

**(2006) 09 P&H CK 0323**

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

**Case No:** Criminal A. No. 1134-M of 2005

Satnam Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Sept. 1, 2006

**Acts Referred:**

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

**Citation:** (2007) 2 RCR(Criminal) 569

**Hon'ble Judges:** A.N. Jindal, J

**Bench:** Single Bench

**Advocate:** L.S. Sidhu, for the Appellant; K.S. Boparai, Addl. AG, for the Respondent

**Final Decision:** Allowed

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**Judgement**

A.N. Jindal, J.

Satnam Singh accused-appellant (hereinafter referred to as the accused) faced trial u/s 15 of the NDPS ACT for keeping in his possession 70 kilograms of poppy husk without any permit on 21.3.1997 in the area of village Gehliwala. Consequently he was convicted by learned Additional Sessions Judge, Ferozepur vide judgment dated 8.11.2000 and was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. one lakh. In default of payment of fine to further undergo rigorous imprisonment for two years.

2. Succinctly dilating upon the facts leading to the prosecution of the accused culminating into trial of the instant case are that on 21.3.1997 ASI Jaspal Singh along with other police officials was proceeding towards village Gehliwala via kacha path on a private vehicle and when he reached two furlongs rear of the bridge of water channel, he spotted three accused sitting differently on two bags each. On seeing the police party they felt perplexed. On suspicion ASI Jaspal Singh nabbed the accused. Thereafter he called upon him that he was suspecting some intoxicant article contained in gunny bags and if he wanted to be searched from him from

some Gazetted Officer or Magistrate, then the accused offered to be searched from Deputy Superintendent of Police, Zira, consequently, his search was conducted as per his assent. On search, he was found in possession of two gunny bags each containing 35 kg of poppy husk, out of which two samples weighing 250 grams were taken out from each bag and the bags containing the remaining poppy husk were sealed with the seal bearing impression JS. The seal after use was entrusted to HC Bhajan Singh. The possession memo, sample seals and the remaining poppy husk bags were attested by DSP, Zira. Thereafter, on the basis of the ruqa sent by Sub Inspector Jaspal Singh through Constable Baljit Singh FIR was registered in the police station. The investigating officer prepared the site plan of the place of occurrence and arrested him after disclosing grounds of his arrest. Personal search memo was also prepared. On return to the police station, the gunny bags, samples and the sample chits were produced before Sub Inspector Gurmeet Singh, Station House Officer, Police Station Dharamkot, who after verifying the case property, affixed his seal bearing impression GS and took the aforesaid articles into possession. On 22.3.1997 Sub Inspector Gurmeet Singh produced the accused, sample as well as the case property before Judicial Magistrate 1st Class, Zira and under the orders of the Judicial Magistrate, the case property was kept in the malkhana. Samples sent to the office of Chemical Examiner on 26.3.1997 through constable Chaman Lal were deposited by him in the office of Chemical Examiner after getting the docket forwarded from the office of Senior Superintendent of Police, Ferozepur. On completion of investigation the accused was challaned.

3. The accused was charge-sheeted to which he pleaded not guilty and claimed trial.

4. In order to bring home the guilt of the accused, the prosecution examined Constable Bhajan Singh (PW-1), a witness of consent memos Ex. P1 and P2, recovery memo Ex. P4, memo of grounds of arrest Ex. P5 and also personal search memo Ex. P6. PW 2 Sub Inspector Gurmeet Singh (before whom the case property as well as sample and the accused were produced by Sub Inspector Jaspal Singh), has also deposed to the same effect. He has also testified that he produced the case property along with the accused before the Illaqa Magistrate vide request Ex. P-8. PW 3 ASI Jaspal Singh besides being investigating officer is also a witness who sent the samples of the case property to the office of the Chemical Examiner through Constable Chaman Lal. He besides proving the consent memos Ex. P1 and P2, sample seal chit Ex. P3, recovery memo Ex. P4, personal search memo Ex. P6, ruqa Ex. P8, FIR Ex. P9, site plan Ex. P10 and memo Ex. P7 for producing the case property. He has also stated that he deposited samples in an intact condition before PW2 Sub Inspector Gurmeet Singh. He also proved the factum relating to the arrest of the accused in the case.

5. Constable Chaman Lal (PW-4) is the witness who tendered affidavit Ex. P1, Deputy Superintendent of Police Nachhatar Singh (PW-5) has also proved the search of the accused having been conducted in his presence.

