

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

(1) **CRA-S-2030-SB-2006**

Simarnjit Singh and another

...Appellants

Versus

State of Punjab

...Respondent

(2) **CRA-S-2039-SB-2006**

Jasvir Singh

...Appellant

Versus

State of Punjab

...Respondent

Date of decision:-31.8.2022

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

Argued by :Mr.Amrinder Singh, Advocate assisted by
Ms.Aarti, Advocate for the appellant(s) in both appeals.

Mr.Sandeep Vermani, Addl.A.G., Punjab.

H.S. MADAAN, J.

1. Vide this judgment, I propose to dispose of two appeals i.e.
CRA-S-2030-SB-2006 filed by appellants Simarnjit Singh and Virinder
Singh and **CRA-S-2039-SB-2006** filed by appellant Jasvir Singh, all of
them being accused in case bearing FIR No.2 dated 5.1.2005, under
Section 15 of the Narcotic Drugs and Psychotropic Substances Act,

1985 (hereinafter referred to as '**the Act**'), registered with Police Station Bhawanigarh, who were tried and convicted by the Court of Judge, Special Court, Sangrur vide judgment dated 18.8.2006 for an offence for which they were booked and vide order of the same date, they were sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of ₹1,00,000/- each and in default thereof to further undergo rigorous imprisonment for a period of one year each.

2. The accused-convicts, who are appellants before this Court pray that the appeals be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

3. In nutshell, the case of the prosecution is that on 5.1.2005, a police party from Police Station Bhawanigarh, District Sangrur led by SI Hardeep Singh (hereinafter referred to as the Investigating Officer/IO) travelling in a Government vehicle bearing registration No.PB-13M/2034 was present at bridge of canal in the area of village Balak Khurd in connection with patrolling and search of suspicious persons; in the meanwhile, a tempo came from the side of village Matran; the Investigating Officer signalled the tempo to stop and it came to a halt; besides the driver of the tempo, two other persons were sitting in the cabin of that vehicle; all three of them tried to ran away after opening the door, however, they were apprehended; on being asked, the person who was driving the tempo disclosed his name as Simarnjit Singh @ Sonu son of Gurbhej Singh; the second person told his name as Virinder Singh @ Riku son of Daljit Singh, whereas the third person disclosed his name as Jasvir Singh @ Jassi son of Surinder Singh; the

Investigating Officer tried to find out some independent person so as to join him with the search and seizure but no such person was available; the Investigating Officer then checked the tempo in question; he informed all the three accused one by one that he suspected that some intoxicant material was being carried in the tempo, as such he wanted to search the same and the accused had a legal right to be searched in presence of a gazetted officer or a Magistrate; the accused opted to get the search conducted in presence of a gazetted officer; their statements in that regard were recorded i.e. of Simarnjit Singh as Ex.P1, Jasvir Singh as Ex.P2 and Virinder Singh as Ex.P3, which were signed by the respective accused and attested by the witnesses.

4. The Investigating Officer contacted Sh.Narinderpal Kaushal, DSP through wireless system; after sometime DSP Narinderpal Kaushal reached at the spot; the Investigating Officer apprised him of the facts of the case; thereafter DSP Narinderpal Kaushal disclosed his identity to the accused telling them that he suspected some intoxicant material to be there in the tempo and a search thereof was to be conducted and that 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 memos in that regard were prepared, which were executed by the respective accused and attested by the witnesses; then on instructions of DSP Narinderpal Kaushal, the Investigating Officer conducted search of the tempo in question, which resulted in recovery of 8 bags of poppy husk concealed in tarpaulin; the Investigating Officer drew two samples of 250 grams each from each of the 8 bags; the residue poppy husk in each bag came out to be 29.500

kgs.; the samples and the bags containing residue poppy husk were converted into parcels, sealed with the seal of Investigating Officer having inscription HS; specimen inscription of the seal was taken on chit Ex.P7 and the seal after use was handed over to ASI Gulab Singh, DSP Narinderpal Kaushal put his seal on all the parcels having inscription NP and prepared sample seal chit Ex.P7. Thereafter, the entire case property was taken into police possession vide recovery memo Ex.P8 attested by ASI Gulab Singh and ASI Darshan Singh besides DSP Narinderpal Kaushal. The tempo was taken into possession vide separate recovery memo Ex.P9.

5. The accused were arrested in this case as per rules. Requisite documents were prepared i.e. personal search memo of accused Simarnjit Singh as Ex.P10, personal search memo of accused Jasvir Singh as Ex.P11 and that of accused Virinder Singh as Ex.P12. Ruqa was sent to the police station, on the basis of which formal FIR was recorded. The Investigating Officer prepared the rough site plan of the place of recovery and recorded statements of witnesses.

