

(2006) 03 P&H CK 0134

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 1187-B of 2001

Amar Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 22, 2006**Acts Referred:**

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

Hon'ble Judges: Uma Nath Singh, J**Bench:** Single Bench**Advocate:** S.S. Bhinder, for the Appellant; M.S. Sidhu, D.A.G. Punjab, for the Respondent**Final Decision:** Dismissed

Judgement

Uma Nath Singh, J.

This Criminal Appeal arises out of a judgment dated 24.08.2001 in Sessions Case No. 197 dated 22.12.1999, passed by learned Judge of Special Court, Mansa, holding the accused-appellant guilty of offence u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentencing him to undergo RI for ten years with a fine of Rs. 1,00,000/-. In default of payment of fine, he has been directed to further undergo RI for one year.

2. As per the prosecution case, on 3.10.1999, SI Gurdial Singh with a police party consisting of HC Harbans Singh, Constable Harkant Singh and PHC Major Singh, was on patrolling duty. He reached the village Khaila Kalan from village Khaila Mubarkpur in a canter bearing No. PB-31-6593. The vehicle was driven by Constable Basan Singh. He also met Mithu Singh son of Bachan Singh, resident of Village Khaila Kalan, during the patrolling, who was associated with the police party. During his further movement on patrolling from village Khaila Kalan to Barnala-Mansa Road, the patrolling party noticed a person on the left side, sitting on 16 gunny bags, near a mulberry tree. On seeing the police party, he got suspicious and tried to slip away. On suspicion, he was detained by SI Gurdial Singh with the help of

police personnel. The person so apprehended disclosed his name as Amar Singh son of Bachan Singh, resident of Village Khaila Kalan. The Police Sub Inspector expressed his suspicion that the said 16 gunny bags, on which the accused was found sitting, contained some contraband substance. He wanted to search the person of the accused-appellant and also the bags. The accused was informed of his right to be searched before a Gazetted Officer or a Magistrate. He opted for his search before a Gazetted Officer. A consent memo was prepared which was signed by the accused. The SI sent a wireless message to the Police Control Room, Mansa, by way of QST for sending some Gazetted Officer at the spot. Shri Iqbal Singh, DSP, with his Gunmen, reached the spot in his official gypsy after one hour. He gave his introduction to the accused and also informed that he is a Gazetted Officer. He again asked for the option of the accused as to whether he wanted to give the search of his person and that of the gunny bags before him. The accused again gave his consent to be searched before him. Accordingly, the introduction memo and the consent memo, were prepared. The memos were signed by the accused and the witnesses. SI Gurdial Singh conducted the search under directions of the DSP. All the 16 gunny bags were found tied with pack thread (Seba). They contained the contraband 'poppy straw'. Two samples of 100 grams were taken out from each of the gunny bags. All the 32 items of the sample were marked as sample numbers 1/1 to 16/16 in two sets. The remaining quantity of the poppy straw on weighment came to be 34 kgs and 800 grams in each gunny bag. The gunny bags were marked as Nos. 1 to 16. The sample parcels and the remainders were sealed by SI Gurdial Singh with his seal 'GS'. A sample seal was prepared separately. The seal of the SI was handed over to HC Harbans Singh after use. The case property (the samples and the remainders) was taken into possession vide a recovery memo, which was signed by the witnesses. The recovery memo was attested by Iqbal Singh, DSP. 20. From the search of the person of the accused-appellant, currency notes of Rs. 85/- were recovered from the left front pocket of his shirt. The money was taken into possession vide a personal search memo, signed by the accused and the witnesses. A ruqa was prepared and sent by hand through Constable Harkant Singh to the Police Station concerned. Accordingly, a formal FIR was registered. The statements of the prosecution witnesses were recorded. The accused was formally arrested by SI Gurdial Singh. On reaching the police station, SI Gurdial Singh produced the accused and the articles of the case property before his official superior SI Parmjit Singh, SHO, Police Station Sadar, Mansa. The SHO interrogated the accused and found the facts of the case to be true. The SHO also attested 16 gunny bags of the remainders and 32 parcels of sample by maintaining the seal of SI Gurdial Singh intact. Seal of the SHO, Parmjit Singh, with description 'PS' was impressed upon all the parcels. He also attested the sample seal of SI Gurdial Singh. He also sent a special report. On 4.10.1999, the next day, the accused and the articles of the case property were produced before the concerned Court. The samples were sent to FSL for analysis. As per the report, they were found to contain crushed poppy heads. A challan was laid after completion of the investigation. From the materials on record,

the accused was charged with and tried upon u/s 15 of the Act. The accused pleaded not guilty and claimed trial.

3. Heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellant submitted that this is a case of chance recovery effected on 3.10.1999, when the accused was found sitting near 16 bags of alleged contraband in an open field belonging to one Baru Singh. Mithu Singh, a public witness, was though associated with, the police party and in his presence the search was conducted, but he was not produced in the witness box. He has rather appeared as DW1 on behalf of the accused-appellant. The police party did not prepare a CFSL form on the spot. This is not a case of conscious possession and the I.O. himself is the complainant. Owner of the field Baru Singh was not made an accused and he has rather deposed in favour of the accused-appellant as DW5. The seal of SI Gurdial Singh, I.O., which was handed over to a Head Constable (PW5), was returned to him the very next day on 4.10.1999. This created suspicion in the background that the samples were sent to the FSL after a gap of 5 days on 8.10.1999. This is also a contention of learned counsel that on the samples and the site plan, the FIR number was not mentioned.

5. On the other hand, learned State counsel supported the prosecution case. According to him, though this is a case of chance recovery, but the accused had tried to slip away from the scene of recovery after seeing the police. The seals of the samples sent to the FSL were not found to be tampered. The public witness was given up because he was won over by the accused-appellant.

6. The prosecution and the defence, both, have examined 5 witnesses each. Iqbal Singh (PW1) was the DSP, before whom the search of gunny bags and person of the accused was conducted. SI Paramjit Singh (PW2) was the SHO of Police Station Sadar, Mansa, before whom the accused and the case property were produced. SI Gurdial Singh (PW3) is the Investigating Officer. He conducted the search and seizure and carried the investigation. Constable Malkit Singh (PW4) is a formal witness. He tendered his evidence on affidavit (Ex.PL). He delivered the sample in the FSL on 8.10.1999. HC Harbans Singh (PW5) was a member of the police party, headed by SI Gurdial Singh, which conducted the search and seizure.

7. In his explanation u/s 313 Cr.P.C., the accused appellant pleaded false implication and wanted to lead defence evidence. Mithu Singh son of Bachan Singh (DW1) has denied the search and seizure in his presence. However, he has admitted his signatures on Ex.PA, Ex.PB, Ex.PC, Ex.PD and Ex.PJ. Teja Singh (DW2) has stated that the accused was illegally picked up by the police and nothing was recovered from him. Ultimately, he was implicated due to party factionalism in the village. However, he has admitted that no application or complaint was moved to the higher authorities against illegal detention and false implication of the accused. He has admitted that the accused is a co-villager. Bikker Singh (DW3) was the Sarpanch of

the village. He also stated that the accused was illegally picked up by the police for interrogation. The accused-appellant was implicated due to party factionalism in the village. He has admitted that he did not pass any resolution of the village Panchayat in favour of the accused or filed any complaint to higher authorities against the false implication. Mithu Singh (DW4) is the son of Jang Singh. He is the second Mithu Singh, who has deposed in favour of the accused. He has stated that no poppy husk was recovered from the field in question. The accused was falsely implicated, however, no complaint was made against the conduct of the police. Taru Singh (DW5) has also made a statement somewhat identical to that of DW4. According to him, nothing incriminating was recovered from the possession of the accused from the place in question. However, he has also admitted that no complaint was filed to the higher authorities against the false implication of the accused, nor was any resolution passed by the Panchayat.

8. From the above analysis of the prosecution evidence, it appears that the recovery of contraband item was effected not from the search of the person of the accused but from an open space, where the accused was sitting over 16 bags. Hence, the provisions of Section 50 of the Act would not apply (See : (i) [State of Haryana Vs. Jarnail Singh and Others](#), ; (ii) [State of Himachal Pradesh Vs. Pawan Kumar](#), and (iii) AIR 2005 SCW 2133, State of Rajasthan v. Ram Chandra. Presence of the accused on the spot does not appear to be natural. He tried to slip away after seeing the police party. This is a case of chance recovery of a huge quantity of the contraband 'poppy straw'. Though a Gazetted Officer was not required to remain present during the search but it was effected in the presence of DSP Iqbal Singh (PW1), who has also attested the recovery memo. The DSP (PW1) has supported the prosecution case in material particulars. He prepared his identity memo (Ex.PA), which was attested by the witnesses. The search was effected by SI Gurdial Singh (PW3) under his directions. He also received the special report (Ex.PE) sent by the I.O. He has pointed out that the recovery was effected in the field of Baru Singh. He sent the special report to the SSP Office through his Reader. He had received the message through the Police Control Room and he remained at the spot till 4.30 PM. He remained standing at the spot when the proceedings were reduced to writing. The personal search memo was prepared after the recovery memo. A ruqa was prepared in his presence. In his cross- examination he has stated that the accused was sitting near the bags when he reached the spot. The accused was formally arrested after 2-1/2 hours after he reached the spot. A rough site plan was also prepared in his presence. Paddy crop was surrounding the field of recovery. The sample seal (Ex.DX) though did not bear any FIR number but it remained intact as prepared before him. His statement was recorded by the I.O. at 3.30 PM. He also filled the log book of the vehicle. So long as PW1 stayed at the spot, no public man had passed by. He enquired from the accused as to why these bags were brought to the spot but he could not give any satisfactory reply. He has denied all the defence suggestions contrary to the prosecution case. SI Paramjit Singh (PW2) was posted as SHO, Police

Station Sadar, Mansa, on 3.10.1999. He had received a ruqa (Mark-A) and thereupon had recorded the FIR (Ex.PF). He identified the endorsement (Ex.PF/1) made by him on the ruqa. The accused and the case property were produced before him by SI Gurdial Singh. He identified the accused in the Court. He had interrogated the accused and then lodged him in the lock up. He had sealed the case property with his seal description `PS". He had put his seal impressions on all the parcels, and also on the sample seal (Ex.PE). The very next day, the accused and the case property were produced before the Court with sample seal. An application (Ex.PG) and the inventory report (Ex.PH) were also produced before the Court. He has clarified that as there was no space in the judicial malkhana to accommodate the case property, therefore, he retained it in his possession. He dispatched the sample parcels on 7.10.1999 through Constable Harkant Singh for depositing in the office of the Forensic Science Laboratory, Chandigarh. He had sent the samples after obtaining the docket from the office of the SSP, Mansa. Besides sample parcels, form No. 29 and sample seals were also sent to the FSL. The said articles were deposited in the office of the FSL on 8.10.1999. A receipt was produced before him by Constable Harkant Singh. He has denied any tampering with the case property during his possession. On receipt of the report (Ex.Pi1) of the FSL, he put up a challan against the accused u/s 173 Cr.P.C. He has given the precise time being 8.30 PM of production of the accused and the case property before him. The case property was deposited with him by SI Gurdial Singh at about 9.15 PM. Necessary entry in that regard was made in the Daily Diary Register. In his cross-examination he has stated that the case property was taken out from the Malkhana at about 12.00 noon the next day, and after producing before the Court, it was redeposited in the Malkhana at about 5.00 PM. Necessary entries were made in the Daily Diary Register and the Register No. 19 on 4.10.1999 under his signature. He has stated in his cross-examination that during the possession of the case property from 3.10.1999 to 8.10.1999, he had not proceeded on leave nor had he handed the keys of the store over to any one. He had sent the special report at 4.15 PM itself. It was delivered to the Illaqa Magistrate so also to the senior police officers. Necessary entry about departure of the Police Constable was recorded in Rapat No. 17 dated 3.10.1999 and the arrival was recorded in Rapat No. 22 dated 3 10.1999. He has denied the defence suggestion about false implication of the accused. SI Gurdial Singh (PW3) has fully supported the prosecution case. He sent a wireless message to the Police Control Room for calling some Gazetted Officer. After about 1 hour, DSP Iqbal Singh (PW1) had reached the spot in an official gypsy, accompanied by his gunmen. He has corroborated the testimony of DSP Iqbal Singh (PW1) in material particulars. He prepared introductory and the consent memo (Ex.PA) on the instruction of DSP Iqbal Singh. He also conducted the search of the bags containing contraband. He sealed all the parcels of the samples and the remainders with his seal impression `GS". He has proved the recovery memo (Ex.PB). He also identified the case property in the Court premises. He also proved the ruqa (Ex.PF 12) and the FIR (Ex.PF). He identified the signature of SI Paramjit Singh in the FIR. He prepared

the site plan (Ex.PK). He has also proved the arrest memo (Ex.PD), the special report (Ex.PE) and the signature of DSP Iqbal Singh (PW1). He has clarified that in the ruqa, it was mentioned that the accused was found sitting near the bags. He has admitted that it is a case of chance recovery and he had no prior secret information or knowledge about the accused being in possession of the said contraband. He proved to have completed the writing work. The DSP had arrived at the spot at about 11.05 AM. Till the DSP arrived, he was not aware of the contents of the gunny bags. He also confirmed that the DSP remained at the spot from 11.05 AM to 5.00 PM and did not move out. He has also stated that so long as they remained at the spot, no public person had passed through that place. He was not aware about the party factionalism in Village Khaila Kalan, to which the accused belonged. He had handed over the special report u/s 57 of the Act to the DSP at the spot itself. He had recorded the statement of the SHO u/s 161 Cr.P.C. The SHO had attested the sample seal and also put his seal impression PS. He did not add anything to the particulars already mentioned on the sample seal. According to him, the weighment of the contraband had taken a considerable time. It had started at 11.25 AM and lasted upto 3.15 PM. He also clarified that the seal was handed over to a Head Constable because private witness Mithu Singh had expressed his inability to receive it. This fact was mentioned in a zimini proceeding by him. He has denied all the defence suggestions contrary to the prosecution case.

9. Thus, from the aforesaid analysis of the evidence, it appears that this is a case of chance recovery of huge quantity of 16 bags of poppy straw, during a police patrolling. The accused tried to slip away, having seen the police party, which created suspicion. The prosecution case appears to be fully supported by the evidence of the police witnesses. Though the recovery of contraband was effected from an open space but the appellant was given an opportunity to exercise his option to be searched before a Gazetted Officer or a Magistrate. Throughout the search and seizure, DSP Iqbal Singh (PW1) had been present there. From the spot, a ruqa (Mark A) was sent to the Police Station, whereupon the FIR (Ex.PF) was immediately registered. A special report was timely given to the DSP, a senior Police Officer u/s 57 of the Act. That apart, the accused and the case property were also produced before the Court. The sample was sent to the FSL on 7.10.1999. It is nowhere noticed that there was any tampering with the seal. The seal of the I.O. was handed over to a Head Constable as the private witness had expressed his inability to receive it. Vide the FSL Report (Ex.P1), the samples were received with seals intact and the contraband item was found to be poppy heads with ingredients mochenic acid and morphine. That apart, though the defence has examined five witnesses to prove the innocence of the accused, but they have admitted that they had not made any complaint to the higher authorities against the conduct of the police.

10. Thus, I do not find any merit in this Criminal Appeal No. 1187-SB of 2001. Hence, it is hereby dismissed and resultantly, the impugned judgment dated 24.8.2001 passed in Sessions Case No. 197 dated 22.12.1999 by learned Judge of Special Court,

Mansa, is affirmed.