6. In his statement u/s 313 Cr.P.C., the accused denied all the incriminating circumstances as put to him and he pleaded his false implication in the case.

7. In defence, he examined AMWC Gurdip Singh (DW-1) to prove the plea that the case property was taken out from Police Station Dharamkot on 22.3.1997 for producing the same before Illaqa Magistrate.

8. On conclusion of the trial, the accused was convicted and sentenced accordingly.

9. I have heard the learned counsel for the appellant, the learned Additional Advocate General, Punjab and have closely scrutinized the records of the case.

10. The case of the prosecution merely rests on the testimony of the official witnesses namely ASI Jaspal Singh (PW-3), Sub inspector Gurmeet Singh (PW-2) and DSP Nachhattar Singh (PW-5). Though village Gehliwal was at a distance of two furlongs from the place of occurrence but none from the village was called upon to attest the recovery memos. The presence of the Deputy Superintendent of Police at the spot is doubtful for the reasons that though Deputy Superintendent of Police Nachhattar Singh (PW-5) signed the consent memo dated 21.3.1997 Ex. P1, yet arrest memo Ex. P5, search memo Ex. P-6, recovery memo of the poppy husk Ex. P-7 do not bear his signatures. Had he been present at the spot, the investigating officer must have obtained his signatures on the aforesaid papers as the same have also been prepared at the spot. I also find merit in the other argument advanced by the counsel for the appellant that the consent memos so prepared by the ASI Jaspal Singh Exs. P-2 and P-3 are also not free from doubt and permit me to conclude that offer was not made to the accused in proper manner before effecting search upon him. The consent memo Ex. P2 reveals that the accused was asked if he wanted to get himself searched from a Gazetted officer or a Magistrate but it does not indicate if the accused wanted to get himself searched from Deputy Superintendent of Police. It appears that the consent memo which appears to have been prepared on the arrival of the Deputy Superintendent of Police was created just to avoid the other exigencies for getting himself searched before a Magistrate. This consent memo has been prepared in the presence of the Deputy Superintendent of Police which shows that when Deputy Superintendent of Police had arrived and investigating officer again offered him to be searched then the accused agreed to get himself searched by the Deputy Superintendent of Police. All this goes to show that the offer to get himself searched from Deputy Superintendent of Police was not readily accepted by the accused. Thus, this offer made cannot be said to be valid one.

11. I also find force in the other limb of argument that the prosecution has failed to connect the report Ex. P12 given by the Assistant Chemical Examiner, Punjab with the sample so sent to him for analysis. Sub Inspector Gurmeet Singh had stated that on 26.3.1997, he handed over the sealed parcels to Constable Chaman Lal to deposit the same in the officer of Chemical Examiner, Bathinda who after depositing the

same in the office of Chemical Examiner on 27.3.1997 handed over the receipt to him. The report EX.P12 does not reveal if the samples Nos. 62P-97 to 63P-97 have been deposited through Constable Chaman Lal No. 799. The report Ex. P12 indicates that the samples were of poppy but to the contrary, case of the prosecution is that poppy husk (i.e. remainder of poppy heads) was recovered from the accused and sample of poppy husk was sent to Chemical Examiner for analysis. Charge is also with regard to possession of poppy husk. Poppy is the genesis whereas poppy husk is the remainder of the poppy. The report Ex. P12 as such appears to be incomplete and is of vague nature. There are four columns in the report i.e. (i) Physical appearance (ii) Mechanic (Meconic ?) acid (iii) Morphina (iv) Morphine. Out of the four columns, nothing has been mentioned about the existence of the mechanical (meconic ?) acid which also impels me to conclude that the test was not properly conducted in order to find out all the ingredients of the stuff recovered from the accused. It may further be mentioned that as per affidavits, the sample was handed over by Constable Chaman Lal to Chemical Examiner, Bathinda on 27.3.1997, but the evidence as to on which date Chemical Examiner received the samples is missing. Prosecution has not led any evidence in order to establish as to who had received the samples from him till it was analyzed by the competent authority.

12. Having closely scrutinized the impugned judgment, it transpires that the trial Court has not appreciated the evidence and did not analyze the same from the view of point as discussed above. The evidence so led is infest with many peg holes which remain unplugged so as to impel the Court to hold that the prosecution has failed to prove the prosecution case beyond reasonable doubt.

13. For the forgoing reasons, I hereby accept the appeal preferred by the accused and set aside the conviction and the sentence passed against him. The fine, if any, is ordered to be refunded to him.