

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

CRA-S-215-SB-2005(O&M)

Date of decision:-13.9.2022

Saraj Singh and others

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Mr.S.S. Sidhu, Advocate
for the appellants.

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

H.S. MADAAN, J.

1. Appellants - Saraj Singh, Avtar Singh and Janak Raj were tried by learned Judge, Special Court, Bathinda in case FIR No.36 dated 4.3.2003 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), registered with Police Station Sangat, on the allegations that on 4.3.2003 in the area of crossing of village Sangat, they were found in conscious possession of 241 kgs. 500 grams of poppy husk without any licence or permit. The trial ended in their conviction and vide judgment dated 15.1.2005, they were convicted in that case for the offence for which they

were booked and in terms of order passed on that very date, they 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 undergo further rigorous imprisonment for a period of 6 months each.

2. In nutshell, the case of the prosecution is that on 4.3.2003, a police party from Police Station Sangat led by ASI Harjit Singh (hereinafter referred to as the Investigating Officer/IO) was going towards crossing of roads of village Sangat; an independent witness, namely, Tehal Singh was joined with the police party; at about 6:00 a.m., the police party intercepted a TATA Sumo vehicle bearing No.DL-3CA-4072, which was being driven by accused Saraj Singh in which accused Avtar Singh was sitting on the front seat beside the driver, whereas Janak Raj was sitting on the rear seat; some gunny bags having contents were loaded in the TATA Sumo; the IO suspected that the gunny bags contained some contraband, therefore he apprised the accused of their legal right to be searched in presence of a gazetted officer or a Magistrate; the accused opted to get their search conducted in presence of a gazetted officer.

3. Therefore, DSP Jagmohan Singh, a gazetted officer was summoned to the spot. He accordingly arrived there and he apprised the accused of their right to be searched before some other gazetted officer or a Magistrate vide memo Ex.PB. However, the accused reposed confidence in that DSP. Therefore, the bags six in number being carried in the TATA Sumo vehicle were searched, which were found to be contain poppy husk; the bags were given Serial No.1 to 6. The accused could not produce any permit or licence for possession of such quantity of poppy husk. Then on

instructions of DSP Jagmohan Singh, the IO took out a sample of 250 grams each from each of the six bags, then all the samples and six bags containing residue poppy husk were converted into sealed parcels and sealed with the seal of IO having inscription 'HS' and seal after use was handed over to ASI Kaur Singh; a sample seal impression chit was also prepared. Thereafter, the case property along with sample seal impression chit and TATA Sumo vehicle were taken into police possession vide recovery memo Ex.PC.

4. The IO sent ruqa Ex.PF to the police station, on the basis of which formal FIR ExPF/1 was recorded. All the accused were arrested in this case as per rules. Their jamatalashi were conducted and memos were prepared in that regard. Grounds of arrest were served upon the accused. The IO sent special report to the higher police officers. He also prepared the rough site plan of the place of recovery and recorded statements of witnesses. On return to the police station, IO kept the entire case property and sample seal in his own custody as he was also officiating as SHO and lodged all the accused in lock-up.

5. On the next day i.e. on 5.3.2003, IO produced the case property before Area Magistrate and the latter passed order Ex.PM/1 for keeping the case property in judicial MALKHANA, however vide report Ex.PM/2, it was informed that there was no space in the judicial MALKHANA, therefore vide order Ex.PM/3 learned Magistrate directed that the case property be placed in police MALKHANA; inventory Ex.PN had been produced before the Area Magistrate. Learned Area Magistrate had given an option to the accused for taking another sample from the

bulk parcels but the accused by their statement Ex.PN/2 did not exercise that option. The registration certificate Ex.P3 of TATA Sumo vehicle was taken into possession by the police. During the course of investigation, the sample parcels were sent to the office of Chemical Examiner, Punjab and as per report received therefrom, those were found to be that of CHURA poppy heads. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

6. On presentation of the challan, copies thereof were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C.

7. Then on observing that prima facie charge for an offence under Section 15 of the Act was disclosed against all the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

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

PW1 ASI Harjit Singh, who was heading the police party on 4.3.2003, which had intercepted the TATA Sumo vehicle being driven by Saraj Singh with Avtar Singh sitting along with him on the front seat and Janak Raj on the rear seat and from where six gunny bags containing 241 kgs. and 500 grams of poppy husk had been recovered, deposed in that regard supporting the prosecution story on material points.

PW2 DSP Jagmohan Singh, supported the prosecution case with regard to recovery of contraband from the conscious possession of the accused. He deposed in consonance with the prosecution story.

PW3 Sukhjit Singh, Junior Assistant, DTO Office, Sangrur

had brought the original transfer register of vehicle from the office of DTO, Sangrur and stated that the Car No.DL-3CJ-4072 was transferred in the name of Saraj Singh son of Buta Singh, resident of Nasirpur, Moga Road, Barnala, Tehsil Barnala, District Sangrur and it was transferred by the then Additional DTO Sh.Karanbir Singh Chhina on 18.9.2002. He stated that original owner was Ishwar Parshad son of Krishan Parshad, resident of L 360, Lumman Puri, Pahargunj, New Delhi. He proved the registration certificate of TATA Sumo vehicle as Ex.P2 and entry regarding transfer as ExP10.

PW4 C-II Surjit Singh supported the prosecution story on material aspect especially with regard to the recovery of contraband from the possession of accused.

9. After closure of prosecution evidence, 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 both the accused but they denied the allegations contending that they were innocent and had been falsely involved in this case.

10. During their defence evidence, the accused examined DW1 Tehal Singh, who as per the prosecution story was joined with the police party and who had witnessed the search and seizure from the accused. This witness was given up the prosecution for the reason of having been won over by the accused. He stated that neither any recovery was effected from the accused nor the police party had visited the place of alleged occurrence.

DW2 HC Kaur Singh produced copies of DDR Nos.3, 6 and 12 dated 5.3.2003.

11. After hearing arguments, learned trial Court convicted and sentenced all the accused as mentioned above, which left them aggrieved and they had filed the present appeal, which was taken up on 31.1.2005, when it was admitted for regular hearing and recovery of fine was ordered to remain stayed. On an application under Section 389 Cr.P.C. having been filed by the appellants/accused for suspension of their sentence of imprisonment during the pendency of appeal, the same was allowed on 4.12.2006 and remaining sentence of appellants/accused was suspended during the pendency of the appeal and they were ordered to be released on bail on furnishing requisite bonds to the satisfaction of CJM, Bathinda.

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

13. I have heard learned counsel for the appellants – accused, learned AAG, for the State of Punjab besides going through the record.

14. Learned counsel for the appellants has attacked the impugned judgment on various grounds. The points so raised by him in that regard are as under:

(1) That violation of Section 50 of the Act is there inasmuch as the IO had recorded joint statement of accused when asked as to whether they wanted the search to be conducted by a gazetted officer or a Magistrate, memo in that regard being Ex.PA. Similarly DSP had done so vide memo Ex.PB causing prejudice to the accused.

The objection is without merit. The recovery in this case had

been effected from TATA Sumo vehicle and not as a result of personal search of any of the accused. Therefore, Section 50 of the Act was not applicable. 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.

In any case, no prejudice is shown to have been caused to the accused in any manner. It may be mentioned here that the law does not require that the accused be informed in writing about their right to get the search conducted in presence of a gazetted officer or a Magistrate and to record their response in black and white. It is just a practice that the Investigating Officers do so in writing just to keep the record that offer had been given to the accused and the option exercised by the accused in that respect.

(2) Memo of jamatalashi Ex.PD being joint.

The jamatalashi of the accused is carried out after their arrest to find out as to whether they are carrying any cash or other article on their person and if a memo in that respect had been prepared jointly that certainly does not affect the merits of the case.

(3) The seal after use was not handed to independent witness Tehal Singh but to ASI Kaur Singh by the Investigating Officer ASI Harjit Singh.

There is no provision of law that after use the IO is to hand over his seal to the independent witness. Therefore, the IO in this case not doing so, does not give rise to any doubt in the mind about the

truthfulness of the prosecution story.

(4) Non-compliance of Section 52-A of the Act.

Section 52-A of the Act basically deals with producing the case property before a Magistrate so as to get an authentication order from him and thereafter after keeping the samples of the contraband recovered, the bulk quantity can be disposed of to avoid hassels of their storage for a long time during the pendency of the trial and appeal. In this case on the next day of recovery, the IO had produced the case property before the Area Magistrate, who had passed order Ex.PM/1 for keeping the case property in judicial MALKHANA but since adequate space was not available there, learned Magistrate had directed that the case property be kept in police MALKHANA. Inventory Ex.PN had been produced before the Area Magistrate. The Area Magistrate had given an option to the accused for taking another sample from the bulk parcels but the accused did not exercise that option. From the evidence on record by the prosecution, it stands adequately established that the case property had remained in safe custody and sample parcels had reached the office of Chemical Examiner, Punjab, Chandigarh with seals intact and on being analyzed the samples were found to be that of CHURA poppy heads. Thus there does not appear to be any non-compliance of Section 52-A of the Act. No question of any prejudice being caused to the accused in any manner and further there was no scope for tampering with the seals in light of the evidence adduced by the prosecution.

(5) The accused not specifically questioned with regard to conscious possession of the contraband.

This submission is without any merit. While being examined only incriminating evidence appearing in the prosecution evidence against the accused are to put to him, which is shown to have been done in this case. The ingredients of the offence are not required to be put to the accused. Even otherwise, once the possession of the contraband by the accused is established, in view of Section 35 and 54 of the Act, the presumption can be raised that the accused were in conscious possession of the contraband.

(6) The link evidence in this case missing.

