



CRA-S-271-SB-2004 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-271-SB-2004 (O&M)
Reserved on: 27.01.2025
Pronounced on: 30.01.2025

Dharam Singh @ Bhutto -Appellant

Versus

State of Haryana -Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kulvir Narwal, Advocate with
Mr. Abhisar Chaudhary, Advocate and
Ms. Geetanjali Bhatia, Advocate
for the appellant.

Ms. Trishanjali Sharma, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
745	24.8.1997	Pehowa	15 of NDPS Act
Case No.	SC No. 55 of 2003 Date of Decision: 14.11.2003		
Names of accused/ convicts/ appellants	Dharam Singh @ Bhutto		
Conviction under section	15 of the NDPS Act		
Sentence imposed	R.I. for 10 years and fine of Rs. 1,00,000/-. In default, RI for one year		

1. The accused, convicted and sentenced as mentioned above, had come up before this court by filing the present appeal.
2. By the time the sentence was suspended and he was released on bail, according to the custody certificate dated January 24, 2025, he had already served 3 years, 8 months, and 13 days in this FIR.
3. The prosecution's case is being taken from FIR, the special report filed under Section 57 of the NDPS Act, and the police report under Section 173 CrPC.
4. On August 24, 1997, a police party headed by SHO/SI was patrolling in their jurisdiction to detect crime. When they were present at Pehowa roundabout, they received secret information that the appellant, who was present in a tractor trolley RSM-1255 make Escort, was carrying rice husk (Turi) and had concealed two bags of poppy husk under the rice husk and was coming towards Pehowa. The Investigator found the



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information credible and informed DySP, asking him to reach out on the spot. The police Inspector and his officials reached a T-point near Dhand to apprehend the driver and stop the tractor trolley. In the meantime, they noticed the above-described tractor, which was signaled to stop. On inquiry, the driver revealed his name as Dharam Singh (appellant). Subsequently, the Investigator apprised the driver of the tractor that they had information that he had concealed poppy husk beneath the rice husk and further asked whether he would like to get the search of his tractor conducted before a Magistrate or Gazetted officer or if he would be satisfied if the Investigator himself carries on the search. On this, the appellant told the Investigator that he would like the search to be conducted by a Gazetted Officer. As such, a memo under Section 50 of the NDPS Act was written, and the appellant's signatures were obtained on it.

5. Meanwhile, Yogender Singh Nehra DySP reached the spot. He was informed of confidential information and the apprehension of the tractor. In his presence, the tractor-trolley was searched, and from underneath the rice husk, police detected two gunny bags, which were taken out, and upon opening them, the Investigator detected poppy husk. Subsequently, both the gunny bags were weighed and found weighing 47 kg and 36 kg. After that, two samples of 500 grams were taken from both the bags and sealed with the seal of impression 'RC'. The remaining bags were also sealed with the same seal. The sample seal was handed over to ASI Rajinder Singh. Yogender Singh Nehra, DySP, also put his seal 'YN' on the samples and the bulk.

6. Subsequently, the poppy husk samples, along with the tractor, were seized and taken into possession vide seizure memo, and ASI has put his signature on the recovery memo. DySP also attested to the same. Based on this information, the above-captioned FIR was registered.

7. The samples were sent to the laboratory upon receiving the report from Ex. PJ, the samples tested positive for poppy straw. The prosecution was launched, and the trial Court found prima facie evidence and framed charges against the appellant for the commission of an offense punishable under Section 15 of the NDPS Act (Act No.61 of 1985). The appellant did not plead guilty and claimed trial. The prosecution's witnesses supported the Investigator's version and after the completion of the prosecution evidence, the prosecution's case was put to the accused under Section 313 CrPC, where he answered all the prosecution's evidence as incorrect but in answer to question No.11 stated as under: -

"I am innocent. As a matter of fact the tractor-trolley belonged to one Manjit Singh son of Balkar Singh resident of village Bodhni, a big land owner of my village. The recovery was effected from him. He however, was let off by the police after the greased the palm of the Investigating Officer. I was forcibly lifted from my house in the morning



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of 24.7.1998 and later on falsely involved in this case. I am landless. No member of my family owns land. I am having dispute with Manjit Singh over a bara in the village and we have old enmity with the said Manjit Singh."

8. The appellant cited one person, Randhir Singh, a co-villager, as a defense witness, who testified that the petitioner was a landless person. He further testified that six years ago, the appellant was forcibly taken away by SHO, and the fact was informed to the witness by the appellant's mother by visiting his house. Later on, he went to the appellant's house, and in his presence, police forcibly took away the appellant and involved him in a false case. The defense witness in cross-examination testified that he was the Sarpanch of the village, but at the time of the incident, he was not Sarpanch. He further explained that he inquired from the police why the appellant was being taken, and on this, police had informed him that he was required in a case. He admitted that he did not move any application regarding false involvement to any officer.

9. The Trial Court found the prosecution's evidence credible and neither found the appellant's stand under Section 313 CrPC nor the statement of the defense witness as credible and disbelieved them. Consequently, vide the impugned judgment dated 14.11.2003, the appellant was convicted, and on 15.11.2003, he was given minimum statutory imprisonment, i.e., a sentence of 10 years and a fine of Rs.1 lacs. Feeling aggrieved, the appellant had filed the present appeal before this Court.

10. I have heard counsel for the parties and have gone through the record, and its analysis would lead to the following outcome.

11. To establish the evidence collected in the investigation, the prosecution examined Inspector Ram Chander as PW7. He testified that, along with police officials, namely ASI Rajinder Singh PW6 and other police officials, were present at Pehowa in a government jeep to patrol and detect crime. He also testified about receiving secret information that the appellant was transporting poppy-husk by concealing the same beneath rice-husk in a tractor trolley being driven by him. Afterwards, they went towards the T-point, where they waited for the tractor.

12. A perusal of the FIR (Ex. P.C/1) the special report filed under Section 57 of the NDPS Act, (Ex. P.D) and the police report under Section 173 CrPC, and the statement of PW7 Inspector Ram Chander does not mention that Inspector Ram Chander had taken down the secret information in writing. In fact, his stand is that he had informed DySP through wireless. The copy of the Wireless has not been proved in evidence.

13. The prosecution examined Yogender Singh Nehra DySP as PW-8, and by that time, he had become Superintendent of Police. He testified that he had received a



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wireless message from Police Station to proceed at the spot. He did not say that he had received a message of coming at the spot because of prior information or for suspicion or apprehension of detection of a tractor trolley containing poppy straw. Simply because DySP was present at the spot would not dilute the requirement of complying with the mandatory safeguards of communicating the specific information in writing to the superior officers.

14. In *Boota Singh v. State of Haryana*, 2021 SCC Online SC 324, Hon'ble Supreme Court holds,

[12]. The evidence in the present case clearly shows that the vehicle was not a public conveyance but was a vehicle belonging to accused Gurdeep Singh. The Registration Certificate of the vehicle, which has been placed on record also does not indicate it to be a Public Transport Vehicle. The explanation to Section 43 shows that a private vehicle would not come within the expression public place as explained in Section 43 of the NDPS Act. On the strength of the decision of this Court in *Jagraj Singh alias Hansa*¹, the relevant provision would not be Section 43 of the NDPS Act but the case would come under Section 42 of the NDPS Act.

15. S. 42 of NDPS would apply in the given facts because the prosecution did not prove that the tractor trolley was a public vehicle. A tractor with trolley would not fall in the categories of public conveyance because it is not accessible to public as defined in explanation to Section 43 of NDPS Act. The other fact that would make the said Tractor Trolley fall under S. 42 and not 43 is that the appellant was alone on the Tractor. There is no evidence that S. 43 of the NDPS Act would apply to the Tractor-Trolley and thus it would fall under the definition of conveyance as mentioned in S. 42 of the NDPS Act and not under S. 43 NDPS. Thus, the conviction has to be set aside on the violation of S. 42 of the NDPS Act.

16. However, there are also additional points that must be discussed, analyzed, and adjudicated.

17. When the Investigator issued a notice to the accused under S. 50, he opted to be searched in the presence of a Gazetted Officer. In the meantime, DySP PW-8 reached the spot, and on his directions, they conducted a search of the tractor trolley. Without commenting upon the admissibility of the signatures of the accused on the statement under Section 50 of the NDPS Act and its impact on S. 162 of CrPC, this Court is proceeding further for the reason that it was the search of a tractor and not of a person, as such, Section 50 would not at all apply to the facts of the case.

18. However, the prosecution's case has another defect: the link evidence is not



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established.

19. It has come as evidence of PW-7 that after search and seizure, he handed over the case property to PW-2 Puran Mal, who, in his examination-in-chief, tendered his statement by affidavit Ex. PB. A perusal of Ex. PB does mention the receipt of case property from SHO and the transmission of samples to the laboratory on 01.09.1997 through Karam Singh, but neither is there any reference to the Malkhana register nor a copy of RC No.1376 through which it was transmitted to the laboratory has been annexed. Karam Singh, who had taken the samples to the laboratory, testified as PW-1 and tendered in evidence his affidavit Ex. PA. Perusal of his affidavit Ex. PA does mention that he had taken the samples through RC No.1376, but he did not tender in evidence the copy of RC No.1376. He also did not state about the signatures obtained and entries made in the Malkhana register or the Godown register. Thus, except for the oral statement of PW-2 that he had kept the case property in Malkhana in the police station, there is no corroborative evidence to establish the same. Nothing has been proven through the Malkhana register as to what the case property contained, the date and time of its deposit, and the time of withdrawal of the sample for their further testing from FSL to complete link evidence. Since the samples' details and the sample's impression have to be mentioned in the road certificate, even the copy of the road certificate was not tendered in evidence despite the fact that its number was mentioned in the affidavit as RC No.1376. It is not a case where the prosecution has forgotten the material fact because of a time lag or pressure of the Court; it is a case where they have handed over their evidence, i.e., examination-in-chief, by way of an affidavit, which was prepared well in advance and must have been cross-checked. Despite that, neither any reference was made to the Malkhana register, nor was a copy of the road certificate tendered in evidence. Thus, the link evidence regarding the time the SHO handed over the case property to PW-2 until it was handed over to PW-1 Karam Singh for further transmission to the laboratory and its receipt up to the laboratory is missing. It cannot be ascertained that what the laboratory had received was untampered. This assumes significance because when the case property was opened in the Court, it came in the cross-examination of PW6, ASI Rajinder Singh that seals were in broken condition and not clearly visible and further one bag had one or two holes and the other had three-four holes in one-inch diameter, which allegedly contained 36 kgs, and poppy husk was protruding from it.

20. These contradictions are important because no independent witness was associated despite the availability. The Investigating Officer, SHO, PW-7 Inspector Ram Chander, admitted in his cross-examination that people were passing by at the place of recovery, but when asked to join, they refused and expressed their inability. However, he did not say he had directed them to associate under S. 160 CrPC, 1973. The person from

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whom the weighing scale was taken could have easily been associated as an independent witness to prove not only handing over the weighing scale but also the recovery and seizure. Thus, the possibility cannot be ruled out that the independent witnesses were intentionally not associated.

21. Ld. trial Court’s findings on the above mentioned points are contrary to the law.

22. Thus, in the entirety of facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt, and the benefit must go to the convict, which is given accordingly.

23. Given the above, the present appeal is allowed. The conviction and sentence are quashed and set aside. Bail bonds are discharged. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

30.01.2025
Jyoti Sharma

Whether speaking/reasoned	Yes
Whether reportable	YES