

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

CRA-S-843-SB-2006 (O&M)

Date of pronouncement: 26.08.2022

Binder Singh

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. Manvinder Singh Sidhu, Advocate
for the appellant.

Mr. Brijesh Sharma, AAG, Haryana.

H.S. MADAAN, J.

1. This appeal is directed against judgment dated 03.04.2006 passed by Addl. Sessions Judge, Sirsa, vide which he had convicted Binder Singh son of Mukhtiar Singh, an accused in FIR No.167 dated 06.08.2003, for offences under Sections 15/16 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') registered with Police Station City Dabwali and vide order of even date, had sentenced him to undergo rigorous imprisonment (RI) for a period of 06 years and to pay a fine of Rs.60,000/-; in default of payment of fine, to undergo further imprisonment for one year.

Briefly stated facts of the case, as per prosecution story are that on 06.08.2003, SI Rajesh Kumar, Investigating Officer (for brevity 'IO') along with some other police officials from Police Station City,

Dabwali was travelling in a private jeep going towards village Shergarh in connection with patrolling; when the vehicle carrying the police party had reached at bus stand village Shergarh, then accused Binder Singh was spotted sitting on a jute bag having contents near a cemented bench at bus stand; accused was apprehended on the basis of suspicion and he was served a notice under Section 50 of the Act enquiring from him as to whether he desired his search to be conducted before a Gazetted Officer or a Magistrate; responding to said notice, the accused reposed faith in IO; the bag in possession of the accused was searched and it was found to contain 30 kg of poppy straw; the IO took out two samples of 100 gm each from the poppy straw in the bag, preparing parcels thereof; the bag containing residue poppy straw was also converted into a parcel; all the parcels were sealed by the IO with his seal having impression 'RK'; then the sample parcels and bulk parcel were taken into possession, vide recovery memo Ex.PW4/C; the accused who could not produce any license or permit for possession of the contraband was arrested in this case as per law, preparing requisite documents; ruqa was sent to the police station on the basis of which formal FIR Ex.PW4/E was recorded there; the IO prepared rough site plan of the place of recovery as Ex.PW4/F and prepared report under Section 57 of the Act as Ex.PW3/A; he recorded statements of witnesses; on return to the police station, the IO produced the accused, witnesses and the case property before Sh. Madan Lal, SHO, PS City Dabwali; the said SHO after verifying the facts, affixed his own seal on sample parcel, bulk parcel etc., and

thereafter, the case property was deposited in the malkhana of the police station.

During the course of investigation, one sample parcel was sent to Forensic Science Laboratory, Haryana at Madhuban and as per report received there from Ex.PX, it was found to be that of poppy straw. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

2. On presentation of the challan, 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 offences under Section 15/16 of 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 PW1 Head Constable Amarjit Singh, PW2 Constable Raghbir Singh, PW3 Inspector/SHO Madan Lal, PW4 SI Rajesh Kumar, PW5 HC Shankar Lal.

The Public Prosecutor tendered in evidence FSL report as Ex.PX and 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 was innocent and had been falsely implicated in this case.

The accused did not lead any evidence in defence.

5. On conclusion of trial, learned Addl. Sessions Judge, Sirsa convicted and sentenced the accused as mentioned above.

6. Feeling aggrieved by the judgment of conviction and order of sentence, accused Binder Singh has filed the present appeal, notice of which was given to the State, which has put in appearance. The appeal was taken up for hearing and was Admitted for regular hearing. On an application under Section 389 Cr.P.C., having been filed by the appellant/accused, the same was accepted and remaining sentence of appellant was suspended during pendency of the appeal, subject to his furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Sirsa, vide order dated 30.10.2006.

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

8. Here, in the instant case, both the witnesses of recovery namely PW-4 SI Rajesh Kumar, leader of the police party which had apprehended the accused and effected recovery of contraband from him deposed in that regard, besides the investigation conducted by him and PW-5 HC Shankar Lal, a witness of recovery also supported the prosecution version. Both these PWs 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 these PWs and the accused has been alleged or proved prompted by which they might have involved the accused falsely or deposed against him to secure his conviction. The account given by these PWs come out to be natural

and convincing worthy of reliance. The prosecution by examining remaining witnesses i.e. PW-3 Inspector/SHO Madal Lal, PW-1 HC Amarjit Singh and PW-2 Raghubir Singh had successfully established that the case property remained in safe custody after search and seizure and the sample parcel reached FSL, Madhuban with seals intact and on analysis, it was found to be that of poppy straw (choora post) of Papaver Somniferum. The prosecution had successfully proved its charge against the accused conclusively and promptly, whereas, the accused had failed to render any reasonable or plausible explanation for his alleged false implication in this case. He could not account for his possession of contraband, therefore, drawing presumption under Sections 35 and 54 of the Act, he was taken to be in conscious possession of the contraband.

