

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

CRA-D-550-DB-2013 (O&M)

Reserved on: 24.02.2025

Date of decision: 07.03.2025

OM PARKASH

...Appellant

Versus

STATE OF PUNJAB

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Ankit Bishnoi, Advocate for the appellant.

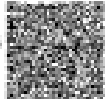
Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 17.04.2013, upon Sessions Trial No.47 dated 17.04.2013, by the learned Special Judge, Ferozepur, wherethrough in respect of a charge drawn against the accused *qua* an offence punishable under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”), the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

“xxx

After hearing the convict on quantum of sentence and keeping in view of the fact of recovery of 350 Kilograms poppy husk from the convict, this court finds that he does not deserves any leniency and under



*Section 15 (c) of The Narcotic Drugs and Psychotropic Substances Act, 1985, is sentenced to undergo rigorous imprisonment for a period of **twelve years and to pay fine of rupees one lac and in default of payment of fine to further under go rigorous imprisonment for a period of one year.***

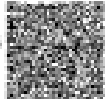
xxx”

2. The period of detention undergone by the convict, 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-convict 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 him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal.

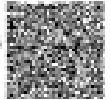
Factual Background and Investigation proceedings

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P10 is assigned. The narrations carried in Ex.P10, are that on 10.07.2006 SI Major Singh along with ASI Chhinder Singh 1334, ASI Tilak Raj 711, HC Hardev Singh 800, HC Jallandhar Singh 119, HC Gurcharan Singh 863, HC Baljit Singh 1986, HC Milakh Raj 2287, HC Prem Chand 748 Constable Mukhtiar Singh 1323, C Bhupinder Singh 409, C Gurbachan Singh 1394, C Ashok Kumar 2712, on a government vehicle No.PB-05J-4676 its driver is HC Ashok Kumar 479 was holding a picket in the area of village Waryam Khera Chowk near bridge killer for checking of suspicious vehicle, were present. At about 6:00 A.M. one Jeep Balero closed body without number came from Rajasthan, by road. On seeing the picket of police, it was stopped some distance behind, in which three clean shaven men were sitting. After immediate stopping



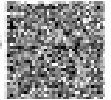
the Jeep driver and his companion sitting towards his left side opened the windows and ran away towards the fields. We chased them but could not apprehended them. The person, who was sitting in the middle, was apprehended and on the asking of IO, he told his name as Om Parkash son of Kheewa Ram, Caste Naik, resident of Hanuwant Pura, Police Station Rattan Nagar District Churu and he also told that driver of the vehicle as Rajinder son of Amar Singh and person who opened the left window his name is Vikram son of Indraj, caste Jaat, residents of Dhani Panne Singh Police Station Rattan Nagar, District Churu, Rajasthan.

5. Then the IO got introduced himself and asked that bags lying in your Jeep, having doubt of some intoxicant substance into them. So, the search of you and of the bags lying in the vehicle in your possession, is to be conducted. You have a legal right that you can get conduct search of your self and of the bags lying into the vehicle in your possession, from me or from some Magistrate or some Gazetted Officer. Upon it, he replied that I want to get conduct search of myself or conduct the search of the vehicle in my possession, in the presence of some Gazetted officer. As such, upon that Om Parkash aforesaid put his signature on memo in Hindi language and witnesses had got signed on the memo. Then the IO wireless fitted on the vehicle, requested through it to Amrik Singh Minhas, DSP Abohar to reach at the spot while intimating him about the spot on a Government Gypsy. Then DSP disclosed to the person already apprehended by the IO, namely Om Parkash about his name and rank that my name is Amri Singh Minhas Halqa DSP Abohar and posted as DSP Abohar and I am a Gazetted officer. The search is to be conducted of yourself and the bags lying in your vehicle. So that you have a legal right that you can get conduct the search of you and bags lying into the vehicle in your possession, in my presence



or in the presence of some Magistrate as well as in the presence of some other Gazetted Officer.

6. Then above noted Om Parkash replied that I want to get conduct the search of myself as well as of the bags lying in vehicle in my possession in your presence. Upon it, memo for consent was prepared. Om Parkash signed om memo in Hindi language and attested the witness. Memo was attested by DSP. Then the IO as per directions of DSP, unloaded the bags from the vehicle and opened their faces upwards and checked and 10 bags of powder of Poppy husk were recovered. After making arrangement of weighing scale 2/2 samples of powder of Poppy husk containing 250/250 grams each were taken out separate samples from each bag and prepared bundles, which were marked from 1 to 1A to 10-10A respectively and on weighing the bags, which came to each bag 34 kg and 500 grams of powder of Poppy husk. These were also marked Sr.No. 1 to 10 respectively. Thereafter 20 parcels of samples and 10 bags powder of Poppy husk, were sealed by the IO with his own seal bearing impression 'M.S' and the sample of the seal was prepared separately. The seal after use was given to ASI Chhinder Singh. DSP also sealed 20 parcels of samples and 10 parcels of bags of powder of poppy husk and prepared sample of seal with his own seal bearing impression 'A.S' and attested them. He kept the seal after use with him. Then the IO took into police possession the parcels of samples of powder of poppy husk and 10 parcels of bags of powder of Poppy husk and sample of seal with Balero vehicle of silver colour without number, its chassis number is 52L-54881 and Engine number GA-54L-68176 has been taken into Police possession vide separate recovery memos. Memo was got attested from the witnesses. DSP also attested the memo. Then on conducting the further personal search of Om Parkash, currency notes worth Rs. 350/- were recovered from him and the same



were taken into police possession vide separate recovery memo of personal search. Om Parkash signed on it in Hindi language and attested by the witness. DSP had put his attestation on the memo. Mr. Om Parkash, Rajinder and Vikram above have kept in their possession jointly 10 bags of powder of Poppy husk, so that they have committed an offence under Section 15, 29, 61, 85 ND & PS Act. On receipt of report of chemical examiner and on conclusion of investigation, challan against both the accused was presented in the Court for trial.

Trial Proceedings

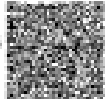
7. The learned trial Judge concerned, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charge against the accused, for an offence punishable under Section 15(c) of the Act. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 6 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. However, the accused did not lead any witness into the witness box.

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

Submissions of the learned counsel for the appellant

10. The learned counsel for the aggrieved convict-appellant 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

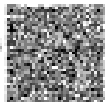
11. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate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

Analysis of the case

12. Through recovery memo Ex.P4, the recovery of the contraband became allegedly recovered from the vehicle concerned. In proof of the prosecution case, Sub Inspector Shinder Singh stepped into the witness box as PW-2, and, in his examination-in-chief, he made speakings thereins, which concur with the contents of the appeal FIR, to which Ex.P10 is assigned.

13. 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.

14. A reading of the report (Ex.P8), 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 heads. The said report is *ad verbatim* extracted hereinafter.

“x x x x

*Office of the Assistant Chemical Examiner to Government Pb. Amritsar
No.2838 dated:- 21-08-06*

*732-P/06
Macroscopic Poppy head coarse Powder
Morphiae Present
Meconic Acid:Present*

*733-P/06
Poppy head coarse Powder
Present
Present*

xxx

*740-P/06
Macroscopic Poppy head coarse Powder
Morphiae Present
Meconic Acid:Present*

*741-P/06
Poppy head coarse Powder
Present
Present*

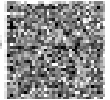
Opinion:- *The contents of the exhibits No.732 to 741-P/06 are of Poppy head.*

The seals of the exhibit/exhibits were intact and agreed with the sample seal sent.

*Sd/-
Assistant Chemical Examiner
to Govt. Pb. Amritsar”*

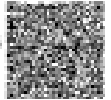
15. Be that as it may, though a reading of the report (supra) of the FSL also discloses, that the sealed cloth parcels, became received there, hence with the seal impressions thereons being intact. However, the chemical examiner at the FSL concerned, after making examinations of the stuff inside the sealed cloth parcels, and, thereafter his drawing the report (supra), yet omits to mention in the report Ex.P8, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

16. 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.P4, 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



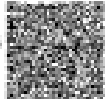
against the accused would be concluded to become cogently established. However, as above stated, for want of the chemical examiner concerned, after making examination(s) of the stuff inside, the sealed cloth parcels, thus re-enclosing the examined stuff inside the cloth parcels, and, his further failure 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.

17. 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.P4, and rather also as revealed on a reading of the examination-in-chief of PW-4 also remained unproduced in Court. In the wake of the above, it appears, that despite the identification of the case property, being made in Court by PW-6, and, also irrespective of the fact, that the exhibit marks were made, during the makings of testifications by PW-6, 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 the stuff examined at the FSL concerned, thus occurring within the sealed cloth parcels.



18. Therefore, though Ex.P4 may appertain to the relevant stuff, as became purportedly examined at the FSL concerned. However, yet in the wake of no observations (supra), being made by the learned trial Judge concerned, at the time of production of Ex.P4 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.P4; (b) the loose cloth parcels, Ex.P4, 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 Ex.P4, being introduced therein, thereby the report of the FSL (supra), rather looses its evidentiary vigour. A further scope is also left, 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.

19. Moreover, in paragraph 35 of the judgment rendered by the Hon'ble Apex Court in **"Noor Aga V. State of Punjab and another" Criminal Appeal No.1034 of 2008, decided on 09.07.2008**, paragraph whereof becomes extracted hereinafter, thus becomes spelt the imperative *sine qua non*, rather requiring to become cogently proven hence for therebys the charge drawn against the accused



becoming declared to become unflinchingly proven. However, since after the examination(s) being made of the stuff inside the sample parcels, thus by the FSL concerned, rather the latter did not re-enclose them in the sealed cloth parcels, hence carrying thereons the seals' of the FSL concerned. Moreover, when the said sample parcel(s) became never returned to the office wherefrom they generated nor when they became produced in Court.

“35. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. Even for the said purpose the retracted confession on the part of the accused could not have been taken recourse to.”

20. Consequently, the expostulation of law carried in verdict (supra), remains unsatiated thereby the accused become entitled to an acquittal.

21. The said view is also supported by a judgment rendered in case titled as **“Gaunter Edwin Kircher V. State of Goa, Secretariat Panji, Goa”, Criminal Appeal No.642 of 1991, decided on 16.03.1993**, relevant paragraph whereof becomes extracted hereinafter.

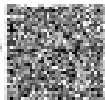
“J. Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 52A and 53 – Customs Act, 1962, Section 110(IB) – Physical evidence – Case Property – Recovery of heroin from accused – Case property destroyed and not produced – Physical evidence relating to three samples taken from the bulk amount of heroin were also not produced – Bulk quantity was destroyed the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52A of the Act.”

Final order

22. 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 appellant, and, as

becomes recorded by the learned trial Judge concerned, is quashed, and, set



aside. The appellant is acquitted of the charge framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. 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 appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

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

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

07.03.2025
Ithlesh

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