

(2010) 04 P&H CK 0127

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Darshan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 22, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15

Hon'ble Judges: Mohinder Pal, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Mohinder Pal, J.

Appellant Darshan Singh has filed this appeal against the judgment of conviction and the sentence order dated 18.9.2004 passed by the learned Judge, Special Court, Barnala, whereby he was convicted u/s 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs. 1,00,000/-, in default whereof to undergo further rigorous imprisonment for one year.

2. Mohinder Singh and Manjit Singh (co-accused of appellant Darshan Singh) were acquitted of the charge framed against them by the trial Court.

3. The prayer made in this appeal is to set aside the impugned judgment and the sentence order by way of acceptance of this appeal and to acquit appellant Darshan Singh of the charge framed against him u/s 15 of the Act.

4. The facts of the prosecution case, in brief, are that on 24.08.2002, a police party headed by Inspector Surinder Pal Singh, Incharge CIA staff, Barnala in connection with patrol duty and checking of suspected persons was present near the Bus Stand of village Dhaula, where Inspector Surinder Pal Singh received a secret information

to the effect that accused-appellant Darshan Singh and acquitted-accused Manjit Singh and Mohinder Singh were dealing in the sale-purchase of poppy husk while present near the watercourse on the katcha passage of village Tajoke Bal and in case a raid was conducted, they could be apprehended with poppy husk. Taking the said information to be creditable, ruqa was sent to the Police Station on the basis of which formal First Information Report was recorded.

5. As per the secret information, message was sent to the Control Room to send any Gazetted Officer. The police party had gone to conduct raid at the disclosed place. Near "Phirni" of Village Tajoke, one Bhura Singh met the party and he was joined in the party to witness the recovery. In the mean time, Deputy Superintendent of Police Gurjit Singh came there. The facts of the case were brought to the notice of Deputy Superintendent of Police Gurjit Singh. The police party was going towards Baloke via Kacha road and was present at some distance from the canal minor when the accused were seen sitting on the gunny bags lying near the canal minor. On seeing the police party, the two accused had succeeded in running away from the spot. Constable was deputed to chase the accused. However, appellant Darshan Singh was apprehended at the spot and he had disclosed about the names of his co-accused as Manjit Singh and Mohinder Singh (since acquitted), who had fled away from the spot. On reaching the spot, the Deputy Superintendent of Police disclosed his identity to appellant Darshan Singh. The appellant was apprised of his right being searched in the presence of a Magistrate or a Gazetted officer. The appellant opted for his search to be made in the presence of Deputy Superintendent of Police Gurjit Singh, a Gazetted Officer. Consent memo of the appellant in this regard was prepared. Thereafter, on the direction of Deputy Superintendent of Police Gurjit Singh, the search of the gunny bags was conducted which were found to be containing poppy husk. Bags were four in numbers. On weighment, three bags were found to be containing 30 kgs poppy husk each and fourth bag was found to be containing 20 kgs each. Two samples of 250 grams each were taken from each bag. Samples and remaining poppy husk were separately sealed by the Investigation Officer with his seal bearing impression "SPS" and with the seal of Deputy Superintendent of Police bearing impression "GS". The bags containing bulk poppy husk and the samples were taken into possession. On personal search of the accused-appellant, Rs. 510/- were recovered, which were also taken into possession. The accused-appellant was then arrested. Site plan was prepared showing the place of recovery.

6. The acquitted accused who fled from the spot were arrested later on by Assistant Sub Inspector Gurcharan Singh and Assistant Sub Inspector Harbhajan Singh, on 07.12.2002 and 13.12.2002, respectively.

7. After receipt of the report of the Chemical Examiner and the completion of investigation, challan was presented against the accused-persons in Court.

8. Charge u/s 15 of the Act was framed against the accused, to which they did not plead guilty and claimed trial.

9. In order to prove its case against the accused, the prosecution examined Inspector Surinder Pal Singh (P.W.1), Head Constable Pargat Singh (P.W.2), Constable Jaspal Singh (P.W.3), Assistant Sub Inspector Harbhajan Singh (P.W.4), Head Constable Balbir Singh (P.W.5), Sub Inspector Gurdev Singh (P.W.6), Deputy Superintendent of Police Gurjit Singh (P.W.7) and Assistant Sub Inspector Gurcharan Singh (P.W.8). Bhura Singh, the independent witness, was given up as having been won over by the accused.

10. In his statement recorded u/s 313 of the Code of Criminal Procedure, the accused-appellant denied the prosecution allegations and pleaded innocence. He further stated that he was arrested from his house in the presence of Kapoor Singh, Gurdarshan Singh, Mohinder Singh and Nachhattar Singh of his village and was falsely involved in this case. Nothing was recovered from him. false implication. Bhura Singh was examined by the accused in defence as D.W.1.

11. I have heard the learned Counsel for the parties and have gone through the records of the case.

12. The learned Counsel for the appellant, inter alia, argued that in this case conscious possession of contraband poppy husk by the appellant is not proved by the prosecution and it entitles the appellant to acquittal. He argued that merely being found present at the place where the gunny bags containing poppy husk were found and the failure to give any satisfactory explanation for being so present did not prove that the accused was in possession of the said poppy bags. According to the learned Counsel, in fairness to the accused, the police ought to have conducted further investigation as to the transportation of poppy bags to the place of incident, ownership of the poppy husk etc. to prove that the accused-appellant was really in possession of the said articles.

13. After giving my careful thought to the argument raised by learned Counsel for the appellant, I find sufficient force in the same. In this case, the appellant was allegedly found sitting on the gunny bags lying near the "kacha path" of the canal minor in the area of Village Tajoke. Accused-appellant Darshan Singh belongs to Village Gharali. There is no evidence on record to show the ownership of the poppy husk by the appellant. The police ought to have conducted further investigation to prove that the appellant was really in possession of these bags, which was not done. As noticed above, the case of the prosecution is consisted of only official witnesses and the only independent witness, namely, Bhura Singh was not examined. Instead, he was examined by the accused in defence. No doubt, the statements of the official witnesses cannot be discarded merely because of their official status, but when the exclusive possession of the accused over the contraband poppy husk has not been proved on record the statements of the police witnesses, who are interested in the

success of the case, have to be scrutinized minutely particularly when there is no corroboration to their statements from an independent source.

14. There is no evidence to prove the charge of transporting the contraband poppy husk to the place of recovery by the accused. No investigation was made by the police regarding the source of the contraband as to wherefrom it was brought and its destination. It casts a serious doubt on the prosecution version.

15. In the case reported as *State of Punjab v. Balkar Singh and Anr.* 2004 SCC (Cri.) 838 wherein the accused-respondents, who belonged to different villages, were alleged to have been found present at a place wherefrom about 100 bags of poppy straw were recovered, sitting on such bags, and failed to give any satisfactory explanation for being present at that place, it was held by the Hon"ble Supreme Court that merely by being found present at the place where the poppy bags were found and the failure to give satisfactory explanation for being so present did not prove that the accused persons were in possession of said poppy hags. Holding thus, the Apex Court dismissed the appeal of the State against the acquittal of the accused-respondents. Similar view was taken by a Division Bench of this Court in the case of *Bikkar Singh v. State of Punjab* 2006 (3) R.C.R (Criminal) 16 wherein the accused-appellant Balkar Singh was found sitting on 120 bags of poppy husk lying in a sugarcane field and it was held by this Court that custody and control of accused over the substance was not proved beyond doubt. For taking this view, reliance was placed by a Division Bench of this Court on the authority reported as *State of Punjab v. Balkar Singh* 2004 SCC (Cri.) 838.

16. In the case of *State of Punjab v. Nachhattar Singh alias Bania* 2007 (3) RCR (Criminal) 1040 : 2007 (3) P.L.R.122 wherein the accused therein was found sitting on bags of poppy husk near a river and the police did not ascertain whether bags belonged to accused or not and how bags were transported to the place of recovery, it was held by a Division Bench of this Court that it was not sufficient to prove conscious possession of the accused. Accordingly, the appeal filed by the State against the acquittal of the accused therein was dismissed.

17. Further, in the case of *Sukhdev Singh alias Sukha v. State of Punjab* 2006 (1) R.C.R (Criminal) 4 : 2006 (1) Cri. C.C 934 where the accused was found sitting on six bags of poppy husk, it was observed by a Division Bench of this Court that the police should have conducted further investigation to prove that the accused was really in possession of these bags and the failure to give any explanation by the appellant therein for being present on that place itself does not prove that he was in possession of these articles.

18. In view of the above, the charge u/s 15 of the Act against the appellant is not proved beyond all reasonable doubts. Resultantly, I accept this appeal and acquit the appellant of the charge framed against him by giving him the benefit of doubt by setting aside the impugned judgment of conviction and the sentence order.