9. Learned counsel for the appellant had raised various contentions, first being that conscious possession of contraband by the accused is not established, since recovery had been effected from bus stand, which is a public place. However, I do not find myself in agreement with learned counsel for the appellant in that regard. The prosecution had successfully proved its case that the accused was seen sitting on a jute bag having contents near a cemented bench at bus stand and on being searched as per law, it was found to contain poppy straw. The accused cannot simply wash his hands off the matter stating that he did not know the contents of the jute bag and was not in conscious possession thereof.

The judgment referred to by learned counsel for the appellant

Baldev Singh Vs. State of Punjab, 2005 (1) RCR (Criminal) 823 is not applicable due to different facts and circumstances. In the present case, the accused has been found to be in conscious possession of contraband and it is not a case of merely the accused being present in close proximity of gunny bag containing poppy heads. The authority in question does not find application in this case due to different facts and circumstances.

10. One more argument put forward was that while being examined under Section 313 Cr.p.C., no question was put to the appellant with regard to conscious possession causing prejudice to the accused. Again after going through the record, I find this contention to be lacking merit. The statement under Section 313 Cr.P.C., of accused goes to show that incriminating circumstances appearing against him in the prosecution evidence against were put to him and he had responded to the same, denying the allegations. The prosecution is required to put such circumstances and not the ingredients of the offence to the accused.

11. The judgment **State of Punjab Vs. Hari Singh & Ors.**, 2009 (2) RCR (Criminal) 143, wherein it was observed that when no question with regard to possession or conscious possession was put to the accused during examination under Section 313 Cr.P.C., conviction was set aside, is not applicable because the questions put to the accused clearly indicate that as per evidence adduced by the prosecution he was found in possession of the contraband. No prejudice or lack of understanding in that regard on the part of the accused comes out to be there.

12. As regards the contention that no Gazetted Officer was called. It has to be taken note of that accused himself had reposed

confidence in the IO, who had then carried out search of the bag in possession of the accused. Notice to the accused in that regard and his response thereto have been fully proved in evidence by the prosecution. In any case, the law is well settled that Section 50 of the Act is applicable to personal search only and not to the search of bag in possession of the accused, therefore, non-calling of a Gazetted Officer to the spot to witness the search does not affect the prosecution story.

13. Coming to another argument put forward on behalf of the appellant/accused that no independent witness was joined with the police party. Again the said argument fails to convince me. Now a days, people hesitate to join the police during investigation lest that may invite animosity and wrath of the criminals. Very few people come forward to join the police in that regard. Even otherwise, since no previous enmity between the official witnesses of recovery and accused has been alleged or promoted, the depositions of such witnesses are to be treated at par with independent witnesses and non-joining of independent witness with the police party does not affect the credibility of prosecution story.

14. Learned counsel for the appellant had further argued that seals on the case property which was produced in the Court were found to be broken. May it be so, sometimes, the seals get damaged while being transported from judicial/police malkhana to the Court, the process may be repeated several times and some damage to the seals in the process does not render the prosecution story doubtful. The crucial thing to be seen is as to whether the sample parcel had reached FSL with seals intact.

The answer is in affirmative, keeping in view the evidence adduced by the prosecution in that regard and mention in the FSL report that when received, the sample parcel was found to have seals intact. Therefore, the prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt. The trial Court was justified in convicting the accused for the offence under Section 15 of the Act.

15. As regards the sentence part, the accused has been sentenced to undergo RI for a period of 06 years and to pay a fine of Rs.60,000/-; in default of payment of fine, to undergo further imprisonment for one year for possession of 30 kg of poppy straw. As per custody certificate placed on record, he has undergone 08 months and 22 days of total imprisonment. However, he is shown to be involved in another case under the Act, vide FIR No.45 dated 24.02.2003, registered with PS City, Dabwali, Sirsa in which he is said to be on bail, whereas, convicted in a case under the Act bearing FIR No.211 dated 27.09.2002 and sentenced to undergo RI for 03 years with fine of Rs.10,000/-. He is further shown to be involved in another case under the Act in FIR No.92 of 2002, registered with PS City Dabwali, though, acquitted in that case.

However, since the contraband involved in this case comes within category of 'non-commercial' quantity for which minimum punishment is not prescribed and appellant was stated to be aged about 24 years at the time of recovery and now about 16 years have elapsed from the date of judgment, he can be given some concession as regards the sentence part. In my view, ends of justice shall be adequately met if

the substantive imprisonment awarded to him is reduced to 04 years from 06 years, while keeping the fine part intact.

16. Under the circumstances, the judgment of conviction is upheld, whereas order of sentence is modified accordingly. The appellant/accused who is on bail is directed to surrender before Chief Judicial Magistrate, Sirsa within a week from today to undergo the remaining sentence awarded, vide modified this judgment. In case he fails to do so, CJM, Sirsa 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.

The appeal stands disposed of accordingly.

26.08.2022

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(H.S. MADAAN)
JUDGE

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