whereby appellant, was convicted under Section 15 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced to undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs.1,20,000/- and in default of payment of fine, the appellant shall further undergo simple imprisonment for a period of six months.

Brief facts of the case as mentioned in the trial Court judgment, reads as under:-

“On 28.12.2013, ASI Amar Nath along with HC Sushil Kumar and Constable-I Raj Kumar was on patrolling and crime detection duty in Government vehicle bearing registration No.HR65-3242 with its driver Constable Devender Kumar and while doing patrolling and crime detection duty, they were going towards Village Bhateri from Dhand-Pehowa Road when

they reached near the fields of Rakma son of Amrit, caste Gujar, resident of Bhateri, one vehicle bearing registration No. HR10-M-7944 was standing below the road into the pits on the left side of the road leading to Village Bhateri. At that time, Sewa Singh Sarpanch son of Banta Ram, caste Gujar, resident of Village Bhateri, came there and search of the accidental vehicle bearing registration No. HR10-M-7944 of white colour make Verna was conducted. From inside the car, 17 plastic bags (kattas) of white colour, on which, 'technical grade urea for industrial use only' was written, were recovered. The plastic bags were checked after opening the same and poppy straw (choora post) was recovered from each plastic bag. Weighing scale was arranged. From each plastic bag, two samples of 250 grams each were taken out. The plastic bag containing remaining poppy straw (choora post) was weighed and each plastic bag was found containing 19 kilograms 500 grams. The parcels of the samples and each plastic bag containing poppy straw (choora post) were sealed with seal of AS/4 and sample seal was also prepared. The dash board of the above car was checked and one RC of the above said vehicle in the name of Dhir son of Karan Singh, resident of Nagal Kalan, District Sonipat was recovered. All the recovered 17 bags of poppy straw (choora post), 34 parcels of the samples, sample seal, car No. HR10-M-7944 and RC of the said car were seized vide seizure memo. Witnesses have put their signatures. Seal after use was handed over to HC Sushil Kumar. Investigating Officer ASI Amar Nath made search of the driver of the said car in the nearby area, but no clue of the car driver was found. ASI Amar Nath has prepared rukka and handed over the same to Constable-I Ram Kumar for getting the FIR registered, on the basis of which present FIR was registered.”

Site plan was prepared. After completing the investigation at the spot, ASI Amar Nath has produced the case property along with sample parcels of poppy straw (choora post) and witnesses before the SI/SHO

Phool Singh. SI Phool Singh has verified the facts of the case and put his seal of 'PS' on the parcels of the case property, samples and the sample seal. He also attested the parcels of the case property, samples and the recovery memo. Compliance of Section 55 of the N.D.P.S has been made and the case property was deposited in the malkhana. On 29.12.2013, case property, sample parcels and sample seal were taken before the Magistrate and inventory under Section 52-A of the NDPS was prepared. During the investigation as per the registration certificate of the vehicle, registered owner Dhir Singh son of Karan Singh, resident of village Nagal Kalan, District Sonapat was joined in the investigation, who disclosed that he had sold the said car to Ashit Sood son of Sh. Chander Mohan Sood. Thereafter, Ashit Sood joined in the investigation and he had produced an affidavit of car bearing registration No.HR10-M-7944 make Verna, vide which, he had sold the said car to Sukhwinder Singh son of Bhura Singh. **Sukhwinder Singh, owner of the car, was also joined in the investigation and he had stated that on 26.12.2013, accused Shinderpal @ Shinda had taken his car from him for going in his relations. The mobile number of Shinderpal was collected and on receipt of his mobile No.73071-30370, the Investigating Officer had collected the ID of the same from the Cyber Cell, Kurukshetra, which was in the name of Rani Kaur wife of Sunderpal. Location of the said mobile was collected. On 28.12.2013, the location of the said phone was found at Bastali, Karnal at 7.40 a.m. and at Dhand, District Kaithal at 7.55 a.m.**

During the investigation, it was found that case bearing FIR No.162 dated 29.12.2013, under Sections 279/337 of the Indian Penal Code was also registered at Police Station, Dhand, District Kaithal regarding the

accident of the above said vehicle. Accused Shinderpal could not be arrested and ultimately on 17.12.2014, he was declared proclaimed offender and challan against him being proclaimed offender, was filed in the Court on 13.7.2015. On 4.8.2016, HC Ranbir Singh of PO Staff had arrested accused/appellant and produced him before ASI Jaswant Singh. Thereafter, ASI Jaswant Singh has arrested accused/appellant in the present case and he was produced in the Court and two days police remand was taken. Accused/appellant had pointed out the place of occurrence and had also identified car bearing registration No. HR10-M-7944 standing in the police station. On 5.8.2016, accused/appellant retracted from his earlier disclosure statement and made fresh disclosure statement. On 6.8.2016, accused/appellant was produced in the Court and was sent to judicial custody. Investigating Officer recorded the statements of witnesses.

After completing the investigation, police has prepared the report under Section 173 Cr.P.C. against accused/appellant-Shinderpal @ Shinda and filed in the trial Court.

