
Jaskaran Singh and Others Vs State of Punjab

Criminal Appeal No. 2454-SB of 2007

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 17, 2009

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) – Section 15(c), 25

Citation: (2009) 32 CriminalCC 562

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Bipan Ghai, with Mr. S.P.S. Sidhu, for the Appellant; A.S. Brar, DAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

Kanwaljit Singh Ahluwalia, J.

Jaskaran Singh, Nanak Singh and Daljit Singh were tried in case FIR No. 141 dated 10.10.2005 registered

at Police Station Sadar, Moga under Sections 15(c) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be

referred as, "the Act"). Jaskaran Singh and Nanak Singh have been convicted u/s 15(c) of the Act and sentenced to undergo rigorous

imprisonment for 10 years and to pay a fine of Rs.One lac each and in default of payment of fine, they were to undergo rigorous imprisonment for

1-1/2 years. Daljit Singh alias Bhola was convicted under Sections 25 read with Section 15(c) of the Act and sentenced to undergo rigorous

imprisonment for 10 years and to pay a fine of Rs.One lac. In default of payment of fine, he was to undergo further rigorous imprisonment for 1-

1/2 years. Appellants Jaskaran Singh and Nanak Singh were found in possession of 56 Kg. of poppy straw while they were travelling in Tavera

vehicle bearing registration No.PB-29E-6369 owned by Daljit Singh co-accused. The vehicle Tavera bearing aforesaid registration number was

ordered to be confiscated to the State. The present appeal has been filed against the conviction and sentence by all the appellants. No appeal

against confiscation of Tavera vehicle has been filed.

2. FIR Ex.P7/A was recorded by MHC Gurmel Singh PW9 on the basis of ruqa Ex.P7 sent by SI Mohan Lal PW1.

3. SI Mohan Lal was present along with his companion officials on the bridge of seepage-drain in the area of village Dagru for holding nakabandi

and patrolling. It was stated that nakabandi and patrolling was done under the supervision of SI Tehal Singh. At 6.30 A.M. a red colour Tavera

vehicle was seen coming from the side of Village Sada Singh Wala. The police party spotted two persons sitting in the vehicle. The vehicle was

signaled to stop. At that time one Gurdev Singh son of Darshan Singh was also coming on a scooter. He was stopped by the police party and he

was made to join the police party. SI Mohan Lal asked the driver who was driving the Tavera vehicle to disclose his name, parentage and village.

The driver disclosed his name as Jaskaran Singh son of Darshan Singh resident of Sant Nagar, Street No. 1, Moga whereas the person who was

sitting along with him on the adjacent seat disclosed his name as Nanak Singh son of Bant Singh resident of Police Station Sadar Patiala. The

Investigating Officer told those persons that he suspect that in the bags lying on the rear seat, there is some narcotic substance and, therefore, the

search is to be conducted and option was given to them that if they want to be searched before a Magistrate or a Gazetted Officer, they can

exercise that option. A memo to this effect was prepared. It is stated that a consent memo was prepared in which it was recorded that the accused

had reposed faith and confidence in the Investigating Officer. Accordingly search was carried. Bags were opened and poppy straw was found and

the same was weighed which came to 56 Kgs. From each bag samples of 250 grams were also prepared. Necessary procedure for search,

seizure and drawing of the samples was completed. The seal after use was handed over to ASI Bikar Singh. After registration of the case, the

matter was investigated. Thereafter, report u/s 173 Cr.P.C. was submitted. The appellants were charged by the Special Judge, Moga. They

pleaded not guilty and claimed trial.

4. Prosecution examined SI Mohan Lal as PW1. He had prepared ruqa Ex.P7 on the basis of which formal FIR was recorded. He gave the report

regarding stopping of vehicle, giving offer to the appellants to get themselves searched before a Magistrate or a Gazetted Officer and prepared

consent memo Ex.P1. He also stated regarding joining of independent witness Gurdev Singh. He also deposed regarding drawing of samples at the

spot, weightment of the narcotic substance and handing over of the seal impression Ex.P3 to ASI Bikar Singh. Thereafter he submitted that accused

along with the case property were produced before SI Ajaypal Singh, SHO, Police Station Sadar, Moga. In further examination-in-chief, he stated

that as per statement of Mahesh Kumar, Clerk, Office of DTO Moga, Tavera vehicle bearing registration No.PB-29-E-6369 was owned by Daljit

Singh appellant. He further stated that on receipt of report of Chemical Examiner Ex.P13, challan against the accused was submitted. In cross-

examination he admitted that he had not prepared the log book of the vehicle used for patrolling in present case. He stated that they were travelling

in a Mini bus. During cross-examination he admitted that seal was returned to him after 2-3 days of the occurrence and he had sent the ruqa at

10.00 A.M. and Hari Singh returned at the spot after obtaining number of the FIR at 1.00/1.30 P.M. He further admitted that he had not filled up

the CFSL form. He further admitted that seal was returned after 2-3 days by ASI Bikar Singh. He further stated that when the samples were sent

by the SHO for testing purpose, seal was with him.

5. PW2 Ashok Kumar is a Photographer. He had taken the photographs of the case property in the Court of Mrs.B.K.Bhatia, Judicial Magistrate

1st Class, Moga on 23.11.2005. PW3 HC Taranjit Singh had delivered the special report to Illaqa Magistrate and Senior police authorities. PW4

HC Tarsem Singh had tendered his affidavit Ex.P18 to prove the link evidence. HC Tarsem Singh was cross-examined. He stated that CFSL form

was not prepared by the MHC in his presence. He had deposited the material to the MHC. He further stated that except seals of Mark "KPS"

and "ML", there was no other seal on the sample parcels and on the seal chit. PW5 SI Ram Singh stated that on 11.10.2005 accused were

produced vide application Ex.P19 before the Illaqa Magistrate. He admitted in cross-examination that two packets of samples and two bags were

sealed by seal of the Court. ASI Bikar Singh to whom seals were handed over appeared as PW6. In cross-examination he stated that police party

was led by SI Tehal Singh. He further admitted that SI Mohan Lal was junior to SI Tehal Singh and SI Tehal Singh after effecting the recovery had

left the spot after 2-3 hours. He further stated that the seal which was entrusted to him was handed over to SI Mohan Lal on the next day. PW7

Gumam Singh had proved registration certificate of Tavera vehicle. PW8 SI Ajay Pal Singh deposed regarding production of the case property

and accused before him and subsequently handing over of the case property to SI Ram Singh. PW9 HC Gurmel Singh proved his affidavit

Ex.P24. He stated that three sample seal chits were produced before him and all were original. CFSL form was not deposited with him. Sample

seal chits were signed by the JMHC. PW Gurdev Singh was given up by the prosecution being won over by the accused. Report of Chemical

Examiner was tendered as Ex.P13.

6. All incriminating circumstances were put to the accused. They pleaded false implication and stated that no recovery was effected from them. The

accused were picked up from their houses in the morning. In answer to question No. 10 put to accused Jaskaran Singh, it was stated as under:-

That at the behest of higher police officers this false case was registered against me and Nanak Singh in order to falsely implicate my brother-in-

law (Jija Daljit Singh alias Bhola). This case has been planted upon me and Nanak Singh by involving Tavera car which was in my possession as

the said car Tavera was given to me on Sapurdari by order dated 03.09.2005 by Shri B.S.Sandhu the then, Special Judge, Ferozepore. Whereas

my brother-in-law Daljit Singh alias Bhola was in judicial lock up from 7th January, 2005 till 18th January, 2006 u/s. 15 of the NDPS Act in FIR

No.5 dated 07.01.2005 P.S.Malla Wala, District Ferozepore. In that case my brother-in-law was acquitted on 18th January, 2006.

That nothing incriminating has ever recovered from me and I was picked up from my house early in the morning and this false case has been

registered against me.

7. In defence, Surjit Singh was examined as DW1. He stated that on 10.09.2005 the accused were taken from their house. Mr.Ghai senior

counsel for appellants state that date 10.09.2005 has been wrongly recorded in fact it should be 10.10.2005, however, no explanation was sought

from the witness regarding this alleged lapse. Ranjit Singh DW2 had stated that on 10.10.2005 when he was going to the Gurdwara, he had seen

that in front of the gate of Jaskaran Singh police officials had arrived. Gurdev Singh appeared as DW3. He had stated that he is a Member

Panchayat and no recovery was effected from the accused. Appellant Jaskaran Singh along with another man was taken by the police from his

house.

8. I have heard Mr.Bipan Ghai, Senior Advocate along with Mr.S.P.S.Sidhu, Advocate and Mr.A.S.Brar, counsel for the State.

9. It has been submitted that in the present case, recovery was effected on 10.10.2005 at 6.30 A.M.. Police party was headed by SI Tehal Singh.

At the time of recovery, SI Tehal Singh was present and after 2-3 hours of the recovery, he left the spot. The recovery is not attested by SI Tehal

Singh. It is further submitted that in the present case, the accused had reposed confidence in the Investigating Officer and no Magistrate or

Gazetted Officer was called at the spot. It is further submitted that samples were prepared and sample seals after use were handed over to ASI

Bikar Singh. The CFSL form along with the samples were sent to the Chemical Examiner on 17.10.2005. Mr.Ghai has stated that CFSL form was

filled up on 17.10.2005 as it has come in the evidence of various witnesses that no such form was filled up at the spot. The CFSL form has been

exhibited as Mark A. A chit has been pasted on the CSFL form. The chit bear the seals of "ML" belonging to Mohan Lal and "APS" belonging to

Ajay Pal Singh. Mr.Ghai has read Ex.P20 an order passed by the Judicial Magistrate 1st Class, Moga wherein it has been stated that samples

have been produced and on the samples the Magistrate had got affixed seal of the Court. Mr.Ghai state that in the Laboratory when the seals were

opened, no mention has been made in the report that it bears the seal of Magistrate.

10. Mr.A.S.Brar, counsel for the State has stated that testimonies of official witnesses inspire confidence, therefore, no interference is warranted.

11. I have examined the arguments advanced by Mr.Ghai and counsel for the State. It has been stated by PW4 HC Tarsem Singh that except

seals of "APS" and "ML", there was no other seal on the sample parcels and on the seal chit. I find merit in this argument, as name of the

Magistrate is Ms.B.K.Bhatia and every where seal has been put as "APS" and this seal bear initials of Ajay Pal Singh. In the present case, case

property and the samples were handed over to SI Ram Singh. He had stated that the case property with seals intact were handed over to MHC

Gurmel Singh. He stated that he do not remember whether those seals were attested by the Magistrate or not. Order Ex.P20 is emphatic. The

Magistrate had put her seal on the samples on 11.10.2005. Thus apparently the samples on which the Magistrate had affixed the seal were not

sent to the Laboratory.

12. Another suspicious circumstance is that seal after use was not handed over to independent witness Gurdev Singh, rather it was handed over to

ASI Bikkar Singh. ASI Bikkar Singh PW6 had stated that he had returned the seal to the Investigating Officer on the next day which was handed

over to him. Thus, he had belied SI Mohan Lal that seal was returned back and received by him after 2-3 days. On the next date if ASI Bikkar

Singh had returned the seal, then it is the day when the Magistrate had affixed the seals. In the present case, Gurdev Singh independent witness has

not been examined. Even before giving up independent witness Gurdev Singh as won over, he was not produced before the Court. The argument

advanced by Mr.Ghai assume importance that there was no person by the name of Gurdev Singh. Therefore, he was not produced before the

Court. Rather he has been given up as won over on false pretext. Mr.Ghai has stated that in case Gurdev Singh independent witness was present

at the spot, there was no need to hand over the seal to police officials, rather it is expected that seal after use should have been handed over to

independent witness. It is stated that by introducing Gurdev Singh, the Investigating Agency had not acted fairly and properly. Even in this

contention of Mr.Ghai, I find merit. In the present case when suspicious circumstance regarding drawing of the samples and handing over the seal

are present, it was necessary to remove the doubt and independent witness should have been examined. In the present case, the case property

was produced before the Magistrate on 23.11.2005 after a delay of more than 1 month and 10 days. Why SI Tehal Singh who was heading the

police party was not examined; why he has been withheld from the Court, is another circumstance which assume importance to infer that

independent witness ought to have been examined. ASI Bikkar Singh had stated that SI Tehal Singh remained at the spot for 2-3 hours. Ruqa was

sent by SI Tehal Singh. Ruqa does not bear the signatures of SI Tehal Singh. SI Ajay Pal Singh stated that case property was handed over on the

next day. SI Ram Singh PW5 had stated that he deposited the case property with MHC Gurmel Singh on 11.10.2005 along with the samples.

There is no explanation as to why the samples were sent to the Chemical Examiner on 17.10.2005 along with CFSL form. Though PW9 MHC

Gurmel Singh had denied the suggestion that quantity of samples and other words were written later at Mark A after receipt of report of Chemical

Examiner, the possibility of tampering cannot be ruled out.

13. Taking into consideration various circumstances, the present appeal is accepted and the appellants are acquitted of the charge.