

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

State of Punjab ...Respondent

Mr. M.S. Bajwa, DAG, Punjab.

As per the complainant, on 15.05.2009, he alongwith certain police



officials were going to village Kajoli on the banks of SYL canal. At about 3.10 p.m., when they crossed Kajoli bridge, then they noticed two persons sitting on the gunny bags on a rikshaw rehra. On seeing the police party, they got perplexed and tried to run away and were apprehended by them on suspicion. The police party inquired their names and addresses and one of them revealed his name as Harmail Singh and the other person told that he was Nachahatar Singh son of Banarsi Dass resident of village Raulo Majra, Police Station Chamkaur Sahib. The complainant disclosed his identity and told them that he suspected some contraband in the bags, which were lying in their possession and informed them that they had right to get search conducted from him or from a Magistrate or any other gazetted police officer. They told that they wanted to get the search conducted from a gazetted officer and memo was prepared in this regard, which was signed by them. The complainant informed Manminder Singh, DSP, Chamkaur Sahib through wireless and requested him to come at the spot. On this Manminder Singh, DSP, Chamkaur Sahib, came at the spot after sometime and disclosed his identity to both the accused and told them that he wanted to get the search of the bags conducted and further told them that they had the right to be searched from any other gazetted officer or a Magistrate. Both the accused reposed confidence in Manminder Singh, DSP and the consent memo Ex.PW3/A was prepared by the DSP and only it was thumb marked by both the



accused and signed by them and ASI Amrik Singh. As per the directions of Manminder Singh, DSP, complainant searched 08 bags and after opening the bags, the poppy husk was recovered in all 08 bags and, thus, were marked as No. 1 to 8. Two samples of 250 gms from each of the sack were taken out and were duly marked and were converted into separate parcels and sealed with the seal impression “AP” and “MS” and numbered as 1/A, 1/B to 8/A, 8/B. The remaining poppy husk in each bag weighed 33 kgs and all the 08 bags were converted into parcels and were sealed with the seals of “AP” and “MS”. Separate sample seal Ex.PW5/B was also prepared. All the sample parcels, bags, sample seal and the rickshaw rehra were taken into possession vide recovery memo Ex.PW3/B, which was signed by ASI Amrik Singh, HC Devinder Singh and attested by Manminder Singh, DSP. The seal after use was handed over to Amrik Singh, ASI. The rukka Ex.PW5/B/1 was sent to the police station through Constable Sohan Singh upon which FIR Ex.PW5/B/2 was registered and signed by SI Gurbaksh Singh. Since the accused were carrying the contraband without any permit or licence, the FIR under Section 15 of the NDPS Act was registered against both of them. After usual investigation, the accused were arrested in the present case by following the due process of the law. The case property was deposited with the MHC and the accused were confined in the lock up. On the next day, ASI Amrik Singh produced the accused and the case



property before the Area Magistrate where 08 samples were taken in the Court of Area Magistrate as Ex.P9 to Ex.P16 and after completion of the investigation, the challan was presented in the Court. After appreciating the final report under Section 173 Cr.P.C. and the documents appended therewith, the appellants/accused were charge sheeted for commission of the offences punishable under Section 15 of the NDPS Act and the accused pleaded that they had been falsely involved in the present case and claimed trial.

3. To prove the charge against the appellants, 08 prosecution witnesses were examined. The prosecution examined PW1 HC Nazir Singh, who had tendered his affidavit Ex.PW1/A in evidence. He stated in cross-examination that parcels were handed over to him at about 09.00 a.m. on 21.05.2009 and the same were entered in the road register. He received the parcels with his signatures and deposited the same with chemical examiner. MHC Dilbagh Singh tendered his affidavit Ex.PW2/A and was examined as PW2. The prosecution further examined PW3 DSP Manminder Singh, who had reached at the spot on getting a message from the complainant and in his presence, the search and seizure of the contraband was completed. Even, the recovery memos were also prepared in his presence and he had supervised the entire process. PW4 Amrik Singh, Junior Assistant, DTO Office, Mohali, had brought the record relating to two wheeler No. PB-65A-8255, which



was in the name of Amar Singh son of Basta Singh. The prosecution further examined PW5 Inspector Arvind Puri, who reiterated the averments, which were made by him in the FIR in the present case. He submitted in cross-examination that the DSP was informed at about 3.30 p.m. Thereafter, the DSP had not verified the investigation of this case and he did not try to hand over the seal to any other person. He sent a police official to bring some independent person, but he could not tell the name of that official. On return, he had told that no one had agreed. He did not try to send any official to village Kajoli to bring an independent witness, which was near to the place of the occurrence. Still further, Sandeep Kumar, Photographer was examined as PW6, who had taken the photographs to the Court and had handed over the same to the police. PW7 ASI Amrik Singh supported the case of the prosecution and corroborated the testimony of PW5 Inspector Arvind Puri. In fact, ASI Amrik Singh was also part of the police team, which had apprehended both the appellants at the spot. The prosecution further examined SI Gurbaksh Singh, who was working as a SHO at Police Station Morinda on 15.05.2009. On that date, ASI Arvind Puri produced before him 16 parcels of sample and 08 bulk parcels of poppy husk, sealed with the seals of “AP” and “MS”. Sample seal was also produced alongwith the accused. He verified the facts of the case and sealed the case property with his seal “GS” and the same was deposited with the MHC. With this, the



prosecution evidence was closed by the public prosecutor.

4. After recording of the prosecution evidence, the entire incriminating evidence was put to both the appellants, who stated that they were innocent and had not committed any offence. No recovery was effected from them as alleged by the prosecution and a false case was planted on them. They were father and son and were taken in custody by the police in the evening on 14.05.2009. In support of their defence, they examined DW1 Surjit Singh, Ex-Sarpanch of village Raulo Majra. He stated that both the accused belonged to his village and on 15.05.2009, while he was going towards the shop, police came to the house of the accused. On inquiry, the police told him that they wanted to make some inquiry from the accused and took away both the accused with them. He alongwith other villagers went to the police station and they were informed that a case has been registered against both the accused. He further stated that the accused had good moral character and had nothing against them. However, in cross-examination, he stated that they did not make any resolution in the Panchayat nor any application was moved before the police officers in this regard. He was not a summoned witness before the Court. DW2 Ajit Singh, Member Panchayat also tried to support the version of DW1 Surjit Singh and deposed on the similar lines. However, in cross-examination, he also stated that they had not passed any resolution in the Panchayat nor any application was



moved by him before the higher police officers.

5. Learned counsel for the appellant vehemently argued that in the present case, the appellants, who are father and son were taken away from their home and a false case was planted on them. Even, it has been alleged that the police had allegedly loaded 08 bags of poppy husk on a rickshaw rehra and each of the bag was containing 33.5 kgs of poppy husk. Even, it was not possible to load so many bags on a rickshaw rehra, which was 04 feet in length and 03 feet in width. Apart from that, it could not be proved that the appellants owned the said rehra. Still further, the entire prosecution case was based on the testimony of official witnesses and no efforts were made to join the independent/public witnesses from the adjoining places, where the recovery was effected. Still further, the seal after use was handed over to a police official, who was working under Investigating Officer and there were chances of tampering with the case property also. He further contended that there was 06 days delay in sending the sample parcel to the chemical examiner and the link evidence in the present case was missing.

6. On the other hand, learned State counsel has vehemently opposed the statements made by learned counsel for the appellants and submitted that in the present case, both the appellants were found in conscious possession of 268 kgs of poppy husk and the prosecution had proved its case by examining PW5 Inspector Arvind Puri and



PW7 ASI Amrik Singh. Still further, the defence could not led any evidence to show that the official witnesses inimical towards the present appellants or there was any motive on their part to plant a false case on the present appellants. Apart from that, search and seizure of the contraband was effected in the presence of PW3 Manminder Singh, DSP, a gazetted officer and the entire process of law was followed by the police officials. Still further, the accused had failed to show that any prejudice had been caused to them due to delay of 06 days in sending the parcels to the chemical examination. In fact, the report of the chemical examiner had been received, which corroborated the case of the prosecution. Thus, the appeal is liable to be dismissed by this Court.

7. We have heard the submissions made by learned counsel for the appellants as well as learned State counsel and have carefully perused the trial Court record.

8. The primary contention raised on behalf of the present appellants was that the prosecution had failed to prove the conscious possession of the appellants over the case property. To support its case, the prosecution had examined PW5 Arvind Puri, SHO, who was heading the police team, which apprehended the police at the spot, while they were in possession of 08 bags of poppy husk on rickshaw rehra. The testimony of PW5 Arvind Puri, SHO, was duly corroborated by the testimony of PW7 Amrik Singh, ASI, who was



member of the police party, which had affected the search and seizure and recovery of contraband from the present appellants. First of all, both the witnesses were subjected to lengthy and incisive cross-examination by the learned defence counsel, but their testimonies could not be shaken in any manner. From the testimonies of these two witnesses, it was established that the appellants were sitting on the bags, when the police party reached there and were perplexed on seeing the police party. On suspicion, they tried to run away from the spot but were apprehended by the police at the spot. Apart from that, the trial Court has correctly held that the police/accused were found to be in possession of the contraband in the shape of 08 bags of poppy husk, for which, they could neither offer any explanation nor could produce any permit or licence in this regard. Therefore, the presumption of law laid down under Section 35 and 54 of the NDPS Act get attracted in the present case. Thus, the prosecution had succeeded in establishing the fact that the accused were in conscious possession of the contraband and defence could not lead any evidence to dispel the presumption under Section 35 read with Section 54 of the NDPS Act.

9. We also do not find any substance in the arguments raised by learned counsel for the appellants that the entire prosecution case was based on official witnesses and there was no independent corroboration of the prosecution case. In the present case, the



prosecution examined Arvind Puri SI/SHO as PW5, who stated in his cross-examination that he had sent a police official to bring some independent person, who on returning, told him that no villager had agreed. Similarly, PW7 ASI Amrik Singh also stated that no independent witness agreed to join the official witnesses, even though, efforts were made in this regard. The law is well settled that the testimonies of the official witnesses cannot be discarded on the ground of their official status. It is a matter of common knowledge that in the case of smuggling of drugs, normally, the private witnesses are not willing to join the raiding parties. Apart from that, this Court has carefully perused the testimonies of the official witnesses produced by the prosecution, who had been searchingly cross-examined and had withstood the test of cross-examination. Thus, the submissions raised on behalf of the appellants in this regard are repelled and the findings recorded by the trial Court are upheld.

10. Still further, in the present case, the link evidence stood proved by way of testimonies of PW1 HC Nazir Singh and PW2 MHC Dilbagh Singh. In fact, the samples were deposited with MHC Dilbagh Singh and till the time, the samples remained in his custody neither he himself tampered nor allowed anybody else to tamper with the same. Similarly, PW1 HC Nazir Singh had taken the samples to the FSL and as per the chemical report Ex.PX, the samples were found to be containing poppy heads. Even, the trial Court was correct



in observing that some minor discrepancies in verification part of the affidavit were pointed out, however, the same cannot be held to be fatal to the case of the prosecution. Still further, the accused could not lead any evidence to shatter the testimonies of PW1 Nazir Singh and PW2 MHC Dilbagh Singh in any manner. Still further, from the prosecution evidence, it also stood established that Form No. 29 was filled at the spot and even seals were affixed at the spot itself. Apart from that, from the report of the chemical examiner Ex.PX, it can be seen that the seals were intact on sample parcels, when those parcels were received by the chemical examiner and the appellants had failed to show that any prejudice was caused to them in sending the samples to the FSL after delay of 06 days. Even, the defence evidence produced by the appellants did not advance their case in any manner. The appellants examined DW1 Surjit Singh, Ex Sarpanch of village Raulo Majra, who stated that on 15.05.2009, the police officials had taken away both the accused with them and alleged that they were told that a case has been registered against them. However, in cross-examination, he admitted that he had not made any resolution in the Panchayat nor any representation was moved to the higher police officers in this regard. Even, DW2 Ajit Singh, Member Panchayat of village Raulo Majra also admitted that no resolution was passed by the Gram Panchayat nor any application was moved before the higher police officers regarding the false implication of the



appellants. In fact, it appears that being the co-villagers, they had appeared to support the case of the appellants and their testimonies did not appear to be truthful.

11. In view of the above discussion, we are in agreement with the findings recorded by the trial Court and find no reasons to deviate from the same. The trial Court has correctly appreciated the evidence adduced by both the sides and has recorded the valid reasons, by convicting the appellants.

12. Sequally, the impugned impugned judgement and order dated 29.09.2011 passed by the Judge (Special Court, NDPS Act), Roopnagar, are upheld and the appeal is, accordingly, ordered to be dismissed.

13. All pending applications, if any, are disposed off, accordingly.

14. Trial Court record be sent back to the trial Court.

15. All concerned may be intimated.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

24.05.2024
amit rana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No