

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

CRA-S-2552-SB-2006(O&M)

Date of decision:-17.8.2022

Jeewan Singh

...Appellant

Versus

The State of Punjab

...Respondent

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

Present: Mr.Satnam Singh Gill, Advocate
for the appellant.

Mr.Sandeep Vermani, Addl.A.G., Punjab.

H.S. MADAAN, J.

1. Appellant/accused Jeewan Singh was tried by learned Judge, Special Court, Sangrur in case FIR No.212 dated 4.7.2004 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Dhuri and in terms of judgment dated 10.11.2006, he was convicted in that case for the offence for which he was booked and vide 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 4.7.2004, a police party headed by ASI Jasbir Singh from Police Station Dhuri, District Sangrur was travelling in official vehicle bearing No.PB13C-3045 while doing patrolling and checking of suspects; it was going from village Meemsa towards vilage Kandhargarh Chhanna; when the vehicle carrying the police party had reached at bridge of drain in the area of village Meemsa, then Krishan Singh son of Kaka Singh, resident of Samundagarh Channa came and he was joined with the police party; while the vehicle carrying the police party was going towards village Cheema and had covered a distance of one furlong, the accused was spotted sitting on a plastic bag in the drain with another bag with its mouth open also lying nearby, a mug of a litre capacity was also lying there and 30 glazed envelopes were also lying besides scooter bearing NO.PB11V-2577 was also standing nearby; the time was about 11:10 a.m.; the accused was apprehended by the police party on the basis of suspicion; on being inquired, he disclosed his name and other particulars; the Investigating Officer informed the accused that he nursed a doubt that the plastic bags in his possession contained some narcotic substance and he wanted to carry out the search of the same and the accused has a legal right to get the search conducted in presence of a gazetted officer or a Magistrate, who could be called at the spot; however the accused expressed faith in the Investigating Officer and did not opt to get the search conducted in presence of some gazetted officer or a Magistrate; his consent statement in that regard was recorded as Ex.PD, which was thumb marked by the accused and attested by the witnesses;

the bag having its mouth open was found to contain poppy husk, whereas the second bag was opened and it was also found to contain similar contraband; the Investigating Officer drew two samples of 250 gms. each from both the bags, converting those into parcels and residue poppy husk in each bag, on being weighed came out to be 25 kgs. 500 gms; the bags containing residue poppy husk were also converted into parcels; all the parcels were sealed by the Investigating Officer with his seal bearing inscription JS; sample seal impression was taken on a chit and seal after use was handed over to independent witness Krishan Singh; all the parcels were taken into police possession vide recovery memo Ex.PE attested by the witnesses; the scooter along with its RC was also seized vide recovery memo Ex.PF attested by the witnesses; the jamatalashi of the accused was conducted; the grounds of arrest were furnished to him; a memo in that regard was prepared thumb marked by the accused and attested by the witnesses; intimation regarding arrest of accused was given to Tejo wife of Baru vide memo Ex.PH. The Investigating Officer prepared special report Ex.PI. He sent ruqa Ex.PJ to the police station on the basis of which formal FIR Ex.PJ/1 was recorded there. The Investigating Officer prepared rough site plan of the place of recovery as Ex.PK.

3. On return to the police station, the Investigating Officer produced the accused along with sample parcels and bulk parcels besides the witnesses and chit having specimen seal impression before SI Jograj, SHO of Police Station Dhuri. He verified the investigation, questioned the accused and thereafter put his own seal having impression JS on the sample parcels and bulk parcels besides attesting sample seal chit Ex.P1.

Thereafter, on his directions, the Investigating Officer deposited the case property with MHC Nirmal Singh. The case property was produced before Judicial Magistrate at Dhuri. Application Ex.PL was moved, on which the Court passed order Ex.PL/1. During the course of investigation, the sample parcels were sent to the office of Chemical Examiner, Punjab and as per report Ex.PM 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 of Judge, Special Court, Sangrur.

4. 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.

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

PW1 CII Manoj Kumar, a formal witness tendered in evidence his affidavit Ex.PA.

PW2 HC Nirmal Singh, who was posted as MHC of Police Station Dhuri on 4.7.2004 when the case property had been deposited with him and who had given the sample parcels to CII Manoj for the purpose of taking those to the office of Chemical Examiner, Punjab in his affidavit Ex.PB testified in that regard stating that no tampering of seals had taken place on the case property during the period those remained in his custody.

PW3 Ashok Kumar, Clerk of the office of DTO, Patiala

deposed that as per office record scooter bearing No.PB11V-2577 stands in the name of Piara Singh son of Babu Singh of village Rohti Chhanna. He proved document in that regard as Ex.PB.

PW4 ASI Gurnam Singh, a witness of recovery supported the prosecution story on material aspects with regard to accused having been found in possession 52 kgs. of poppy husk without any licence or permit on the date, time and place as claimed by the prosecution. He proved on record second sample parcels as Ex.P2 and Ex.P3, parcels containing residue poppy husk Ex.P4 and Ex.P5, envelopes Ex.P6 to Ex.P35 and plastic mug as Ex.P37.

PW6 ASI Jasbir Singh, the Investigating Officer of the case deposed with regard to the investigation conducted by him besides stating about recovery of contraband from the possession of the accused in terms of the prosecution story. He proved various documents including RC of scooter recovered from the accused as Ex.P38.

PW5 SI Jograj Singh, who was posted as SHO of Police Station Dhuri at the relevant time deposed regarding his part.

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

6. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances in the prosecution evidence appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case further stating that there is party faction in the village Panchayat and for that reason a false case has been planted upon him at

the instance of Sarpanch of village Samundgarh.

7. In his defence evidence, the accused examined Krishan Singh as DW1, an independent witness, who had statedly joined the police party during the investigation. He denied that any recovery had been effected from the accused in his presence and rather stated that on the date in question, he had gone to the police station due to some quarrel in the village and police obtained his signatures on the blank papers. During his cross-examination by learned Additional Public Prosecution, he had identified his signatures on documents Ex.PD to Ex.PI.

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

“Whether the accused was found in possession of 52 Kgs of poppy husk, as per case of prosecution on 4.7.2004 in the area of village Meemsa?”

9. 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 19.12.2006, 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 13.9.2007.

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

11. I have heard learned counsel for the appellant – accused – convict, learned Addl.Advocate General for the State of Punjab besides

going through the record.

12. The first ground of attack by learned counsel for the appellant was that there has been non-compliance of Sections 50, 55 and 57 of the Act rendering the trial vitiated, as such accused deserves to be acquitted on that account.

13. However, I do not find myself in agreement with learned counsel for the appellant on that point. The Investigating Officer is shown to have informed the accused of his right to get the search conducted in presence of a gazetted officer or a Magistrate but the accused reposed faith in the Investigating Officer and his consent memo Ex.PD was prepared in that regard, which was thumb marked by him and attested by the witnesses. The prosecution has led sufficient evidence in that regard. However as has been discussed in a judgment ***State of Himachal Pradesh Versus Pawan Kumar, 2005(2) RCR (Cri.)621***, Section 50 of the Act is applicable to personal search of an accused and not to the bags carried by him.

14. The case property comes out to have been kept in safe custody with no tampering with seals having taken place and the sample parcels had reached the office of Chemical Examiner, Punjab with seals intact. There are statements of PW1 CII Manoj and PW2 HC Nirmal Singh in that regard, who tendered in evidence their affidavits Ex.PA and Ex.PB, respectively. Report Ex.PM from Chemical Examiner, Punjab also shows that the sample parcels had reached there with seals intact.

15. Furthermore, after recovery the Investigating Officer had prepared special report Ex.PL besides sending ruqa to the police station,

which formed basis for registration of the FIR and special reports had been sent to Illaqa Magistrate and other police officers. As such, no violation of any mandatory provision is shown to have been there with no prejudice caused to the accused.

16. In a judgment referred to by learned State counsel i.e. ***Varinder Kumar Versus State of Himachal Pradesh, 2019(1) RCR(Criminal)1003***, it was observed that when recovery was not effected from the accused but gunny bags carried on scooter, there was no violation of Section 50 of the Act. It was observed that Sections 52 and 57 of the Act are directory in nature.

17. Another contention put forward by learned counsel for the appellant was that independent witness joined with investigation, namely, Krishan Singh was not examined by the prosecution rather he appeared as a defence witness and supported the version of accused putting a question mark over the credibility of the prosecution version. Again I do not find any merit in this contention.

18. Learned State counsel has referred to a judgment dealing with such an eventuality i.e. ***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. As 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.

19. The aspect of delay in sending the sample to the office of Chemical Examiner was also discussed 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.

20. Another submission made by learned counsel for the appellant was that the recovery memo Ex.PE and Ex.PF are not signed by the accused.

21. That hardly makes any difference because it is no where provided that the recovery memos must be signed by the accused and in absence thereof, those cannot be taken into consideration although duly proved by the prosecution.

22. One more argument put forward by learned counsel for the appellant was that the scooter in question is in the name of Piara Singh and Piara Singh was neither cited as a prosecution witness nor examined,

therefore, the accused is not connected with the scooter.

23. May it be so. The main thing to be seen in this case is as to whether the accused was found in conscious possession of the contraband and recovery of remaining articles is not of much significance. The prosecution by leading enough cogent, convincing and reliable evidence has established that accused was found in possession of the contraband. The witnesses of recovery namely PW4 ASI Gurnam Singh and PW6 ASI Jasbir Singh were unanimous in saying so. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material contents. 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.

24. Learned counsel for the appellant has further argued that the contraband recovered in this case is stated to be 50 kgs., if weights of the bags is not taken into consideration, which is non commercial quantity, therefore, some leniency be shown to the appellant/accused in matter of sentence since he is poor person and only earning member of the family.

25. Whereas, learned State counsel has countered the argument stating that as per the schedule of the Act commercial quantity of the poppy husk is 50 kgs. With regard to the judgment referred to by learned counsel for the appellant i.e. **Ratto Versus State of H.P., 2004(1) RCR(Criminal) 501** in support of his contention that commercial quantity in case of recovery of poppy husk would be more than 50 kgs., that judgment is not applicable because that related to recovery of CHARAS

and further the observations had been made while deciding a petition for regular bail, whereas here we are dealing with a decision of appeal on merits. As per the case of the prosecution, the recovery effected was of 52 kgs. of poppy husk. It cannot be taken that if weight of the bags is counted, then it would come to 50 kgs. or less than that. The entire exercise is based upon conjectures and assumptions. There could even be possibility of the bags weighing less than 1 kg or so. There is nothing on record to show that weight of the bags was 2 kgs. or more than that. Therefore, this argument of learned counsel for the appellant is not acceptable and is rejected accordingly.

26. The other judgments referred to by learned counsel for the appellants i.e. *Gurlal Singh and ors. Versus State of Punjab, 2003(3) RCR(Criminal) 198* and *Sikander Singh Versus State of Punjab, 2005(2) RCR(Criminal) 810* do not find application to the present case due to different facts and circumstances and the context in which such observations had been made. The accused was rightly convicted by the trial Court.

27. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for ten years each, which is the minimum conviction 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 increase 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.

28. 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.

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

17.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes