

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

CRA-S-1883-SB-2005 (O&M)

Date of pronouncement: 25.08.2022

Kashmir Singh and another

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Appeal qua appellant No.1-Kashmir Singh already abated.

Mr. Harish Goyal, Advocate for appellant No.2-Raju Singh.

Mr. Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Briefly stated facts of the case, as per prosecution story are that on 11.12.2000, Inspector Harcharan Singh [hereinafter referred to as the Investigating Officer (IO)] from Police Station Boha along with a police contingent, was going towards Reond Khurd in connection with patrolling; when the police party approached seepage drain bridge within the revenue limits of village Reond Khurd, accused Kashmir Singh and Raju Singh were spotted sitting over a bag having contents; on seeing the police party, both the accused tried to slip away, however, accused Kashmir Singh was apprehended by the police party whereas the other accused namely Raju Singh managed to escape; an independent witness PW Inder Singh was joined with police party.

The IO informed accused Kashmir Singh that he suspected the gunny bag in his possession to contain some narcotic and he wanted to search the same that the accused had a right to get the search conducted in the presence of some Gazetted Officer or a Magistrate, accused Kashmir Singh opted to get the search conducted in presence of a Gazetted Officer; the IO prepared a memo in that regard; thereafter, he flashed a wireless message so as to call a Gazetted Officer to the spot; accordingly, Sh. Amarjit Singh, DSP, Sardulgarh, a Gazetted Police Officer arrived at the spot after some time; Sh. Amarjit Singh disclosed his identity to accused Kashmir Singh telling him that he had a right to get the search carried out before him or some other Gazetted Officer or a Magistrate; accused Kashmir Singh, however reposed faith in the said DSP; consent memo in that regard was prepared; thereafter on instructions of Sh. Amarjit Singh, DSP, the IO searched the bag in the possession of accused and it was found to contain poppy husk; the IO took out two samples of 100 gm each from the bag containing poppy husk and on being weighed, the residue poppy husk in the gunny bag came out to 29 kg 800 gm; two samples and gunny bag containing residue poppy husk were converted into parcels sealed by the IO with his seal having inscription 'HS'; he prepared specimen seal impression chit, then the case property along with specimen seal chit were taken into police possession, vide recovery memo; seal after use was handed over to PW Inder Singh; Kashmir Singh accused was arrested in this case as per rules and necessary documents in that regard were prepared.

The IO had sent ruqa to the police station on the basis of which FIR was recorded by MHC Chanan Singh; the IO prepared rough site plan of the place of recovery, he recorded statements of witnesses; on return to the police station, the IO kept the case property in safe custody whereas accused Kashmir Singh was put up in the lockup.

On the next day of recovery, the IO produced produced Kashmir Singh accused along with case property before Illaqa Magistrate, who passed necessary orders; since there was shortage of space in judicial malkhana, the IO had kept the case property in his own custody.

On 14.12.2000, a sample parcel besides specimen seal impression chit and Form No. 29 were sent to Forensic Science Laboratory, Punjab, Chandigarh through Constable Sukhpal Singh who deposited the same there on 15.12.2000 and on return to the police station, handed over the receipt issued by that Laboratory to the IO; subsequently, a report was received from FSL, Chandigarh to the effect that on analysis, the sample was found to be that of poppy husk; accused Raju Singh was arrested in this case on 10.02.2001; on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

2. On presentation of the challan in the Court of Judge, Special Court, Mansa, copies of 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 of the

Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '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 05 witnesses i.e. PW1 ASI Bant Singh, PW2 Constable Sukhpal Singh, PW3 Sh. Amarjit Singh, DSP, PW4 Inspector Harcharan Singh (since retired), PW5 ASI Ajaib Singh.

The prosecution relied upon various documents including report from FSL Ex.PX/1 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 they denied the allegations contending that they were innocent and had been falsely implicated in this case.

The accused did not lead any evidence in defence.

5. After hearing arguments, the trial Court vide judgment dated 07.10.2005 convicted both the accused for the offence for which they were booked and vide order of even date, sentenced them to undergo rigorous imprisonment for 02 years and to pay a fine of Rs.5000/- each; in default of payment of fine, to undergo further RI for 03 months each.

6. Feeling aggrieved by the judgment of their conviction and order of sentence, both the accused had filed the present appeal, notice of which was given to the State, which had put in appearance. The appeal

was taken up on 27.10.2005 when notice of motion was issued, vide order dated 16.01.2006. The appeal was Admitted for regular hearing and on an application under Section 389 Cr.P.C., having been filed by both the appellants/accused, the same was accepted and remaining sentence of appellants was suspended during pendency of the appeal and they were ordered to be released on bail subject to their furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Mansa. As per report, appellant No.1 Kashmir Singh had expired, therefore, vide order dated 26.02.2000 it was observed that appeal qua him stood abated. Since it was observed that appellant No.2 Raju Singh was trying to prolong the proceedings and was misusing the concession of suspension of sentence and grant of bail to him, that concession was withdrawn, vide order dated 04.07.2022 and he has since been arrested.

Now the appeal has come up for final hearing.

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

8. Learned counsel for the appellant Raju Singh has contended that as per prosecution story, Raju Singh had run away from the spot and he had been identified by HC Bhagwan Dass, however neither he was examined by the prosecution nor any identification parade was arranged by the police/investigating agency. Since Raju Singh was not known to other PWs earlier, identity of Raju Singh is not established and no criminal liability can be slapped upon him.

Whereas, learned State counsel has contended that identity of

Raju Singh had been fully established since Raju Singh was previously known to HC Bhagwan Dass and when Raju Singh had run away on seeing the police party, he was chased by HC Bhagwan Dass and Constable Suresh Kumar, though Raju Singh managed to escape but then when HC Bhagwan Dass and Constable Suresh Kumar returned, HC Bhagwan Dass told that the person who had run away was Raju Singh son of Jangir Singh resident of Reond Kalan, therefore, no doubt could be there with regard to identity of Raju Singh.

After hearing the rival contentions, I do not find myself in agreement with learned counsel for the appellants. In the ruqa itself, name of accused Raju Singh along with his parentage and his residential address etc., are mentioned and it is further mentioned that he was earlier known to HC Bhagwan Dass, who had disclosed identity of Raju Singh. It being so, no doubt was left with regard to identity of the accused and the mere fact that the prosecution did not examine HC Bhagwan Dass during the course of its evidence does not create any doubt with regard to identity of accused Raju Singh. Under the circumstances, non holding of any identification parade by the investigating agency does not have any effect.

9. Another argument put-forward by learned counsel for the appellant was that story of Raju Singh running away is improbable since with several police officials being there, he would not have been able to escape. Again I find little merit in this argument. As per prosecution story, on seeing the police party, Raju Singh had run away, though, he was

chased by HC Bhagwan Dass and Constable Suresh Kumar but he managed to escape. There is nothing unusual in that. Keeping in view generally low standard of physical fitness of police officials in State of Punjab. The accused may be having good physique and he may be a good runner which might not have been the case as regards the police officials chasing him. Each and every police official may not be having hundred percent physical fitness and capacity to run fast. Therefore, the mere fact that Raju Singh had managed to escape on seeing the police party does not make the story improbable.

10. One more another argument advanced by learned counsel for the appellant was that case property had been put in the police malkahana instead of judicial malkhana, therefore, there could be possibility of tampering with the same by the IO. However, this contention is also not convincing. It has come on record that there was paucity of space in judicial malkhana and for that reason, the case property was placed in police malkhana; that does not give rise to any suspicion with regard to IO having tampered with the case property, since the prosecution has brought sufficient link evidence oral as well as documentary to show that the case property remained in safe custody and no tampering of seals had taken place during the period it remained in custody of police officials and reached FSL, Punjab, Chandigarh, through Constable Sukhpal Singh. Report from the office of Chemical Examiner Ex.PX/1 also goes to show that sample parcel had reached there with seals intact.

11. Another contention of learned counsel for the appellants was

that Inder Singh, the independent witness said to have been joined with the police party was not examined, putting a question mark over credibility of the prosecution story. This contention is also without any element of merit. There is nothing on record to show that witnesses of recovery namely PW4 Inspector Harcharan Singh, PW1 ASI Bant Singh, PW5 ASI Ajaib Singh and PW3 Sh. Amarjit Singh, DSP had any previous enmity with the accused prompted by which they might have involved the accused falsely or deposed against him to secure his conviction. All of them deposed in a natural and convincing manner and the account given by them inspire confidence. The law is well settled that statements of official witnesses are at par with the independent witnesses unless such witnesses have any motive for false implication of the accused which in this case is not found to be there.

12. Learned counsel for the appellants had referred to various judgments in support of his contentions i.e. **Pappu Singh and Ors. Vs. State of Haryana**, 2013(4) RCR (Criminal) 402, **Karamjit Singh Vs. State of Punjab**, 2003 (4) RCR (Criminal) 431, **Tara Ram @ Tara Vs. State of Punjab**, 2013(2) RCR (Criminal) 734, **Buta Singh Vs. State of Punjab**, 2006 (1) RCR (Criminal) 835, **State of Punjab Vs. Balkar Singh**, 2004 (3) SCC 582, **Daya Nand Vs. State of Haryana**, 2005 (3) RCR (Criminal) 338, **Mohan Singh Vs. State of Punjab**, 2004 (4) RCR (Criminal) 260 and **Dharambir Vs. State of Haryana**, 2008 (4) RCR (Criminal) 40. But those are not applicable due to different facts, circumstances and the context in which such observations have been

made.

13. The legal position is very clear inasmuch as in **Sucha Singh Vs. State of Punjab**, 2015 (4) RCR (Crl.) 25, a Division Bench of this Court while dealing with an eventuality when in a case of recovery of contraband, an independent witness had been joined by the police party during search and recovery but he was not examined as a prosecution witness, rather he appeared as a defence witness denying his having joined as witness to search and recovery, rather stating that his signatures were procured on blank papers when he had visited police station in drunkard condition. It was held that it cannot be believed that numerous signatures on various papers having different writing material could be signed by a witness on blank papers and that when recovery of contraband otherwise stood proved by consistent and reliable testimonies of IO and DSP who were present at the spot, the defence witness was held to be unreliable whose testimony was rightly discarded. In that very judgment, it was observed that when there are no allegation of any enmity against the police officials to falsely implicate the appellants, then the conclusion drawn by the trial Court that non-examination of independent witness of search and recovery who was won over by the accused did not raise any doubt in the prosecution case. In this very judgment, the delay in sending sample to the office of Chemical Examiner was discussed holding that prosecution and conviction cannot be vitiated on that account.

14. Furthermore, a Single Judge of this Court in judgment

Krishan Kumar Vs. State of Punjab, 2016(2) RCR (CrL.) 707, has 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. It was further observed that once it is established that appellant was in possession of the contraband, it was for him to show that he was not in conscious possession thereof, since Section 54 of the Act creates a legal fiction and presumes that the person in possession of the illicit article has committed the offence, in case he fails to account for the possession. It was further observed that possession is a mental state and once the possession is established, the Court can presume under Section 35 of the Act that the accused has culpable mental state and has committed the offence.

By now the law is well settled that Section 50 of the Act applies to personal search only and in that regard, reference can be made to judgment **State of Himachal Pradesh Vs. Pawan Kumar**, 2005(2) RCR (Criminal) 621.

15. Furthermore in judgment **Khet Singh Vs. Union of India**, 2002(2) RCR (Criminal) 277 by the Apex Court, it was observed that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the Court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. It was further observed that if the search and seizure was in complete defiance of the

law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.

In the present case, as discussed in detail above, the accused along with his co-accused Kashmir Singh having been found in possession of contraband stands established on record, since he (Raju Singh) has failed to account for his possession, drawing presumption under Sections 35 and 54 of the Act, he is to be taken in conscious possession of the contraband. No mandatory provision of law is shown to have been violated in this case. Therefore, it cannot be said that the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure.

16. The impugned judgment of conviction passed by the trial Court is quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therewith, which might have called for interference by this Court while exercising appellate jurisdiction, and as regards the sentence, the accused had failed to render any reasonable or plausible explanation for his alleged false implication in this case. He could not account for his possession of the contraband in question without any license or permit. Therefore, he is to be taken in conscious possession of the contraband. Since the accused for a pecuniary benefit indulged in drug peddling

putting lives and health of various persons of the area to a risk by providing easy supply of drugs to them, no leniency can be shown to him in the matter of sentence. The order of sentence does not call for any interference. The same is also upheld. The appeal is found to be without merit and same is hereby dismissed. Appellant Raju Singh, who is in custody be made to undergo the remaining sentence of imprisonment besides paying fine and in case of non-payment of fine, to undergo imprisonment in default in terms of the judgment passed by the trial Court.

25.08.2022

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(H.S. MADAAN)
JUDGE

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