6. On return to the police station, the Investigating Officer put the accused in the lock up and deposited the case property with MHC Gurmail Singh. On the next day i.e. on 6.1.2005, the Investigating Officer took the case property from MHC Gurmail Singh and produced the same in the Court of ACJM, Sangrur, moving application Ex.P39 on which the Court had passed order Ex.P39/A. The Investigating Officer had moved another application Ex.P40 for depositing of the case property in judicial malkhana and in terms of the order passed, the case property was deposited in judicial malkhana. During the course of

investigation, the sample parcels were sent to the office of Chemical Examiner, Punjab and as per report Ex.P41 received therefrom, those were found to be that of poppy husk. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

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

8. Then on observing that prima facie charge for an offence under Section 15 of the Act was disclosed against the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

9. During the course of its evidence, the prosecution examined the following witnesses:

PW1 ASI Gulab Singh, a witness of recovery deposed as per the prosecution version.

PW2 HC Gurmail Singh, a formal witness tendered in evidence his duly sworn affidavit as Ex.P14 and deposed with regard to the safe custody of the case property so long as it remained in his possession being MHC of the police station.

PW3 HC Gurbhej Singh, another formal witness tendered in evidence his duly sworn affidavit as Ex.P15. He is the police official, who had taken the sample parcels to the office of Chemical Examiner, Punjab after getting docket issued from SSP, Sangrur stating that so long as the sample parcels remained in his possession no tampering therewith had taken place.

PW4 DSP Narinderpal Kaushal, a witness of recovery lent

support to the prosecution story on material points. Whereas PW5 Harwinder Singh, Clerk, DTO Office, Patiala had brought the register with regard to registration of vehicles in Patiala stating that as per their record mini truck bearing registration No.PB-11U/5457 is registered in the name of name of Simarnjit Singh son of Gurbhej Singh resident of House No.154, St.No.1, Gurbax Colony, Patiala; the earlier number of the vehicle was UP-14-E-6801 of U.P. State, however, it was assigned new number and was transferred to Simarnjit Singh vide entry Ex.P17. He proved RC of the vehicle as Ex.P18.

PW6 Nasib Chand, Clerk, DTO Office, Fatehgarh Sahib had brought the summoned record with regard to driving licence No.60842 dated 11.6.2004 issued in the name of Simarnjit Singh for scooter LMV and endorsement for HMV (Commercial) up to 10.3.2006. He proved the licence as Ex.PW6/A.

PW7 SI Hardeep Singh, the Investigating Officer of this case deposed with regard to recovery of contraband from the possession of the accused as well as the investigation conducted by him proving various documents.

The prosecution after tendering affidavit of Suresh Kumar, Nazir as Ex.P42 had closed the prosecution evidence.

10. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence against them were put to such accused but they denied the allegations contending that they were innocent and had been falsely involved in this case. Further accused Simarnjit Singh stated that no recovery had been effected from them; he was brought from his

house from Patiala; all the formalities were completed while sitting at Police Station Bhawanigarh and in office of DSP Sangrur and that the accused and vehicle have been falsely involved in this case.

Accused Jasvir Singh stated that he was arrested from bus stand Bhawanigarh along with his motorcycle since his motorcycle had struck against a vehicle and nothing was recovered from him.

Accused Virinder Singh had taken up the same plea as taken by accused Simarnjit Singh.

11. During their defence evidence, the accused examined DW1 ASI Charanjit Singh, Incharge, who had brought the logbook regarding wireless message pertaining to entries made on 5.1.2005 from the morning to 12:00 a.m. night stated that there is no record showing transmitting the message to DSP Narinderpal Kaushal on 5.1.2005. He further stated that no message is recorded in the logbook regarding Sh.Narinderpal Kaushal DSP reaching the spot.

DW2 Sorabhdip Singh, Executive Regulatory Affairs, Spice Communications, Mohali had brought the mobile record pertaining to mobile No.9814800048 stating that this connection was released in favour of Parminder Singh, House No.1066/2, Sector 39, Chandigarh and even on 5.1.2005, the connection was in his name continuing till date. He further stated that the connection was never released in the name of SI Hardip Singh.

12. With that the evidence of defence stood closed.

13. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left them aggrieved and they had filed the present appeals, which were admitted for regular

hearing. On applications under Section 389 Cr.P.C. having been filed by the appellants/accused for suspension of their sentence of imprisonment during the pendency of appeals, the same were allowed and remaining sentence of appellants/accused was suspended during the pendency of the appeal and they were ordered to be released on bail on their furnishing adequate bail bonds/surety bonds to the satisfaction of the CJM, Sangrur.

14. Now the appeals have come up for final hearing.

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

16. Learned counsel for the appellants has come up with a plea that complainant and Investigating Officer SI Hardeep Singh PW7, are the same person and he was a interested witness. Although Narinderpal Kaushal, DSP was examined as PW4 but his cross-examination was deferred and he did not appear to face cross-examination, which is fatal to the case of the prosecution, therefore, a doubt arises in the mind about the truthfulness of the prosecution story and giving the benefit of doubt to the accused, they should be acquitted of the charge framed against them.

17. I find this argument to be totally misconceived. In this case both the witnesses of recovery, namely, PW1 SI Gulab Singh and PW7 SI Hardeep 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 – convicts has been alleged or proved prompted by which they might have involved the accused in this case wrongly and deposed against them falsely to secure their conviction. The account given by these PWs come out to be worthy of reliance. Then Sh.Narinderpal Kaushal had got his statement recorded in the Court as PW4, his cross-examination was not conducted and rather the same was deferred. Subsequently, the prosecution had filed an application under Section 311 Cr.P.C. for recalling of that witness to face cross-examination, which was opposed on behalf of the accused. It was dismissed by the Court vide order dated 1.8.2006. The prosecution cannot be blamed for non-conducting of cross-examination of this witness and accused cannot take benefit of this thing. Nevertheless even if statement of PW4 is not taken into consideration, from other evidence brought on the file by the prosecution, the recovery of contraband from the conscious possession of the accused stands duly proved.

18. As regards the judgment referred to by learned counsel for the appellant i.e. **State of Himachal Pradesh Versus Anil Kumar, (2015) 5 RCR(Cri.) 189**, the facts of that case were entirely different and so as the context in which the observations had been made therein. There were various factors leading to acquittal of the accused i.e. *non joining of independent witness despite easy availability, non-placing of special report on record; non-filling of column Nos.9 and 11 of NCB form; non-resealing of process of contraband by SHO Police Station, difference between time of recovery of contraband in seizure memo and NCB form and entire investigation conducted by complainant himself;*

non-production of original seal in Court for comparison etc.

19. However, a Constitution Bench of the Apex Court in judgment **Mukesh Singh Versus State (Narcotic Branch of Delhi), 2021(1) SCC(Cri.) 356** had dealt with the point of investigation by informant/investigator holding that when informant is investigator that by itself would not result in unfairness or bias in the investigation, therefore on sole ground that informant is investigator the accused is not entitled to acquittal. A decision by the Supreme Court in case **Mohan Lal Versus State of Punjab, (2018)17 SCC 627** taking a contrary view that informant cannot be the investigator and in such a case the accused is entitled to acquittal was not held to be good law and was specifically overruled.

20. Another argument put forward on behalf of the appellants was that neither logbook of the vehicle of Sh.Narinderpal Singh, DSP was produced in the Court nor statement of his driver or gunman was recorded to show the arrival of Narinderpal Singh, DSP at the spot. Rather DW1 ASI Charanjit Singh had deposed that there was no message in the logbook for calling DSP to the spot.

21. I find this argument to be totally misconceived. The production of logbook of the official vehicle of DSP and recording statement of his driver or gunman was not necessary, rather by raising such type of arguments, an attempt is being made to over stretch the things not understanding that for each and every fact corroborative evidence is not required to be brought on record since that would result in burdening the file unnecessarily. Only the relevant evidence is to be produced and not otherwise.

22. With regard to non-joining of independent witness, since in view of detailed discussion above, it has been found that the official witnesses did not have any enmity with the accused prompted by which they might have planted a false case upon the accused or depose against him wrongly to secure his conviction. Even otherwise, the depositions of official witnesses are at par with that of independent witness. Furthermore, independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided in any statute that independent corroboration is a must and in absence thereof, the case of the prosecution is to be rejected outrightly.

23. A Single Bench of this Court in judgment **Krishan Kumar Versus State of Punjab, 2016(2) RCR(Criminal)707** had 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.

24. One more argument put forward by learned counsel for the appellant was with regard to non-compliance of Section 50 of the Act. Again this objection is totally devoid of any merit. The law is well settled that Section 50 of the Act applies to personal search only and not otherwise. In case **Varinder Kumar Versus State of Himachal Pradesh, 2019(1) RCR(Criminal)1003** it was observed that when recovery was not effected from the accused but gunny bags carried on scooter, there was no violation of Section 50 of the Act. It was observed that Sections 52 and 57 of the Act are directory in nature.

