

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

SR. No.346

CRA-S-667-SB-2004 (O&M)

Reserved on:24.11.2022

Pronounced on:24.01.2023

Malkiat Singh @ Gurmit Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Amit Kumar Goyal, Advocate/Amicus Curiae,
for the appellant.

Mr. M.S.Bajwa,DAG, Punjab
for the respondent-State.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 01.03.2004 passed by the learned Special Court, Jalandhar, whereby the appellant was convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lac along with default stipulation.

The factual matrix of the present case is that on 19.03.1998, SI Sukhpal Singh along with other police officials was on patrolling duty. They saw a truck bearing registration No. PAT-7771 in the Grain Market and also heard some noise. SI Sukhpal Singh along with the other police officials reached there and found that two persons were unloading the bags from the

said truck from its rear side and on seeing the police party, the driver of the said truck sped away the truck bearing registration No.PAT-7771. Later on, the name and address of the truck driver was known to be Jaswant Singh son of Gurdial Singh resident of Sant Nagar, Phillaur and the remaining two persons were apprehended by the police. The said two persons disclosed their names as Makhan Singh (since deceased) and Malkiat Singh (present appellant) and they had already unloaded ten bags from the said truck. On asking by the police party about the contents of the bags, the accused informed that the bags contained poppy husk. On this, SI Sukhpal Singh asked them that he wanted to get the search conducted and if the accused wanted their search from some gazetted officer or a Magistrate, they may be informed. The accused reposed confidence in SI Sukhpal Singh and their consent memos were prepared. The police party made efforts to join an independent witness but nobody was willing to join. The bags were thereafter searched and on searching, the same were found containing poppy husk. 250 grams of poppy husk was taken out as sample from each of the bag and were made into parcels. The remaining poppy husk in each bag was found to be 34 kg 750 grams. The samples as well as the bags were sealed with seal "SS" and separate seal impressions were prepared. The samples, the case property and the sample seal impressions were taken into possession by the police party vide separate recovery memo and ruqa was sent to the police station, on the basis of which, the FIR was recorded by MHC Jagir Singh. The police officials conducted the initial investigation. SHO Balwinder Singh met the police party on the way and SI Sukhpal

Singh produced before him the sample, the case property, the accused and the witnesses and he also affixed his seal “BS” on the samples and the case property and the separate seal impressions were also prepared. On return to the police station, the case property was deposited with MHC Jagir Singh. The truck was later on taken into possession during the course of investigation on 17.05.1998. After necessary investigation, the challan was filed in the competent court along with the report of the Chemical Examiner.

After hearing the parties and finding a prima facie case, the charge under Section 15 of the Act was framed against the appellant and he pleaded not guilty and claimed trial.

In support of the charge, the prosecution examined six witnesses. HC Jagir Singh and C. Satwinder Singh were examined as PW-1 and PW-2, respectively and their evidence was formal in nature. Jagdev Singh, Clerk, office of District Transport Officer, was examined as PW-3, who brought the summoned record regarding the registration of truck bearing Registration No. PAT-7771. As per him, Ranjit Singh son of Bakhtawar Singh, resident of VPO Sarabha, District Ludhiana, was the registered owner of the said truck. SI Sukhpal Singh was examined as PW-4, who supported the case of the prosecution. He narrated all the allegations as contained in the FIR. Even he had initially conducted the preliminary investigation and also took into possession the case property as well. Inspector Balwinder Singh was examined as PW-5, who stated that he had verified the investigation and sealed the sample packets and the gunny bag with his seal after verification of the initial investigation. HC Salinder

Singh was examined as PW-6, who was also part of the raiding team along with the investigating officer. He also supported the case of the prosecution with all material particulars. However, in cross-examination, he stated that he had seen the case property. The chits were not fixed with any of the bags and two-three bags were lying torn and some bags were not tied properly. The option memos were written by SI Sukhpal Singh and in fact entire writing work done by him. No accused was known to him previously and he did not identify the person who had run away from the spot.

After the closure of the prosecution evidence, the statement of the accused/appellant under Section 313 Cr.P.C was recorded in which he stated that he had been falsely involved in the instant case. He also expressed his willingness to examine the defence evidence as well.

Mohinder Singh was examined as DW-1, who stated that he was Lambardar of village Malsian Patti Sala Nagar. On 18.03.1998, the police came to his village and he was present at his house. The police took away accused-appellant Malkiat Singh along with them on the pretext that he was required in connection with Amarjit Singh. Accused Malkiat Singh enquired from the police and they told him that he was not required in any criminal case and after the compromise with Amarjit Singh, he will be allowed to go away. On this assurance, the accused/appellant came to the police station and was arrested in this case. Parminder Kaur, wife of the present accused-appellant, appeared as DW-2 and she deposed on similar lines. She stated that accused/appellant Malkiat Singh was taken away by the police illegally and later on his arrest was shown in the instant case.

Learned counsel for the appellant has vehemently argued that the prosecution story was full of discrepancies and even driver of the vehicle Jaswant Singh has been acquitted. The case of the appellant was at par with the case of Jaswant Singh and even he was liable to be acquitted. He has further submitted that the appellant was only a labourer and he had been falsely implicated in the present case. Even there was nothing to show that the alleged contraband was in the conscious possession of the present appellant. Still further, in the instant case, the prosecution had been able to establish that the said vehicle belonged to Ranjit Singh son of Bakhtawar Singh, resident of VPO Sarabha, District Ludhiana, still no action was taken against him and the appellant, who was merely a labourer, had been falsely involved in the instant case. Apart from that, no independence witness was associated, whereas as per the police, recovery of the narcotic contraband was made from the Grain Market and many persons were available there.

On the other hand, the above-said submissions made by the learned counsel for the appellant have been opposed by the learned State counsel by submitting that the arguments raised by the learned counsel for the appellant are contrary to the defence evidence. Still further, the appellant and his co-accused were found unloading the bags from the truck and their conscious possession stood proved from the prosecution evidence. Apart from that, the non-joining of independent witnesses was merely an irregularity and the impugned judgment is a well reasoned and liable to be upheld by this Court.

I have heard the learned counsel for the parties and with their able assistance perused the case file minutely.

So far as the arguments raised by the learned counsel for the appellants are concerned that there were material discrepancies in the statements of various witnesses and the case of the appellant was at par with the case of co-accused Jaswant Singh, I find no force in the said arguments. Only some minor discrepancies have been pointed out, which do not affect the case of the prosecution in any manner and such discrepancies are bound to appear in the testimonies of various witnesses, who got a chance to appear before the courts after several months. Still further, the case of the present appellant is clearly distinguishable from the case of Jaswant Singh. The present appellant along with co-accused was apprehended at the spot when they were unloading the bags containing poppy husk, whereas in the case of Jaswant Singh, neither he was arrested at the spot nor the conscious possession of the narcotic substance was proved in his case. Consequently, the present appellant cannot be treated at par with Jaswant Singh and he has been rightly convicted by the learned trial Court.

Learned counsel for the appellant further submitted that the present appellant was only a labourer and his conscious possession of the contraband was not proved by any stretch of imagination.

Again, the said submission raised by the learned counsel for the appellant is liable to be rejected in view of the fact that the said submission runs contrary to the defence evidence placed on record by the accused/appellant. The accused/appellant examined DW-1 Mohinder Singh

and DW-2 Parminder Kaur. As per the said defence witnesses, on 18.03.1998, the police came to their village and took away the appellant on the pretext that he was required in connection with some compromise with Amarjit Singh. Later on, it was known that the appellant had been falsely implicated in the present case. Thus, the submission raised by the learned counsel for the appellant is unacceptable and the findings recorded by the learned trial Court in this regard are liable to be affirmed.

Still further, in the instant case, the present appellant and Makhan Singh (since deceased) were unloading the bags containing poppy husk from the truck. During the course of investigation, it was transpired that the truck belonged to Ranjit Singh son of VPO Sarabha, District Ludhiana. However, later on, sufficient evidence was not found against him and consequently, he was not challaned by the police. The appellant, whose complicity stood proved beyond doubt, could never take advantage of the said fact and thus, the aforementioned submission is without any substance and liable to be rejected.

Still further, the police made all efforts to join the independent witnesses in the Grain Market, however, no one came forward as the accused belonged to the same place and normally, the witnesses are not willing to join the investigation against their acquaintances. Even otherwise it is merely an irregularity and the mandatory provisions of the Act had been complied with by the investigating officer.

No other argument was raised by the learned counsel for the appellant.

Considering the facts and circumstances of the present case as discussed above, this Court finds no merit in the instant appeal and the same is hereby dismissed. Consequently, the judgment of conviction and order of sentence dated 01.03.2004 passed by the learned Special Court, Jalandhar, are upheld.

Pending application, if any, shall also stand disposed off.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

The trial Court record be sent back forthwith.

In the end, I record my appreciation for Mr. Amit Kumar Goyal, Advocate/Amicus Curiae, who had rendered his able assistance to this Court.

24.01.2023

mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO