

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

CRA-S-614-SB-2006 (O&M)

Date of pronouncement: 16.09.2022

Kartar Singh @ Baggi

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. Rohan Garg, Advocate (Amicus Curiae)
for the appellant.

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

H.S. MADAAN, J.

1. Appellant Kartar Singh @ Baggi son of Dalip Singh, an accused in FIR No.153 dated 10.08.2000, for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Sultanpur Lodhi was tried by Judge, Special Court, Kapurthala on the allegations that on 10.08.2000 at about 7.00 pm in the area of turning of metalled road of village Bhor within jurisdiction of Police Station Sultanpur Lodhi, he was found in conscious possession of 10 kg of poppy husk without any license or permit. The trial ended in conviction of the accused, vide judgment dated 29.03.2006 and in terms of the order passed on that very day, he was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-; in default of payment of fine, to further

undergo RI for three months.

2. Feeling aggrieved by the judgment of his conviction and order of sentence, the appellant had preferred an appeal before this Court which was taken up on 03.04.2006, when it was Admitted for regular hearing, and on an application having been filed, his substantive sentence of imprisonment was suspended during the pendency of the appeal, subject to his furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Kapurthala and deposit of fine at the time of furnishing of requisite bail bonds.

Notice of the appeal was issued to the State which had put in appearance. Now the appeal has come up for final arguments.

3. Briefly stated facts of the case, as per prosecution story are that on 10.08.2000, ASI Kuldip Singh [hereinafter referred to as the Investigating Officer (IO)] along with ASI Paramjit Singh and some other police officials from Police Station Sultanpur Lodhi while travelling in a Govt., vehicle bearing No.PB09-A-7816 being driven by Constable Satnam Singh were present on turning of metalled road of village Bhor in connection with patrolling and for checking of anti social element, then one Hans Raj son of Surjit Singh, R/o Mohalla Mehtabgarh came there and he was joined with the police party; the accused was spotted coming riding a Bajaj Chetak scooter bearing No.PB33-8447 from the side of village Bhor; he was signalled to stop and he brought the scooter to a halt; on being enquired, he disclosed his name and other particulars; a gunny bag having some contents was found lying on the foot rest of the

scooter; the IO told the accused that he suspected such gunny bag placed on foot rest of his scooter to be containing some contraband and wanted to search the same and that the accused had a right to get the search conducted in the presence of some Gazetted Officer or a Magistrate; the accused opted to get search carried out in the presence of a Gazetted Officer; then the IO sent a wireless message to Sh. Ravcharan Singh, DSP, Sub Division, Sultanpur Lodhi with a request to arrive at the spot; the said DSP reached the spot after about 20-25 minutes; on his arrival, the DSP disclosed his identity to the accused, telling him that the search could be carried out in the presence of other Gazetted Officer also, however, the accused reposed confidence in the DSP; a memo in that respect was prepared exhibited by the accused; thereafter on instruction of DSP, the IO conducted search of the gunny bag and it was found to be containing poppy husk; the IO took out 250 gm of poppy husk as a sample and on being weighed, the remaining poppy husk in the gunny bag came out to 9 kgs 750 gms which was retransferred in the same gunny bag; the sample and gunny bag containing residue poppy husk were converted into parcels, sealed with the seal of DSP having impression 'RS'; then the sample parcel, bulk parcel along with scooter of the accused were taken into possession, vide a recovery memo; the seal after use was retained by DSP; sample seal impression chit was prepared; accused was accordingly arrested in this case as per rules, preparing requisite documents; the IO had sent ruqa Ex.PC to the police station on the basis of which formal FIR Ex.PC/1 was registered; the IO prepared

rough site plan of the place of recovery.

On return to the police station, the IO produced the accused along with case property and witnesses before SI Sarup Singh, SHO of the Police Station, who verified the facts and put his own seal having impression 'SS' on the sample parcel and bulk parcel; a separate seal impression chit was prepared; thereafter the IO deposited the case property with MHC Sakattar Singh; on 11.08.2000, ASI Kuldip Singh took the case property from MHC Sakattar Singh for the purpose of producing the same before Illaqa Magistrate and after doing that, he redeposited the same with said MHC, whereas the accused was lodged in the lockup.

During the course of investigation, a sample parcel was sent to the office of Chemical Examiner, Jalandhar, Punjab through Constable Mukhtiar Singh, which was received there on 22.08.2000 and as per report given Ex.PJ, the sample was found to be that of poppy head fine powder; on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

4. On receipt of the challan, the trial Court of Special Judge, Kapurthala supplied copies of documents relied upon in the challan 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 Act was framed against the accused, to which he pleaded not guilty and claimed trial.

5. During the course of prosecution evidence, prosecution

examined Sh. Ravcharan Singh, DSP, as PW-1. He supported the prosecution story as regards the recovery of contraband in the form of 10 kg of poppy husk from the possession of the accused and otherwise, testified with regard to his part in the investigation.

PW-2 ASI Iqbal Singh stated that on 10.08.2000, he was posted at Police Station Sultanpur Lodhi and on that day, on receipt of ruqa Ex.PC, he recorded formal FIR Ex.PC/1, under his signatures sending special reports to Illaqa Magistrate and higher police officers through a constable.

PW-3 ASI Paramjit Singh, who was member of the police party on 10.08.2000, which had apprehended the accused and effected recovery from him, supported the prosecution story on material aspect, especially with regard to recovery of contraband from the possession of the accused.

PW-4 ASI Sakattar Singh, who was working as Moharar Head Constable at Police Station Sultanpur Lodhi on 10.08.2000 with whom the case property had been deposited by the IO, who has since been promoted as ASI, getting his statement recorded and tendered his affidavit in evidence Ex.PK, wherein he testified that on 10.08.2000, ASI Kuldeep Singh from CIA Staff, Kapurthala had deposited the case property in the form of sample parcel and bulk parcel duly sealed with seals having impression 'RS' and 'SS' and specimen seal impressions with him and on 11.08.2000. On 11.08.2000, ASI Kuldeep Singh took the case property from MHC Sakattar Singh for the purpose of producing the

same before Illaqa Magistrate and after doing that, he redeposited the same with said MHC; that on 22.08.2000, he had sent the sample parcel with seals intact and sample seal impressions to Constable Mukhtiar Singh for the purpose of depositing those in the office of Assistant Chemical Examiner, Jalandhar, Punjab. Constable Mukhtiar Singh accordingly get docket issued from the office of SSP, Kapurthala and deposited the said articles in the office of Assistant Chemical Examiner, Jalandhar, Punjab and on return, handed over receipt to him; that during the period, the case property remained in his possession, neither he tampered with the same nor allowed anybody else to do so.

PW-5 Constable Mukhtiar Singh, the carrier of the sample parcel and other articles to the office of Assistant Chemical Examiner, Jalandhar, Punjab, vide his affidavit Ex.PL testified that so long the articles remained in his possession, no tampering therewith had taken place.

PW-6 SI Sarup Singh, who was posted as SHO, Police Station Sultanpur Lodhi on 10.08.2000 deposed regarding his part as detailed supra in the judgment.

PW-7 Sh. Sant Ram, MTC, Office of SDM, Nakodar had brought the registration record of scooter number PB-33-8447 stated that it stand in the name of Kartar Singh son of Dalip Singh, R/o Anandpur, now at Railway Road, Nakodar. He proved the registration certificate of the scooter as Ex.P1.

The Addl. PP for the State gave up PW Hans Raj as having

been won over by the accused by making a statement in the trial Court on 01.11.2004 and on 08.07.2005, he made a statement that ASI Kuldip Singh who was IO of the case had since gone to Canada after his retirement and was not likely to return to India, as such, Addl. PP closed the evidence of prosecution.

6. Thereafter, 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 was innocent and had been falsely involved in this case.

7. During his defence evidence, he examined four witnesses as detailed below:-

DW-1 Gurdev Singh, Member Panchayat of village Toti, Tehsil Sultanpur Lodhi stated that he knows Kartar Singh accused and his house is at some distance from his residence; that about 05 years ago, the police officials came in a van to the dera of the accused, stating that Kartar Singh had committed a murder and they were searching for the weapon of offence from the residence of the accused, however, nothing was recovered. The police party had arrived there at about 11.00 pm. According to this witness, he along with some other persons had also reached the spot. The police had taken the accused along with his scooter in their vehicle to the CIA Staff, Kapurthala and after about 02 days, they came to know that Kartar Singh had been involved in a false case by the police. The witness stated that wife of Kartar Singh had also moved

applications to the higher authorities.

DW-2 Puran Kaur, wife of the accused also deposed on similar lines as that of DW-1, stating that she had moved applications to the higher authorities. She proved carbon copy of one of the applications as Ex.D1, UPCs as Ex.D2 to D5, stating that no action had been taken on her such applications.

DW-3 Gurmej Singh, Addl. MHC, PS Sultanpur Lodhi had brought the summoned record i.e. register No.19 regarding deposit of the case property stating that the case property was deposited with MHC, Police Station Sultanpur Lodhi on 10.01.2000, vide entry No.210 and vide report No.30, register No.2, the case property i.e. 9 kg 750 gm in a gunny bag, sample of 250 gm sealed with seal bearing letters 'SS' and 'RS', however, form No.29 was not deposited with the case property. ASI Kuldip Singh had deposited the case property and sample with MHC Sakattar Singh. The scooter was also deposited at that time. In this case, the case property was not withdrawn from malkhana again for producing the same before the Magistrate and no inventory list of photographs were deposited with them along with case property as per record. The case property was deposited at 10.00 pm and both the entries were made by MHC in the respective registers. The other register being register No.2 Roznamcha in which deposit of case property at 10.00 pm is mentioned. He proved copy of the relevant entry of register No.19 as Ex.DW3/1 and that in register No.2 as Ex.DW3/2.

