

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

CRA-S-2205-SB-2006

Date of decision:-2.9.2022

Sajjan Singh alias Bittu and others

...Appellants

Versus

State of Punjab

...Respondent

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

Argued by :Mr.Rahul Vats, Advocate for the appellants.

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

H.S. MADAAN, J.

1. Appellants Sajjan Singh alias Bittu, Sewak Singh alias Sebu, Sukhdev Singh and Nirmal Kaur, all of them being accused in case bearing FIR No.77 dated 15.6.2001, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), registered with Police Station Sadar, Moga, were tried by the Court of Special Judge, Moga and vide judgment dated 23.10.2006 observing that on 15.6.2001, accused Sajjan Singh, Sewak Singh and Sukhdev Singh were found in conscious possession of 20 bags each containing 30 kgs. of poppy straw without holding any licence or permit, they were convicted for an offence under Section 15(c) of the Act, whereas accused Nirmal Kaur owner of tractor having registration No.PJE-5092 along with trolley having knowledge of her co-accused being in conscious possession of such quantity of the contraband, which

was loaded in the tractor trolley, she was convicted for an offence under Section 25 read with Section 15(c) of the Act and in terms of order dated 24.10.2006, accused Sajjan Singh, Sewak Singh and Sukhdev Singh were sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of Rs.1,00,000/- each and in default thereof to further undergo rigorous imprisonment for a period of one year each under Section 15(c) of the Act, whereas accused Nirmal Kaur 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 one year under Section 25 read with Section 15(c) of the Act. A separate notice was ordered to be issued to accused Nirmal Kaur under Section 60(3) of the Act to show cause as to why the tractor trolley in question be not confiscated to the State.

2. The accused-convicts, who are appellants before this Court pray that the appeal 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 15.6.2001, SI Sikandar Singh, SHO of Police Station Sadar, Moga (hereinafter referred to as the Investigating Officer/IO) was leading a police party comprising ASI Gurcharan Singh, HC Balbir Singh and other officials; they were going for patrolling in the area of village Dagru, Jogewala etc.; when the police party reached bus stand of village Khukhrana, ASI Gurwinder Singh, Incharge of Police Post, Khukhrana along with his party came across the police party headed by SI Sikandar Singh and they were also joined therewith; while the combined police party was going

on the link road from village Darapur to Jhandiana and reached about 2/3 killas short of Dana Mandi of village Jhandiana, a tractor trolley was spotted coming from the side of village Jhandiana; it was got stopped by the police party; the tractor was having registration No.PJE-5092; it was being driven by accused Sajjan Singh while accused Sukhdev Singh and Sewak Singh were sitting in the trolley; after the tractor-trolley was stopped, accused Sajjan Singh tried to slip away but he was apprehended by the police officials; accused Sukhdev Singh however managed to escape despite being chased by HC Balbir Singh and LC Iqbal Singh; accused Sewak Singh was also apprehended at the spot; on being inquired about their names and other particulars, Sajjan Singh and Sewak Singh disclosed the same; the trolley was covered with a tarpaulin, which was taken off; certain bags having contents were found loaded in the trolley; the Investigating Officer informed the accused Sajjan Singh and Sewak Singh that he suspected some intoxicant material to be there in the trolley and therefore wanted to carry out necessary search; he informed both the accused of their legal right to be searched in presence of a gazetted officer or a Magistrate; accused Sajjan Singh and Sewak Singh opted to get the search conducted in presence of a gazetted officer; two memos in that regard were prepared executed by each accused and attested by the witnesses; DSP Jagmohan Singh, Moga was accordingly called to the spot; on arrival of DSP Jagmohan Singh, he disclosed his identity to the accused Sajjan Singh and Sewak Singh and informed them that they could get the search carried out in presence of some Magistrate; however, the accused reposed confidence in DSP Jagmohan Singh; consent memos in that

regard were prepared executed by each accused and attested by the witnesses.

4. Thereafter, on instructions of DSP Jagmohan Singh, the Investigating Officer conducted search of trolley from where 20 bags of poppy straw were recovered. The Investigating Officer drew one sample of 250 grams each from each of the 20 bags; the samples numbering 20 were converted into parcels, whereas the remaining poppy straw in each bag on being weighed came out to be 29 kgs.750 grams; then the sample parcels and bulk parcels were given serial No.1 to 20 and 1 to 20; all the parcels were sealed with the seal of Investigating Officer having inscription 'SS' and DSP Jagmohan Singh also affixed his seal having inscription 'JS' on all the parcels; specimens of the seal impressions of IO and DSP were also taken; the Investigating Officer handed over the seal after use to ASI Gurwinder Singh, whereas DSP Jagmohan Singh kept the seal with himself.

5. The entire case property was taken into police possession vide a recovery memo. Accused Sajjan Singh and Sewak Singh were arrested in this case as per rules and necessary documents in that regard were prepared. Personal search of both the accused had been carried out. Personal search of accused Sewak Singh resulted in recovery of Rs.30/-, whereas from the personal search of accused Sajjan Singh, Rs.50/- were recovered. Personal search memos were prepared. Grounds of arrest were served upon the accused Sajjan Singh and Sewak Singh and memos were prepared in that regard.

6. The Investigating Officer sent ruqa to the police station, on the basis of which formal FIR was registered. The IO further prepared

rough site plan of the place of recovery and recorded statements of witnesses. During the course of investigation, the IO produced the case property before the Illaqa Magistrate and obtained retention order. Subsequently, accused Sukhdev Singh was also arrested in this case. The sample parcels and sample seal impressions were sent to the office of Chemical Examiner, Chandigarh and report Ex.PL was received therefrom having enclosure analytical data as Ex.PL/1. 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 initially on observing that prima facie charge for an offence under Section 15 of the Act was disclosed against accused Sajjan Singh @ Bittu, Sewak Singh alias Sebu and Sukhdev Singh, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. During the course of trial, accused Nirmal Kaur owner of the tractor trolley was summoned also to face trial along with other accused already facing trial. Thereafter, amended charge for the offence under Section 15(c) of the Act against accused Sajjan Singh @ Bittu, Sewak Singh alias Sebu and Sukhdev Singh and under Section 25 read with Section 15(c) of the Act against accused Nirmal Kaur was framed, to which, they pleaded not guilty and claimed trial.

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

PW1 ASI Gurcharan Singh, who was member of the police party headed by SI SHO Sikandar Singh, which had effected recovery

from the accused deposed in that regard supporting the prosecution story on material points.

PW2 HC Gurmail Singh, who was posted as MHC of the Police Station Sadar, Moga at the relevant time stated that on 16.6.2001, SI Sikandar Singh deposited the case property with him and he had handed over the sample parcels and sample seal impression to Constable Gurmeet Singh for depositing the same in the office of Chemical Examiner, Chandigarh and so long as such articles remained in his possession neither he tampered with the same nor he allowed anybody else to do so.

PW3 SI Sikandar Singh, who was heading the police party which had intercepted the tractor trolley in question finding that contraband was being carried in the trolley and had arrested the accused Sajjan Singh and Sewak Singh at the spot deposed in that regard besides other proceedings carried out by him being Investigating Officer of the case. He proved various documents.

PW4 HC Harpal Singh stated that the truck bearing registration No.PB-08G-5195 was taken into police possession by SI Sikandar Singh in his presence and further accused Sukhdev Singh was arrested in his presence.

PW5 ASI Gurwinder Singh, another witness of recovery supported the prosecution case on all relevant aspects.

PW6 HC Balbir Singh, who was the member of the police party led by SI Sikandar Singh on 15.6.2001 when accused Sajjan Singh, Sewak Singh and Sukhdev Singh had come on a tractor trolley while Sajjan Singh and Sewak Singh had been apprehended on spot and

Sukhdev Singh had escaped deposed in that regard. This witness stated that he had identified accused Sukhdev Singh with whom he was having prior acquaintance.

PW7 Raj Kumar, Junior Assistant, State Transport Commissioner, Punjab stated that the tractor bearing registration No.PJE-5092 was earlier registered in the name of Gurbhai Singh and Kishan Singh sons and Karam Kaur wife of Hazara Singh of District Amritsar and later on it was transferred in the name of Mohinder Singh son of Saggar Singh, resident of village Landhke i.e. husband of accused Nirmal Kaur.

PW8 DSP Jagmohan Singh, in whose presence search was conducted resulting in recovery of 20 bags of poppy straw being carried in the trolley deposed in that regard giving the necessary details.

PW9 MHC Bhupinder Singh stated that sample parcels and sample of seal impressions were handed over to Constable Gurmeet Singh by MHC Gurmail Singh in his presence. He proved the entry in the hand of MHC Gurmail Singh regarding despatch of sample parcels and samples of seals.

The prosecution after tendering report from the office of Chemical Examiner, Chandigarh Ex.PL and Ex.PL/1 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 Sajjan Singh took up a plea that he was in fact picked up from his house and caused injuries at the police station and the police officials in order to escape taking of any action against them had planted a false recovery upon him after bringing tractor trolley from Dharamkot.

Whereas the plea taken up by accused Sewak Singh was that Harchand Singh private witness who is running tea-shop in front of the police station is a stock witness of the police;

Accused Sukhdev Singh took up the plea that he was not present at the time of place of recovery and the story of his escape from the spot is wrong and a false recovery has been planted upon him.

The version taken up by accused Nirmal Kaur was that the tractor-trolley in question was not recovered from the alleged place of recovery and at the time of alleged recovery, neither the tractor-trolley was in her her possession nor she was owner of the same; as a matter of fact at the relevant time, the tractor-trolley was in possession of Jagjit Singh and Baljinder Singh sons of Harinder Singh, resident of Dharamkot to whom the tractor-trolley had been sold by her deceased husband prior to his death. According to accused Nirmal Kaur, she had been falsely involved in this case.

11. During defence evidence, the accused Sukhdev Singh examined Ranjit Singh as DW1, who deposed that in June, 2001, he was member of the panchayat of his village when police officials came to their village Jajja Khurd and search of accused Sukhdev Singh was conducted in his presence but nothing incriminating was recovered. He stated that he never produced Sukhdev Singh or his truck before the

police.

12. With that the evidence of the defence stood closed.

13. Learned trial Court formulated following points for determination:

1. Whether identification of accused Sukhdev Singh is proved beyond reasonable doubt?
2. Whether conscious possession of accused Sajjan Singh and Sewak Singh is proved?
3. What is the effect of contradictions in the statements of the witnesses of recovery?
4. What is the effect of non-examination of the only independent witness Harchand Singh and non handing over of seal to him?
5. Whether Section 55 of the Act was complied? If not, its effect?
6. Whether charge under Section 25 read with Section 15(c) of the Act is proved against accused Nirmal Kaur beyond reasonable doubt?

14. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left them aggrieved and they had filed the present appeal, which was 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.

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

16. I have heard learned counsel for the appellants – accused -

convict, learned A.A.G., for the State of Punjab besides going through the record.

17. In this case, all the witnesses of recovery, namely, PW1 ASI Gurcharan Singh, PW3 SI Sikandar Singh, PW5 ASI Gurwinder Singh, PW6 HC Balbir Singh and PW8 DSP Jagmohan Singh 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 – 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.

18. As per the prosecution story, it stands duly established on record that the tractor trolley was being driven by accused Sajjan Singh, whereas accused Sukhdev Singh and Sewak Singh were sitting in the trolley; the bags containing poppy straw covered with tarpaulin for being carried in the trolley were recovered therefrom. The tractor trolley is not a passenger vehicle, rather it is meant for transportation of the material used/required in connection with agricultural operations. The tractor trolley was not a public vehicle but under a private ownership. Accused Sajjan Singh was driving the tractor and Sewak Singh and Sukhdev Singh were sitting in the trolley. All of them could not render any satisfactory explanation with regard to possession of the contraband. As discussed above, such accused having been found in possession of the contraband stands established from the depositions of the official

witnesses. Once the possession of the contraband stands established, then in terms of Section 35 and 54 of the Act, they are to be taken in conscious possession of the contraband in the form of poppy straw. A single Bench of this Court in **Krishan Kumar Versus State of Punjab, 2016(2) RCR(Criminal)707** has dealt with this aspect in detail observing that in terms of Section 54 of the Act once it is established that the accused 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, to have committed the offence in case he fails to account for the possession and under Section 35 the presumption is that the accused had culpable mental state and had committed the offence. Since in this case the accused have failed to account for their possession, they are taken to be in conscious possession of the contraband having culpable mental state.

19. The requisite link evidence has also been produced by the prosecution in the form of examining PW2 HC Gurmail Singh with whom the case property had been deposited on 16.6.2001. Report Ex.PL also shows that the sample had been received there with seals intact and further that on analysis the contents of the samples were found to be those of poppy straw. On case property being produced, learned Magistrate had passed the necessary retention order.

20. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan them falsely or to depose against them to secure their conviction.

21. Although the accused have pleaded innocence stating that the police has planted the recovery upon them but keeping in view the huge recovery involved in this case, chances of the police planting the same on the accused come out to be very remote. This aspect was dealt with in judgment *Krishan Kumar Versus State of Punjab*(supra), wherein it was observed that when recovery involved was of 35 bags containing 35 kgs. of poppy husk in each bag from the possession of 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, in that way, the conviction and sentence of the accused by the trial Court were upheld.

22. Admittedly, till date the accused have not submitted any written representation to the higher police officers complaining against their alleged false implication in this case. If the accused had been roped in wrongly, they would not have kept quiet with damoclean sword of conviction hanging over their heads. Their silence and inaction goes to show that their plea of false implication lacks merits. There is nothing on record to show that the Investigating Officer had any axe to grind with the accused spurred by which he might have involved the accused in this case wrongly while letting off the real culprits.

