

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

CRA-S-3717-2019 (O&M)
Reserved on: 02.08.2024
Date of decision: 07.08.2024

AMANDEEP SINGH AND ANOTHER

...Appellants

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Suvir Sidhu, Advocate,
Mr. Gagandeep Singh Saini, Advocate,
Mr. H.S. Rajput, Advocate and
Mr. G.S. Dhillon, Advocate
for the appellants.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 18.11.2019, upon CIS No.NDPS 817/2016, by the learned Judge Special Court, Jalandhar, wherethrough in respect of a charge drawn against the accused qua an offence punishable under Section 18 of the NDPS Act, the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellants. Moreover, through a separate sentencing order, drawn on 22.11.2019, the learned trial Judge concerned, imposed upon, the convicts both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

Sr. No.	Name	Offence	Sentence
1.	Amandeep Singh	18 (c) NDPS Act	To undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.one lac and in default of payment of fine to further undergo Simple imprisonment for 6 months.
2.	Inderjit Singh	18 (c) NDPS Act	To undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.one lac and in default of payment of fine to further undergo Simple imprisonment for 6 months.

2. The period of detention undergone by the convicts, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment.

3. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background and Investigation proceedings

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PW-5 is assigned. The narrations carried in Ex.P-5, are that the police party headed by ASI Amarjit Singh had apprehended the aforesaid accused Amandeep Singh and Inderjit Singh, when they were found cultivating opium poppy plants weighing 182 Kilograms, without any permit or licence on dated 05.04.2016, in the area of village Dalla, Jalandhar falling within the jurisdictional limit of Police Station Bhogpur, District Jalandhar. Thereafter, after completion of investigation and after presentation of challan, both the present accused Amandeep Singh and Inderjit Singh were put to trial for the aforesaid

offence under Sections 16/17 of the Act, in the present case before the learned Committal Court concerned.

Trial Proceedings

5. The learned trial Judge concerned, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charge against the accused, for an offence punishable under Section 18 of the NDPS Act. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

6. In proof of its case, the prosecution examined nine witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused also chose to adduce defence evidence, and three witnesses were led into the witness box.

7. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convicts.

Submissions of the learned counsel for the appellants

8. The learned Senior counsel for the aggrieved convicts-appellants has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

9. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convicts, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Analysis of the case

10. Through recovery memo Ex.P3, the recovery of the contraband became allegedly recovered from the site concerned. In proof of the prosecution case, ASI Amarjit Singh stepped into the witness box as PW-1, and, in his examination-in-chief, he made speakings therein, which concur with the contents of the appeal FIR, to which Ex.P5 is assigned.

11. The prosecution though has been able to lead cogent evidence, in proof of the recovery of the seizure, thus being effected at the crime site, and, the same thus being sealed with the relevant seal impressions. Moreover, though the prosecution has also been able to cogently establish, that the sealed cloth parcels, became deposited in the malkhana concerned. In addition, though the prosecution has been able to establish, that the case property travelled in an untampered condition to the FSL concerned.

12. A reading of the report (Ex.PZ), as made by the FSL concerned, whereto the relevant seizure became sent for an examination being made of the stuff inside the sealed cloth parcels, though reveals, that the examined stuff inside the sealed cloth parcels, as became sent to it for examination, thus being poppy plants. The said report is *ad verbatim* extracted hereinafter.

“X X X X

6. Articles received: One parcel sealed with two seals one each of ‘AS’ and ‘BM’ alleged to contain poppy plants.

Seals of the parcel were found intact and tallied with the specimen seal impression.

On opening the parcel was found to contain one kilogram of mutilated plant material.

X X X X

Report

The extract obtained from the content of the parcel under reference has been analysed by chemical analysis. On the basis of analysis, the content of the parcel has been identified as the poppy plants.”

13. Be that as it may, though a reading of the report (supra) of the FSL also discloses, that the sealed cloth parcels, became received there, hence with the seal impressions thereons being intact. However, the chemical examiner at the FSL concerned, after making examinations of the stuff inside the sealed cloth parcels, and, thereafter his drawing the report (supra), yet omits to mention in the report Ex.PZ, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

14. The above was required to be mandatorily done, as, thereupon the imperatively required to be proven, thus unbroken links in the chain of incriminatory evidence, commencing from the seizure being made from the crime site, through recovery memo Ex.P3, and, lasting upto the production of the case property in Court, thereby thus would become convincingly proven, rather to remain unsnapped or unbroken. In the above event alone the charge drawn against the accused would be concluded to become cogently established. However, as above stated, for want of the chemical examiner concerned, after making examination(s) of the stuff inside, the sealed cloth parcels, thus re-enclosing the examined stuff inside the cloth parcels, and, his further failure to emboss thereons, rather the seals of the FSL concerned, whereafter the examined stuff was to be produced in Court, for its being shown to the investigating officer

concerned, for thereby thus, on evident surging-forth of the above requisite primary evidence, rather the charge drawn against the accused, could be concluded to be convincingly proven.

15. Be that as it may, when the chemical examiner concerned, after examining the stuff inside the sealed cloth parcels, omitted to re-enclose the examined stuff inside the cloth parcels, and, also omitted to emboss thereons the seals of the FSL concerned. Therefore, it appears, that the stuff after becoming examined by the chemical examiner concerned, was thus enclosed in loose cloth parcels, and, thereafter the said loose cloth parcels, became sent in an unsealed condition, thus to the incharge of the malkhana concerned. Subsequently, it appears that such loose, and, unsealed cloth parcels, thus comprising the case property Ex. P2/A, rather became produced in Court, and, as revealed on a reading of the examination-in-chief of PW-7, also became identified, as such by PW-7. In the wake of the above, it appears, that despite the identification of the case property, being made in Court by PW-7, and, also irrespective of the fact, that the exhibit marks were made, during the makings of testifications by PW-7, thus on the said case property, upon its, becoming produced in Court, but since there is no recorded observation by the learned trial Judge concerned, about P2/A, thus occurring within sealed cloth parcels.

16. Therefore, when Ex. P2/A obviously appertains to the relevant stuff, as became examined at the FSL concerned. In consequence, in the wake of no observations (supra), being made by the learned trial Judge concerned, at the time of production of Ex.P2/A in Court, and, also in the wake of the report (supra) of the FSL concerned, omitting to specifically state therein, about the examined stuff, being re-enclosed in sealed cloth parcels, whereons, became embossed the seals of the FSL concerned, thus leads to the hereinafter

conclusion; (a) The prosecution has not been able to co-relate the report (supra) to Ex. P2/A; (b) the loose cloth parcels, Ex. P2/A, as became produced in Court, in support of the report (supra) of FSL concerned, do not become related to the said examined stuff. Resultantly, when scope is, thus left for an inference qua either the case property, thus not relating to the report (supra) of the FSL concerned, and/or to the enclosures inside P2/A, being introduced therein, thereby the report of the FSL (supra), rather loses its evidentiary vigour. A further scope is also left, that thereby the stuff, if any, existing inside Ex. P2/A, rather became introduced therein, and/or, that the case property, if any, became tampered with. Moreover, much scope is also left for the drawing of an inference, that the case property other than the one related to the charge drawn against the accused, thus became produced in Court. As but a natural corollary, when the primary evidence for proving the charge drawn against the accused, does come under a cloud of deep suspicion. Resultantly, this Court is constrained to conclude, that the charge drawn against the accused did not come to be cogently established.

Final order

17. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment convicting, and, sentencing the appellants, and, as become recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellants are acquitted of the charge framed against them. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The

appellants, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

- 18. Records be sent down forthwith.
- 19. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

07.08.2024

Ithlesh

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