

## Lakhbir Singh and Another Vs State of Punjab

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** April 29, 2008

**Acts Referred:** Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) " Section 15

**Citation:** (2008) 27 CriminalCC 930

**Hon'ble Judges:** Sham Sunder, J

**Bench:** Single Bench

**Advocate:** Amar Singh Sandhu, for the Appellant; S.S. Bhullar, DAG, Punjab, for the Respondent

**Final Decision:** Dismissed

### Judgement

Sham Sunder, J.

This appeal is directed against the judgment of conviction and the order of sentence dated 20.11.2001, rendered by the

Court of Special Judge, Ferozepur, vide which it convicted the accused/appellants, for the offence punishable u/s 15 of the Narcotic Drugs &

Psychotropic Substances Act, 1985 (hereinafter called as "the Act" only) and sentenced them to undergo rigorous imprisonment for a period of one

years each, and to pay a fine of Rs. 1 lac each, and in default of payment of the same, to undergo rigorous imprisonment for another period of one

year each for having been found in possession of 120 bags each containing 15 Kgs. of poppy husk, without any permit or licence.

2. The facts, in brief, are that on 25.03.1998 ASI Gurpreet Singh, Incharge Police Post Bahabwala, Police Station Sadar, Abohar, along with

other police officials was present, after having held a picket on the bridge of canal minor in the area of Village Amarpura situated on Abohar-

Hanumangarh road. At about 11.30 A.M. a tanker bearing registration number PB-09-KA-5937 came from the side of Rajasthan. The tanker

was signalled to stop and the driver stopped the same at some distance Lakhbir Singh, accused, was driving the tanker, whereas, Punjab Singh

was sitting by his side. Search of the tanker was conducted, in accordance with the provisions of law, in the presence of DSP Gurmit Singh, who

was called to the spot through wireless message, which resulted into the recovery of 120 bags each containing 15 Kgs. of poppy husk. Two

sample of 250 grams, from each of the bags were taken out, and the remaining poppy husk, was put into the same bags. The sample and the bags

were duly sealed with the seals bearing impression "GS" of Gurpreet Singh and "GS" belonging to Gurmit Singh, DSP. Separate sample

impression of the seals was prepared. The seal, after use, was handed over to Head Constable Pritam Singh. The accused could not produce any

valid permit or licence, for keeping in possession, the poppy husk. Therefore, the entire case property including the sample parcels were taken into

possession vide a separate recovery memo, attested by the witnesses. Personal search of accused Lakhbir Singh was effected which resulted in to

the recovery of Rs.550/- whereas the personal search of accused Punjab Singh, resulted into the recovery of Rs.370/-. The amount of personal

search of both the accused, was taken into possession, vide a separate recovery memo. Ruqa was sent to the Police Station, on the basis whereof,

FIR was recorded. The tanker was also taken into possession vide a separate recovery memo. The accused were arrested. After the completion

of investigation, the accused were challaned.

3. On their appearance, in the Court, the copies of documents, relied upon by the prosecution, were supplied to the accused. Charge u/s 15 of the

Act, was framed against them, to which they pleaded not guilty, and claimed judicial trial.

4. The prosecution, in support of its case, examined Nagore Singh, PW1, Pritam Singh, ASI, PW2, Gurmit Singh, DSP, PW3, Baljinder Singh,

Constable, PW4, and Gurprit Singh, ASI, PW5. Thereafter, the Public Prosecutor for the State closed the prosecution evidence.

5. The statements of the accused u/s 313 Cr.P.C., were recorded, and they were put all the incriminating circumstances, appearing against them, in

the prosecution evidence. They pleaded false implication. They however, led no evidence in their defence.

6. After hearing the Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court,

convicted and sentenced the accused, as stated herein before.

7. Feeling aggrieved, against the judgment of conviction, and the order of sentence, rendered by the trial Court, the instant appeal, was filed by the

accused/appellant.

8. I have heard the learned Counsel for the parties, and have gone through the evidence and record of the case, carefully.

9. The Counsel for the appellant, at the very outset, contended that the prosecution miserably failed to prove that the accused were found in

conscious possession of 120 bags containing 1800 Kgs. of poppy husk. As many as 120 bags, containing poppy husk were lying in the tanker.

Lakhbir Singh, accused was driving the same, whereas, Punjab Singh was sitting by his side. It means that they were in possession of and control

over the bags containing poppy husk. Such a large quantity of poppy husk, lying in the tanker could not be planted, against the accused, by the

Police, especially, when it (Police) had no grudge or enmity against them. Once the accused were found in physical possession of and control over

the bags containing poppy husk, the statutory presumption under Sections 35 and 54 of the Act operated against them by virtue where of they

were presumed to be in conscious possession thereof. Thereafter, the onus shifted on to the accused, to prove that they were not in conscious

possession of those bags containing 1800 Kgs. of poppy husk. Section 54 of the Act *ibid*, is extracted as under:-

Presumption from possession of illicit articles. - In trials under this Act, it may be presumed, unless and until the contrary is proved, that the

accused has committed an offence under this Act in respect of:-

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance

or controller substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled

substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been

manufactured, for the possession of which he fails to account satisfactorily.

Section 35, which relates to the presumption of culpable mental state, is extracted as under:-

Presumption of culpable mental state. - (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused,

the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental

state with respect to the act charged as an offence in that prosecution.

Explanation. - In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely

when its existence is established by a preponderance of probability.

10. From the conjoint reading of the provisions of Sections 54 and 35, referred to hereinbefore, it becomes abundantly clear, that once an

accused, is found to be in possession of a contraband, he is presumed to have committed the offence, under the relevant provisions of the Act until

the contrary is proved. According to Section 35 of the Act *ibid*, the Court shall presume the existence of mental state, for the commission of an

offence, and it is for the accused to prove otherwise. In *Madan Lal & Anr. v. State of H.P.*, 2004(1) Apex Court Judgments 260 (S.C.): 2004(2)

Criminal Court Cases 361 (S.C.) : 2003 SCC (Cr.) 1664 it was held as under:-

The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in

possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available

in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.

The facts of *Madan Lal's* case (supra) in brief, were that accused Manjit Singh was driving the Car, and the remaining four accused, were sitting

therein. One steel container (dolu) in a black coloured bag was recovered from the said Car, which contained 820 gms. charas. The accused were

convicted and sentenced by the trial Court, holding that they were found in conscious possession of charas. The High Court dismissed the appeal.

The Apex Court held that the trial Court was right in coming to the conclusion, that the accused were found in conscious possession of charas, as

they had failed to explain, as to how, they were travelling in a Car together, which was not a public vehicle. The Apex Court upheld the conviction

and sentence awarded to the accused. The facts of the aforesaid authority, are similar and identical to the facts of the of the instant case.

The accused failed to rebut the statutory presumption, operating against them, under the provisions of Sections 35 and 54 of the Act. The accused,

in their statements u/s 313 Cr.P.C. were put specific questions, that the search of the tanker was conducted, as a result whereof, 120 bags

containing 1800 Kgs., of poppy husk, lying in the tanker, were recovered. The accused were also put specific questions, that Lakhbir Singh was

driving the tanker, whereas, Punjab Singh was sitting by his side. They were, thus, made aware of the fact, that they were found in physical

possession of 120 bags containing 1800 Kgs. of poppy husk. They did not take up the plea, that they were not aware of the contents of the bags.

They also did not state as to how they were travelling, in the tanker, together and proceeding to the same destination. They did not state that they

were mere travellers, in the tanker, or had taken a lift, from a certain place, and, therefore, did not know about the bags containing poppy husk,

lying in the body of the tanker. It could not be said that the accused were not aware of the bags, containing a large quantity of poppy husk. It was

not a small quantity of poppy straw, which was concealed and, as such, could escape the notice of the accused. Even no evidence in defence was

produced by any of the accused to rebut the presumption, referred to above. In these circumstances, the accused miserably failed to rebut the

statutory presumption, operating against them, under Sections 35 and 54 of the Act that they were in conscious possession of the bags containing

poppy husk, which were recovered from the tanker. Keeping in view the principle of law, laid down, in the aforesaid authority and the evidence

produced, in this case, the trial Court, in my considered opinion, was right, in coming to the conclusion, that the accused were found in conscious

possession of poppy husk contained in 120 bags, lying in the tanker. No doubt, during the course of cross-examination of Gurprit Singh, PW5, a

suggestion was put to him that Punjab Singh, accused told him that he had taken the lift in the tanker. However, he stoutly denied the suggestion. In

case, Punjab Singh had only taken a lift, in the tanker, and he had no concern with the bags, containing poppy husk, he would have taken up such

a plea in his statement u/s 313 Cr.P.C, and produced cogent evidence, in that regard, so as to rebut the statutory presumption operating against

him under Sections 35 and 54 of the Act. Mere suggestion, having been put up to Gurprit Singh, PW5, which was stoutly denied by him, did not

prove that the statutory presumption, operating against the accused, stood rebutted. It was, thus, proved beyond a reasonable doubt that the

accused were found in conscious possession of 120 bags containing 1800 Kgs. of poppy husk. The submission of the Counsel for the appellants

being without merit, must fail and the same stands rejected.

11. The Counsel for the appellants however, placed reliance on Avtar Singh v. State of Punjab, 2002(2) Apex Court Judgments 402 (S.C.):

2002(4) RCR(Criminal) 180 (SC), Narcotics Control Bureau, Jodhpur Vs. Murlidhar Soni and Others, and Joga Singh v. State of Punjab,

2006(3) Criminal Court Cases 973 (P&H) : 2006(3) RCR(Criminal) 480 to contend that the accused were not found in conscious possession of

120 bags containing 1800 Kgs of poppy husk. In Avtar Singh's case (supra), decided by the Apex Court, it was held that, at the most the

accused who were found sitting, in the truck, carrying poppy husk could be said to be abettors. The act of abetment is punishable u/s 29 of the Act

though no sentence was awarded to them for the offence punishable under the said Section, on the ground that no charge of abetment had been

framed. In Narcotic Control Bureau's case (supra) the provisions of Sections 35 and 54 of the Act were not adverted to. In Joga Singh's case

(supra) decided by a Single Bench of this Court, the accused was sitting by the side of the driver and it was held that he could not be said to be in

conscious possession of the contraband, being carried in the truck. The facts of the aforesaid authorities, being distinguishable, from the facts of the

instant case, no help therefore, can be drawn by the Counsel for the appellant from the ratio of law laid down therein. The accused miserably failed

to rebut the statutory presumption referred to above. In view of the principle of law laid down in Madan Lal's case (supra), the facts whereof are

identical and similar to the facts of the instant case, it could be safely held that the accused were in conscious possession of the contraband, the

submission of the Counsel for the appellants's being without merit, must fail and the same stands rejected.

12. It was next contended by the Counsel for the appellants that a number of discrepancies and contradictions, occurred in the statement of the

prosecution witnesses, which in the absence of corroboration to the evidence of the official witnesses were fatal to the case of the prosecution but

the same were not taken into consideration, by the trial Court, as a result whereof, miscarriage of justice occasioned. The discrepancies, pointed

out, in the statements of the prosecution witnesses were noted down, by the trial Court, in Para number 19 of its judgment. The trial Court came to

the conclusion, that these discrepancies were bound to occur, in the statements of the witnesses, after a lapse of considerable time and due to

faltering of memory. The trial Court also held in Para No. 19 of its judgment that these discrepancies, being minor, did not go to the-root of the

case of the prosecution, and, as such, the same did not make the case of the prosecution, in any way, doubtful. After carefully going through the

evidence, produced by the prosecution, and the conclusion arrived at by the trial Court, in Para number 19 its judgment, to the effect, that the

discrepancies were minor in nature and did not go to the root of the case, this Court is also of the opinion that the Court was right in discarding

such insignificant discrepancies. The conclusion arrived at, by trial Court, in this regard, being correct is endorsed. In this view of the matter, the

submission of the Counsel for the appellants being without merit must fail and the same stands rejected.

13. No other point, was urged, by the Counsel for the parties.

14. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the trial Court, are based on

the correct appreciation of evidence, and law on the point. The same do not warrant any interference. The same are liable to be upheld.

15. For the reasons recorded, hereinbefore, the appeal is dismissed. The judgment of conviction and the order of sentence dated 20.11.2001, is

upheld. The bail bonds of the appellants, if they were released on bail are cancelled. The Chief Judicial Magistrate, Ferozepur shall comply with the

judgment of this Court with due promptitude keeping in view the applicability of the provisions of Section 428 of the Code of Crl. Procedure.

16. The trial Court failed to pass any specific order regarding the confiscation of the tanker in question. The trial Court should proceed further

immediately, in accordance with the provisions of Sections 60(3) and 63 of the Act for confiscation of the tanker, and pass a final order, in regard

thereto if already not passed within three months, from the date of receipt of certified copy of the judgment.