DW-4 Hans Raj, who was cited by the prosecution as an

independent witness and who had been given up by the prosecution for the reason of his having been won over by the accused, opted to appear as a witness for the accused, stating that he does not know the accused and the police did not apprehend the accused in his presence. He stated that he had studied up to 10+2 class and Ex.PD does not bear his signatures and Ex.PE, PG and PH do not bear his signatures. He stated that his statement was never recorded by the police in this case.

8. After hearing arguments, the trial Court convicted and sentenced the accused as mentioned supra.

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

10. In this case, both the witnesses of recovery namely PW-1 Sh. Ravcharan Singh, DSP and PW-2 ASI Paramjit Singh fully supported the prosecution story with regard to recovery of 10 kg of poppy husk from accused Kartar Singh @ Baggi on 10.08.2000 at about 7.00 pm in the area of turning of metalled road of village Bhor, which he was carrying in a gunny bag placed on the foot rest of his scooter. Both these PWs were subjected to lengthy cross-examination on behalf of the accused but they stuck to their guns and could not be shattered on any material point. Both of them deposed in a natural and convincing manner and the account given by them inspire confidence. No previous enmity between these PWs and the accused has been alleged or proved prompted by which they might have involved the accused in this case wrongly or deposed against him to secure his conviction. The prosecution has rendered a satisfactory

explanation for non-examination of ASI Kuldip Singh, the IO of the case, submitting that after retirement, he has since migrated to Canada with little prospects of his returning to India. Therefore, no adverse inference can be drawn against the prosecution for non-examination of ASI Kuldip Singh.

11. As regards the prosecution not examining Hans Raj, independent witness, as per statement made by Addl. PP in the Court, he had been won over by the accused, therefore, he was not examined as a prosecution witness. This fact stands corroborated because Hans Raj had appeared as a witness on behalf of the accused, stating that no recovery had been effected by the accused in his presence. He had denied his signatures on various documents prepared by the IO relating to search and seizure in this case. Now the question arises as to whether under such circumstances, statement of Hans Raj as DW-4 can create a dent in the prosecution case, giving rise to a doubt in the mind about truthfulness of prosecution story. The answer has to be in negative.

12 A Division Bench of this Court in judgment **Sucha Singh Vs. State of Punjab**, 2015 (4) RCR (Crl.) 25, dealing with a similar situation where 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 drunken 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 testimony of that witness was held to be unreliable and was discarded.

In this case also, Hans Raj had denied his signatures on various documents but then the accused has not examined any document expert in defence to show that signatures on documents purporting to be those of Hans Raj do not tally with his standard signatures. Therefore, deposition of DW-4 Hans Raj does not help the accused in any manner.

13. In judgment Sucha Singh's (supra), 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 appellant and there was no reason for them to depose against the appellant, 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. The aspect of delay in sending the sample to the office of Chemical Examiner was also discussed in that judgment, 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 is no specific provision in the Act in that regard and the instructions/standing orders in that respect are only the guidelines to regulate and control the internal working of Narcotic Control Bureau. That effectively meets with the objection raised by learned counsel for the appellant that since sample in this case was sent after 12 days of

recovery to the office of Assistant Chemical Examiner, Jalandhar, Punjab that creates a doubt in the mind about truthfulness of prosecution story.

14. Another argument advanced by learned counsel for the appellant was that the IO had not handed over the seal after use to the independent witness. However, this argument is also without merit. In judgment by a Single Judge of this Court in judgment **Ajaib Singh Vs. State of Punjab, 1999(2) RCR (CrI.) 638**, dealing with such type of situation, it was observed that when seal is not handed over to independent witness after use, the same is not fatal, though it created suspicion which is very feeble and moreover, seal cannot always be handed over to the independent witness because the IO 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 objection is rejected.

15. The prosecution has led adequate link evidence to show that no tampering with the case property had taken place and the sample parcel had reached the office of Assistant Chemical Examiner, Jalandhar, Punjab with seals intact and on analysis, the sample was found to be that of poppy husk. The prosecution had proved its charge against the accused conclusively and affirmatively.

The impugned judgment of conviction passed by the trial Court is quite detailed, well reasoned, does not suffer from any illegality or infirmity. It is based upon proper appraisal of evidence and correct

interpretation of law. There is illegality or infirmity therewith, which might have called for interference by this Court while exercising appellate jurisdiction.

Similarly, keeping in view the quantity of contraband recovered, the sentence awarded cannot be said to be on higher side and there is no scope for reduction thereof. As such the impugned judgment of conviction and order of sentence are upheld. The appeal is found to be without merit and is dismissed accordingly.

16. The appellant/accused is directed to surrender before Chief Judicial Magistrate, Kapurthala 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.

16.09.2022

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(H.S. MADAAN)
JUDGE

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