Copy of charge sheet was supplied to accused free of costs under Section 207 of The Code of Criminal Procedure, 1973.

FSL result was received. On finding a prima facie case against accused/appellant-Shinderpal @ Shinda for the offence punishable under Section 15 (c) of the Narcotic Drugs and Psychotropic Substances Act, charge against him was framed, vide order dated 18.10.2016, to which, he pleaded not guilty and claimed trial. Thereafter, the case was fixed for prosecution evidence.

In order to prove its case against the accused/appellant, the prosecution has examined in total 17 witnesses.

After recording the evidence of the prosecution, statement of accused/appellant under Section 313 of the Code of Criminal Procedure, 1973 was recorded separately. The entire incriminating evidence and documents brought on record by the prosecution were put to him. The accused/appellant denied the evidence of the prosecution and pleaded his false implication in the present case. He opted to lead defence evidence.

In his defence, accused/appellant-Shinderpal @ Shinda has examined DW1 Sewa Singh who has stated that he was elected as a Sarpanch of village Bateri in the year 2011 and he remained as Sarpanch of village Bateri upto 2014. On 28.12.2013, the police did not meet him at his village Bateri neither any car or poppy husk was recovered in his presence from the said car. He used to make visits in Police Station, Pehowa in connection with the affairs of the villagers and on 27.12.2013, some police officials met him in the police station and they inquired from him whether any person belonging to his village was involved in bringing poppy-husk etc. Then, he told them that none of his villagers have been involved in such type of activities and then, they have got obtained his signature on one blank paper by saying that they will make a report to the effect that none person of village Bateri had been involved in the above referred cases.

The Court below after going through the entire evidence led by the parties convicted the appellant, as the accused/appellant was found to be in possession of car bearing registration No. HR-10-M-7944 on 28.12.2013, when 3.40 qtls. poppy straw (choora post) was recovered on 28.12.2013. The prosecution has thus established that accused Shinderpal @ Shinda has kept in his conscious possession 3.40 qtls. poppy straw (choora post) without any permit or licence. The accused/appellant has not been able

show that either the police or PW9 Sukhwinder Singh has any personal enmity with him. A very large quantity of poppy straw (choora post) has been recovered and the quantity could not have been planted on the accused. P.W.2 ASI Amar Nath also deposed that he has collected the call details of mobile No. 73071-30370 which belongs to the present appellant but the ID of the said mobile number belongs to Rani Kaur wife of appellant.

Learned counsel for the appellant has argued that the appellant was not the owner of the vehicle from where the contraband was recovered and thus, the recovery cannot be linked with the appellant. She has further argued that the prosecution has not produced the certificate under Section 65-A of the Evidence Act and thus, the call details are not admissible in evidence.

Learned counsel for the appellant further contends that no independent witness was joined.

On the other hand, learned State counsel has placed on record copy of judgment dated 07.12.2017 passed by Addl. Chief Judicial Magistrate, Kaithal whereby the present appellant has convicted and sentenced under Sections 279/337/304-A/357 (3) IPC for rash and negligent driving. The vehicle used in this accident was the same vehicle, which has been used in the present case. The vehicle bearing registration No. HR10-M-7944 was standing below the road into the pits on the left side of the road leading to Village Bhatari after the accident in which Mansa Ram succumbed to his injuries.

After hearing learned counsel for the parties at length, the present appeal deserves to be dismissed.

It is not in dispute that the appellant was found to be in

possession of the documents of the offending vehicle, which was used in the crime and thus, he was convicted and sentenced, vide judgment dated 07.12.2017. The prosecution has joined Sewa Singh Sarpanch, during search of the accidental vehicle bearing registration No.HR10- M-7944. From inside the car, 17 plastic bags (kattas) of white colour, on which, 'technical grade urea for industrial use only' was written, were recovered. The plastic bags were checked and after opening the same, poppy straw (choora post) was recovered from each plastic bag. Thus, the prosecution has been able to establish that accused/appellant has kept in his conscious possession 3.40 quintals of poppy straw (choora post) without any permit or license. All the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 have been duly complied with.

The main witnesses in the present case are that P.W.2-ASI Amar Nath, First Investigating Officer and P.W.3 HC Sushil Kumar, who have stated that they on 28.12.2013, along with Constable Ram Kumar were in Government vehicle bearing No. HR65-3242 with its driver Constable Devender Kumar and were present at Dhand-Pehowa Road. On the road side, ASI Amar Nath found the car bearing registration No. HR10M-7944 in abandoned condition. On search of the vehicle. 17 gunny bags were found lying in it. The Sarpanch of the village namely Sewa Singh was called, in whose presence, 17 gunny bags were weighed and 19 kg 500 grams of poppy straw (choora post) were found in each bag. The case property was deposited with the MHC. Both these witnesses have been cross-examined at length by the learned counsel for the accused/appellant but nothing incriminating could come out from their cross-examination which could shatter or destroy their worthiness or which can possibly cause any dent in

the prosecution case.

With regard to non-joining of independent witness, reference at this stage can be made to numerous judgments wherein it has been held that the factum of non-joining of independent witness would not amount to doubt the recovery when the other police officials are consistent in their statements so far as conscious possession over the contraband by the accused was considered. The judgments to this effect are ***Appa Bai and another Vs. State of Gujarat***, AIR 1988 SC 696, ***State of Punjab vs. Balbir Singh***, 1994(1) RCR (Criminal) 736, ***Akmal Ahmed Vs. State of Delhi***, 1999(2) RCR (Criminal) 265, ***State of NCT of Delhi Vs. Sunil***, 2001 (1) RCR (Criminal) 56, ***Ram Swaroop Versus State (Govt. NCT) of Delhi***, Criminal Appeal No.1327 of 2010, decided on 21.5.2013, ***Bakshish Singh vs. State of Punjab***, 2004(3) RCR (Criminal) 64 & ***Makhan Singh vs. State of Punjab***, 2003(4) RCR (Criminal) 427.

In the present case, the accused/appellant has not been able to prove on record that the police has some personal enmity with him. Further the statement of P.W.2-ASI Amar Nath, First Investigating Officer and P.W.3 HC Sushil Kumar are consistent so far as recovery of the contraband from the car is concerned.

With regard to the fact that Investigating Officer, ASI Amar Nath was not an authorized officer and even Deputy Supdt of Police was not called at the spot and thus, the mandatory provisions of Section 42 of Narcotic Drugs and Psychotropic Substances Act, 1985, has not been complied with. On this point, reference can be made to judgment titled as ***Karnail Singh vs. State of Rajasthan***, 2004 (4) RCR (Crl) 171 (SC), wherein in para 8, it has been observed as under:-

“The Act was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for the matters connected therewith. Chapter V comprising of Sections 41 to 68 deals with the procedure relating to issuance of warrants and authorisation, power of entry, search, seizure and arrest without warrant or authorisation, procedure where seizure of goods liable to confiscation not practicable, conditions under which searches shall be conducted, disposal of persons arrested and articles seized, presumptions regarding possession of illicit articles, punishment for vexatious entry, search, seizure and arrest, confiscation of goods used for concealing illicit drugs and substances, procedure for making confiscation and power to tender immunity from prosecution, etc. Section 42 provides that any Authorised Officer of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Department of the Central Government or the Border Security Force, specifically empowered by general or special order by the Central Government, or any such officer of the Revenue, Drugs control, Excise, Police or any other Department of a State Government empowered in that behalf by general or special order, if he has reason to believe from personal knowledge or information given by any person that any narcotic drugs or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset, enter into any such building, conveyance or place

and in case of resistance, break open any door and remove any obstacle to such entry. Such officer has the power to seize the drug or substance and all material used in manufacture thereof and any other article or conveyance which he has reason to believe to be liable to confiscation under the Act and detain and search, and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV. If such officer has reason to believe that such warrant and authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for escape of an offender, he has the authority to enter such building, conveyance or enclosed place any time between sunset and sunrise but after recording the grounds of his belief. For attracting the applicability of Section 42, it is necessary that the officer empowered thereunder, before exercise of his right, has reason to believe from personal knowledge or information regarding the movement of narcotic drug or psychotropic substance. However, if the action is taken not upon his personal knowledge or information, the requirements of Section 42 would not be applicable”.

In the present case, since the recovery was a chance recovery, in the course of routine patrolling, Investigating Officer could not be expected to call witnesses from the residential locality or adjacent park.

Further prosecution has examined PW6 HC Vijay Kumar, who has collected the call details of mobile No.73071-30370 Ex.P17 on the application moved by the Investigating Officer and he has also deposed that the above said Sim has been issued in the name of Rani Kaur, House No.33, Tarai, Patiala. PW2 ASI Amar Nath has also deposed that he has collected the call details of mobile No.73071-30370 which belongs to Shinderpal, but the ID of the said mobile number belongs to wife of Shinderpal. Although,

it is true that no certificate under Section 65-B of the Indian Evidence Act has been produced and in the absence of the same, the call details cannot be admitted in evidence. But still from the testimony of PW9 Sukhwinder Singh and PW2 ASI Amar Nath, it has been established that on 28.12.2013 after the accident of car bearing registration No. HR10-M-7944, accused/appellant Shinderpal, who was possessing the same, had made a telephonic call to PW9 Sukhwinder Singh, owner of car bearing registration No. HR10-M-7944, from mobile No.73071-30370, which further strengthens the prosecution case.

The facts of this case, as mentioned above, disclose that there is no doubt about the fact that the accused-appellant was in conscious possession of the contraband recovered from his possession.

In this case, there was complete compliance of the mandatory provisions of Section 50 of the Act as recovery in this case was effected from the accused in the presence of Sewa Singh, Sarpanch.

Under these circumstances, we find no perversity in the impugned judgment rendered by the Court below. No contrary view than the one taken by the Court below can be taken.

Consequently, we do not find any merit in the appeal and dismiss the same .

(RITU BAHRI)
JUDGE

10.03.2022
G Arora

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No