

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

CRA-S-2269-SB-2004(O&M)

Date of decision:-5.8.2022

Sheikh Badroo Doza

...Appellant

Versus

State of Punjab

...Respondent

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

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

Rana Harjasdeep Singh, DAG, Punjab.

H.S. MADAAN, J.

1. Appellant Sheikh Badroo Doza was tried by learned Judge, Special Court, Bathinda in case FIR No.120 dated 13.8.2002 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Sangat and in terms of judgment dated 8.10.2004, he was convicted in that case for the offence for which he was booked and in terms of order passed on 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 undergo further rigorous imprisonment for a period of 6 months.

2. Briefly stated, the facts of the case as per prosecution version are that on 13.8.2002, a police party led by ASI Gurdev Singh from Police Station Sangat, District, Bathinda was doing patrolling in the area within revenue limits of village Pathrala; when the police party reached near bus stand of that village, an independent witness namely Hakam Singh joined it; in the meanwhile, a Maruti Car bearing registration No.DBG-5494 was observed standing on the right side of the road with its front portion having hit a KIKAR tree; the police party inspected the car and found that two gunny bags having contents were lying in the dicky of the car with two gunny bags full being there on the rear seat of the car; in the meanwhile, J.C.O./Naib Subedar Sh.P.C. Berman from a nearby military camp came and produced the accused Sheikh Badroo Doza before the Investigating Officer; Sh.P.C. Berman disclosed that accused was driving the car, which had met with an accident and the accused had received injuries for that reason he had been taken to first aid room in the military camp and after providing the first aid, he had been produced before the Investigating Officer; since the police party suspected that some contraband was being carried in the bags placed in the car and the Investigating Officer wanted to search the car and the bags, he informed the accused of his right to get the car searched in presence of a Magistrate or a gazetted officer; the accused vide consent memo Ex.PA opted to get the search conducted in presence of a gazetted officer; that memo was signed by the accused and attested by the witnesses; thereafter, the Investigating Officer sent a wireless message at Police Station Sangat for sending some gazetted officer to the spot; on receipt of that message

Sh.Jagmohan Singh, DSP(Rural) arrived at the spot; he was apprised of the facts of the case and introduced with the accused and independent witness; thereafter the DSP himself informed the accused of his right to get the search conducted in presence of any other gazetted officer or Magistrate but the accused reposed confidence in DSP Jagmohan Singh vide consent memo Ex.PB signed by the accused and attested by witnesses, as such, the bags in the Maruti car were searched and they were found to contain poppy-husk. A sample of 250 gms. each was drawn from the four bags and converted into parcels; they were given serial Nos.1 to 4. On being weighed, the residue poppy-husk in each of the bag came out to be 32 kgs.250 gms.; the four bags containing residue poppy husk were converted into four different parcels; the bulk parcels were sealed with the seal of IO having inscription GS; after use the seal was handed over to Hakam Singh, independent witness; bulk parcels and sample parcels were taken into police possession vide recovery memo; sample seal impressions were also taken. The search of maruti car revealed that driving licence of accused was there, which was also taken into possession. The personal search of accused was conducted and a memo was prepared in that regard; grounds of arrest were served upon the accused vide a memo; from further search of the car, one affidavit executed and sworn in by Krishan Pilani in favour of Mrs.Rubi wife of the accused was recovered. The affidavit along with maruti car were taken into police possession. Ruqa was sent to the police station through Constable Tarsem Singh, on the basis of which formal FIR was recorded at the police station. The site plan of the place of recovery was prepared.

3. On return to the police station, the accused along with the case property and the witnesses were produced before the SI Devinder Kumar, SHO of the Police Station Sangat, who had verified the facts of the case from the accused and witnesses. The accused was put up in the lock up and the case property was deposited with the MHC of the police station. The case property was produced before Illaqa Magistrate and necessary proceedings were carried out. During the course of investigation, sample parcels were sent to the office of Chemical Examiner, Punjab on 22.8.2002 through Constable Sukhdev Singh and as per report Ex.PN received therefrom, those were found to be that of Chura Poppy Heads. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

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 ASI Gurdev Singh, who was the Investigating Officer of the case deposed regarding the recovery of the contraband from the car of the accused and further about the investigation having been conducted by him proving various documents Ex.PA to Ex.PL and bulk parcels Ex.P2 to Ex.P5.

PW2 DSP (Rural) Jagmohan Singh lent support to the prosecution case on material aspects deposing that on request of the

Investigating Officer, he had gone to the spot and had witnessed the search proceedings. He deposed that four bags each containing 32 kgs.500 gms. of poppy husk were recovered from the conscious possession of the accused.

PW3 Constable Sukhdev Singh, a formal witness tendered into evidence his affidavit Ex.PM testifying that he had deposited the sample parcels in the office of Chemical Examiner, Patiala on 22.8.2002 after those were handed over to him by MHC of the police station and the sample parcels remained in intact condition.

PW4 SI Devinder Kumar, who was posted as SHO of Police Station Sangat at the relevant time stated that on 13.8.2002, the entire case property, sample parcel and accused were produced before him by Gurdev Singh ASI. He found the case property in intact condition and put his own seal having inscription DK on all the four parcels and bags besides putting his seal and sample seal slip. He further deposed regarding taking into possession the case property, maruti car and sending report Ex.PJ to higher officers, adding that on 14.8.2002, he had produced the case property before the Illaqa Magistrate by moving application Ex.PL and the Illaqa Magistrate had passed order Ex.PL/1 for keeping the case property in judicial MALKHANA; however, on report Ex.PL/2 by the Incharge, Judicial Malkhana with regard to shortage of space there, the Magistrate by passing order Ex.PL/3 directed that the case property be deposited in the police station under rules. The inventory of the case property Ex.PM was prepared and then the entire case property had been produced before the Illaqa Magistrate. He further stated that the accused

was given an offer for getting second sample to be analyzed from the chemical laboratory but he did not opt to do so.

6. With that the prosecution evidence got concluded.

7. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence against him were put to such accused but he denied the allegations contending that he was innocent and had been falsely involved in this case. He had taken up a plea to the following effect:

“I was not driving the car No.DBG-5494 on 13.8.2002. On 11.8.2002, I had gone to Dabawali to purchase second hand jeep for my brother. I was accompanied by Gulam Nabi, Dawood Sekh son of Safudin Sekh, Jamilpur Rehman son of Abdul and Pardeep Chaudhri which was of Zen make. I was arrested by the police while returning back to Ludhiana and falsely implicated in this case. Even though nothing was recovered from my possession. I am innocent.”

8. In his defence evidence, the accused examined HC Raj Pal as DW1, who produced DDR Nos.15 and 16 dated 11.8.2002 and DDR No.14 of 12.8.2002. By examining this witness, the accused wanted to prove that ASI Gurdev Singh, the Investigating Officer had been put on patrolling duty on different dates at different times.

DW2 C-II Arjan Singh produced the record of DDR from 11.8.2002 to 13.8.2002 to show that SHO Davinder Kumar was deployed on official duties on different occasions.

DW3 Hakam Singh, an independent witness, who had joined

the police party and witnessed the recovery and other proceedings had been given up by the prosecution for the reason of having been won over by the accused. This witness was examined by the accused in his defence and he stated that on 13.8.2002, he had gone to Police Post village Pathrala in connection with a dispute between Bajigars of his village for the purpose of resolving that dispute and at that time ASI Gurdev Singh took his thumb impressions on five blank papers on the pretext of preparing compromise. The witness stated that no poppy-husk was recovered from the accused in his presence.

9. It may be mentioned here that the accused had closed his defence evidence on 31.7.2004. However, since the Additional P.P. had moved an application under Section 311 Cr.P.C. to call Naib Subedar P.C. Berman, which application was allowed on 11.8.2004, Sh.PC Berman was examined by the prosecution as PW5 in the form of additional evidence. PW5 P.C. Berman stated that on 13.8.2002, accused Sheikh Badroo Doza was produced before him by Lance Naik Vinu – T and at that time accused told him that he had met with an accident of his car bearing No.DBG-5494, which accused was driving. According to PW5, he had inspected the car in presence of the accused and found that poppy husk from the car. At that time personal search of the accused was carried out in presence of the witness and he had signed the personal search memo Ex.PD.

10. After examination of PW5 by way of additional evidence supplementary statement of accused was recorded on 23.9.2004. In that statement, accused admitted that driving licence belongs to him and he

was driving the car and further that affidavit Mark-A regarding purchase of car was in the name of his wife Smt.Rubi. The accused had stated that car No.DBG-5494, which he was driving had met with an accident on 11.8.2002 near Pathrala and on that day, the Army Authority had sent a message to his Unit at 17 FAD, c/o 56 APO and on that day nothing incriminating from his car was found or recovered.

11. After recording of supplementary statement of accused, he had examined DW5 Subedar Sukhdev Singh, who produced signal messages Ex.DX and Ex.DY. Ex.DX is message dated 13.8.2002 sent from Headquarter at ART Brigade regarding accident of Sheikh Badroo Doza and Ex.DY is signal message dated 14.8.2002 specifically stating that accident of Sheikh Badroo Doza had taken place on 11.8.2002 and on 13.8.2002 , 130 kgs. of poppy husk was recovered from his car and FIR was registered at Police Station Pathrala.

12. 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 20.11.2004 when it was admitted for regular hearing and on that very day, 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.

13. Now the case has come up for regular hearing.

14. I have heard learned counsel for the appellant – accused - convict, learned DAG for the State of Punjab besides going through the record.

15. The trial Court relying upon the oral and documentary evidence brought on file by the prosecution has reached a clear conclusion that accused was driving the maruti car standing in the name of his wife Rubi, which met with an accident by hitting a KIKAR tree on 13.8.2002 and 130 kgs. of poppy husk being carried in it in the form of 4 bags was recovered therefrom, in that way, the accused was found in conscious possession of the contraband in his car. The defence taken up by the accused that as a matter of fact the car had met with an accident on 11.8.2002, whereas recovery was effected on 13.8.2002, as such he cannot be held responsible for the same, was considered and rejected by giving cogent and convincing reason referring to the evidence brought on file by the prosecution as well as stand taken by the accused in defence and evidence brought on file by him. The recovery involved in this case is on a very high side constituting commercial quantity. There is nothing on record to show that the Investigating Officer or other police personnel connected with the investigation had any previous enmity with the accused prompted by which, they might have involved the accused in this case falsely or deposed against him to secure his conviction. No violation of any mandatory provision of the Act comes out to be there.

16. As regards the judgment referred to by learned counsel for the appellant i.e. **Boota Singh and others Versus State of Haryana, 2021(2) RCR(Crl.) 892** by the Apex Court, that judgment does not help the accused/appellant much since the recovery had been effected from the damaged maruti car, which was standing on the road side and the recovery had not been done in pursuance of receipt of any secret

information. Even otherwise, the facts and circumstances of the case were different so was the context, in which the observations had been made.

17. As regards the other judgment relied upon by counsel for the appellant i.e. **Amrik Singh and others Versus State of Punjab** passed by Single Bench of this Court in CRA-S-2352-SB-2003, that judgment also does not find application to the facts of the present case.

18. Learned State counsel has referred to various judgments in support of his contention that no violation of any mandatory provision was there. The Apex Court in **Hardip Singh Versus State of Punjab, 2008(4) RCR(Criminal)97** while dealing with a case relating to recovery of 7 kgs. of opium when samples were sent to chemical examiners after 40 days of recovery, however, there was no evidence that samples were tampered with or any prejudice was caused to the accused, the delay was not held to be fatal to the case.

19. Learned State counsel has further referred to judgment by Single Bench of this Court i.e. **Kashmiri Lal Versus State of Punjab** passed in CRA-214-SB of 1994 decided on 31.7.2008, wherein referring to judgment by Full Bench of this Court in case **Piara Singh Versus The State of Punjab, 1982 CLR(2) 447** when the seal on the sample of illicit liquor recovered from the accused, was not entrusted to an independent person forthwith and the independent person though entrusted with the seal by the Investigating Officer was not produced as a witness, in the circumstances, it was held that those facts alone were not sufficient to affect the merits of the case and the prosecution case could not be thrown out on that score alone. In that judgment it was held that it was not

incumbent upon the police officer to hand over the seal to a third person forthwith and even, in cases, where he had done so, it was not obligatory for him, to produce such person, as a witness during the trial since there was no statutory requirement. Referring to the case law on the subject in this very judgment, it was observed that Section 50 of the Act is applicable to personal search of an accused and not in relation to the premises, vehicles or other articles.

20. Another judgment referred to by learned State counsel was ***Varinder Kumar Versus State of Himachal Pradesh, 2019(1) RCR(Criminal)1003*** wherein 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.

21. Learned State counsel has further placed reliance upon judgment ***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. 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.

22. In **Natha Singh and Ors. Versus State of Haryana, 2017(4) RCR(Criminal)1037**, it was observed that when immediately on receipt of the secret information, the SI sent VT message to the DSP and the raid was conducted after DSP arrived at the bus-stand, the recovery was effected in presence of gazetted officer, which satisfies the provisions of Section 42 of the Act, there was no reason to interfere with the well-reasoned judgment of the High Court.

23. Another important judgment pressed into service by learned State counsel was **Krishan Kumar Versus State of Punjab, 2016(2) RCR(Criminal)707** by a Single Bench of this Court, wherein the various aspects of the case were discussed, which are as under:

A. Evidence Act, 1872 Section 3 Criminal trial – Official witnesses – Testimonies of the official witnesses carries the same evidentiary value as that of any other witness – Their statements

cannot be discarded simply on account of their official designation.

B. Narcotic Drugs and Psychotropic Substances Act, 1985

Section 15 Contraband – *Delay in sending sample – It is established that the case property remained intact throughout and was never tampered with at any point of time – Mere delay of 14 days in sending the sample parcels to the Chemical Examiner is of no legal consequences.*

C. Narcotic Drugs and Psychotropic Substances Act, 1985

Section 15 Recovery of contraband – *Seal was handed over to the police official instead of independent witness – It will not create any dent in the prosecution case.*

D. Narcotic Drugs and Psychotropic Substances Act, 1985

Section 54 Contraband – Conscious possession – *It is established that the appellant was in possession of the contraband – It was for him to show that he was not in conscious possession thereof – Section 54 of the Act creates a legal fiction and presumes that the person in possession of the illicit article, to have committed the offence in case he fails to account for the possession.*

E. Narcotic Drugs and Psychotropic Substances Act, 1985

Section 35 Contraband – *Mental state presume that the accused has culpable mental state and has committed the offence.*

F. Narcotic Drugs and Psychotropic Substances Act, 1985

Section 15 Contraband – *False implication – Recovery of 35 bags containing 35 kilograms poppy husk in each bag from the possession of the present appellant and his co-accused – Such a*

huge quantity of the contraband cannot be planted by the police from its own source, that too, just for the false implication – Conviction and sentence upheld.

24. In another judgment relied upon by the State counsel i.e. **Khet Singh Versus Union of India** by the Supreme Court in Appeal (Crl.) 31 of 2000, it was observed that law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the Court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.

25. Thus, the amount of recovery of contraband involved rules out the possibility of any false plantation, rather it comes out that the accused was in conscious possession of the recovered contraband since he has failed to render a reasonable or plausible explanation for the presence of bags containing contraband in the car having been driven by him standing in the name of his wife. He was rightly convicted and sentenced by the trial Court. Considering the contraband recovered from him, the trial Court has been somewhat lenient with the convict awarding him substantive imprisonment of 10 years only, which is the minimum prescribed for the offence.

26. 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.

27. Appellant Sheikh Badroo Doza is stated to be on bail granted to them by this Court. His bail is cancelled. Chief Judicial Magistrate, Bathinda is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

5.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes