

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

CRA-S-2325-SB-2006 (O&M)

Date of pronouncement: 25.08.2022

Dalvinder Singh

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. H.S. Randhawa, Advocate for the appellant.

Mr. Brijesh Sharma, AAG, Haryana.

H.S. MADAAN, J.

1. In nutshell, the facts of the case as per prosecution story are that on 08.12.2004, a police party from Police Station Dhand, District Kaithal being led by ASI Ramesh Chander [hereinafter referred to as the Investigating Officer (IO)] was present at Bus Stand Begpur in connection with patrolling; there the IO received a secret information that Dalvinder Singh son of Sulkhan Singh, Jat Sikh, resident of Dera Begpur was indulging in sale of poppy straw and in case, a raid was conducted on his house, poppy straw in huge quantity could be recovered; the information was also to the effect that accused was preparing to load bags of poppy straw in the tractor trolley and if a raid was conducted at that time, he could be caught red handed.

The IO sent ruqa Ex.PA to police station through Constable

Balwan Singh which formed basis for registration of formal FIR; the IO sent report under Section 42 of the Act Ex.PK to Superintendent of Police, Kaithal through Constable Suresh Kumar; thereafter, the IO tried to contact DSP (HQ) and DSP, AEC at Kaithal but they were not available, as such, DSP, Guhla Sh. Arun Kumar was requested to reach at the spot; independent witnesses Ran Singh, Lamberdar and Suresh Kumar had come across the police party at Bus Stand Begpur; they were apprised with the facts of the case and requested to join the investigation to which they agreed.

Accordingly, the police party accompanied by two independent witnesses aforesaid went to Dera of the accused to conduct a raid; a tractor trolley was standing outside the dera whereas accused was found present in the room of his house; seven bags having contents were observed to be there; since IO suspected those bags to contain some contraband, as such, he served a notice under Section 50 of the Act upon the accused, informing the accused that he had a right to get the search conducted in the presence of some Gazetted Officer or a Magistrate; in response to the notice, the accused opted to get the search carried out in the presence of a Gazetted Officer; a memo in that regard was prepared as Ex.PD; it was signed by the accused and attested by the witnesses; thereafter, the IO informed Sh. Arun Kumar DSP Guhla requesting him to come to the spot; Sh. Arun Kumar DSP reached at the spot after some time and after verifying the facts got the bags searched from IO; all the seven bags were found to have poppy straw in them; the IO separated two

samples of 250 gm each from contents of 07 bags and on being weighed, the residue poppy straw in each bag came out to 39 kg 500 gm; the samples and the bags containing residue poppy straw were converted into separate parcels sealed with seal of IO having impression 'RC' and that of DSP having impression 'AK'; specimens of seal impressions were taken; after use, the IO handed over his seal to PW Ran Singh, Lamberdar whereas Sh. Arun Kumar, DSP had retained his seal with himself; then the sample parcels, 07 bags containing residue poppy straw, specimen seal impressions chit were taken into police possession, vide recovery memo Ex.PE, attested by witnesses; the IO recorded statements of witnesses; accused was arrested in this case as per rules, preparing necessary documents; rough site plan of the place of recovery was prepared.

On return to the police station, the IO produced the accused along with case property and witnesses before SI Zile Singh, SHO, Police Station Dhand, who verified the facts and investigation, affixing his own seal having impression 'ZS' on sample parcels and bulk parcels; thereafter on his direction, the IO deposited the case property, his specimen seal impressions chit with MHC of the police station; accused was put up in the lockup; the IO prepared report under Section 57 of the Act Ex.PB and gave it to SI Zile Singh for further transmission.

During the course of investigation, sample parcels were sent to Forensic Science Laboratory, Haryana at Madhuban for analysis and as per report received there from Ex.PM, those were found to be that of

poppy straw (choora post) of Papaver Somniforem; on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

2. On presentation of the challan before Judge, Special Court, Kaithal 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 he pleaded not guilty and claimed trial.

3. During the course of prosecution evidence, prosecution examined the following witnesses:-

PW1 ASI Devender Kumar who on 08.12.2004 on receipt of ruqa Ex.PA sent by IO through Constable Balwan Singh had recorded formal FIR Ex.PA/1, thereafter, making endorsement Ex.PA/2 on the ruqa, sending copies of the FIR and special report to Illaqa Magistrate, DSP and SP, Kaithal etc., deposed in that regard.

PW-2 SI Zile Singh who on 08.12.2004 was posted as SHO, Police Station Dhand deposed regarding his part as discussed earlier.

PW-3 Ran Singh, Lamberdar, independent witness joined with the police party did not toe the prosecution line and stated that on 08.12.2004, the police never met him and in his presence, no recovery was effected from the accused.

PW-4 HC Ved Parkash, PW-5 Constable Surinder Singh,

PW-6 Constable Sushil Kumar, formal witnesses tendered in evidence their affidavits Ex.PG, PH, PJ respectively.

PW-7 Constable Suresh Kumar, who had taken report under Section 48 of the Act prepared by ASI Ramesh Chander to SP, Kaithal on 08.12.2004 handing over the same to the latter deposed in that regard.

PW-8 HC Satbir Singh, PW-9 ASI Ramesh Chander, witnesses of recovery and PW-10 Sh. Arun Kumar, DSP in whose presence, the recovery had been effected got their statements recorded deposing in tune with the prosecution version.

PW Suresh Kumar, an independent witness said to have been joined with the police party during search and seizure was given up by the Public Prosecutor for the reason of his having been won over by the accused. The prosecution relied upon various documents including report from FSL, Madhuban, Haryana Ex.PM. Thereafter, the prosecution evidence got concluded.

4. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused were put to him but he denied the allegations contending that he is innocent and has been falsely implicated in this case.

The accused did not lead any evidence in defence.

5. After hearing arguments, the trial Court convicted, vide judgment dated 08.09.2006 convicted the accused for which he was booked and vide order of even date, sentenced him to undergo rigorous

imprisonment for 10 years and to pay a fine of Rs.1 lakh; in default of payment of fine, to further undergo RI for 03 years.

6. Feeling aggrieved by the judgment of his conviction and order of sentence, the accused had filed the present appeal, notice of which was given to the State, which has put in appearance. The appeal was taken up on 23.11.2006. On an application under Section 5 of the Limitation Act having been filed, delay of 03 days in filing of the appeal was condoned. The appeal was Admitted for regular hearing. Recovery of fine was stayed during pendency of the appeal. Further the accused had moved an application 389 Cr.P.C., for suspension of his sentence, which was accepted and his remaining sentence was ordered to be suspended subject to his furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Kaithal, vide order dated 02.07.2009.

Now the appeal has come up for final hearing.

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

8. Here all the witnesses of recovery, namely PW8 HC Satbir Singh, PW-9 ASI Ramesh Chander, PW-10 Arun Kumar, DSP fully supported the prosecution story as regards the recovery of contraband from the possession of the accused. Although, they were cross-examined at length on behalf of the accused but they could not be shattered on any material point, rather they deposed in a natural and convincing manner and account given by them inspire confidence.

I do not see any reason to disbelieve their statements.

Although PW3 Ran Singh, Lamberdar who as per prosecution story had witnessed the search and seizure, did not support the prosecution version and was declared hostile witness. Similarly, Suresh Kumar was not examined by the Public Prosecutor and was rather given up but that does not create any dent in the prosecution story.

9. A Division Bench of this Court in judgment **Sucha Singh Vs. State of Punjab**, 2015 (4) RCR (CrI.) 25, dealing with a similar situation in a case under NDPS Act when the independent witness joined the police party during search and recovery had appeared as a defence witness denying his having joined the police party or any recovery of contraband having taken place from the accused stating that his signatures were procured on blank papers when he had visited police station in drunkard condition; it was observed that it cannot be believed that numerous signatures on various papers having different writing material could be signed by a witness on blank papers. The recovery of contraband otherwise stood proved by consistent, reliable testimonies of IO and DSP who were present at the spot. Such independent witness who had appeared as a defence witness was held to be unreliable witness whose testimony was rightly discarded by the trial Court. Therefore, this contention of learned counsel for the appellant is also rejected.

10. Further, a Single Judge of this Court while dealing with such aspect in judgment **Krishan Kumar Vs. State of Punjab, 2016(2) RCR (CrI.) 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.

11. Learned counsel for the appellant has submitted that the IO did not make any effort to confirm the ownership of the house from where the recovery had been effected, therefore, accused is not connected with the recovery. However, I am not convinced by this contention. The accused was found in possession of the contraband which he has failed to account for. While being examined under Section 313 Cr.P.C., he has simply stated that he has been falsely implicated in this case and no recovery was effected from him. As discussed earlier, the recovery of contraband from his possession has been successfully proved by the prosecution by bringing sufficient oral and documentary evidence. A huge quantity of recovery involved i.e. 280 kg of poppy straw minimizes the chances of any false implication. Even otherwise, no motive for the official witnesses to indulge in false plantation comes out to be there.

12. In judgment **Krishan Kumar** (supra) while dealing with a case under Section 15 of the Act, where accused had raised plea of false implication, the Court had observed that considering the recovery of 35 bags containing 35 kg poppy straw in each bag from the possession of the 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.

Similarly, in this case there is no circumstance pointing out towards contraband having been planted upon the accused. The accused

having failed to render any reasonable or plausible explanation or to show that he was not in conscious possession of the contraband. Drawing presumption under Sections 35 and 54 of the Act, he is to be taken as in conscious possession of 280 kg of poppy straw.

13. Learned counsel for the appellant has referred to various judgments, first being **State of Punjab Vs. Balkar Singh**, 2004(3) SCC 582 by the Apex Court, that case had different facts. It related to 100 bags of poppy straw when accused belonged to different villages and police had not made any investigation as to how 100 bags of poppy straw were transported to the place of incident and there was no evidence to show ownership of poppy straw. It was observed that failure to give any satisfactory explanation by accused for being present on that place itself does not prove that the accused were in possession of those articles.

Here the facts of the case are quite different. The recovery had been effected from dera of the accused at village Begpur. It is not his case that he belongs to some different place and has got nothing to do with the place from where the recovery was effected. The contraband recovered is 07 bags of poppy straw which is quite substantial, each bag containing 40 kg. Therefore, this judgment does not help the appellant in any manner.

14. Similarly, other judgment **Jarnail Singh Vs. State of Punjab**, 2008(2) RCR (Criminal) 464, **Sukhdev Singh Vs. State of Haryana**, 2008(1) RCR (Criminal) 503, **Mani Ram Vs. State of Haryana**, 1992(2) RCR (Criminal) 411, **Jaswinder Singh & Anr. Vs.**

State of Punjab, 2013(1) RCR (Criminal) 257 are not applicable due to different facts, circumstances and the context in which such observations have been made.

There is nothing on record to show that any mandatory provisions of law was violated during proceedings of this case which might have caused any prejudice to the appellant in any way.

15. 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. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt. The accused was rightly convicted by the trial Court.

As far as the sentence part is concerned, the accused was found in possession of 280 kg of poppy straw, when 50 kg of poppy straw constitute commercial quantity. The trial Court in the sentence order while referring to judgment **Narender Kaur Vs. Arun Sheoran**, 2000(4) RCR (Criminal) 266 has granted the minimum punishment provided for the offence to the accused. There is no scope for further reduction in the sentence and even otherwise, considering the fact that the accused for a pecuniary benefit tried to indulge in trafficking of drugs, providing easy supply to the drug addicts in the process endangering their health and lives and disturbing the social fabric, he does not deserve any leniency in the matter of sentence.

The appeal is found to be without merit and same is hereby dismissed.

17. The appellant/accused is directed to surrender before Chief Judicial Magistrate, Kaithal within a week from today, failing which learned CJM, would issue warrants of arrest to secure his presence and send him to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned for information and compliance.

25.08.2022

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(H.S. MADAAN)
JUDGE

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