25. With regard to delay in sending the sample, this argument also does not carry any weightage since the prosecution has successfully

established that the sample parcels had reached the office of Chemical Examiner, Punjab with seals intact and the case property had remained in safe custody after its seizure by the Investigating officer. The Apex Court in **Hardip Singh Versus State of Punjab, 2008(4) RCR(Criminal)97** while dealing with a case relating to recovery of 7 kgs. of opium when samples were sent to chemical examiners after 40 days of recovery, however, there was no evidence that samples were tampered with or any prejudice was caused to the accused, the delay was not held to be fatal to the case.

26. Regarding the objection that no CFSL form was prepared at the spot or deposited with the MHC, learned State counsel has referred to citation **Wazir Singh versus State of Haryana, 2010(1) RCR(Criminal) 480** by a Co-ordinate Bench of this Court wherein while dealing with the aspect of CFSL Form not filled on the spot, it was observed that there is no rule of evidence or procedural rule under Criminal Procedure Code or NDPS Act and every document must be prepared at the spot of recovery.

27. PW5 Harwinder Singh, Clerk, DTO Office, Patiala by bringing the record had proved that the tempo in question stands in the name of Simarnjit Singh. Other two accused were sitting with him in the cabin. As has been observed by the trial Court, the tempo is not a passenger vehicle. All the three accused on observing the police party had tried to run away. In that way, they were in joint possession of the contraband. Since they failed to account for the possession, presumption can be drawn under Section 35 and 54 of the Act that their such possession was conscious.

28. Learned counsel for the appellants has referred to various other judgment, which do not find application to the present case in view of different facts and circumstances and context in which such observations had been made. The judgment **Kishan Chand Versus State of Haryana, (2013) 2 Supreme Court Cases 502** does not find any application since here no mandatory provision of law is shown to have been violated during search and seizure.

29. The judgment **Saudan and another Versus State of Rajasthan, 2002 Cri.LJ 4816** with regard to non-joining of independent witness does not help the appellant in any manner in view of the detailed discussion above.

30. With regard to judgment **Noor Aga Versus State of Punjab (2008)16 Supreme Court Cases 417**, that judgment is basically with regard to presumption of culpable mental state of accused on possession of illicit articles by him and reverse burden on accused to prove to the contrary. That judgment does not help the appellants because it was observed by the Apex Court that Section 35 read with Section 54 and 53-A are not violative of Article, 14, 20 and 21 and further burden on accused is not merely a legal burden but also an evidentiary burden. Here the conscious possession of the contraband by all the three accused stands adequately proved on record.

31. Learned counsel for the appellants could not show any violation of any mandatory provision, which might cause some prejudice to the appellants/accused.

32. The prosecution has proved its charge against the accused conclusively and affirmatively. The accused could not render any

reasonable or plausible explanation for their alleged false implication nor could they account for possession of the contraband without any licence or permit thereby showing that they were in conscious possession of such contraband. In absence of any previous enmity between the official witnesses and the accused being alleged or proved on record, such heavy quantity of recovery rather rules out the possibility of false implication as has been held by a Single Bench of this Court in case **Krishan Kumar Versus State of Punjab case (supra)**, wherein it was held that in case of recovery of 35 bags containing 35 kilograms poppy husk in each bag from the possession of the present appellant and his co-accused, such a huge quantity of the contraband cannot be planted by the police from its own source, that too, just for the false implication. As such, conviction and sentence of the accused by the trial Court were upheld.

33. As regards the sentence part, the recovery effected is quite substantial coming within the definition of commercial quantity. The trial Court has been quite lenient with the appellants awarding the minimum sentence when under the circumstances, more imprisonment could have been awarded to them. The accused were sentenced to undergo rigorous imprisonment for ten years each, which is the minimum prescribed conviction for possession of commercial quantity of the contraband. Even otherwise, the appellants/accused for a pecuniary benefit opted to play with lives and health of people of the area by making them addict to taking drugs. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and

sternly and no sympathy can be shown to them lest that proves to be counter productive and result in increase drug trafficking. Therefore, the sentence awarded to the appellants/accused is not found to be on very high side and does not call for any reduction.

34. The impugned judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas the appeals are found to be without any merit and the same are dismissed accordingly.

35. It is pertinent to mention here that the concession of suspension of sentence granted to the appellants was withdrawn vide separate orders dated 18.7.2022 passed in both the appeals. Chief Judicial Magistrate, Sangrur is directed to issue arrest warrants to get them arrested so as to make them undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

31.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No