

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

CRA-S-1838-SB-2011(O&M)

Date of decision:-9.9.2022

Kashmir Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.Aseem Kataria, Advocate
for the appellant.

Mr.G.S.Dhillon, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant/accused Kashmir Singh was tried by learned Judge, Special Court, Sri Muktsar Sahib in case FIR No.77 dated 19.5.2002 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Sadar, Malout and vide judgment dated 11.5.2011, he was convicted for the offence for which he was booked and in terms of order of that very date, he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default thereof to further undergo rigorous imprisonment for a period of two years.

2. Briefly stated, the facts of the case, as per the prosecution version are that on 19.5.2002, a police party from Police Station Sadar, Malout headed by SI Gamdoor Singh (hereinafter referred to as the Investigating Officer/IO) comprising ASI Darshan Singh and HC Major Singh etc., was on routine patrolling and checking of suspicious persons travelling in a private jeep going towards villages Lakarwala, Bhalarian, Ratta Khera, Alamwala etc.; when the police party reached at bus stand of village Ratta Khera, then one Jeeta Singh came there and he was joined with the police party; when the police party reached near link road Alamwala in the area of village Ratta Khera, then the accused was spotted coming on a scooter without number carrying gunny bags having contents on that scooter; on suspicion, the scooter was got stopped by the police party and on being inquired about, the accused disclosed his name and other particulars; the IO informed the accused that he suspected some contraband in possession of the accused and wanted to carry out necessary search and that the accused had a legal right to get the search conducted in presence of some gazetted officer or a Magistrate; the accused opted to get the search carried out in presence of a gazetted officer; a memo in that regard was prepared as Ex.P1 executed by the accused, which was attested by ASI Darshan Singh, HC Major Singh and Jeeta Singh, an independent witness and thumb marked by the accused; then DSP(D) Jarnail Singh, a gazetted officer was called to the spot by sending a wireless message; the said DSP(D) Jarnail Singh along with his staff arrived at the spot after some time; on reaching there, he gave his introduction to the accused and inquired from him whether he wanted the search to be carried out in his

presence or in presence of a Magistrate or any other gazetted officer; the accused reposed confidence in DSP(D) Jarnail Singh stating that he had no objection, if search was conducted in his presence; a consent memo Ex.PW6/A in that regard was prepared, which was thumb marked by the accused and attested by the witnesses.

3. Thereafter, on instructions of DSP(D) Jarnail Singh, the IO conducted search of the bags tied on the rear seat of the scooter with a rubber tube of a bicycle, which were found to contain poppy husk. The accused could not produce any permit or licence for possession of the said contraband. Accordingly, after arranging weights and scale, two samples of 250 grams each were drawn from both the bags and the residue poppy husk in each bag came out to be 34 kgs. 500 grams; the sample parcels and the bags containing residue poppy husk were converted into parcels and sealed with the seal of IO having impressions 'GS'; specimen seal impression chit was also prepared; DSP(D) Jarnail Singh also put his seal having letters 'JS' on all the parcels; specimen seal impressions were taken on a chit; the IO handed over the seal after use to ASI Darshan Singh, whereas DSP(D) Jarnail Singh retained his seal with himself; the case property was accordingly taken into police possession vide a recovery memo Ex.P2; the IO sent ruqa Ex.PW5/A to the police station through LC Sukhdev Singh on the basis of which formal FIR Ex.PW5/B was recorded by ASI Kulwant Singh. Accused was accordingly arrested in this case as per rules, preparing requisite documents i.e. a memo of jamatalashi Ex.P3 and memo with regard to serving grounds of arrest upon the accused as Ex.P4. The scooter make Bajaj Chetak of Cococola

colour without number plate Ex.MO 5, rubber tube of cycle Ex.MO 6 were also taken into possession vide recovery memo Ex.P5. The Investigating Officer prepared rough site plan of the place of recovery as Ex.PW7/B and recorded statements of witnesses.

4. On return to the police station, the Investigating Officer produced the accused along with the case property and witnesses before SI Harinder Singh, SHO of the police station, who verified the facts and sealed the case property with his seal having inscription 'HS'; the case property was taken into possession vide separate entrustment memo. The accused was lodged in the lock up.

5. On the next day i.e. on 20.5.2002, SI/SHO Harinder Singh produced the accused along with the case property in the Court moving applications Ex.PW3/C and Ex.PW3/A. Learned Magistrate drew one additional sample from the bulk parcel sealing the same along with bulk parcel with its seal having inscription FSD/MLT and passed orders Ex.PW3/D and Ex.PW3/B; thereafter handing over the case property to SHO, who deposited the same with MHC Jaswinder Singh; the SHO had sent detailed report Ex.PW5/E to the Halqa DSP. During the course of investigation, the sample parcels were sent to the office of Chemical Examiner, Punjab, Chandigarh and as per report Ex.PW5/G 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.

6. On receipt of the case in the Court, observing that prima facie charge for an offence under Section 15 of the Act was disclosed

against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

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

PW1 ASI Darshan Singh, who was member of the police party headed by SI Gamdoor Singh, which had apprehended the accused effecting recovery of contraband from him, deposed in that regard in tune with the prosecution version.

PW2 HC Angrej Singh, a formal witness tendered in evidence his affidavit Ex.PW2/A deposing that so long as the case property remained in his possession, no tampering therewith had taken place.

PW3 HC Jaswinder Singh, another formal witness, with whom the case property had been deposited by SI/SHO Harinder Singh after search and seizure in his affidavit Ex.PW6 testified that the case property had been deposited with him with seals intact and he had sent sample of the case property to the office of Chemical Examiner, Punjab on 27.5.2002 through HC Angrej Singh, who deposited the same there on 28.5.2002.

PW4 Jasvir Singh, Translator to the Court of District and Sessions Judge, Sri Muktsar Sahib stated that on 20.5.2002, he was posted as Ahlmad in the Court of Sh.Jagnahar Singh, SDJM, Malout and on that day on an application Ex.PW3/A having been filed before the said SDJM, Malout, order Ex.PW3/B was passed by him and similarly on application Ex.PW3/C, learned SDJM, Malout passed order Ex.PW3/D.

PW5 SI Harinder Singh, who was posted as SHO of Police Station Sadar, Malout before whom the case property had been produced and after verifying the facts had put his own seal on the parcels thereafter depositing the case property with MHC Jaswinder Singh on the next day, produced the case property in the Court along with the accused moving requisite applications, deposed in that regard.

PW6 Sh.Jarnail Singh, DSP(Retd.), a witness of recovery testified in that respect and his statement was in tune with the prosecution version.

Since SI Gamdoor Singh had expired, therefore, he could not be examined as a witness by the prosecution, however his death certificate Ex.PY and report in that regard Ex.PZ/1 were placed on record.

The prosecution has relied upon various documents and thereafter the prosecution evidence stood closed.

8. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances in the prosecution evidence appearing against such accused were put to him but he denied the allegations contending that a false case has been foisted upon him by the Investigating Officer.

The accused did not lead any evidence in his defence.

9. The trial Court had formulated the following point for determination:

“Whether on 19.5.2002 at 7:00 p.m., in the area of village Ratta Khera, accused was found in possession of 70 kilograms of poppy husk without any permit or licence and whether he can be

convicted?”

10. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal, which was taken up on 27.7.2011, when it was admitted for regular hearing and recovery of fine was stayed during the pendency of the appeal. On an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the same was allowed vide order dated 11.8.2017 and remaining sentence of the appellant was suspended during the pendency of the appeal and he was admitted to bail, subject to his furnishing personal and surety bonds to the satisfaction of learned CJM/Duty Magistrate, Sri Muktsar Sahib.

11. Now the appeal has come up for final hearing.

12. I have heard learned counsel for the appellant – accused – convict, learned Assistant Advocate General for the State of Punjab besides going through the record.

13. Here both the witnesses of recovery namely PW1 ASI Darshan Singh and PW6 Sh.Jarnail Singh, DSP(Retd.) have fully supported the prosecution story with regard to accused having been found in conscious possession of contraband. 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 – convict has been alleged or proved prompted by which they might have involved the accused in this case wrongly and deposed against him falsely to secure his conviction. The account given by these PWs

come out to be worthy of reliance. Since SI Gamdoor Singh, the IO and witness of recovery had expired, the prosecution cannot be blamed for not examining him as a witness.

14. From the statement of PW2 HC Angrej Singh and PW3 HC Jaswinder Singh as well as orders passed by learned SDJM, Malout on applications Ex.PW3/A and Ex.PW3/C, coupled with testimony of PW5 SI Harinder Singh, the then SHO of Police Station Sadar, Malout, it comes out that the case property had remained in safe custody and no tampering therewith had taken place and further that the sample parcels had reached the office of Chemical Examiner, Punjab, Chandigarh with seals intact. Report Ex.PW5/G from Chemical Examiner, Punjab, Chandigarh also shows that the samples had reached there with seals intact. This very report goes to show that on analysis the sample parcels were found to contain poppy heads.

