

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

(I)

CRA-D-No.1002-DB of 2007 (O&M)
DATE OF DECISION : 7TH SEPTEMBER, 2018

Charan Singh

.... Appellant

Versus

State of Punjab

.... Respondent

(II)

CRA-S-No.5135-SB of 2015 (O&M)

Gurnam Singh

.... Appellant

Versus

State of Punjab

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE B. S. WALIA**

* * * *

Present : Mr. Charanpreet Singh, Advocate
for the appellant in CRA-D-1002-DB-2007.

Mr. Himanshu Puri, Advocate
for the appellant in CRA-S-5135-SB-2015.

Mr. Manju Arora, Additional Advocate General, Punjab.

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A. B. CHAUDHARI, J.

1. In both these appeals the respective appellants had put to challenge the judgment and order dated 08.09.2007 passed by Judge Special Court, Jalandhar in Sessions Case No.48 of 2006 and judgment and order dated 31.03.2015 passed in case No.29060 of 2013, by which the trial court had convicted them for the offence punishable under Section 15 of the Narcotics Drugs & Psychotropic Substances Act (in

short, NDPS Act) and sentenced them to undergo rigorous imprisonment for 15 years and 10 years respectively, and fine of ₹1,50,000/- each.

FACTS:

2. On 08.11.2002, ASI Kamaljit Singh, Police Station Malsian along with other police officials had gone in a private vehicle for Nakabandi. They received secret information that Ajit Singh, Gurnam Singh and Charan Singh were running a syndicate of sale of poppy husk and had set up a base at the well of the fields of Ajit Singh outside the village, where they were stocking the contraband. Even on that date three persons were present and selling contraband and if the raid would be conducted they would be apprehended. Accordingly the information was dispatched through C.II Sarwan Singh and was also sent to SHO, Police Station Shahkot and DSP sub-Division, Shahkot to reach the spot. The FIR was registered under Section 15 of the NDPS Act and investigation was set in motion.

3. The police party thereafter associated independent witnesses and conducted the raid at the disclosed place. Head Constable Balwinder Singh identified two persons namely Gurnam Singh and Charan Singh who ran away from the spot while Ajit Singh was apprehended at the spot with weighing scale and 14 bags were recovered stacked near the manger at Dera of Ajit Singh. Ajit Singh was made aware about his rights under the law and consent was obtained as he wanted to have search in the presence of Gazetted Officer. After obtaining his consent the DSP Sarwan Singh reached the spot and made search and found 14 bags of poppy husk for which Ajit Singh had no account. Samples were

taken and thereafter sent to FSL. The investigating officer was again ASI Kamaljit Singh who thereafter took up the investigation. He prepared the rough site plan, recorded the statement of the witnesses, took the thumb marks of the accused and got the same attested by witnesses on the documents/memo. He completed the formalities on the spot and thereafter returned to the police station. He produced the articles and the accused before the SHO Pritam Singh. Thereafter the parcels dispatched to the chemical analyzer, Chandigarh through C.II Manjit Singh and having received report the IO filed challan only against Ajit Singh because the other accused Gurnam Singh and Charan Singh were declared proclaimed offenders by the trial court vide order dated 15.09.2004. Ajit Singh died during the trial and the trial against him was abated. The trial was then held against Charan Singh and Gurnam Singh who were later arrested. The supplementary challan was filed which was tried by the trial court and the trial court convicted them as aforesaid. PW-2 Kamaljit Singh was investigating officer as also stated by the learned trial court.

ARGUMENTS:

4. In support of the appeals the learned counsel for the appellants relying on the recent decision of the Apex Court in the case of ***Mohan Lal Versus State of Punjab, 2018 AIR (SC) 3853*** and submitted that admittedly the record shows that it was PW-2-Kamaljit Singh, ASI, who was informer and in fact raided the place in question and recovered the contraband. The DSP was called as gazetted officer for search and thereafter the DSP went back. Thereafter, his evidence shows that PW-2

took up the investigation and he himself completed the entire investigation. The challan was firstly filed against Ajit Singh and thereafter the supplementary chargesheet was filed against the present appellants. Learned counsel for the appellants submitted that they are required to be acquitted in view of the decision of the Apex Court in the case of ***Mohan Lal (supra)***. Learned counsel for the appellants also made submissions on the other aspect, including the non-compliance of Section 42 of the NDPS Act. He also contended that there was no evidence to show that Charan Singh and Gurnam Singh appellants were at all identified, nor any test identification parade was carried out and therefore, the appellants are entitled to acquittal.

5. We have heard learned counsel for the rival parties. We have perused the entire evidence on record to test the submission about the reliance placed by the learned counsel for the appellants on the recent decision of the Apex Court in the case of ***Mohan Lal (supra)***.

6. We find from the evidence of PW-2 that he conducted the raid himself and seized the contraband got FIR registered and thereafter started investigation and completed the same and filed supplementary challan against the appellants. We quote the relevant portion from his evidence as under:

“On 8.11.2002 I was posted at Police Post Malsian.

On that day I alongwith HC Bhupinder Singh, HC Balwinder Singh and other police officials were present at Bus Stand Rupewal, where I received secret information against accused Charan Singh

present in the Court and Ajit Singh, Gurnam Singh that they are habitual in selling the poppy husk at the well of Ajit Singh they sell the poppy husk, and today they are selling the poppy husk on the said well. If raid is conducted they can be apprehended along with the poppy husk. Ruqa Ex.PA was sent to the police station through C-II Sarwan Singh for the registration of the case. On the basis of which formal FIR Ex.PA/1 was recorded by SI Opinder Kumar, whose signatures I identify. xxx.... xxx.... xxx....

I told him that I suspect some contraband in the said 14 bags. If he wanted the search of the bags in the presence of some gazetted officer or Magistrate. Accused Ajit Singh desired the search in the presence of gazetted officer. Memo in this regard Ex. PB was recorded which was thumb marked by Ajit Singh and signed by HC Balwinder Singh and Phool Chand. Thereafter DSP Sarwan Singh was informed to inform to reach at the spot. On his arrival accused Ajit Singh was produced before him. The DSP told accused Ajit Singh that he is a gazetted officer posted as DSP posted at Sub Division Shahkot and further asked if he wanted the search of the bags in the presence of some gazetted

officer or Magistrate. But accused Ajit Singh reposed confidence upon him. Memo in this regard was prepared which is Ex.PC. which was thumb marked by Ajit Singh and signed by Phool Chand and myself. Thereafter under the supervision of DSP I separated 250 grams poppy husk out of each bag and the remaining was 34 kg 750 grams in each bag. The samples and the case property were sealed with seal my self KH and SS and separate seal impression were prepared. xxx.... xxx.... xxx....

I recorded the statement of witnesses. On arrival at the police station I produced the case property and samples alongwith accused Ajit Singh before SI Pritam Singh, who affixed his seal bearing impression "PS" on the sample and the case property, and thereafter he deposited the case property with the MHC Sukhjit Singh. The sample seal impression of the seal of the SHO was also prepared. The memo of arrest Ex.PF was also prepared which bears the thumb impression of accused Ajit Singh. I identify the accused present in the Court who had absconded from the spot. On receipt of the report of Chemical Examiner Ex.PG, the accused was challaned by SHO Pritam Singh. The memo of personal search Ex.PH was also

prepared by me, which was thumb marked by
accused Ajit Singh.”

7. Reading of the above evidence of ASI Kamaljit Singh, clearly shows that he was informant as well as the investigating officer. In the light of this admitted evidence it is clear that the present case, on facts, is squarely covered by the decision by the Apex Court in the case of ***Mohan Lal (supra)*** cited supra in which it is held as under:

8. In view of the above the appellants should be entitled to acquittal based on the aforesaid Supreme Court judgment rendered by three Judges’ Bench. In that view of the matter, it is not necessary for us to consider the other points raised by learned counsel for the appellants.

9. In the result we make the following order:

ORDER

- (i) The CRA-D-No.1002-DB-of 2007 and CRA-S-No.5135-SB of 2015, both are allowed.
- (ii) The judgment/order dated 08.09.2007 passed by Judge Special Court, Jalandhar in Sessions Case No.48 of 2006 and judgment/order dated 31.03.2015 passed in case No.29060 of 2013, convicting and sentencing the appellants, are set aside.
- (iii) The appellants are acquitted of the charges framed against them.

- (iv) The appellant-Gurnam Singh be released forthwith from the jail, if his custody is not required in connection with any other case.
- (v) The sentence of appellant-Charan Singh has already been suspended vide order dated 05.11.2008 passed by this Court. His bail bonds be discharged.

(A. B. CHAUDHARI)
JUDGE

7TH SEPTEMBER, 2018
'raj'

(B. S. WALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>