(2007) 05 P&H CK 0205

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 902-DB of 2004

Gian Singh and Another		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: May 28, 2007

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 16

Citation: (2007) 3 RCR(Criminal) 796

Hon'ble Judges: Nawab Singh, J; Mehtab S. Gill, J

Bench: Division Bench

Advocate: T.S. Sangha, for the Appellant; S.S. Bhinder, Addl. A.G., Punjab, for the Respondent

Final Decision: Allowed

Judgement

Mehtab S. Gill, J.

This is an appeal filed by Gian Singh son of Mehar Singh and Satbir Singh son of Gurjit Singh against the judgment dated 11.9.2004 of the Judge Special Court, Patiala, whereby he convicted both the Appellants u/s 15 of the Narcotic Drugs Psychotropic Substances Act (hereinafter referred to as "NDPS Act") and sentenced them to undergo 12 years rigorous imprisonment. Fine of Rs. one lac was imposed on each of the Appellants, in default of payment of fine, to further undergo rigorous imprisonment for one year.

2. The case of the prosecution is the Inspector Harbhajan Singh stated, that when he was present in his office at Police Station Samana, a special informant came to him and gave him secret information that Gian Singh and Satbir Singh, known inter-State smugglers, who were living in Patiala in connivance with Dr. Kuldeep Singh and others, brought churra poppy husk from Rajasthan and supplied it in the area of Police Stations Samana and Bhawanigarh. On 25.4.2002, Surjit Singh and his brother Gian Singh, Satbir Singh @ Kala and Kuldeep Singh are going to bring poppy husk in

a truck bearing No. HR-38A-8468, hidden under gypsum bags. If a naka is held, they could be arrested with poppy husk. A DDR under Sections 15/16/85 of the NDPS Act was registered. Copy of the DDR Ex. PE was sent to the Illaqa Magistrate and the higher officials. Inspector Harbhajan Singh with SI Narinder Singh, ASI Jaswinder Singh, HC Gurcharan Singh, HC Mewa Singh, C. Chand Singh, C. Raj Kumar, C. Narinder Singh, SPO Paramjit Singh and Darshan Singh in official Gypsy and a private vehicle proceeded to the T Point Bhawanigarh road.

3. The prosecution to prove its case brought into the witness box HC Udham Singh PW-1, C. Narinder Singh PW-2, C. Tehal Singh PW-3, HC Jagtar Singh PW-4, Inspector Harbhajan Singh PW-5 and ASI Jaswinder Singh PW-6.

4. Learned Counsel for the Appellants has attacked the case of the prosecution on three counts: (1) Link evidence is missing; (2) Conscious possession of Satbir Singh not being proved; and (3) No document of Appellant Gian Singh being found from the truck.

5. Learned Counsel for the Appellants has argued, that as per the secret information, four persons were bringing contraband in a truck from Rajasthan. Strangely, only two were apprehended i.e. Appellants Gian Singh and Satbir Singh.

6. The case property, as per Inspector Harbhajan Singh PW-5, was deposited in the malkhana and was handed over to MHC Tehal Singh PW-3. Tehal Singh PW-3 in his affidavit Ex. PC has stated, that nobody tampered with the case property, but there is no entry on 25th or 26th of April, 2002 in Register No. 19, regarding deposit of the case property or taking it out. The case property was not presented before the Senior Officers, nor was it taken out to present it before the Magistrate either on 25.4.2002 or 26.4.2002. Register No. 19 is the register, which is kept by the MHC to record the movement of the case property, which is deposited in the malkhana and taken out. The alleged recovery of the contraband was made on 25.4.2002. No one has taken the responsibility as to where the case property was kept on 25.4.2002 or 26.4.2002.

7. No question was put to Appellant Satbir Singh regarding he being in conscious possession of the contraband. Allegedly, as per the case of the prosecution, he was only sitting in the truck. The Investigating Officer Inspector Harbhajan Singh PW-5 has stated, that no documents like driving licence, insurance or registration were recovered from the truck to show that Appellant Gian Singh was the one, who was driving the truck.

8. Learned Counsel has further argued, that as per the statement of the Appellants, it is a case of police vendetta. They have stated, that a false case vide FIR No. 68, dated 20.6.1994 u/s 15 of the NDPS Act was registered at Police Station Malerkotla against Appellant Gian Singh and his brother Surjit Singh. They were tortured and were kept in CIA Staff, Bhawanigarh. Criminal Writ Petition No. 473 of 1994 was filed in the Hon''ble Punjab and Haryana High Court titled as Ranbir Singh v. Senior

Superintendent of Police, Sangrur and others. A warrant officer was appointed, who raided the police station and CIA Staff of Bhawanigarh on 21.6.1994 and found Gian Singh''s brother Surjit Singh in illegal detention of CIA Staff, Bhawanigarh. No case was found to be registered against the Appellant and his brother Surjit Singh and they were released. SI Sampuran Singh was the Investigating Officer and DSP Jagjit Singh Gill was the Gazetted Officer, who was joined in the investigation. At the end of the trial in that case, when the police officials saw Gian Singh''s brother Surjit Singh will be acquitted, DSP Jagjit Singh Gill and SI Sampuran Singh being the close friends of Inspector Harbhajan Singh PW-5, who registered this false case against the Appellants. The independent witness Nirmal Singh DW-2, in his statement before the learned trial Court, deposed that nothing was recovered from the Appellants. He (DW- 2) has further stated, that his signatures were taken on a blank piece of paper by ASI Jaswinder Singh PW-6. He did not know Appellants Gian Singh and Satbir Singh. Similarly, HC Harjit Singh DW-1 has brought the file, where an enquiry Ex. D-1 was held by Superintendent of Police (D), Fatehgarh Sahib Mohinder Singh Chahal on an application filed by Kuldeep Singh, where the Appellants were found innocent.

9. Learned Counsel for the State has argued, that the link is complete. Inspector Harbhajan Singh PW-5 deposited the case property with C. Tehal Singh PW-3 since HC Udham Singh PW-1 was on leave. An entry in the register No. 19 does not make much difference, as the case property was produced in the Court and duly proved.

10. Learned Counsel has further argued, that Appellant Gian Singh was driving the truck and Appellant Satbir Singh was sitting by his side. If the police officials did want to falsely implicate the Appellants, there was no need to implant 20 bags of poppy husk on them and a lesser quantity could have been implanted.

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

12. Inspector Harbhajan Singh PW-5, Investigating Officer in his testimony before the Court, has stated that he received secret information on 25.4.2002, when he was posted as SHO, Police Station Samana, that both Appellants Gian Singh and Satbir Singh were bringing poppy husk in a truck No. HR-38A-8468 and FIR Ex. PE was recorded. He (PW-5), along with the police party after joining Nirmal Singh DW-2, an independent witness, held a naka at T Point Kularan on Samana-Bhawanigarh road. At about 3.30 p.m., the truck bearing No. HR-38A- 8468 came towards them from Sunam side. It was stopped. It was being driven by accused Gian Singh and the other person sitting with him disclosed his name as Satbir Singh. Offer of search was made as to whether they wanted to be searched by a Gazetted Officer or a Magistrate. Appellants stated, that they be searched by a Gazetted Officer. A wireless message was sent to DSP Samana Jaspreet Singh, who reached the spot. He (DSP) also made an offer of search to the Appellants and the Appellants reposed confidence in him. Consent memos Ex. PH and Ex PJ were prepared. On search of

the truck 20 bags containing poppy husk weighing 40 kg each were recovered. Sr. No. 1 to 20 were put on all the bags. Samples of the bags at Sr. No. 1-A, 1-B to 20-A and 20-B were taken. Seal of "HS" was put on them. Samples Ex. P2 to Ex. P21 and bags Ex. P22 to Ex. P41 were brought to the court. He (PW-5) has further stated, that on return to the police station, he handed over the case property to MHC Tehal Singh PW-3. He did not tamper with the case property or allowed anybody to do so during the period it remained in his possession.

13. C. Tehal Singh PW-3, who tendered his evidence vide affidavit Ex. PC, has stated in his cross-examination, that he did not make any entry with regard to the deposit of the case property on 25.4.2002. MHC Udham Singh PW-1 returned after availing leave on 27.4.2002. An entry was made by him (MHC Udham Singh) on that day i.e. 27.4.2002. He (PW-3) has further stated, that it is correct that w.e.f. 24.4.2002 to 27.4.2002, no entry was made with regard to the deposit of the case property. MHC Udham Singh PW-1 was on leave w.e.f. 24.4.2002 to 26.4.2002. He (PW-3) has further stated that, it is correct that the entry is not attested or verified till today by the SHO or any Gazetted Officer. He has further stated, that the recital with regard to parking of truck No. HR-38A-8468 is made with a different pen. Similarly, HC Jagtar Singh PW-4 has stated, that on 26.4.2002 on the directions of the SHO, he took the case property from the MHC to be produced before the Illaqa Magistrate. He (PW-4) did not write any application before the Magistrate for producing the case property. There is no entry for the redeposit of the case property with the MHC, after its production before the Illaqa Magistrate. He has further stated, that as per Ex. DA entry in Register No. 19, there is no entry dated 26.4.2002 that the case property was taken out from the malkhana and was handed over to him.

14. It is clear from the statements of these three witnesses i.e. Inspector Harbhajan Singh PW-5, C. Tehal Singh PW-3 and HC Jagtar Singh PW-4, that the case property was not deposited in the malkhana till 27.4.2002. Inspector Harbhajan Singh PW-5, the Investigating Officer has stated, that he deposited the case property on 25.4.2002, but no entry has been made in Register No. 19 till 27.4.2002. The entry, which has been made on 27.4.2002 in Register No. 19, has not been verified by any senior officer. There is over-writing as per the statement of the witnesses and is with different ink, thus, showing that the case property was never brought to the police station. The crucial links of the case property being deposited in the malkhana and taken to the Magistrate are missing.

15. Hon''ble Supreme Court in State of Rajasthan v. Gurmail Singh, 2005 (1) AC 521 : 2005 (2) RCR (Cri.) 58 (SC) and this Hon''ble Court in Bhola Singh v. State of Punjab, 2005 (2) RCR (Cri.) 520 and State of Punjab v. Tarlok Kumar, 2001 (2) RCR(Cri.) 334 (DB) held that the link evidence adduced by the prosecution was not satisfactory. In the present case also, the link evidence is missing, thus, demolishing the case of the prosecution completely.

16. Further going into the case of the Appellants, it is strange that no documents like driving licence, insurance or registration were taken into possession of Appellant Gian Singh, who allegedly was driving the truck. The Hon''ble Supreme Court in Avtar Singh v. State of Punjab, 2002 (4) RCR(Cri.) 180 and this Hon''ble Court in Tarsem Singh v. State of Punjab, 2005 (4) RCR (Cri.) 300 (DB) and Raj Kumar v. State of Punjab, 2005 (1) RCR (Cri.) 70 (DB) held that the conscious possession of the contraband by the accused was not proved, thus, he was acquitted on this ground alone. Similarly, in the case in hand, conscious possession of the contraband of Appellant Satbir Singh could not be established.

17. The sole independent witness Nirmal Singh DW-2 has categorically stated, that nothing was recovered from the Appellants in front of him.

18. Appellants have taken a categorical stand that they have been falsely implicated because of police enmity.

We do not find merits in the case of the prosecution.

Appeal is allowed.

19. Conviction and sentence of the Appellants is set aside. Appellants are acquitted of all the charges.