15. Learned counsel for the appellant has attacked the impugned judgment of conviction and order of sentence on various grounds. Firstly, that the independent witness Jeeta Singh joined with the police party was not examined by the prosecution, which renders its version doubtful. However, I am not impressed by this contention. As already observed the official witnesses of recovery are not shown to have any previous enmity with the accused prompted by which they might have come forward to depose falsely against the accused. One of the official witness is a police officer of the rank of ASI i.e. ASI Darshan Singh, whereas other is DSP namely Sh.Jarnail Singh, who happened to be a gazetted officer. 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. 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.

A Division Bench of this Court in case ***Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25*** when an independent witness had been joined during the search and recovery of contraband. He had appeared as a witness for the defence stating that his signatures were procured on blank papers when he had visited the police station in drunken condition, had observed that such contention was not accepted holding that it cannot be believed that numerous signatures on various papers having different written material could be signed by a witness on blank papers. The testimony of that witness was held to be unreliable and was discarded. In that very judgment, credibility of official/police witnesses was considered and it was observed that when there is no allegation of any enmity against the police officials to falsely implicate the appellants and there was no reason for them to depose against the appellants, the trial Court had rightly concluded that non-examination of independent witness of search and recovery being won over by the accused does not raise any doubt in the prosecution case.

16. Another argument put forward by learned counsel for the appellant was that as per the prosecution version the police party was travelling in a private jeep, however the driver of the that jeep was not examined, adversely affecting the merits of the prosecution story.

17. I find this argument to be lacking merit. The prosecution is not required to examine each and every person, who had witnessed the recovery. It is for the prosecution to decide as to which witness is to be examined and which is to be given up as unnecessary. Furthermore, the prosecution had examined two police officers, one of the rank of ASI i.e. ASI Darshan Singh and other a gazetted officer i.e. Sh.Jarnail Singh, DSP and none examining of driver of the jeep does not make the prosecution story doubtful.

18. One more contention put forward by learned counsel for the appellant was that there was delay of 9 days in sending the sample to FSL, Punjab, Chandigarh.

19. Again this contention failed to convince me. As discussed above and as is borne out from the record the case property had remained in safe custody and sample parcel had reached the office of Chemical Examiner, Punjab, Chandigarh with seals intact. Therefore, some delay in sending the samples to the office of Chemical Examiner, Punjab, Chandigarh does not have any adverse affect on the merits of the case of the prosecution. 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. In **Sucha Singh's** case supra, it was observed that when the samples were not sent to the office of Chemical Examiner within 72 hours, the prosecution and conviction cannot be vitiated on that ground since there was no specific provision in the Act in that regard and the instructions/standing orders in that respect were only the guidelines to regulate and control their internal working of Narcotic Control Bureau.

20. One more argument put forward by learned counsel for the appellant was that no consent memo of the accused is available on the judicial record. However, a perusal of statement of PW6 Jarnail Singh, DSP(Retd.), goes to show that he had categorically stated that he had given an option to the accused to get his search conducted by him or by some other gazetted officer or Magistrate, however, the accused had reposed confidence in the DSP and a consent memo was prepared thumb marked by the accused and attested by him (this witness), ASI Darshan Singh SI Gamdoor Singh and public witness Jeeta Singh. He prepared carbon copy of consent memo as Ex.PW6/A. Although he was cross examined with regard to original of the consent memo but he stated that as per challan presented in the Court original consent memo was produced along with other documents. If it was so, then the prosecution cannot be blamed for non production of the original consent memo. Even otherwise, the recovery had been effected from the bags, which the accused was carrying on the rear seat of his scooter and it is not a case of recovery of contraband as a result of personal search of accused.

Therefore, the provisions of Section 50 of the Act are not attracted. The Apex Court in judgment ***State of Himachal Pradesh Versus Pawan Kumar 2005(2) RCR(Cri.) 621*** has observed that Section 50 of the Act applies to personal search of the accused and not with regard to the search of bag in his possession.

21. The prosecution has proved its charge against the accused conclusively and affirmatively. The accused could not render any reasonable or plausible explanation for his alleged false implication nor could he account for possession of the contraband without any licence or permit thereby showing that he was in conscious possession of the contraband.

22. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for ten years, which is the minimum prescribed sentence for possession of commercial quantity of the contraband. Even otherwise, the appellant/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 should prove to be counter productive and result in increased drug trafficking. Therefore, the sentence awarded to the appellant/accused is not found to be on very high side and does not call for any reduction.

23. 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 appeal is found to be without any merit and the same is dismissed accordingly.

24. Appellant Kashmir Singh is stated to be on bail granted to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Sri Muktsar Sahib is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

9.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes