

(2006) 07 P&H CK 0207

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal. No. 722-DB of 2003

Labh Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: July 24, 2006**Acts Referred:**

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

Hon'ble Judges: Mehtab S. Gill, J; Baldev Singh, J**Bench:** Division Bench**Advocate:** A.S. Jattana, for the Appellant; S.S. Randhawa, D.A.G., for the Respondent**Final Decision:** Dismissed

Judgement

Baldev Singh, J.

Labh Singh son of Ghumand Singh son of Kishan Singh resident of village Nangal Police Station Nihalsinghwala has filed this appeal against the impugned judgment dated 13.8.2003 and the sentence order dated 14.8.2003 passed by Shri Sukhdev Singh, the then Special Judge, Moga in case. FIR No. 42 dated 8.6.1999 u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be briefly referred to as the Act) Police Station Nihalsinghwala. He was convicted u/s 15 of the Act and was sentenced to undergo RI for 15 years and to pay fine of Rs. 1,50,000/- and in default of payment of fine to undergo further RI for one year and six months.

2. The prayer made in this appeal is to set aside the impugned judgment of conviction and the sentence order and to acquit the appellant of the charge u/s 15 of the Act by way of acceptance of this appeal.

3. The facts of the prosecution case are that on 8.6.1999, Sandeep Kumar Sub Inspector/Station House Officer of Police Station Nihalsinghwala along with other police officials was travelling in official Gypsy No.PB04-3145 from the side of village Takhtpura towards village Nangal for checking suspected persons. When their gypsy reached near bus-stand Nangal, PW Gurmail Singh Sarpanch of village Khai met

them and he disclosed to Sandeep Kumar Sub Inspector/Station House Officer that on the previous night at about 10.30 p.m. when he was passing by the side of house of Harjeet Kaur wife of Karnail Singh at village Nangal, he had seen Labh Singh - appellant stacking bags of poppy husk after unloading them from the truck in the 'baithak' of Harjeet Kaur, with whom he was permanently residing. PW Gurmail Singh Sarpanch was joined in the police party. Raid was then conducted at the house of Harjeet Kaur at village Nangal. Labh Singh - appellant was found standing in the door of the house. PW Gurmail Singh Sarpanch pointed out the appellant to be the same person, whom he had seen on the previous night unloading the bags of poppy husk. Sandeep Kumar Sub Inspector apprehended the appellant with the help of other police officials. The name of the appellant, his parentage were got ascertained. Sandeep Kumar Sub Inspector then disclosed the appellant that they had suspicion that he had stacked some bags containing intoxicating substance in the baithak of Harjeet Kaur and that they wanted to search the said baithak. Sandeep Kumar Sub Inspector told the appellant that he had the right to get the search conducted in the presence of some Magistrate or gazetted officer. The appellant desired that the baithak be searched in the presence of some gazetted officer. No other person was present in the house of Harjeet Kaur at that time except the appellant. Consent memo Ex.PD was prepared, which was attested by PWs Dilbag Singh Assistant Sub-Inspector, Balwinder Singh Assistant Sub-Inspector and Gurmail Singh Sarpanch. The appellant signed it in Punjabi. Sandeep Kumar Sub Inspector also signed it. Deputy Superintendent of Police, Sub-Division Baghapurana was requested through wireless message to come on the spot. Then PW Sarabjit Singh Deputy Superintendent of Police Baghapurana reached the spot in his official Gypsy bearing No.PBO-5804. Sarabjit Singh Deputy Superintendent of Police was apprised of the facts of the case. He then introduced him to the appellant telling him that he was Deputy Superintendent of Police of the Police and was a gazetted officer. Then on the directions of Sarabjit Singh Deputy Superintendent of Police and in the presence of the witnesses and Labh Singh - appellant, search of the baithak in the house of Harjeet Kaur was conducted. The bags were found stacked in the baithak. The bags were opened. Poppy husk was found in them. They were counted and were found 80 in number. The bags were marked -1 to 80. From each bag sample of 250 grams of poppy husk was drawn. The remaining poppy husk was weighed. Each bag was found to contain 37kg 750 grams poppy husk. The samples were sealed in to 80 Separate parcels. The bags containing the remaining poppy husk were also separately sealed numbering 80. Sandeep Kumar had used his seal bearing impression of letters SKI. Sarabjit Singh Deputy Superintendent of Police had also used his seal bearing impression of letters" SSI, in sealing the sample parcel and the bags. Seal of Sandeep Kumar Sub Inspector was entrusted to Dilbag Singh Assistant Sub-Inspector. Sarabjit Singh Deputy Superintendent of Police retained his seal with him. The sample parcels and the bags containing remaining poppy husk were then taken into possession vide recovery memo Ex.PE. which was attested by PWs Sarabjit Singh Deputy Superintendent of Police, Balwinder Singh

Assistant Sub-Inspector, Dilbag Singh Assistant Sub-Inspector and Gurmail Singh Sarpanch. Sandeep Kumar Sub Inspector had prepared the recovery memo. Personal search of the appellant was conducted. Currency notes worth Rs.90/- were taken into possession vide recovery memo of personal search Ex.PF. Ruqa Ex.PG was prepared. It was sent through Constable Jagjit Singh for registration of the case. FIR was registered on its basis. Copy of FIR is Ex.PG/I. Site plan Ex.PH was prepared showing the place of recovery. Arrest memo Ex.PJ and information memo Ex.PK were also prepared. Ex.PL is the consent of the appellant for medical examination.

4. On reaching the Police Station, PW6 Sandeep Kumar Sub Inspector retained the case property in his safe custody. The appellant was confined in the lock up. Then on the next day i.e. 9.6.1999, PW6 Sandeep Kumar Sub Inspector produced the appellant along with the case property before the Judicial Magistrate (on duty). Application Ex.PN was moved for depositing the case property. The Judicial Magistrate (on duty) passed order Ex.PB/1 for depositing the case property in the Malkhana. PW 6 Sandeep Kumar Sub Inspector then deposited the case property with MHC Gursewak Singh. The sample parcels were sent for chemical analysis. Reports Ex.PO and Ex.PO/1 were received. The contents of the sample parcels were found to be 'Coarse Powder Poppyheads'. Challan was then presented against the appellant in the Court.

5. Charge was framed against the appellant for the offence punishable u/s 15 of the Act for keeping in his possession 80 bags of poppy husk. He did not plead guilty to the charge and claimed trial.

6. The prosecution at the trial examined eight witnesses, namely; PW 1 Gursewak Singh MHC, PW2 LC Jasbir Singh, PW3 Anu Sharma PW4 Constable Jaswinder Singh, PW5 Head Constable Gurcharan Singh, PW6 Sandeep Kumar Sub Inspector, PW7 Dilbag Singh Assistant Sub-Inspector and PW8 Sarabjit Singh Deputy Superintendent of Police. They proved Exhibits PA, PB and PC, which are affidavits of PWs Gursewak Singh MHC, LC Jasbir Singh and Constable Jaswinder Singh, respectively. Ex.PD is consent memo and Ex.PE is recovery memo. Ex.PF is the memo of personal search, Ex.PG is ruqa, Ex.PG/I is copy of FIR, Ex-PH is site plan, Ex.PJ is arrest memo, Ex.PK is information memo, Ex. PL is consent for medical examination and Ex.PN is the application for keeping the case property in custody. Ex PB/I is order of the Judicial Magistrate (on duty). Ex.PO and Ex.PO/1 are the analysis reports. Ex.PI is sample seal and Exhibits P2 to P81 are the poppy husk bags. This is the entire prosecution evidence.

7. PW Gurmail Singh Sarpanch was given up by the prosecution as won over by the appellant. The appellant has examined him as DW3.

8. Statement of the appellant was recorded u/s 313 of the Code of Criminal Procedure. He stated that no recovery was affected from him. He complained of his false implicity in this case. He stated that he was brought from village Nangal on

3.6.1999 in the evening time by Sandeep Kumar Sub Inspector/Station House Officer of Police Station Nihalsinghwala said Sandeep Kumar Sub Inspector had enquired about Karnail Singh husband of Harjeet Kaur, whereupon he (appellant) had an altercation with him. He was taken away by the police officials in the presence of Harjeet Kaur, wife of Karnail Singh, Manga Singh son of Jit Singh resident of Meenian, who visited the house of Harjeet Kaur for collecting his labour charges, Jagrup Singh son of Bhola Singh of village Nangal. Then on 8.6.1999, this false case was made out against him. Harjeet Kaur wife of Karnail Singh had sent complaint through registered post on 4.6.1999 to the Hon"ble Chief Justice of the Punjab and Haryana High Court and to the Director General of Police, Punjab. Gurmail Singh Sarpanch was not present there and his signatures were obtained by the police in the Police Station.

9. The appellant examined four witnesses, namely; DW 1 Manga DW2 Harjeet Kaur, DW3 Gurmail Singh Sarpanch and DW4 Vidhya Parkash postman. They proved copies of statements Ex.DA to DC, copy of complaint dated 4.6.1999 Ex.DW2/A and postal receipts Exhibits DW2/B and DW2/C.

10. Arguments of the Ld. Counsel for the appellant and of the Senior Deputy Advocate General appearing for the respondent State of Punjab were heard and the evidence was scrutinised with their help.

11. The prosecution version is supported on all material particulars by PW6 Sandeep Kumar Sub Inspector/Station House Officer, PW7 Dilbag Singh Assistant Sub-Inspector and PW8 Sarabjit Singh Deputy Superintendent of Police. There are no discrepancies in their statements. Their evidence is cogent and consistent. They proved that PW Gurmail Singh Sarpanch of village Khai who had given information about the appellant was with them and in his presence 80 bags containing poppy husk which the appellant had stacked in the baithak of Harjeet Kaur, were recovered. The appellant alone was present in the house of Harjeet Kaur. Consent memo Ex.PD had been prepared. The appellant had given consent that search of the baithak of Harjeet Kaur be conducted in the presence of some gazetted officer. PW8 Sarabjit Singh Deputy Superintendent of Police, who was gazetted officer of the police, had then joined at the time of the search. 80 bags each containing 38 kg poppy husk were recovered. 250 grams poppy husk was taken out as sample from each bag. 80 sample parcels were sealed. The remaining poppy husk was weighed. Each bag was found to contain 37 kg 750 grams poppy husk. The bags were also then sealed by Sandeep Kumar Sub Inspector and Sarabjit Singh Deputy Superintendent of Police with their seals. Ex.PE recovery memo was prepared which was attested by Dilbag Singh Assistant Sub-Inspector, Balwinder Singh Assistant Sub-Inspector, PW Gurmail Singh Sarpanch and Sarabjit Singh Deputy Superintendent of Police. Sandeep Kumar Sub Inspector also signed it.

12. The Ld. Counsel for the appellant argued that PW Gurmail Singh Sarpanch was given up by the prosecution as having been won over by the appellant. In the

absence of corroboration of independent witness, the statements of the police officials had not inspired confidence to convict the appellant. This contention is not tenable. No dent is caused in the prosecution case for non-examining PW Gurmail Singh Sarpanch, who had been given up as won over by the appellant. The appellant examined said Gurmail Singh Sarpanch as DW3. He deposed that he did not visit village Nangal on 7.6.1999, nor he saw the appellant unloading bags of poppy husk from the truck and stacking them in the baithak of Harjeet Kaur. He admitted his signatures on documents Ex.PD, PE and Ex.PJ. However, according to him, the police had obtained his signatures on blank papers. Since PW Gurmail Singh Sarpanch resiled from his statement, so it is of no avail to the prosecution. The appellant also cannot derive any benefit out of it, merely by picking him up and summoning him in defence.

13. The LD. Counsel for the appellant further argued that house of Harjeet Kaur was located in a residential area in the village. Respectable inhabitants of the locality were not joined at the time of the alleged search. Since PW Gurmail Singh Sarpanch was already there as witness, so the police officials did not feel the necessity of joining any other independent witness. Indeed, it may be lapse on the part of the Investigating Officer in not complying with the provisions of Section 100(4) of the Code of Criminal Procedure, but this lapse would not render the search illegal and invalid. The matter is to be examined with a pragmatic approach. Strict compliance need not be insisted upon. So, in our view the search made in this case resulted into the recovery of 80 bags of poppy husk from the possession of the appellant.

14. The LD. Counsel for the appellant argued that conscious possession of the appellant is not proved. The evidence on the file proves that the appellant was living permanently with Harjeet Kaur. At the time of the search of the baithak of Harjeet Kaur, the appellant alone was found present in the baithak. He was standing in the door of the baithak in which the bags of contraband poppy husk were lying. When the prosecution has succeeded in proving this fact, it is for the appellant to explain that his possession was not conscious. The case of [Madan Lal and Another Vs. State of Himachal Pradesh](#), is referred here. Five persons were found in Maruti Esteem Car; one Manjit Singh was driving the Car and the remaining accused persons were sitting therein. The Car was searched. A black coloured bag was found which contained a steel dolu kept in a plastic bag. The said dolu contained 820 gms charas. Under these circumstances, the Apex Court laid down that the appellants were in conscious possession of the contraband charas. The Trial Court had noted down that all the accused persons were travelling in a vehicle, they were known to each other, it was not explained as to how they travelled together from the same destination in a vehicle which was not a public vehicle. Further, it was observed by the Apex Court that once possession is established, the person who claims that it was not a conscious possession has to establish as to how he came to be in possession and that it was not within his special knowledge. Section 35 of the Act gives a statutory recognition of such position because of the presumption available

in law. Similar is the position in terms of Section 54 of the Act, where also, presumption is available to be drawn from illicit articles. So, it was held by the Apex Court that in the factual scenario of the case not only possession, but conscious possession was established. In the present case, the appellant admitted that he was in the house of Harjeet Kaur, from where the police officials had allegedly brought him. His defence evidence has not been accepted by us that he was brought on 3.6.1999 and this case was then foisted on 8.6.1999. So, conscious possession of the appellant is proved.

15. The Ld. Counsel for the appellant argued that in this case provisions of Section 42 of the Act were violated and as such the alleged recovery is rendered vitiated. PW Gurmail Singh Sarpanch had given information to the police officials at the bus stand of Nangal. The police officials after joining PW Gurmail Singh Sarpanch rushed to the house of Harjeet Kaur. They did not lose time lest the appellant could run away from there. So, no information was reduced into writing at bus stand Nangal and the ruqa was sent for registration of the case after the search and recovery of the bags of poppy husk had been made. In this case, the compliance of the requirements of Section 42 of the Act would have delayed the trapping of the appellant which might have led to his escape. Hence on fact, there was no violation of Section 42 of the Act. It is not always mandatory that information received should be reduced into writing and then sent to immediately superior official. The case of [Sajan Abraham Vs. State of Kerala](#), can be referred here. In this case, the officer concerned was on patrol duty and on receiving the information that the accused was selling contraband drugs at a particular place, he immediately rushed there and apprehended him. It was held by the Apex Court that compliance with the requirements of Sub Sections (1) and (2) of Section 42 of the Act would have delayed the trapping of the accused, which might have led to his escape. Hence on fact, there was no violation of Section 42 of the Act. In this case, the accused was in possession of a manufactured drug known by the name of 'Tidigesic' and three syringes for injecting the same. The Head Constable and two other Constables during patrolling had given information to Sub Inspector of Police, who was coming in a jeep along with his police party. The information was not reduced into writing and the raid was conducted. The accused was apprehended with a packet which contained five strips of ampoules each of 'Tidigesic' and three injection syringes. It was observed by the Apex Court that strict compliance of the mandatory provisions of the Act need not be insisted upon. The whole matter should be considered pragmatically. So, in this case, the provisions of Section 42 of the Act have not been violated resulting into the vitiation of the recovery.

16. We have considered the defence evidence. The Trial Court has rightly discarded it and for valid reasons. We also find no merit in the defence evidence. DW1 Manga Singh and DW2 Harjeet Kaur deposed that the police party took away the appellant. DW2 Harjeet Kaur sent complaint through registered post to the Chief Justice of Punjab and Haryana High Court and to the Director General of Police, Punjab. It is

usual with the criminals that when they are about to commit a crime they send applications to higher authorities in advance so that if they are apprehended while committing the crime, such applications could be used by them in defence evidence. The defence evidence, therefore, does not negative the cogent and plausible evidence of the prosecution.

17. Last of all, Ld. Counsel for the appellant submitted that in case the conviction of the appellant is maintained by this Court, then lenient view be taken against him regarding sentence. It is brought to our notice that the appellant is a poor person. He has two children and a wife and also an old mother to support, who are entirely dependent on him. He is in custody, since 8.6.1999 when the case was registered against him. We find that the sentence, which has been awarded to him by the Trial Court, is on harsh side. Therefore, we interfere in the impugned sentence order and reduce the sentence from 15 years RI to 10 years RI and the amount of fine is also reduced from Rs. 1,50,000/- to Rs 1,00,000/- and in default of payment of fine, to undergo further RI for six months. The period of detention during investigation, trial and the pendency of this appeal shall be set off against the period of sentence. Except for this modification in the sentence order, the appeal fails and the same is dismissed.