23. As far as statement of DW1 Ranjit Singh, Member Panchayat, who stated that accused Sukhdev Singh was searched in his presence by the police of Moga but nothing was recovered, this witness did not claim that he had asked the Gram Panchayat to pass any resolution with regard to alleged innocence of Sukhdev Singh or had himself submitted any written representation to the senior police officers

pleading that a false case had been planted upon accused Sukhdev Singh. According to the prosecution story, it was DW1 Ranjit Singh, who had produced accused Sukhdev Singh along with truck bearing No.PB-08G-5195 before the police and his signatures were there on the personal search memo Ex.P6 of Sukhdev Singh. During his cross examination, he admitted his signatures on personal search memo Ex.P6. If he had not produced accused Sukhdev Singh along with the truck before the police, then how did his signatures appear on document Ex.P6. In his examination-in-chief, he stated that the police had carried out personal search of accused Sukhdev Singh in his presence at village Jajja Khurd. He did not state that the memo in that regard was prepared, which he had signed. It seems that DW1 Ranjit Singh a co-villager of accused Sukhdev Singh accused was trying to save him from conviction and account given by him does not inspire any confidence keeping in view the replies given by him in his cross-examination and his conduct of keeping silent and not agitating the matter with regard to alleged false implication of Sukhdev Singh. Except accused Sukhdev Singh none of the other accused opted to lead evidence in support of their respective versions.

24. Learned counsel for the appellants has contended that the impugned judgment passed by the trial Court is not sustainable since the trial Court conveniently ignored various material shortcomings and lacunae in the case of prosecution rendering the prosecution case doubtful and wrongly convicted and sentenced the appellants/accused. He had made various submissions in that regard. First being that Harchand Singh an independent witness was not examined by the

prosecution. This submission does not cut any ice. Here as has been discussed above, the official witnesses examined by the prosecution to prove the recovery of contraband from the accused did not have any scores to settle with the accused, which might have driven them to tread the dangerous path of involving the accused in a false case. The police officials of the rank of DSP a gazetted officer besides SI, ASI etc. would not have ganged up against the accused without any rhyme or reason fully aware of the fact that if it was found that they had involved the accused in this case wrongly then their service career would be ruined with likelihood of prosecution that too ending in imprisonment and fine. In case **Krishan Kumar Versus State of Punjab**(supra), it was 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. In **Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25,** it was a case 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. 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 having been won over by the accused does not raise any doubt in the prosecution case.

25. However, in this case Harchand Singh had not appeared as a witness for defence and support their case of false implication.

26. Another argument by learned counsel for the appellants was that Harchand Singh was already joined with the police party and how did the police anticipate that some recovery was to be effected, that itself is a suspicious circumstance.

27. However, I do not find any merit in this contention. The police party was on patrolling. The purpose of patrolling is to see that normal law and order is maintained and the criminals are apprehended to ensure peace and tranquility in the society. Therefore, associating some independent person with the police party is not something, which can be treated with suspicion.

28. One more argument advanced by learned counsel for the appellants/accused was that accused Sewak Singh and Sukhdev Singh sitting in the trolley cannot be attributed conscious possession.

29. In view of the detailed discussion above, this argument is found to be devoid of any merit and is rejected.

30. Another argument presented by learned counsel for the appellants was that adequate link evidence has not been led by the prosecution to prove that the sample parcels had reached office of Chemical Examiner without any tampering. This aspect has been dealt in detail in the earlier part of the judgment finding that the case property

had remained in safe custody and sample parcels had reached office of Chemical Examiner, Chandigarh with seals intact. Therefore, this argument is rejected.

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

32. The prosecution had proved its charge against the accused conclusively and affirmatively. The accused Sajjan Singh, Sewak Singh and Sukhdev Singh 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 leading to the inference that they were in conscious possession of such contraband. It stands duly established that accused Nirmal Kaur had provided her tractor trolley to her co-accused Sajjan Singh, Sewak Singh and Sukhdev Singh for transportation of the contraband, as such she is equally liable with them and was rightly convicted.

33. As regards the sentence part, the recovery effected is quite substantial i.e. 600 kgs. of poppy straw when 50 kgs. of that contraband constitutes 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 sentence 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 should prove 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 appeal is found to be without any merit and the same is dismissed accordingly.

35. Appellants Sajjan Singh, Sewak Singh, Sukhdev Singh and Nirmal Kaur are stated to be on bail granted to them by this Court. Their bails are cancelled. Chief Judicial Magistrate, Moga 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.

2.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No