

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

CRA-S-1933-SB-2006 (O&M)

Date of pronouncement: 18.08.2022

Binder Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. Rajesh Kumar Dhiman, Advocate (Legal Aid Counsel)
assisted by Mr. Deepak Aggarwal, Advocate
for the appellant.

Mr. Sandeep Vermani, Addl. AG, Punjab.

H.S. MADAAN, J.

1. Briefly stated facts of the case, as per prosecution story are that on 30.07.2005, SI Balwinder Singh along with other police officials from Police Station Kotwali, Bathinda was present at Bus Stand Fauji Chowk in connection with patrolling and checking of suspicious persons, in the meanwhile, ASI Jasvir Singh had received a secret information and he conveyed it to ASI Balwinder Singh, which was to the effect that Asha Rani, Binder Singh and Surinder Singh @ Matharu were jointly engaged in selling of poppy husk in the house of Asha Rani, situated at Birla Mill Road, Bathinda and if a raid was conducted, heavy quantity of contraband could be recovered; SI Balwinder Singh recorded ruqa Ex.PA and sent it to police station with a request that information be sent to higher police

officers; he along with other police officials proceeded towards the place disclosed by the informer; while being at Mill Road, Bathinda, an independent witness Gurdev Singh was joined with the police party; Sh. Darshan Lal, Superintendent of Police, along with various other police officials also arrived there and joined the police party of SI Balwinder Singh; then they proceeded towards the disclosed place; when they had reached near Bahia Fort Hotel, they stopped their vehicles and proceeded towards the disclosed house on foot; while going towards house of Asha Rani being in a street, a scooter driven by Surinder Singh @ Matharu on which Asha Rani was pillion rider was spotted; HC Roop Singh and Gurdev Singh independent witness identified them, however, no attempt was made to stop them or to chase them; when the police party had reached in front of house of Asha Rani accused, Binder Singh was spotted coming from the house carrying a bag on his head; on seeing the police party, he threw the bag on the ground in the street and himself went inside the house; after hitting the ground, the mouth of bag got opened and poppy husk fell out of it on the ground; accused Binder Singh was apprehended; the bag which he had thrown on the ground was found to contain 10 kg of poppy husk; two samples of 250 gm each were separated and converted into parcels; the residue poppy husk in the bag came out to 9 kg 500 gm; that weighed poppy husk was retransferred in the same bag and then the sample and bulk were converted into parcels, duly sealed with seal of the IO having impression 'BS'; sample seal chit was prepared; seal after use was handed over to PW Gurdev Singh and

then the case property and the sample were taken into police possession, vide recovery memo Ex.PG.

Since the police suspected that there could be more contraband in the house, therefore, a notice under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') Ex.PF was served upon accused Binder Singh, vide which he was informed that the police wanted to search house of Asha Rani and he had right to get the search conducted in the presence of some Gazetted Officer or a Magistrate; however, the accused opted to get the search conducted in the presence of a Gazetted Officer; thereafter, search of the house was carried out in the presence of DSP and it came out that the house was under construction and in a room thereof, two bags were covered under plastic tarpaulin; the tarpaulin was removed and two bags were found underneath it; their mouths were opened which revealed that the bags contained poppy husk; the bags were given number 1 and 2 respectively; two samples of 250 gm each were drawn from each of the two bags; the samples were converted into separate parcels, total four in number; the residue poppy husk in each bag, on being weighed came out to 29 kg 800 gm; two bags containing residue poppy husk were also converted into parcels; then all the parcels were sealed with seal of the IO having impression 'BS'; sample seal chit was prepared and seal after use was handed over to PW Gurdev Singh; the IO prepared rough site plan of the place of recovery, recorded statements of witnesses; the accused were arrested in this case as per rules and necessary documents were prepared

in that regard; special report under Section 57 of the Act Ex.PK was sent to higher officers on 30.07.2005; on return to the police station, the IO handed over the case property to Sh. Surinder Pal Singh, SHO; the said SHO verified the case property and sealed all the parcels with his own seal having impression 'SPS'; the case property was deposited in the malkhana of the police station.

On 31.07.2005, SHO prepared inventory Ex.PA and produced all the parcels along with sample seal chit and other articles including a mobile phone recovered from the accused, before Illaqa Magistrate; an application under Section 52-A of the Act was filed for pre-disposal of the case property; learned Magistrate on drawing sample of 250 gm of poppy husk from each bulk parcel which was then sealed with seal of the Magistrate having inscription 'BK' and the Magistrate certified that the residue poppy husk came out to 9 kg 250 gm in first bag and 29 kg 250 gm in each two bags (67 kg and 750 gm in three bags); the sample parcels numbering 06 were sent to the office of Chemical Examiner, out of them three parcels were of the same weight which were drawn by the same Magistrate each containing 250 gm of poppy husk and remaining three parcels, total 06 parcels were handed over to Chemical Examiner by Constable Brij Lal in intact condition along with sample seal chit; the chemical examiner after analysis concluded that all the parcels were containing chura poppy heads; the residue contraband was deposited in the godown of NDPS cases on 31.07.2005.

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 (C) of 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 PW1 Constable Brij Lal, PW2 Inspector Surinder Pal Singh, PW3 Gurdev Singh (retired SI), PW4 SI Balwinder Singh, PW5 Darshan Kumar, SP (City), PW6 SI Amrit Pal, PW7 HC Roop Singh and thereafter, the prosecution evidence got concluded.

4. Statements of the accused were 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 he denied the allegations contending that he is innocent and has been falsely implicated in this case. Accused Surinder Singh @ Matharu took up a plea that he has no concern with the alleged raided place; that he had never driven any scooter with Asha on pillion seat; that he is a married person having children of marriageable age.

Whereas, plea taken up by Asha Rani was that she has been unnecessarily dragged in this case; that she was neither owner nor in the control of any place of alleged raid; that she had never sat on the pillion of the scooter driven by Surinder Singh and has never indulged in any smuggling activities.

The defence raised by accused Binder Singh was that he has no concern with the alleged place of recovery; the police has falsely implicated him by showing 10 kg of poppy husk on his head; that he is a labourer and has been made a scapegoat in this case.

5. The trial Court had formulated the following points for determination:-

- i. Who is owner of the house”*
- ii. Whether prosecution has proved conscious possession of the accused qua contraband recovered in this case?*
- iii. Whether prosecution has proved the charge against the accused beyond shadow of reasonable doubt.*

6. After hearing arguments, the trial Court, vide judgment dated 22.08.2006, held accused Binder Singh to be in conscious possession of 70 kg of poppy husk without any permit or license, as such guilty of offence under Section 15 (C) of the Act and he was convicted and sentenced to undergo rigorous imprisonment (RI) for a period of 10 years and to pay a fine of Rs.1 lakh; in default of payment of fine, to further undergo RI for six months. Whereas, accused Asha Rani and Surinder Singh @ Matharu were acquitted of the charge framed against them.

7. Feeling aggrieved by the judgment of conviction and order of sentence, accused Binder Singh has filed the present appeal, notice of which was given to the State.

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

9. As far as recovery of 10 kg of poppy husk from accused

Binder Singh is concerned, that stands fully proved on record by the prosecution by providing enough cogent, convincing, oral as well as documentary evidence but as far as the recovery of remaining contraband placed in two bags from his concern, in my considered view, appellant/accused cannot be taken to be in conscious possession thereof merely because of the fact that he was coming out of the house under construction, carrying a bag on his head which on seeing the police party, he threw down and which after hitting the ground got opened with poppy husk falling down on the ground, no conclusion can be reached that the poppy husk placed in two bags in the room of the house under construction also belong to him and he is to be taken to be in conscious possession thereof. Even as per prosecution version, the house in question belong to Asha Rani accused, who has since been acquitted of the charge framed against her. There is no cogent and convincing evidence either oral or documentary available on record to show that the appellant was either owner or in exclusive possession of the house in question, therefore, holding him in conscious possession of 60 kg of poppy husk placed in two bags in the room in house under construction could not be justified. The trial Court clearly fell in error in doing so.

10. The judgment of conviction is accordingly modified, holding appellant/accused Binder Singh to be guilty for an offence under Section 15 (C) of the Act for possession of 70 kg of poppy husk is modified and appellant/accused is convicted for an offence under Section 15 (C) of the Act for possession of 10 kg of poppy husk. Similarly, vide order of

sentence, he has been convicted for possession of poppy husk amounting to commercial quantity which attracts minimum punishment of imprisonment of 10 years and fine of Rs.1 lakh. However, in view of the detailed discussion above, the poppy husk recovered from his conscious possession comes out to be 10 kg which is non-commercial quantity. As per custody certificate placed on record by the State counsel, the appellant/accused has already undergone 04 years and 10 months of imprisonment. In my considered view, it shall be proper and appropriate if sentence of imprisonment awarded to the appellant is reduced to the one already undergone by him in this case and fine of Rs.1 lakh is reduced to Rs.10,000/-; in default of payment of fine, to undergo RI for one month. It is ordered accordingly.

11. Accused Binder Singh is directed to deposit fine of Rs.10,000/- in the Court of Chief Judicial Magistrate, Bathinda 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 the sentence in default of payment of fine. Necessary intimation be sent to the Court concerned for information and compliance.

12. With such modification in the impugned judgment and order of sentence, the appeal stands allowed partly.

18.08.2022

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(H.S. MADAAN)
JUDGE

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