

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

CRA-S-1190-SB-2014 (O&M)

Date of pronouncement: 17.08.2022

Amandeep Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Ms. Sumanjit Kaur, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Briefly stated facts of the case, as per prosecution story are that on 14.06.2012, a police party from Police Station City, Sri Muktsar Sahib headed by ASI Pritam Singh was discharging official duties, while doing patrolling and checking of suspects going in a private vehicle; when the police party while going from PS City, Sri Muktsar Sahib towards seepage canal bridge of Bura Gujjar road, had reached near Bharat Gas Agency situated on link road, then from the opposite direction the accused was spotted coming carrying a polythene satchel (jhola) in his hand; on seeing the police party, he tried to slip away on his left hand side towards Bharat Gas Agency; ASI Pritam Singh (IO) got suspicion and directed that the vehicle carrying the police party be brought to a halt; it was accordingly done; he challenged the accused asking him to

stop and then apprehended him, enquiring about his name and other particulars, which he disclosed; the IO suspected that the accused was carrying some contraband in the plastic satchel, which he was holding in his hand and IO wanted to search the same; he apprised the accused of his legal right to get the search conducted in the presence of some Gazetted Officer or a Magistrate; however, the accused stated that he had faith in the IO and gave his consent to be searched by him; consent memo in that regard was prepared which was signed by accused in Punjabi and attested by witnesses; thereafter, the plastic satchel was searched; it was found to contain 15 vials of Parvo-Cof; one vial containing 100 ml of Parvo-Cof was separated as a sample and converted into a parcel; the remaining 14 vials each containing 100 ml of Parvo-Cof were converted into bulk parcel; both the parcels were sealed by the IO with his seal having impression 'PS'; sample seal chit was prepared; seal after use was handed over to HC Joginder Singh; Form M-29 were filled at the spot; thereafter the entire case property along with sample seal chit and Form M-29 was taken into possession, vide recovery memo, attested by the witnesses; the accused was formally arrested in this case as per rules and necessary documents were prepared in that regard; ruqa was sent to the police station through PHG Nanak Chand on the basis of which FIR in question was recorded; the IO prepared rough site plan of the place of recovery, recorded statements of witnesses.

On return to the police station, the IO handed over the custody of the accused along with case property to ASI Chainchal Singh

who was officiating SHO of Police Station Sri Muktsar Sahib; the latter verified the facts from the accused as well as IO and thereafter put his seal on both the parcels having impression 'CS'; he also attested the sample seal chit; the case property along with the sample seal chit and Form M29 were taken into police possession, vide separate memo; the accused was put in the lock-up.

On the next day, the accused along with the case property was produced by ASI Chainchal Singh before CJM, Sri Muktsar Sahib who finding the seals intact issued necessary certificate and thereafter on receiving the orders and certificate of the Court, ASI Chainchal Singh on return to the police station deposited the case property with MHC Balwinder Singh, who further sent sample through HC Bohar Singh to the office of Chemical Examiner, Punjab, Mohali.

2. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court; 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 an offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short '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 HC Joginder Singh, PW2 HC Bohar Singh, PW3 HC Balwinder Singh, PW4 ASI Pritam Singh, PW5 ASI Chainchal Singh 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 is innocent and has been falsely implicated in this case. As a matter of fact, no recovery was effected from him and he was picked up from his house and taken to police station and later on involved in this case falsely.

5. During his defence evidence, the accused examined Sh. Mangat Ram as DW1 who supported his version.

6. The trial Court formulated the following point for determination:-

“Whether on 14.06.2012 at about 7 PM in the area of City Sri Muktsar Sahib, the accused was found in possession of 15 vials of Parvo-Cof each containing 100 ml syrup without any permit of license and, whether he can be convicted for the offence for which he has been challaned and charged?”

7. After hearing arguments, the trial Court, vide judgment dated 09.12.2013 convicted the accused for the offence for which he had been booked and in terms of the order of even date, he was sentenced to undergo rigorous imprisonment (RI) for a period of 10 years and to pay a fine of Rs.1 lakh; in default of payment of fine, to undergo further RI for one year.

8. Feeling aggrieved by the judgment of his conviction and

order of sentence, the accused has filed the present appeal, notice of which was given to the State.

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

10. Here the witness of recovery namely PW4 ASI Pritam Singh, the IO of this case and PW1 HC Joginder Singh, PW2 HC Bhor Singh have fully supported the prosecution story as regards the accused having been found in possession of 15 vials of Parvo-Cof each containing 100 ml of syrup without any permit of license on 14.06.2012 in the area of City, Sri Muktsar Sahib. They were cross-examined at length on behalf of the accused but they could not be shattered on any material point, rather they stuck to their guns. No motive has been suggested or proved prompted by which they might have involved the accused falsely or deposed against him to secure his conviction. All of them deposed in a natural and convincing manner and account given by them inspire confidence.

PW2 HC Bohar Singh had taken the sample to the office of Chemical Examiner and he had furnished his affidavit Ex.P2/A stating that till the sample remained in his possession, he did not allow anybody to touch or tamper its seals and he himself did not do so.

PW5 ASI Chainchal Singh, officiating SHO of Police Station City, Sri Muktsar Sahib also deposed regarding the safe custody of case property. This is further fortified from the order Ex.PW5/D and PW5/E passed by Illaqa Magistrate, Sri Muktsar Sahib on police applications

when the accused along with case property had been produced before the said Magistrate on the next day of recovery i.e. on 15.06.2012. Then PW3 HC Balwinder Singh had testified in that regard with regard to safe custody of the case property till it remained in his possession. In that way, necessary link evidence is also there. From report given by FSL, Punjab it comes out that the sample parcel was found to be that of Parvo-cof. The accused has failed to render any reasonable or plausible explanation for possession of the recovered drugs without any permit or license. Therefore, it comes out that he was in conscious possession thereof and he possessed culpable mental state and therefore necessary ingredients of offence under Section 22 of the Act are completely fulfilled.

11. Learned counsel for the appellant has submitted that no independent witness was joined with the police party despite easy availability since the place of recovery is surrounded by residential houses and it creates a doubt over the truthfulness of the prosecution version.

I do not find any merit in this contention because the depositions of official witnesses are at par with those of independent witnesses, though, if it is established on record that the official witnesses had any previous enmity with the accused, then a doubt does arise in the mind and then the depositions of official witnesses require a close scrutiny. However, nothing of that sort comes out to be there, in the instant case.

Learned State counsel has referred to judgment by a Division

Bench of this Court **Sucha Singh Vs. State of Punjab**, 2015 (4) RCR (Crl.) 25, wherein dealing with a case of recovery of contraband when the independent witness joined by police had turned hostile and rather appeared as witness for the accused denying that he was joined as witness to search and recovery and rather stating that his signatures were produced on blank papers when he had visited police station in drunkard condition while holding that it could not be believed that numerous signatures on various papers having different writing material could be signed by a witness on blank papers. The deposition of that witness was rejected and it was further observed that when there are no allegations of any enmity against the police officials to falsely implicate the appellants and no reason was there for them to depose against the appellants, then observation by trial Court that non-examination of independent witness of search and recovery being won over by the accused did not raise any doubt in the prosecution case, was endorsed.

A Single Judge of this Court while dealing with such aspect in judgment **Krishan Kumar Vs. State of Punjab, 2016(2) RCR (Crl.) 707**, 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. Therefore, this contention of learned counsel for the appellant is found to be without any merit.

12. Another argument put-forward by learned counsel for the appellant was that recovery in this case was effected on 14.06.2012

whereas sample was sent on 25.06.2012, after a delay of about 11 days, which again creates a doubt in the mind about authenticity of prosecution version. This argument is also without merit. In view of the detailed discussion above, it has been proved that the contraband has been recovered from the accused. He was in conscious possession thereof, in view of Sections 35 and 54 of the Act, since he had failed to account for the possession, the sample had been received in the office of Chemical Examiner with seals intact and no prejudice of any type is shown to have been caused by delayed sending of sample to that office.

The Apex Court dealing with such eventuality in a case **Hardeep Singh Vs. State of Punjab** in Criminal Appeal No. 737 of 2007 decided on 20.08.2008 had observed that when samples had been sent to Chemical Examiner after 40 days, it was not fatal since there was no evidence that samples were tampered with and it caused no prejudice to the accused. Similar is the position in this case. Therefore, this argument by learned counsel for the appellant is also rejected.

13. Learned counsel for the appellant further stated that in this case as per prosecution story, seal after use was handed over by the IO to the police official and not to independent witness. I do not find any merit in the contention. There is no requirement of law that seal after use is to be handed over to some independent witness. It is just rule of caution and prudence. Its non-compliance does not vitiate the recovery proceedings.

14. The judgment of conviction passed by the trial Court is quite detailed, well reasoned, based upon proper appraisal of evidence and

correct interpretation of law. There is no illegality or infirmity therein. The same is upheld as regards the conviction.

With regard to sentence part, the contraband recovered from the possession of accused amounts to commercial quantity. The trial Court in order of conviction has dealt with this aspect giving convincing reasons, finding that the total quantity of codeine phosphate of Parvo-cof comes out to 1.5 litre per kg which comes under commercial quantity. The sentence awarded to the appellant/accused is minimum prescribed and there is no scope for further reduction in the sentence. Therefore, his sentence part is upheld.

The appeal is found to be without merit and same is hereby dismissed.

15. The appellant/accused is directed to surrender before Chief Judicial Magistrate, Sri Muktsar Sahib 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.

17.08.2022
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(H.S. MADAAN)
JUDGE

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