

(2007) 02 P&H CK 0135

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 103-DB of 2006 and Criminal Appeal No. 108-DB of 2006

Shinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Feb. 8, 2007**Acts Referred:**

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15

Citation: (2007) 20 CriminalCC 419**Hon'ble Judges:** Mehtab S. Gill, J; Arvind Kumar, J**Bench:** Division Bench**Advocate:** Tarminder Singh, Mr. Ashish Gupta and Mr. Narinder Singh, for the Appellant; Shinder Singh and Mr. J.S. Dhillon, D.A.G., Punjab, for the Respondent**Final Decision:** Dismissed

Judgement

Mehtab S. Gill, J.

We will be passing a common Judgment/order in Criminal Appeal No. 103-DB of 2006 and Criminal Appeal No. 108-DB of 2006, as they arise out of the common judgment/order passed by the Special Judge, Mansa dated 14.12.2005.

2. The trial Court convicted Shinder Singh son of Modan Singh and Ajaib Singh son of Mukand Singh u/s 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and sentenced them to undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 2 lacs each. In default of payment of fine, to further undergo rigorous imprisonment for two years each.

3. The case of the prosecution is unfolded by ruqa Ex. PH sent to Police Station Bhikhi by SI Hardevinder Singh, who stated that on 12.12.2000 he along with ASI Harbhajan Singh, ASI Surjit Singh, HC Yadwinder Singh, HC Gurtej Singh, CI Baldev Singh and PHG Secretary Sharma were going on Govt. Gypsy PB-31-6418 driven by Constable Lakhbir Singh. When they reached near Atma Ram Hospital Bhikhi, octroi post Budhlada road, in connection with Nakabandi and checking of vehicles at about

8.15 A.M., they saw a truck coming from the side of Budhlada, which turned towards Bhikhi. On suspicion, SI Hardevinder Singh stopped the truck. In the meanwhile, Tarsem Singh Municipal Commissioner, resident of Bhikhi came on his scooter. He was joined by the Investigating Officer. There were two young men sitting in the truck. One disclosed his name as Shinder Singh son of Modan Singh, who was driving the truck bearing No. HRD-8547 and the second person, who was sitting on the left portion inside the cabin of the truck, disclosed his name as Ajaib Singh son of Mukand Singh. The truck was checked as per rules. SI Hardevinder Singh saw nine gunny bags full of something. The bags were of fertilizer. SI Hardevinder Singh told Ajaib Singh and Shinder Singh that he suspected that they had narcotics in the nine gunny bags. If they wanted to be searched by a Gazetted Officer or a Magistrate, they could do so. Both Ajaib Singh and Shinder Singh stated, that they be searched in the presence of a Gazetted Officer. Information was sent to the Police Station Bhikhi on the wireless set. He requested DSP(SD) Shri Balwinder Singh Romana to come. The DSP(SD) came at 9.30 A.M. in his Govt-Gypsy along with his gunmen. Balwinder Singh Romana, DSP (SD) disclosed his identity and after preparing the memo, of search and taking the consent of Shinder Singh and Ajaib Singh, he directed SI Hardevinder Singh to conduct the search of the bags. On opening the bags, poppy straw was found in them. Two/two samples weighing 100/100 grams were taken out from each bag and 18 parcels of sample of poppy straw and the remaining bags of poppy straw were weighed with a spring balance turn by turn. Each bag weighed 35/35 kgs. Sample seal was prepared. Seal was handed over to Tarsem Singh M.C. Registration copy of the truck was recovered. 18 parcels of sample of poppy straw weighing 100/100 grams and 9 parcels of gunny bags weighing 35/35 kgs. of poppy straw duly sealed by seal of "HS", along with sample seal and cover made of bags of fertilizer. The truck bearing No. HRD-8547 and the registration of the truck were taken into possession. On the basis of this ruqa, FIR Ex. PH/1 was recorded.

4. The prosecution to prove its case brought into the witness box SI/SHO Hardevinder Singh as P W1, HC Vijay Kumar as PW2, SI Harbhajan Singh as PW3 and Savinder Singh Clerk of DTO Office as PW4.

5. Mr. Tarminder Singh, Advocate, Learned Counsel for appellant Ajaib Singh has argued, that Ajaib Singh was sitting on the side, of the truck. No question was put to him u/s 313 Cr.P.C. as to who consciously was in possession of the contraband. Nor was any question put to him regarding the tampering of the gunny bags.

6. The only witness to the recovery, SI Hardevinder Singh PW1 is an interested witness, as he wanted to take the truck into his own possession with mala fide intention. DSP Balwinder Singh Romana was not examined and no worthwhile effort was made by the prosecution to get him into the witness box.

7. The sample seal remained in the custody of SI Hardevinder Singh and there was every likelihood of the case property being tampered with. The samples were

deposited with the Forensic Science Laboratory on 15.12.2000, though the recovery had taken place on 12.12.2000. HC Vijay Kumar PW2 kept the seals with him for one day i.e. on 14.12.2000. No explanation has come as to why he did not take the samples on that day. The weighing scale was a small spring scale, which could not weigh more than 500 grams.

8. Mr. Narinder Singh, Advocate, Learned Counsel for appellant-Shinder Singh has argued, that there are material discrepancies in the statements of the official witnesses. SI Hardevinder Singh PW1 has stated, that the independent witness Tarsem Singh came at 8.15 A.M., while ASI Harbhajan Singh PW3 has stated, that he came at 8.20 A.M. The truck was apprehended at 8.15 A.M. Similarly, SI Hardevinder Singh PW1 has stated, that Balwinder Singh Romana DSP (SD) was standing at the spot while the paper work was being done, while SI Harbhajan Singh PW3 has stated, that he sat down on the Chaddar. The independent witness Tarsem Singh has not been examined. It has come in evidence that a torch was used though the proceedings were done in broad day light.

9. Learned Counsels have also argued that as the appellants are first offenders and if the Court finds them guilty, the sentence of the appellants (being on the excessive side) be reduced to 10 years RI and fine be reduced to Rs. one lakh and in default of payment of fine, to further undergo one year RI.

10. Learned Counsel for the State has argued, that the minor discrepancies in the statements of the witnesses are for the reason that the statement of SI Hardevinder Singh PW 1 was being recorded after a gap of five years. SI Hardevinder Singh P W1 has stated, that the case property remained with him and no tampering had been done. The case property could not be deposited in the malkhana, as there was no space in the malkhana. Seal was intact when it was produced before the Magistrate in the Court. The seal after use when the contraband was recovered from the appellants, was handed over to Tarsem Singh, MC, an independent witness. The spring balance used for weighing was not a small one, but it could be used for 1 kg. to 50 kgs.

11. We have heard the Learned Counsel for the parties and perused the record with their assistance.

12. Appellant Shinder Singh was driving the truck bearing No. HRD-8547 and appellant Ajaib Singh was sitting on his side, when it was apprehended by the police party headed by SI Hardevinder Singh PW1. The consent memo of appellant Shinder Singh Ex. PC and of appellant Ajaib Singh Ex. PD was. prepared, which were signed by Tarsem Singh MC, SI Harbhajan Singh and DSP Balwinder Singh Romana. Before the Gazetted Officer Balwinder Singh Romana DSP(SD) came to the spot, offer of search was made to the appellants by SI Hardevinder Singh PW1 as to whether they wanted to be searched by a Gazetted Officer or a Magistrate. Their consent was taken separately, where they stated that they were ready to be searched by a

Gazetted Officer. It is thereafter that DSP(SD) Balwinder Singh Romana came to the spot.

13. After searching the truck, poppy straw bags Ex,P3 to Ex. PI 1 were taken into possession. Registration certificate copy of the truck Ex. PI 2 was taken into possession and sample seal Ex. P2 was prepared. The entire case property, registry of the truck and the truck were taken into possession vide document Ex. PF. The special report was sent to the higher officials as per Ex. PL. The necessary formalities were completed. Tarsem Singh could not be brought into the witness box, as the prosecution had given him up because he had been won over by the accused.

14. The Judicial Magistrate vide his order Ed.PMI has stated, that 18 sample parcels with seal impression "HS", nine gunny bags all sealed with seal "HS" and one truck bearing No. HRS-8547 were produced before him. The seal of the case property was found intact. All the case property was returned to SI Hardevinder Singh PW1 to deposit it in the malkhana. This order was passed after application Ex. PM was put up before the JMJC. SI Hardevinder Singh PW1 has stated, that he brought the case property to the police station and could not deposit it in the malkhana, as there was no space in it. HC Vijay Kumar PW2 vide his affidavit Ex. PQ has stated, that he deposited the case property in the Forensic Science Laboratory on 15.12.2000. Nothing was put to both SI Hardevinder Singh PW1 and HC Vijay Kumar PW2, that the samples were tampered with, when they were in their custody.

15. The discrepancies pointed out by the Learned Counsel for the appellants are not material discrepancies and especially when after a gap of five years the statements are being recorded. Contraband was recovered on 12.12.2000 and SI Hardevinder Singh PW1 came into the witness box on 21.11.2005. The independent witness Tarsem Singh reached at 8.15 A.M. or 8.20 A.M. is not of much value, because by the time when the independent witness was with the police party, the truck was taken into possession. There is a gap of only five minutes. It is not "possible for DSP Balwinder Singh Romana to keep standing for four hours, but in fact what SI Harbhajan Singh PW3 has stated is correct, that he sat on a Chaddar, when the proceedings were being recorded. The torch was used in the evening time, as in the month of December it gets dark after 5.30/6.00 P.M. The spring balance used could weigh from 1 kg. to 50 kgs., the contraband could be easily weighed by the spring balance.

16. DSP Balwinder Singh Romana could not be produced, though the prosecution did try so. It is mentioned on the summons sent to him time and again, that he had left for Canada on 27.02.2003. Vide zimini order dated 29.04.2004, the trial Court closed the evidence of prosecution by order. On 01.06.2004 on the request of the prosecution, SI Hardevinder Singh PW1 along with Balwinder Singh Romana DSP was ordered to be resummoned. Finally, vide order dated 21.11.2005, the prosecution evidence was again closed. There is no fault on the part of the prosecution that DSP Balwinder Singh Romana could not be produced, as it is clear from the zimini orders

that he had, left for Canada.

17. Prosecution is able to prove the case against appellants beyond reasonable doubt.

18. We are in agreement with the Learned Counsels for the appellants that the sentence of the appellants is on the harsher side. The sentence of the appellants is reduced from 20 years RI to 10 years RI and the fine is reduced from Rs. Two lacs to Rs. One lakh. In default of payment of fine, the appellants shall further undergo RI for one year.

With the above reduction in sentence of the appellants, Criminal Appeal No. 103-DB of 2006 and Criminal Appeal No. 108-DB of 2006 fail and are dismissed.