The prosecution has proved in evidence inventory report Ex.PN. Such report had been produced before JMIC Bathinda along with the case property on 5.3.2003. The accused had made statement that they did not want to get second sample and photographs of the case property. Ex.PM is application with regard to production of the case property in the Court, which was perused by the JMIC, Bathinda and it was ordered to be deposited in judicial MALKHANA. The order passed by JMIC, Bathinda in that regard is Ex.PM/1. However, on report Ex.PM/2 made by ASI Nachhattar Singh, Incharge judicial MALKHANA that there was paucity of space in judicial MALKHANA, it was ordered to be kept in MALKHANA of police station concerned in safe and intact condition by passing order Ex.PM/3. As per the report from the office of Chemical Examiner, Punjab, Patiala, six parcels of poppy husk weighing 250 grams each duly sealed with the seal having inscription 'HS' had been received there through Constable Surjit Singh and on analysis those were found to be of Chura Poppy Heads. The statements of PW4 CII Surjit Singh, the

carrier of sample parcels and PW1 ASI Harjit Singh, who while working as SHO had handed over such parcels to CII Surjit Singh are there with regard to safe custody of the sample parcels till those remained in their possession. Although PW4 CII Surjit Singh in his cross-examination had stated that on 5.3.2003, he had received the parcels from ASI Harjit Singh at 9:00 a.m., reaching office of SSP, Bathinda at 10:15 a.m., thereafter he reached office of Chemical Examiner, Punjab, Patiala at about 3:50 p.m., however an objection was raised with regard to writing of weight of sample as 250 x 250 instead of 250/250 and on returning to the police station on night, he kept abovesaid articles in his safe custody; ASI Harjit Singh had removed the objection on the docket. Although it was admitted that such objection is not on the file, nevertheless PW4 Constable Surjit Singh had rendered adequate explanation in that regard and from his testimony, no conclusion can be reached that some tampering of seals had taken place on the sample parcels during the period those remained in custody of CII Surjit Singh. Rather he categorically stated that he had not tampered with the sample parcels, sample seal impression, docket or road certificate till those remained in his custody. Therefore, proper link evidence in this case comes out to be there and this objection raised by learned counsel for the appellant is found to be without any merit.

(7) Non-examination of independent Tehal Singh by the prosecution.

Learned counsel for the appellant has submitted that Tehal Singh, who according to the prosecution story was joined with the police party at the relevant time and who had witnessed the recovery and seizure

was not examined by the prosecution as a witness on its behalf and rather he was given up having been won over by the accused. Such Tehal Singh had got his statement recorded as DW1 in which he stated that he does not know the accused and nothing was recovered from the accused in his presence; that he had not joined the police party headed by ASI Harjit Singh; about 1 ½ years earlier (statement of this witness was recorded on 15.12.2004), a dispute between his neighbour Gora Singh and Rajni had taken place; Gora Singh was arrested by the police and he (this witness) being former MC had gone to the police station for effecting a compromise between Gora Singh and Rajni and at that time his signatures were obtained on blank papers by the police telling that he would be responsible for the parties, however, both the parties were discharged; that his thumb impressions were obtained by the police in connection with the compromise; that since he was in hurry, he told the police officials that he would take a compromise later on and he had no knowledge regarding poppy husk being recovered from Saraj Singh. According to the learned counsel for the appellant, under the circumstances, the testimony of DW1 Tehal Singh causes a serious dent in the prosecution story and a reasonable doubt arises in the mind about the guilt of the accused, therefore giving benefit of doubt, the appellant/accused deserved to be acquitted of the charge framed against them.

Whereas, this contention is being opposed by the State counsel vehemently.

After hearing the learned counsel for the parties, I find that this contention of learned counsel for the appellants to be devoid of any

merit. Tehal Singh was given up by the prosecution for the reason of this witness having been won over by the accused and his appearance as a defence witness goes to show that such reason given by the prosecution for non-examination of Tehal Singh as its witness was not without any merit. Merely because Tehal Singh opted to appear as a witness for the accused and denied having being associated with the police party or any recovery having been effected in his presence does not effect the credibility of the prosecution story considering the facts and circumstances of the case and evidence brought on record by the prosecution. 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. 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.

15. The prosecution has proved its charge against all the accused conclusively and affirmatively. The accused could not render any reasonable or plausible explanation for their alleged false implication nor could they account for joint possession of the contraband without any licence or permit thereby showing that they are in conscious possession of such contraband.

16. As regards the sentence part, the accused/appellants were sentenced to undergo rigorous imprisonment of ten years each and to pay a fine of Rs.1,00,000/- each and in default thereof to undergo further rigorous imprisonment for a period of six months each, which is the minimum prescribed sentence for possession of commercial quantity of the contraband. Though keeping in view the huge recovery involved sentence more than the minimum prescribed could have been awarded to the appellants. However, the trial Court showed leniency towards them. Neither there is any occasion to reduce the sentence of imprisonment awarded to the appellants nor it is legally permissible to do so.

17. 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.

18. Appellants are stated to be on bail granted to them by this Court. Their bail is cancelled. Chief Judicial Magistrate, Bathinda 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.

13.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes