

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

CRA-S-3098-SB-2015 (O&M)
Date of pronouncement: 17.08.2022

Joginder Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. Amaninder Preet, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. In nutshell the facts of the case, as per prosecution story are that on 21.07.2012, a police party from Police Station Kurali headed by ASI Nirmal Singh (IO) while travelling in official vehicle bearing No. PB-65-E-0892 was carrying out patrolling and checking of suspicious persons within jurisdiction of the police station; while the police party was there at village Niholka on the road towards village Dasarna side, the IO received a secret information that Joginder Singh son of Bant Singh resident of Shantpur, Police Station Chamkaur Sahib District Ropar then residing at Kurali city used to bring intoxicant powder from outside and then sell the same to people at Kurali and adjoining villages; on that day, he was bringing intoxicant powder from Chandigarh in his

Maruti Car bearing No. HR-O6-D-1552, in case a picket was laid at bridge of Dasarna river, then Joginder Singh could be caught red handed along with intoxicant powder; believing the information to be reliable, the IO sent ruqa to police station through Constable Rajsukhwant Singh, on the basis of which formal FIR was recorded; the police party laid picket at bridge of Dasarna river, during the course of nakabandi, a Maruti Car bearing No.HR-06-D-1552 coming from Chandigarh side was stopped by giving a signal; on being inquired, the driver disclosed his name as Joginder Singh son of Bant Singh, resident of Shantpur, then residing at Kurali; the IO disclosed his identity to the accused, stating that he intended to search his car and that the accused had a right to get the car searched from any Gazetted Officer or Magistrate; the accused opted to get the search conducted from the IO, stating that he had faith in him; the IO prepared a consent memo which was signed by the IO in English and attested by witnesses; thereafter, Maruti car of the accused was searched and from the empty space behind the driving seat, a plastic box was recovered; on being opened and checked, it was found to contain intoxicant powder; from beneath the driving seat, an envelope of wax paper was recovered and on being checked it was found to contain 20 strips of Parvon spas; each strip containing 10 capsules; the IO drew two samples weighing 50 gm each from the intoxicant powder in the plastic box; the samples were put into two separate plastic boxes which were converted into parcels; the remaining intoxicant powder in the plastic box on being weighed came out to 2400 gm; the residue

intoxicant powder was re-transferred in the same plastic box; it was also converted into a parcel, then two sample parcels and the bulk parcel were sealed by the IO with his seal having impression 'NS'; two strips of capsules were taken out as samples and converted into a parcel; remaining 18 strips were also converted into separate parcels; all the parcels were sealed by IO with his seal 'NS'; the entire case property was then taken into police possession vide recovery memo; seal after use was handed over to HC Manohar Singh; Form M29 was filled up at the spot; the entire case property was taken into police possession vide recovery memo attested by PWs; the accused was formally arrested in this case; rough site plan of place of recovery was prepared; Maruti car of the accused was seized vide a separate recovery memo; statements of witnesses were recorded.

On return to the police station, the IO produced the accused along with case property and witnesses before Inspector Mahesh Kumar, SHO of Police Station who after carrying out inspection, sealed the case property with his own seal having impression 'MK' and attested the specimen seal impression chit of the IO; then the case property was handed over to MHC of the police station and accused was put in the lock-up.

On the next day i.e. on 22.07.2012, ASI Nirmal Singh took the case property from MHC of the police station; the accused was taken out from police lockup and the accused along with case property and inventory were produced before JMIC (D), Ropar; the accused was

remanded to judicial custody; on return to the police station, the IO deposited the case property with MHC.

On 23.07.2012, one parcel of plastic box containing 2350 gm of intoxicant powder sealed with seal impression 'NS/AKC'; one parcel containing 16 strips of parvan spas sealed with the seal impression NS/AKC; three sample parcels which included one parcel of plastic containing intoxicant powder duly sealed with seal having inscription 'NS/AKC', one parcel containing 2 strip of parvan spas sealed with seal impression 'NS/AKC' were taken out from malkhana and deposited in judicial malkhana, Ropar in intact condition.

On 30.07.2012, a sample parcel containing 50 gm of intoxicant powder, another sample parcel containing two strips of parvan spas, both parcels duly sealed were handed over to Constable Ashish Kumar for depositing the same in the office of Forensic Science Laboratory, Mohali.

On 06.10.2012, the accused was produced before the Court of Magistrate along with the photographs which were taken into possession by the IO. On 19.10.2012, one Sukhbir Singh resident of Village Sotal, presented the documents related to maruti car before the IO who took into possession the same, vide recovery memo; the statements of witnesses were recorded; report of Chemical Examiner was not received, nevertheless challan was prepared, stating that as and when the report from FSL was received, the same would be produced in the Court.

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 Manohar Singh, PW2 Constable Ashish Kumar, PW3 ASI Nirmal Singh, PW4 Amanbir Singh, Photographer, PW5 Amrik Singh, Sr. Assistant, DTO Office, SAS Nagar, PW6 HC Narinder Singh, PW7 Inspector Mahesh Kumar 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. As a matter of fact, no recovery was effected from him. He stated that there was a dispute between him and his wife. ASI Jagir Singh and Kamaljit Singh, who was posted in Health Department, Punjab, are maternal uncles of his wife. ASI Jagir Singh has involved him in this case falsely. The police had picked him from his house on 18.07.2012 and then involved him in this case falsely.

5. During his defence evidence, the accused examined DW-1 Mohinder Singh, who supported his defence version.

6. After hearing arguments, the trial Court, vide judgment dated 25.05.2015, 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.1.5 lakhs; in default of payment of fine, to further undergo RI for one year.

7. 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.

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

9. Here PW3 ASI Nirmal Singh, and PW1 HC Manohar Singh fully supported the prosecution story with regard to recovery of contraband from the possession of accused on the date, time and place as per prosecution version which he was carrying in his maruti car bearing No.HR06-D-1552. 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. Although, according to the prosecution story, the accused had strained relations with his wife and they were involved in litigation. One Kamaljit Singh working in Family Welfare Department and ASI Jagir Singh are maternal uncles of his wife and they have got him involved in this case falsely but I do not find this

reason to be very convincing. An official of the rank of the Superintendent in a Government Department and a police officer of the junior rank of ASI cannot be that influential so as to make the local police act as per their wishes and to involve an innocent person in a criminal case falsely. The matter of involvement of an innocent person in a false case is quite serious and if the allegations in that regard get proved, the officer and official indulging in such type of acts may not only lose their jobs but may have to go to jail even. Therefore, the IO and other police officials connected with the investigation of this case would not have risked their necks by involving the accused in this case falsely just at the instance of ASI Jagir Singh or his brother Kamaljit Singh.

Although DW1 Mohinder Singh, brother of the accused had supported his version in that regard but he being real brother of the accused had always a reason to depose in his favour to save him from conviction. Therefore, he is an interested witness and much reliance cannot be placed upon his testimony.

I do not see any reason to discard the statements of witnesses of recovery. The prosecution has successfully proved the link evidence by

producing sufficient evidence including examining PW7 Inspector Mahesh Kumar, who was posted as SHO Police Station Kurali on the day of recovery and before whom the accused along with case property and witnesses had been produced and who after verifying the facts had

put his own seal having impression 'MK' on the parcels.

PW-6 HC Narinder Singh in his affidavit PW6/A stated that on 21.07.2012 he was In-charge of malkhana of PS Kurali and on that day, Inspector Mahesh Kumar had deposited with him the case property along with other articles and on 22.07.2012, vide report No.15 at 12.40 PM, he had handed over the case property except maruti car to ASI Nirmal Singh for producing the same in the Court and on 22.07.2012, vide report No.21 at 4.40 PM, ASI Nirmal Singh on return had deposited with him the case property. He had further testified that on 30.07.2012, vide RC No.158 he had handed over sample parcel of intoxicant powder weighing 50 gm, another parcel of capsules parvan spas with seals intact along with sample seal chit and form M-29 to Constable Ashish Kumar for depositing the same to the Office of Director, FSL, Mohali, who accordingly did so and on return handed over receipt to him which he made part of the record. He further stated that on 23.07.2012, vide RC No.150 he had taken out one parcel containing intoxicant weighing 50 gm duly sealed, one sample parcel capsule parvan spas and one plastic box containing intoxicant powder weighing 2 kg 350 gm duly sealed in intact condition for depositing the same with Incharge, judicial malkhana, Ropar. It was accordingly done and receipt was handed over to him. He testified that so long the case property remained in his possession, no tampering with the same was done.

PW-2 Constable Ashish Kumar, the sample carrier in his

affidavit Ex.PA also deposed about safe custody of the parcels so long as they remained in his possession.

10. The investigation in this case has been carried out in a fair and impartial manner. No violation of any mandatory provision of law is shown to have taken place. The prosecution had successfully proved guilt of the accused conclusively and affirmatively.

11. Learned counsel for the appellant has raised various contentions while trying to find faults with the impugned judgment and order. His first ground of attack was that accused had no concern with the maruti car in question and from the evidence adduced by the prosecution in the form of examining PW5 Amrik Singh, Sr. Assistant, DTO Office, Mohali, it only comes that it was originally owned by Dharamjit Singh son of Pirthi Singh, R/o Ward No.6, Kurali and then it was transferred in the name of Sukhbir Singh son of Mohinder Singh R/o Village Sotal, District SAS Nagar, Mohali. The name of accused does not figure as original owner or transferee, therefore, no connection between accused and the car in question could be established by the prosecution.

However, this argument does not have any weightage. As is established on record by the prosecution by bringing enough cogent and convincing evidence, accused Joginder Singh was driving the maruti car from which the contraband had been recovered. It was for him to explain as to how such contraband came to be there in the car. He has failed to account for his possession of the contraband, therefore,

drawing presumption under Sections 54 and 35 of the Act, it is to be taken that the appellant was in conscious possession of the contraband. He cannot simply wash his hands of the matter stating that he has nothing to do with the recovered drugs, rather the natural inference to be drawn is that he was in conscious possession thereof. The trial Court has dealt with this aspect in detail in para No.18 of the judgment making reference to photocopy of affidavit executed by Joginder Singh-accused regarding purchase of vehicle which had been taken into police possession, vide a recovery memo. The IO while getting his statement recorded had testified in that regard, referring to the affidavit as Mark 'B' but he was not cross-examined on that point. Merely because the accused did not get the vehicle transferred in his own name, does not go to show that he has nothing to do with the recovery of contraband from the car in question, which he was driving when apprehended by the police.

12. One more argument put forward by learned counsel for the appellant was with regard to non-joining of any independent witness. However, this argument is without any force. As has been held by a Single Judge of this Court in case **Krishan Kumar Vs. State of Punjab, 2016(2) RCR (Crl.) 707**, 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. The trial Court has also dealt with this aspect in detail referring to the case law on the point.

13. A few minor variations and discrepancies in the statements of prosecution witnesses so pointed out by learned counsel for the appellant do not go to the root of the matter, since the prosecution had fully proved its charge against the accused beyond a shadow of reasonable doubt. As per report Ex.PN, from analysis of parcel No.1, the ingredients were found to be of diphenoxylate hydrochloride to the extent of 3.2% was found present and from the analysis of parcel No.2 containing 20 loose capsules of maroon colour in strip labeled as parvan spas the ingredients of Dextropropoxyphene hydrochloride to the extent of 64.7 mg/capsule, Dicyclomine hydrochloride to the extent of 9.6 mg/capsule and Paracetamol to the extent of 399.6 mg/capsule were found present. The salt diphenoxylate hydrochloride comes out to be of commercial quantity and with regard to 20 strips of capsules of parvan spas Dextropropoxyphene hydrochloride, it comes out to 127.2 gm. The trial Court in para No. 26 has dealt with this aspect in detail, finding that necessary ingredients of Section 22 of the Act are proved.

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 sentence awarded to the appellant/accused is the minimum prescribed and there is no scope for further reduction in the sentence. Therefore, his sentence

part is also 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, Rupnagar 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