

(1987) 11 P&H CK 0019

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Revision No. 603 of 1985

Bheem Sain

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Nov. 23, 1987**Citation:** (1988) 1 AICLR 608 : (1988) 1 CurLJ 360 : (1988) 1 RCR(Criminal) 210**Hon'ble Judges:** S.S.Sodhi, J**Advocate:** N.S. Gujral, G.S. Gujral, Advocates for appearing Parties

Judgement

S.S. Sodhi, J.

1. The petitioner Bheem Sain stands convicted for an offence under Section 9 of the Opium Act and sentenced to one year's rigorous imprisonment and a fine of Rs. 500/ in respect thereof.

2. The case against the petitioner is that on July 4, 1981, he was found in possession of 81/2 kgs. of opium.

3. According to PW 1 Harnek Singh, Incharge of Police Station Kotwali, Ludhiana, on that date, i.e. 4.7.1981, he along with S.I. Harbans Singh and other constables was out on patrol in a jeep, when on reaching near Raikhy Cinema Chowk, Arjan Singh joined them. Later, when they reached near the Bus Stand at about 5.00 P.M. Bheem Sain, who was there, tried to slip away seeing the police party. On suspicion being aroused, he was apprehended and on search, was found to be carrying a Jhola which contained 81/2 kgs. of opium. A sample of 10 gms. was separately taken and sealed which was later sent for chemical examination while the remaining opium was despatched to the Police Station, where a ruqa Exhibit PB was also sent for the registration of the case. The report of the Chemical Examiner, Exhibit PE confirmed that the article recovered was indeed opium.

4. In support of its case, the prosecution examined PW 1 Harnek Singh Inspector and PW 2 Harbans Singh SubInspector besides tendering in evidence, affidavits

Exhibits PF and PG. The report of the Chemical Examiner, Exhibit PE was also placed on the record.

5. When examined under Section 313 of the Code of Criminal Procedure, Bheem Sain petitioner denied the prosecution case and pleaded innocence. The story put forth by him being that he was sitting at the house of his cousin Kasturi Lal, when a constable came there and took him to the Police Station saying that one Vinod Kumar of his village had been arrested and he wanted to see him. To establish this, Arjan Singh, who according to Inspector Harnek Singh was a member of the police party, was examined in defence, besides DW 2 Baldev Raj Gupta. Certified copies of judgments Exhibits DB, DC and DD were also tendered in evidence in order to show that said Arjan Singh was a stock witness of the police.

6. The trial Magistrate, taking into account the material on record, convicted and sentenced the petitioner in the manner stated above. This conviction and sentence was later affirmed in appeal. No occasion is provided here for any interference with either the conviction or sentence of the petitioner.

7. The main ground urged in seeking to assail the conviction of the petitioner was that the case against the petitioner rests solely on the testimony of the official witnesses and, therefore, it would not be safe to rely upon their testimony alone, uncorroborated by that of some independent witness. It is now well settled that the testimony of a witness is not to be doubted merely on the ground that he is an official. It is no doubt true that no independent member of the public was associated but as the prosecution case shows, this was an unexpected recovery of opium. The quantity of the opium recovered is such that it must be termed as a most pertinent consideration in this behalf. Eight and a half kg. of opium cannot just be produced for foisting a false case especially in a case like the present, where the petitioner does not come forth with any explanation or motive for the police to seek to falsely implicate him in this case.

8. Arjan Singh is the person who was examined in defence. He is clearly a person unworthy of belief. Even according to the petitioner, his credentials were such that it would be very unsafe to accept the word. Not only is it that he is undoubtedly a stock witness of the police but as he has shown in this case, he can when convenient, turn round and depose against the prosecution too inasmuch as he denied here that any such incident had taken place, or any recovery had been made from the petitioner.

9. Faced with this situation counsel sought to fall back upon some discrepancies appearing in the testimony of the prosecution witnesses. He mentioned in this behalf that according to Inspector Harnek Singh, it was after 10/15 minutes of their leaving the Police Station that Arjan Singh was associated whereas Sub Inspector Harbans Singh stated that he was associated at about 5.00 p.m. i.e. after 1 hour of their leaving the Police Station. Further that whereas Harbans Singh has stated that

they had checked 5 to 7 Dhabas that day, Inspector Harnek Singh had denied that any Dhaba had been checked and finally that inspector Harnek Singh had stated that the opium was weighed piecemeal whereas according to Sub Inspector Harbans Singh, it was weighed at one time. None of these discrepancies can be said to be with regard to any matter of any significance. It must be appreciated that the witnesses were deposing to an incident that had occurred many months earlier and it is no wonder therefore, that on minor unimportant matters, some lapse of memory occurred, resulting in such discrepancies. They are not such as can justify any doubt in the prosecution case against the petitioner.

10. Finally, a halfhearted attempt was made by the counsel for the petitioner to question the validity to the conviction on the ground that the two affidavits Exhibits PF and PG did not satisfy the requirements of Section 297 of the Code of Criminal Procedure, inasmuch as they had not been verified in the manner to suggest that the contents thereof were true to the knowledge of the deponent. In dealing with this matter, it must be appreciated that it is for the first time in revision that such a point has been raised. At any rate, a reading of the affidavits and the verifications thereon, does not suggest any such infirmity as was sought to be inpunned to them.

11. Considered in their totality, the circumstances of the case as spelt out from the evidence on the record do not justify any interference in revision of either with the conviction or sentence of the petitioner. This being so, this revision petition is hereby dismissed. The petitioner, who is on bail is directed to surrender to his bail bonds to undergo unexpired period of imprisonment imposed upon him.