

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

CRA-S-2535-SB-2006(O&M)

Date of decision:-26.9.2022

Harvinder Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Argued by: Mr.Kamal Narula, Advocate
for the appellant.

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

H.S. MADAAN, J.

1. Appellant/accused Harvinder Singh son of Fauja Singh, then aged 62 years, cultivator, resident of Khet Talwandi Chugha and his co-accused Harbans Singh son of Piara Singh were tried by learned Special Judge, Ferozepur in case FIR No.204 dated 10.12.2003 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Zira, on the allegations that on 10.12.2003 at about 4:40 p.m. in the area of near bridge of canal minor about 1 ½ kms. ahead of village Kamalgarh towards village Talwandi Jallekhan, they were found in conscious possession of 525 kgs. of poppy husk, without any licence or permit.
2. Vide judgment dated 18.11.2006, accused Harbans Singh was acquitted of the charge framed against him, whereas appellant/accused Harvinder Singh was convicted for an offence under Section 15(c) of the

Act and in terms of order dated 20.11.2006, 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 one year.

3. Briefly stated, facts of the case, as per the prosecution version are that on 10.12.2002, ASI Ajmer Singh, Incharge CIA Zira (hereinafter referred to as the Investigating Officer/IO) along with ASI Swaran Singh, ASI Harjinder Singh and other police officials was proceeding from Zira towards village Awan and Poh Wind while travelling in official jeep bearing registration No.PB-02C-0578 driven by HC Hardial Singh; the police party was on official duty in connection with checking of suspicious persons and when it reached at bus stand of Poh Wind, one Balbir Singh son of Nachhatar Singh, resident of village Chotian Thoba, Police Station Bagha Purana met the police party and he was joined therewith; when the police party had reached near bridge of the canal minor about 1 ½ kms. ahead of village Kamalgarh towards village Talwandi Jallekhan, then a tractor trolley was spotted coming from the opposite side; IO signalled the driver of the tractor trolley to stop, who accordingly did so; on being inquired, the person driving the tractor trolley disclosed his name as Harbans Singh alias Bansa alias Raja son of Piara Singh, resident of village Khossa Kotla, P.S. Kot Isekhan, District Moga, whereas the person, who was sitting in the trolley on the tarpaulin disclosed his name as Harvinder Singh alias Pohla son of Fauja Singh, resident of Khet Talwandi Chugha Road, Dharamkot; the IO informed both the accused that he suspected that there was some intoxicant material

being carried in the trolley and therefore wanted to search the same; he also apprised the accused of their legal right to get the search conducted in presence of a gazetted officer or a Magistrate; however, both the accused opted to get the search conducted in presence of a gazetted officer; a memo in that regard was prepared as Ex.P6, which was thumb marked by the accused and attested by ASI Harjinder Singh and Balbir Singh, independent witness.

Thereafter, the IO requested Sh.Sukhdev Singh, DSP Zira through walky-talky set to arrive at the spot; DSP Sukhdev Singh accordingly came to the spot and gave his introduction to both the accused saying that he was a gazetted officer; the accused agreed to get the search carried out in presence of DSP Sukhdev Singh; a memo in that respect was prepared as Ex.P1, thumb marked by both the accused and attested by witnesses as well as DSP Sukhdev Singh; then on directions of DSP Sukhdev Singh, IO carried out search of the trolley, which led to the recovery of 15 bags of poppy – husk, containing 35 kgs. of poppy – husk in each bag; all the 15 bags were given serial number 1 to 15; 250 grams of poppy husk was taken out from each of the bags as sample, which were then converted into parcels and were also given numbers 1 to 15; the bags containing residue poppy husk were also converted into parcels; thereafter, the sample parcels and bulk parcels were sealed by the IO with his seal having inscription 'AS'; DSP Sukhdev Singh also put his seal on sample parcels and bulk parcels, which was having inscription 'SS'; specimen seal impressions of both the seals were taken on chit Ex.P1; the IO handed over his seal after use to ASI Harjinder Singh; then the case

property was taken into police possession vide recovery memo Ex.P2 attested by ASI Harjinder Singh, Balbir Singh, independent witness and DSP Sukhdev Singh; the tractor trolley along with tarpaulin were also taken into police possession vide recovery memo Ex.P3 attested by the witnesses.

The accused could not produce any valid permit or licence for possession of the contraband. They were accordingly arrested in this case as per rules. A memo of jamatalashi was prepared in that regard as Ex.P4. The grounds of arrest were served upon the accused. A memo in that respect was prepared as Ex.P5.

The IO sent ruqa Ex.P10 to the police station, on the basis of which formal FIR Ex.P11 was registered. The Investigating Officer prepared rough site plan of the place of recovery as Ex.P12 and recorded statements of witnesses. He further sent special report Ex.P13 to the senior police officers.

On return to the police station, the Investigating Officer handed over the custody of the accused and the case property to SI Balbir Singh, who put his seal having impression 'BS' on all the parcels preparing sample seal impression on chit Ex.P1/A and took into possession the entire case property vide handing over memo Ex.P7.

SI Balbir Singh produced both the accused and the case property before the learned Magistrate by moving inventory report Ex.P8. Learned Magistrate took out sample of 100 grams of poppy husk each from each of the bulk parcels, preparing their separate parcels. The representative samples so drawn converted into parcels and bulk parcels

containing residue poppy husk were sealed by learned Magistrate with his seal having mark 'HPS'. Learned Magistrate also passed order Ex.P9 and handed over the entire case property to SI Balbir Singh.

On 17.12.2003, SI Balbir Singh handed over 15 sample parcels, sample seal impressions chit Ex.P1/A and CFSL Form Ex.P10 to Constable Ashok Kumar for depositing the same in the office of Chemical Examiner, Punjab, Chandigarh. However, the articles could not be deposited there on that day, therefore Constable Ashok Kumar returned those articles to SI Balbir Singh on 18.12.2003.

On 1.1.2004 SI Balbir Singh again handed over those very articles to Constable Ashok Kumar for depositing those in the office of Chemical Examiner, Punjab, Chandigarh. Constable Ashok Kumar accordingly did so and on return to the police station on the same day, he handed over receipt to SI Balbir Singh. As per report Ex.P15 received from the office of Chemical Examiner, Punjab, Chandigarh, the sample parcels were found to be those of poppy husk.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

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

5. 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 accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

6. During the course of its evidence, the prosecution examined

the following witnesses:

PW1 Constable Ashok Kumar, the carrier of the sample parcels to the office of Chemical Examiner, Punjab, Chandigarh, a formal witness submitted his affidavit Ex.P1 testifying in that regard further stating that so long as the sample parcels and other articles remained in his possession, neither he tampered with the same nor he allowed anyone else to do so.

PW2 DSP Sukhdev Singh, who on being requested by the IO had reached the spot on 10.12.2003, giving his introduction to the accused, apprising them about their right to get the search conducted in his presence or that of some Magistrate and when the accused reposed confidence in him, thereafter directing the IO to search the tractor trolley, resulting in recovery of contraband, deposed in that regard, besides his other role in the search and seizure as detailed in earlier part of the judgment.

PW3 ASI Jaswant Singh stated that on 25.1.2004, he was posted as such at P.S. Zira and on that day, the investigation of this case was entrusted to him during the course of which, he had recorded statements of formal witnesses, namely, Sh.Gurcharan Singh, Ahlmad, to the Court of SDJM, Zira on 18.3.2004 besides recording statement of Ms.Surinder Kaur.

PW4 ASI Harjinder Singh, who on 10.12.2003 was member of the police party, which had apprehended the accused and effected recovery of contraband from them under instructions of DSP Sukhdev Singh, who had arrived at the spot, deposed in that regard supporting the

prosecution story on material aspects.

PW5 SI Balbir Singh, who on 10.12.2004 was posted as Additional SHO, P.S. Zira testified with regard to his role, which has been mentioned in detail in the earlier part of the judgment.

PW6 ASI Ajmer Singh, who on 10.12.2003 was heading the police party and had intercepted the tractor trolley driven by Harbans Singh while Harvinder Singh was sitting in the trolley and had then summoned DSP Sukhdev Singh to the spot and under his directions had effected recovery of the contraband from the possession of accused, deposed in that regard supporting the case of the prosecution. He further testified with regard to the investigation carried out by him proving various documents.

PW7 Sh.Gurcharan Singh, Ahlmad in the Court of Sh.Jasbir Singh Kand, SDJM, Zira stated that on 11.12.2003, he was posted as Ahlmad in the Court of Sh.Harjinder Pal Singh, SDJM, Zira. He identified the signatures of Sh.Harjinder Pal Singh, SDJM, Zira on Ex.P14.

7. Learned Additional Public Prosecutor for the State tendered in evidence report of Chemical Examiner as Ex.P15 and closed the evidence of prosecution.

8. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances in the prosecution evidence appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case. Appellant/accused Harjinder Singh contended that

he did not own or possess any tractor and he is suffering from polio and cannot walk properly and no recovery was effected from him.

9. During the course of their defence evidence, the accused examined Mela Singh, Chief Section Supervisor, Telegraph Office, Moga as DW1, who stated that Ex.D1 and Ex.D2 are the attested copies of the telegrams dated 10.12.2003 sent by Bhajan Singh son of Piara Singh, resident of village Khosa Kotla, District Moga to Chief Justice, Punjab and Haryana, High Court and SSP Moga.

DW2 Bhajan Singh son of Piara Singh, resident of village Khosa Kotla, Moga stated that some police officials had taken away accused Harbans Singh, who is his brother, about two years and eleven months earlier (statement of this witness was recorded on 16.11.2006). Going further, the witness stated that he had sent telegrams to Chief Justice, Punjab and Haryana, High Court and SSP Moga in that regard on 10.12.2003.

10. After hearing arguments, learned trial Court had acquitted accused Harbans Singh, whereas convicted and sentenced Harvinder Singh as mentioned above, which left him aggrieved and he had filed the present appeal, which was taken up on 18.12.2006, 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 9.4.2008 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, Ferozepur.

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 all the witnesses of recovery, namely, PW2 DSP Sukhdev Singh, PW4 ASI Harjinder Singh and PW6 ASI Ajmer Singh had 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 appellant/accused/convict has been alleged or proved prompted by which they might have involved the appellant/accused in this case wrongly and deposed against him falsely to secure his conviction. The account given by these PWs comes out to be worthy of reliance.

14. Though Balbir Singh, who was joined with the police party as independent witness was not examined but in view of the observation that the official witnesses of recovery had no motive to involve the accused in this case wrongly and depose against him falsely to secure his conviction, their statements are to be taken at par with the independent witness. Non-examination of Balbir Singh does not affect the credibility of the prosecution story. In **Krishan Kumar Versus State of Punjab, 2016(2) RCR(Criminal)707**, it 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 acceptable as 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 link evidence in this case has been provided by PW5 SI Balbir Singh to whom the case property had been handed over by the IO on reaching the police station on the day of recovery itself since he was working as officiating SHO of the police station. This witness categorically stated that he had sealed the parcels with his seal having inscription 'BS', then taking over the same into possession, keeping it in safe custody and on the next day producing the case property before the Illaqa Magistrate along with inventory report Ex.P8; the Magistrate had taken out representative samples from the bulk parcels; thereafter such sample parcels and bulk parcels had sealed with the seal of the Magistrate giving the same to SI Balbir Singh, who as stated by him had kept it in safe custody.

PW1 Constable Ashok Kumar carrier of the sample parcels to the office of Chemical Examiner, Punjab, Chandigarh having been given the same to him by SI Balbir Singh, Additional SHO on 17.12.2003 duly sealed with the seals having impressions 'AS', 'SS' and 'BS' along with specimen seal impressions chit after getting docket issued from the office of SSP, Ferozepur has testified that on the next day i.e. 18.12.2003, he had taken such articles to the office of Chemical Examiner, Punjab, Chandigarh, however some objection was raised; he came back to the police station and returned the articles there and after removal of the objection, again took the articles to the office of Chemical Examiner, Punjab on 1.1.2004 and deposited the articles there and during the period those remain in his possession no tampering therewith had taken place.

The report from the office of Chemical Examiner, Punjab,

Chandigarh also goes to show that the sample parcels bearing No.1 to 15 sealed with three seals are having impressions 'AS', 'SS' and 'BS' along with specimen seal impression chit had been received there on 1.1.2004 through Constable Ashok Kumar; the seals were intact and tallied with the specimen seal impressions chit and on analysis the samples were found to be those of poppy husk.

16. The investigation in this case has been carried out in a fair and impartial manner. The accused sitting in the trolley, which was loaded with the bags containing contraband was certainly in conscious possession thereof because tractor trolley is not a vehicle used for travelling, rather it is meant for carriage/transportation of the material/machinery mainly in connection with agricultural operations. It is not the case of the appellant/accused that he had simply taken lift in the tractor trolley for travelling to some distance and was not aware as to what was being carried in the trolley. The accused being in possession of the contraband stands adequately established on record. In **Krishan Kumar Versus State of Punjab**(supra), it had been observed that once it is established that the appellant was in possession of the contraband, it was for him to show that he was not in conscious possession thereof and 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 Section 35 of the Act deals with presumption that the accused has culpable mental state and has committed the offence.

17. Learned counsel for the appellant/accused has made various

submissions contending that the prosecution had been unable to establish its charge against the accused beyond the shadow of reasonable doubt since many doubts arose in the mind with regard to the truthfulness of the prosecution story for various reasons.

18. One of the submission was with regard to non-examination of independent witness Balbir Singh but that has been dealt with during discussion in the earlier part, which need not be repeated here.

19. Another contention put forward by learned counsel for the appellant was that the IO had handed over his seal after use to police officials and not the independent witness.

20. I do not find anything wrong with the IO in doing so. It is nowhere provided that the IO after use his seal is to hand it over to independent witness. A Single Judge of this Court dealing with this aspect in judgment *Ajaib Singh Versus State of Punjab, 1999(2) RCR(Criminal) 638* has observed that when in a case relating to recovery of poppy husk, the property was sealed but seal was not handed over to independent witness after using the same, is not fatal though it create a remote suspicion, which is very feeble. It was further observed that seal cannot always be handed over to the independent witness because the Investigating Officer has to use it frequently and the IO cannot afford always to entrust the seal to independent witness, which is supposed to remain in his possession for days together till the case property reaches its destination.

Therefore this contention is found to be without merit.

21. Another contention raised by learned counsel for the

appellant was with regard to delay in sending the samples to FSL, Punjab, Chandigarh.

22. 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.

The aspect of delay in sending the sample to the office of Chemical Examiner was discussed in ***Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25*** holding 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.

In this case as has been discussed in the earlier part of the judgment, the case property had remained in safe custody and the sample parcel had reached the office of Chemical Examiner, Punjab, Chandigarh in an intact condition. Therefore, the delay of few days in sending the sample to the office of Chemical Examiner, Punjab, Chandigarh is immaterial and no prejudice is going to be caused to the appellant/accused.

23. Learned counsel for the appellant came up with another argument that DSP Sukhdev Singh in his cross-examination had stated

that two samples had been drawn each of the bag containing poppy husk, whereas as stated by PW4 ASI Harjinder Singh only one sample had been drawn, which according to him is suspicious circumstance.

24. However, I do not find myself in agreement with learned counsel for the appellant in that regard. This plea had been raised before the trial Court also but it has been dealt with in a fair and appropriate manner by the trial Court in the form of discussion in para No.16 of the impugned judgment observing that it appears that DSP Sukhdev Singh had inadvertently stated that two samples had been taken out. It needs to be mentioned here that the recovery in this case was effected on 10.12.2003, whereas statement of DSP Sukhdev Singh was recorded in the Court on 1.8.2005 i.e. after a period of about one year and eight months. Forgetfulness is one of the basic human traits and there could be every possibility of lapse of memory on account of passage of time. A police officer is required to deal with multifarious functions daily including maintaining law and order, carry out investigation in criminal cases, providing security to the VIPs etc. and in the process, if some slip here or there in statement of a police officer appears, that cannot be magnified out of proportions so as to treat it as a suspicious circumstance.

25. Learned counsel for the appellant further argued that the prosecution story is not believable and the person driving the tractor, namely Harbans Singh had been acquitted of the charge framed against him disbelieving the prosecution story qua him and using the similar yardstick appellant Harvinder Singh be also given acquittal in this case.

26. However, I am not impressed by this submission. There is

nothing to show that the prosecution case is based upon concoction and fabrication. Rather the story appears to be natural and believable. Merely because Harbans Singh has been acquitted of the charge framed against him giving him benefit of doubt, that does not mean that the case of prosecution is also to fall flat qua present appellant/accused Harvinder Singh when the prosecution has adduced sufficient oral as well as documentary evidence, which has been found to be worthy of reliance to establish that he was in conscious possession of the contraband without any licence or permit. The appellant/accused Harvinder Singh was rightly convicted by the trial Court.

27. 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 such huge quantity of contraband. In case **Krishan Kumar Versus State of Punjab**(supra), it was also held that when recovery of contraband was in the form of 35 bags containing 35 kilograms poppy husk in each bag from the possession of the appellant and his co-accused, then such a huge quantity of the contraband cannot be planted by the police from its own source, that too, just for the false implication. Under those circumstances, the conviction and sentence were upheld.

28. As regards the sentence part, the accused/appellant was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default thereof to undergo further rigorous

imprisonment for a period of one year, which is the minimum prescribed sentence for possession of commercial quantity of the contraband. Though keeping in view the huge quantity of the contraband recovered from the appellant which is more than 10 times of commercial quantity, sentence more than the minimum prescribed could have been awarded to the appellant. However, the trial Court showed leniency towards him. Neither there is any occasion to reduce the sentence of imprisonment awarded to the appellant nor it is legally permissible to do so.

29. 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.

30. It is relevant to mention here that due to non-appearance of the accused either in person or through counsel, the order dated 9.4.2008 granting concession of suspension of sentence and consequent bail to him was recalled and non-bailable warrants was ordered to be issued through CJM, Ferozepur, who has sent a report that in compliance of order dated 19.7.2022, the appellant/accused was arrested and sent to jail. As per the custody certificate placed on record by the State counsel, he has undergone 4 years, 4 months and 12 days of imprisonment including remissions. Let him undergo the remaining sentence of imprisonment and pay the requisite fine. In case he fails to make payment of fine, he would undergo the imprisonment awarded to him in default of payment of fine.

Necessary information be sent to CJM, Ferozepur, who is to issue necessary warrant informing Superintendent Jail, Ferozepur in that regard.

26.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes