

CRA-S-2320-SB-2007 (O & M)

2025:PHHC:024990-DB



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(301-3)

CRA-S-2320-SB-2007 (O & M)

Reserved on: 18.02.2025

Date of Pronouncement:20.02.2025

Hari Om

.... Appellant

V/s

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Aarav Gupta, Advocate, as Amicus Curiae,
for the appellant.

Mr. Munish Sharma, DAG, Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 15/16.05.2007 passed by the Special Judge, Jind.

2. The instant FIR came to be registered on 04.05.2006. The accused-appellant came to be convicted vide judgment of conviction and order of sentence dated 15/16.05.2007. The present appeal against the judgment of conviction and order of sentence was filed on 10.08.2007. The matter has come up for final hearing now after more than 18 years of the registration of the FIR.

3. The brief facts of the case of the prosecution are that on 04.05.2006 Balbir Singh, ASI, IO of the case (PW-5), along with other

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police officials was on patrolling duty in a private jeep and was present at the bridge of the minor Dhamtan. The road leads from Kharal to village Pipaltha. In the meantime, he saw that one Esteem car was coming from village Kharal and he gave a signal to the driver of the car and the car was stopped at a distance of 20/25 paces. On seeing the police party, one person got down from the car, who was sitting on the rear side seat and ran away. He tried to catch that person but he fled away. On the rear seat of the car, one *katta* plastic and one gunny bag were seen. The driver of the car was apprehended. IO Balbir Singh, asked about the antecedents of the accused and he disclosed his name as Hari Om son of Hari Kishan, Caste Saini r/o Ramesh Park, Gali No.10/R/1025, New Delhi and now Dhani Peerawali, P.S.Sadar, Hansi and the name of the accused who had run away as Suresh alias Ramesh son of Lillu Ram, Caste Bishnoi r/o Mandi Adampur. The number of the Esteem car was DL2CF-3917 and the colour of the car was White. The gunny bag and the plastic bag, both were checked by PW-5 Balbir Singh, ASI and poppy husk/*chura post* was found in both the bags. The IO separated two samples from each bag of 100 grams each. The sample parcels were duly sealed with the seal of the IO and remainder was weighed and the plastic bag was also weighed and it was found to be of 13 kgs. 800 grams and gunny bag was found to be of 37 kgs. 800 grams of poppy straw. The samples parcels and residue parcels were sealed with the seal of B.S. by the Investigating Officer and thereafter the samples, residue and Esteem car bearing no. DL-2CF-3917 was taken into possession vide memo Ex.PD and



the recovery memo was attested by the PWs. The accused was formally arrested by Balbir Singh, ASI and thereafter, the IO sent ruqa Ex.PA which was sent through C.Dalbir Singh no.410 on which a formal FIR Ex. PA/1 was recorded by Rajinder Singh, ASI and rough site-plan Ex.PE was prepared. The marginal notes were prepared correctly by the IO. Thereafter, the IO alongwith the accused, witnesses, case property and samples came to the police station, where the S.H.O. Dalbir Singh, was found present. The IO produced the accused, witnesses, case property and samples before him who verified the factum of recovery from the accused and witnesses and S.H.O. also put his seal on the case property and samples on the same day. The IO submitted report u/s 57 of the Act Ex.PF before Dalbir Singh, ASI/SHO, who made his endorsement on the report which is Ex.PF/1 and after the completion of the investigation of the case, and other legal formalities, report under Section 173 of Cr.P.C. was prepared and challan was put in the Court for Trial after receipt of the report of the F.S.L.

4. As a *prima facie* case for committing an offence punishable under Section 15 of the Act was found to be made out against the accused, therefore, vide order dated 25.07.2006, charges were framed to which the accused did not plead guilty and claimed trial.

5. In support of its case, the prosecution examined eight witnesses in all, namely, PW-1 Rajinder Singh, ASI, PW-2 Giani Ram, Patwari, PW-3 Ram Kumar C.No.604, PW-4 Jagat Singh, S.I./S.H.O., PW-5 Balbir Singh, ASI, PW-6 Raj Kumar C.No.265, PW-7 H.C.Kuldeep, Singh No.238, and



PW-8 Dalbir Singh, SI. Thereafter, the evidence of the prosecution was closed.

6. After closure of the prosecution evidence, the statement of the accused was recorded in terms of Section. 313 of Cr.P.C. wherein he denied all the incriminating evidence put to him and he pleaded that he had been falsely implicated in this case. The accused did not lead any defence evidence.

7. Based on the evidence led, the accused-appellant Hari Om came to be convicted and sentenced by the Court of the Special Judge, Jind vide judgment of conviction and order of sentence dated 15/16.05.2007 as under:-

Offence U/S	Sentence RI	Fine	RI in default of payment of fine
15 of the NDPS Act	10 years	Rs.1,00,000/-	RI 02 years

8. The aforementioned judgment of conviction and order of sentence dated 15/16.05.2007 passed by the Special Judge, Jind is under challenge before this Court.

9. During the pendency of this appeal, the sentence of the accused-appellant, namely, Hari Om was suspended by this Court vide order dated 15.12.2010.

10. The learned Amicus Curiae contends that the appellant was just a driver of the vehicle. There is no evidence as to who was the owner of the same. Therefore, the accused cannot be said to be in conscious possession of



the allegedly recovered contraband. Further, the recovery memo has not been signed by the accused making the recovery doubtful. He, therefore, contends that the judgment of conviction and order of sentence was liable to be set aside and the appellant be acquitted of the charges framed against him.

11. The learned counsel for the State, on the other hand, contends that there is nothing coming forth by way of the defence of the accused that he was just a driver of the vehicle. His statement under Section 313 Cr.P.C. is of a simple denial of the prosecution case against him. Merely because no evidence of the ownership of the car was brought on record does not make the prosecution case doubtful in view of the consistent depositions of the witnesses. In fact, the appellant was the driver of the vehicle from which the contraband was recovered and has furnished no explanation whatsoever for the same and therefore, his conscious possession stands established. Further, merely because the recovery memo had not been signed does not in any manner make the recovery itself doubtful. He, therefore, contends that the present appeal was liable to be dismissed.

12. We have heard the learned counsel for the parties.

13. A perusal of the evidence on record and the stand taken by the appellant in his statement under Section 313 Cr.P.C. does not suggest that the accused was simply a driver of the vehicle, the owner being the person who allegedly fled away from the spot. While it is true that the prosecution had not been able to bring on record evidence of the ownership of the



vehicle, it does not make the prosecution case doubtful. All the material witnesses, though, official in nature have described in detail as to how the accused came to be apprehended and the recovery effected. There is nothing to suggest that the police personnel were inimical to the accused so as to implicate him falsely.

14. As regard the conscious possession, the Hon'ble Supreme Court in '**Madan Lal and another versus State of Himachal Pradesh 2003(4) RCR(Criminal) 100**', held as under:-

7. On 5.10.1999, a secret telephonic message was recorded by Sunder Lal, A.S.P. (PW-1) that charas was being transported in a Maruti blue car bearing No. CHO-IE-2764 which was coming towards Oachghat. The information was reduced by him into writing. He gave directions to the SHO, Police Station, Solan to send the information to the Superintendent of Police and thereafter proceeded towards the spot where the car was expected to come. On reaching the spot, he formed a raiding party consisting of Jainarain (PW-1) and Ashwani Kumar Gupta (PW-2) and the car was stopped by the raiding party. Accused, Manjit Singh was driving the car and the remaining accused persons were sitting therein. In the presence of witnesses, Jainarain (PW-1) gave an option to the accused persons as to whether they wanted to be searched by a Magistrate or by him. Accused appellants consented for the search by Jainarain (PW-1). On personal search of the accused persons nothing incriminating was found on their person. When the car was searched, a black coloured bag was found which contained a steel doloo kept in a plastic bag. The said doloo contained 820 grams of charas. After separating two samples of



25 grams each the remaining charas were separately sealed and samples were sent to the Officer Incharge, Police Station, Solan for registration of a case. On the basis of the information FIR was recorded at the Police Station. The car along with the documents and the key were also seized. The sealed parcels of the case property were handed over to the SHO (PW-9) who re-sealed them. The samples were analysed by the Chemical Examiner who filed a report vide Ext.PW-10/A with the finding that the samples were that of charas. On being satisfied about commission of offence under Section 20 of the Act, a charge sheet was submitted. After framing of charge, the accused persons faced trial.

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12. In case of accused-appellant Manjit Singh, it was additionally submitted that he was only the driver of the vehicle and was not supposed to know what the other occupants were bringing.

XXXX XXXX XXXX

19. The other plea which was emphasised was the alleged statement of accused Goyal Nath that he alone was in possession of the contraband bags. The plea centers round a statement of search witness PW-1, who stated that Goyal Nath told him that contraband articles belonged to him. The statement was made totally out of context and no credence can at all be attached to the statement. The accused Goyal Nath in his examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') did not state that he was



alone in possession of the contraband articles. On the contrary, he stated that he did not know anything about the alleged seizure.

20. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record is that all the accused persons were travelling in a vehicle and as noted by the Trial Court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

21. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in chapter IV of the Act which relates to offence for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

22. It is highlighted that unless the possession was coupled with requisite mental element, i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

23. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 Supreme Court 52), to work out a completely logical and precise definition of "possession" uniformly applicable to all situation in the context of all statutes.



24. *The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.*

25. *As noted in Gunwantlal v. The State of M.P. (AIR 1972 Supreme Court 1756) possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power.*

26. *The word 'possession' means the legal right to possession (See Health v. Drown (1972) (2) All ER 561 (HL). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness (1976(1) All ER 844 (QBD).*

27. *Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.*

28. *In the factual scenario of the present case not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.*

29. *In fact the evidence clearly establishes that they knew about transportation of charas, and each had a role in the transportation and possession with conscious knowledge of*



what they are doing. The accused- appellant Manjit Singh does not stand on a different footing merely because he was a driver of the vehicle. The logic applicable to other accused-appellants also applies to Manjit Singh.

15. In the instant case, the recovery is from a vehicle which the accused was driving. He has furnished absolutely no explanation as to how the contraband came to be recovered from the vehicle. Therefore, his conscious possession stands established beyond doubt.

16. As regards the recovery memo not having been signed, the Hon'ble Supreme Court in '***State of Rajasthan versus Teja Ram 1999(2) RCR(Criminal) 285***', held as under:-

28. Learned counsel, in this context invited out attention to one step which PW21 (Investigating Officer) had adopted while preparing the seizure memos Ex. P3 and Ex. P4. He obtained the signature of the accused concerned in both the seizure memos. According to the learned counsel the aforesaid action of the Investigating Officer was illegal and it was vitiated the seizure. He invited our attention to section 162(1) of the Code which prohibits collecting of signature of the person whose statement was reduced to writing during interrogation. The material words in the sub-section are these :

"No statement made by any person to a police officer in the cause of investigation under the chapter, shall, if reduced to writing, be signed by the person making it;"

No doubt the aforesaid prohibition is in peremptory terms. It is more a direction to the investigation officer than to the court because the policy underlying the rule is to keep witnesses free



to testify in court unhampered by anything which the police claim to have elicited from them. (Tehsildar Singh v. State of U.P., AIR 1959 Supreme Court 1012 and Razik Ram v. JS Chouhan, AIR 1975 Supreme Court 667). But if any Investigating Officer, ignorant of the said provision, secures the signature of the person concerned in the statement, it does not mean that the witnesses' testimony in the court would thereby become contaminated or vitiated. The Court will only reassure the witness that he is not bound by such statement albeit his signature finding a place thereon.

29. That apart, the prohibition contained in sub-section (1) of Section 162 is not applicable to any proceedings made as per Section 27 of the Evidence Act. It is clearly provided in sub-section (2) of Section 162 which reads thus :

"Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872, or to affect the provisions of section 27 of that Act."

30. The resultant position is that the Investigating Officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by Section 27 of the Evidence Act. But, if any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it. Hence, we cannot find any force in the contention of the learned counsel for the accused that the signatures of the accessed in Ex.P3 and P.4 seizure memo would vitiate the evidence regarding recovery of the axes.



Similarly, in '*Kishore Bhadke versus State of Maharashtra 2017(1) RCR(Criminal) 606*', the Hon'ble Supreme Court held as under:-

22. *It was then argued that the recovery Panchnama (Exh. 76A) did not contain signature of the accused and for which reason the same was inadmissible. Even this submission does not commend to us. In that, no provision has been brought to our notice which mandates taking signature of the accused on the recovery Panchnama. Admittedly, signature of accused was taken on the statement recorded under Section 27 of the Evidence Act (Exh.76 and 77 respectively). The statement of accused No.3 (Exh.77) bears his signature. Therefore, even this argument does not take the matter any further.*

23. *In the case of the Jackaran Singh (supra), the Court opined that the disclosure statement given by the accused regarding conscious possession of the weapon did not inspire confidence. One of the reason was that disclosure statement did not bear the signature or the thumb impression of the appellant. The Court found that even, the recovery memo of the revolver and the cartridges did not bear either the signatures or the thumb impression of the accused. In the present case, the disclosure statement bears the signature of accused Nos. 2 and 3 respectively. The absence of signatures on the recovery memo (Exhibit 76-A) would not make it inadmissible and it has been rightly taken into account because of the other evidence regarding its authenticity and genuineness. In the recent decision in the case of Sunil Clifford Daniel (supra), in paras 37 to 40, the issue stands answered against the appellants. Reliance was placed on the dictum in paras 18 and 21 in the case of Lohit Kaushal (supra). In that case, the Court found*



that the statement of accused who was discharged by the Trial Court was hit by Section 25 and 26 of the Evidence Act. The same was inadmissible in evidence. The Court, however, observed that statement made to the Police can only be used for the limited purpose provided under Section 27 of the Evidence Act and that too only against the person making the statement. In that case, the statement made by the concerned accused who was discharged did not lead to the recovery of any item whatsoever. In the present case, however, the statement of accused No.2 and 3 has been recorded separately and both the accused accompanied the Police and disclosed the spot where the dead body of Raman was thrown. On the basis of that disclosure, the dead body of Raman and the remains of the burnt articles of Raman were recovered for which that fact becomes relevant fact and can be used against the appellants (accused Nos.2 and 3). In other words, this decision will be of no assistance to the said appellants.

17. In the instant case, the recovery memo has not been signed and going by the dictum laid down in ***Teja Ram (supra) and Kishore Bhadke (supra)***, it is clear that the investigating officer was not obligated to obtain the signatures of the accused at the time of preparing the seizure memo and the absence of such a signature on the recovery memo would not make it inadmissible.

18. On the other hand, as has been mentioned above, the statements of PW-5/Balbir Singh ASI, PW-7/Kuldeep Singh HC and PW-8/Dalbir Singh SI/SHO establish beyond doubt that the recovery of contraband was effected from a vehicle of which the accused was a driver and that the case property



alongwith the accused was produced before the SHO after the recovery had been effected.

19. A cumulative effect of the aforementioned discussion is that it stands established beyond doubt that the prosecution has been able to prove on record the guilt of the accused and therefore, we find no merit in the present appeal and the same stands dismissed. The accused-appellant is directed to surrender before the Jail Authorities concerned forthwith to serve out his remaining sentence.

20. The pending applications, if any, stands disposed of accordingly.

(GURVINDER SINGH GILL)
JUDGE

20.02.2025
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No