

CRA-D-648-DB of 2016

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

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Date of decision: 02.03.2022

Gurpawan Singh alias Pamma and another

.....Appellants

Versus

State of Punjab

.....Respondent

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

Present: - Mr. R.S. Rai, Senior Advocate with
Mr. Karan Pathak, Advocate, for the appellants.

Mr. H.S. Grewal, Additional Advocate General, Punjab.

ASHOK KUMAR VERMA, J.

[1] This appeal has been preferred against the judgment of conviction and order of sentence dated 23.05.2016 passed by the Judge, Special Court, Ludhiana, whereby appellants have been held guilty and sentenced to undergo rigorous imprisonment for a period of fifteen years and to pay a fine of ₹1,50,000/- each for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and in default of payment of fine to further undergo rigorous imprisonment for a period of one year.

[2] The facts and circumstances giving rise to the present appeal are that when on the intervening night of 17/18.08.2014 at about 11.00 p.m. S.I. Jarnail Singh along with other members of the police party was present at Rorian Chowk in connection with patrolling duty and checking of suspected persons, a Toyota Corolla vehicle bearing registration No.HR-05-U-6400, belonging to appellant No.1-Gurpawan Singh alias

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Pamma, was seen coming from Chownk Burkara. He gave signal to stop the vehicle with a torch. After seeing the police party, the driver of the vehicle tried to turn back but vehicle was stopped. One independent witness, namely, Pritpal Singh came and joined the investigating team. On being asked, driver of the aforesaid vehicle disclosed his name as Gulpawan Singh @ Pamma son of Didar Singh and other person, who was sitting on the seat adjacent to the driver seat, disclosed his name as Gurditta Singh son of Sukhdev Singh. S.I. Jarnail Singh disclosed his identity to them and told them that he has suspicion that there is some objectionable article in their possession and in the car, therefore, he wants to conduct the search. Appellants-accused were told of their legal right to get their search conducted from some Gazetted officer or Magistrate. However, appellants reposed faith in S.I. Jarnail Singh and opted for search by him. Separate consent memos were prepared, which were signed by both the appellants-accused and witnessed by police officials. Then S.I. conducted the search of dickey of the car and ten plastic bags of white colour were recovered from it. Upon opening of recovered bags, poppy husk was found. He took two samples of 250 gms each from the said bags and converted the same into parcels and remaining poppy husk on measuring through spring kanda came to be 19 kgs 500 gms from each bag. Sample parcels and case property was sealed with impression "JS". S.I. Jarnail Singh also prepared specimen seal impression on CFSL form and seal after use was handed over to ASI Avtar Ali. All the parcels were taken into possession by SI Jarnail Singh vide memos, which were witnessed by other police personnel. Ruqa was sent to the police station through HC Ranjit Singh, on the basis of which formal FIR was registered

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by ASI Tarsem Kumar. On personal search, nothing incriminating was recovered from the appellants. SI Jarnail Singh prepared rough site plan with correct marginal notes and arrested both the appellants-accused and intimation of their arrest was given to their relatives. Arrest-intimation memos were also prepared and witnessed by the abovesaid witnesses. SI Jarnail Singh also prepared inventory report and recorded the statements of witnesses. On reaching the police station, entire case property along with appellants-accused and witnesses was produced before ASI Tarsem Kumar. Ten sample parcels were sent to the laboratory. On receipt of chemical examiner report and after completion of all the formalities of investigation, challan against the appellants-accused was presented in the Court.

[3] Upon presentation of challan, copies of the report under Section 173 Cr.P.C. and other relevant documents were supplied to the appellants-accused free of cost as envisaged under Section 207 Cr.P.C.

[4] On appraisal of the police report filed under Section 173 Cr.P.C. and the documents attached therewith and after hearing the counsel for the parties, appellants-accused was charged for offence punishable under Section 15 of the NDPS Act. Appellants-accused denied the charges and claimed trial.

[5] In order to prove charges, prosecution examined as many as six witnesses.

[6] After conclusion of prosecution evidence, statements of appellants-accused under Section 313 Cr.P.C. were recorded. They denied all the incriminating material put to them as being incorrect. The appellants-accused pleaded that they are innocent and have been falsely

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implicated and nothing was recovered from their possession. In defence, no witness was examined by the appellants-accused and they closed the same.

[7] After hearing learned counsel for the prosecution as well as for the defence and appreciation of evidence, Judge, Special Court, Ludhiana, held the appellants-accused guilty for the offence punishable under Section 15 of the NDPS Act and sentenced them to undergo imprisonment as narrated above.

[8] The main contention of the learned counsel for the appellants is that prosecution miserably failed to prove its case against the appellants as the sole independent witness Pritpal Singh who was present at the time of alleged recovery and joined as such was not examined, which is fatal to the prosecution case. The entire prosecution case hinges upon the testimonies of the official witnesses, which are discrepant on material points, which render the case of the prosecution doubtful. In support of his contention learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in ***Kamaljit Singh alias Pappu v. State of Punjab***, (2020) 14 Supreme Court Cases 9. It is further contended by learned counsel for the appellants that there is non-compliance of Section 42(1) and Section 50 of the NDPS Act, which is mandatory in nature. Moreover, the trial Court has miserably failed to take into consideration the factors as prescribed under Section 32B of the NDPS Act and has not awarded the minimum sentence to the appellants.

[9] Per contra, learned counsel for the State contended that the prosecution has proved its case against the appellants-accused beyond any

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shadow of doubt by leading cogent evidence and they have been rightly convicted by the trial Court.

[10] We have considered the rival submissions made by learned counsel for the parties and perused the records.

[11] We are not convinced with the arguments raised by the learned counsel for the appellants. The contention of the learned counsel for the appellants that non-examination of sole independent witness Pritpal Singh is fatal to the case of prosecution is misplaced and has no legs to stand. It is settled proposition of law that even if the prosecution has not examined an independent witness, though joined, the same is not fatal to the case of the prosecution. This view of ours finds support from the law laid down by the Hon'ble Supreme Court in *Kashmiri Lal v. State of Haryana*, 2013(3) RCR(Criminal) 259. Present is a case of 'chance recovery' and there was no prior or secret information regarding the accused. That apart, there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the Court can definitely act upon the same. If in the course of scrutinizing the evidence the Court finds the evidence of the police officer as unreliable and untrustworthy, the Court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle of 'quality of the evidence weighs over the quantity of evidence'. These aspects have been highlighted in *State of U.P. v. Anil Singh*, 1990(3) RCR(Criminal) 585; *State Govt. of NCT of*

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Delhi v. Sunil and another*, 2001(1) RCR(Criminal) 56** and ***Ramjee Rai and others v. State of Bihar*, 2006(4) RCR(Criminal) 289**. Appreciating the evidence on record on the unveil of the aforesaid principles, we do not perceive any acceptable reason to discard the testimony of the official witnesses which is otherwise reliable and absolutely trustworthy. The facts and circumstances of ***Kamaljit Singh's case (supra) are distinguishable from the facts and circumstances of the present case as in ***Kamaljit Singh's*** case (supra) the police party had received prior/secret information regarding the accused upon which he was apprehended.

[12] So far as contention of the learned counsel for the appellants with regard to non-compliance of Section 42(1) and Section 50 of the NDPS Act is concerned, same is unsustainable. According to the prosecution police party was present at the place of recovery in connection with patrolling duty. Meanwhile a Toyota Corolla vehicle bearing registration No.HR-05-U-6400 was seen coming from Chownk Burkara. After seeing the police party, driver of the vehicle tried to turn back. After that the driver of the vehicle stopped it and he was apprehended, who disclosed his name as Gulpawan Singh @ Pamma and second accused told his name as Gurditta Singh, who was sitting on the seat adjacent to the driver's seat. On search of the said vehicle ten plastic bags of white colour were recovered from the dickey of the car. Upon opening, poppy husk was found in the recovered bags. There is no dispute over the fact that the seizure had taken place from the dickey of the said vehicle. When a vehicle is searched and not the person of an accused, needless to emphasise, Section 50 of the NDPS Act is not attracted. This has been so held in ***Ajmer Singh v. State of Haryana*, 2010(2) RCR(Criminal) 132**;

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Madan Lal v. State of H.P., 2003(4) RCR(Criminal) 100 and *State of H.P. v. Pawan Kumar, 2004(4) RCR(Criminal) 543*. Thus, the aforesaid submission of the learned counsel for the appellants is without any substance.

[13] There is no merit in the appeal, which is accordingly dismissed. However, considering the age of the appellants and the fact that as per custody certificates appellants are first offenders and they are not involved in any other case, a lenient view is taken as they have suffered the agony of protracted trial for about 7½ years and have undergone custody for more than 5½ years, sentence of 15 years rigorous imprisonment awarded to the appellants by the trial Court is reduced to rigorous imprisonment for 10 years each. The order of payment of fine in the sum of ₹1,50,000/- each is hereby maintained.

(Ritu Bahri) Judge	(Ashok Kumar Verma) Judge
March 02, 2022	
R.S.	

Whether speaking/reasoned	Yes
Whether Reportable	Yes