

(2006) 07 P&H CK 0248

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 497 DB of 2002

Phuman Singh and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 11, 2006

Acts Referred:

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

Citation: (2006) 4 RCR(Criminal) 226

Hon'ble Judges: R.S. Madan, J; K.S. Garewal, J

Bench: Division Bench

Advocate: K.S. Ahluwalia, for the Appellant; A.S. Virk, Additional Advocate, for the Respondent

Final Decision: Allowed

Judgement

K.S. Garewal, J.

Phuman Singh (45) of Aklia and Janga Singh (71) of Kothe Bhupal, Mansa were tried by the learned Judge, Special Court, Mansa for possession of 1550 kg (50 bags of 31 kgs each) of poppy husk. They were both convicted on May 24, 2002 and sentenced to rigorous imprisonment for 15 years and to pay fine of Rs. 1,50,000/-, in default of payment to further undergo rigorous imprisonment for 1 year and 6 months. According to the prosecution, on January 17, 2001 SI Harpal Singh (PW-2), SHO, Police Station, Joga along with ASI Hardam Singh (PW-4) and other police officials were going towards Joga, Makha Chehlan,

2. Anoopgarh. When the police reached near Bus Stand Joga, they met Beant Singh of Burj Jhabar, who was also joined with the police party. When the police reached near the bridge of canal in Makha Chehlan, HC Gurcharan Singh, who had earlier been sent by SI Harpal Singh to collect secret information, met them and informed that Phuman Singh and Janga Singh were selling poppy straw. The two of them had kept a huge quantity of poppy husk in mustard field in Anoopgarh. HC Gurcharan

Singh further informed that spot could be approached through the passage on the western side of Anoopgarh and after traveling 3/4th kilometer the path turned left.

3. SI Harpal Singh took HC Gurcharan Singh with him and the police party reached the stated place where they found Phuman Singh and Janga Singh sitting on 50 bags of poppy straw. They were both apprehended and asked to disclose their identities and addresses. They were informed that they had the right to be searched before a Gazetted Officer or a Magistrate. SI Harpal Singh sent a message to Police Control Room, Mansa and after some time DSP Balwinder Singh Romana (PW-1) reached the spot along with Inspector Chuhar Singh, CIA Staff Mansa and SI Kesar Singh, SHO, P.S. Sadar Mansa. DSP Balwinder Singh Romana (PW-1) informed both Phuman Singh and Janga Singh of their right to be searched by a Gazetted Officer or a Magistrate and recorded their consent. Thereafter their respective identity memos were prepared and on instructions from DSP Balwinder Singh Romana (PW-1), SI Harpal Singh searched the bags. There were 50 bags in all, 2 samples of 100 grams each were taken from each bag and the balance quantity of poppy straw was found to be 30.800 kgs in each bag. Entire case property was taken into possession. Recovery memo was witnessed by ASI Hardam Singh, Beant Singh and DSP Balwinder Singh Romana. Both Phuman Singh and Janga Singh were arrested. On return to the Police Station, the two accused were put in the police lock up. On the basis of the report sent by SI Harpal Singh, F.I.R. was registered at Police Station, Joga, u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as the Act). The samples were sent for analysis to Forensic Science Laboratory, Chandigarh. Deputy Director (Toxicology) reported that the contents of the sample were of poppy straw.

4. After conclusion of the investigation, the accused were sent up for trial. They were charged for having been in possession of 50 bags of poppy husk, each containing 31 kgs, without any valid permit or license. Charge was framed u/s 15 of the Act on May 2, 2001, which was read over to the accused. They pleaded not guilty and claimed trial. At the trial the prosecution examined DSP Balwinder Singh Romana (PW-1), SI Harpal Singh (PW- 2), C. Malkiat Singh (PW-3) and ASI Hardam Singh (PW-4).

5. After the conclusion of the trial, the accused were examined without oath u/s 313 Cr. P.C. They denied the various items of incriminating evidence led by the prosecution and pleaded innocence. According to Phuman Sing, he had moved an application against police officials and had also sworn an affidavit against the police. He was pressured to withdraw his application and affidavit. He did not agree, therefore, the case was planted on him. According to Janga Singh, he had deposed against one ASI Bant Singh, who remained posted at Police Station, Joga, Because he had beaten Balwinder Singh, who remained posted at Police Station, Joga, because he had beaten Balwinder Singh, who was press reporter. Janga Singh's sons Gurdeep Singh and Hardeep Singh were arrested by the Police of Joga, a day prior to the present occurrence. When his sons were let off they sent a telegram to

higher authorities regarding their father's illegal detention. Therefore, the police had a grudge against him and he was falsely implicated.

6. The accused were asked to enter defence. They examined 5 witnesses. Gurdeep Singh (DW-1) son of Jang Singh testified that on the night of January 16, 2001 at 10.00 p.m. police of CIA Staff of Mansa had come to their village, searched their house but nothing was found. However, he along with his brother Hardeep Singh and father Janga Singh were brought to the premises of CIA Staff. Gurdeep Singh and his brother Hardeep Singh were released after the Sarpanch and members of the Panchayat intervened but Janga Singh was not released. On their release, they sent telegrams to the D.G.P., Punjab, Chandigarh, D.I.G., Faridkot and S.S.P., Mansa (exhibit DC) which was to the following effect :-

C.I.A. Staff Mansa picked up me with Hardeep Singh son of Jang Singh and my father Jang Singh son of Hamir Singh of village Bhupal from our house in presence of Jawala Singh son of Mehma Singh and Jeeta Singh son of Hamir Singh of village Bhupal. Last night when nothing incriminating was recovered from them Police has already released me and my brother Hardeep Singh but have detained my father Jang Singh, Police may involve Jang Singh in false case. Kindly intervene and get Jang Singh released immediately.

7. Sarpanch Harpal Singh of Bhupal appeared as DW-2 and corroborated the version of put forth by Gurdeep Singh regarding his release from CIA Staff. Patwari Paramjit Singh (DW-3) produced a site plan depicting the place of occurrence. Sarpanch Avtar Singh (DW-4) of Anoopgarh testified that Phuman Singh was the son-in-law of Jarnail Singh of his village. Jarnail Singh's land fell on the passage leading from Anoopgarh Kotthas. There was a room in Jarnail Singh's field, which was being used by labourers. No poppy husk had been recovered from Jarnail Singh's field. HC Gurjant Singh of Police Station Joga appeared as DW-5 to testify regarding the entries in register No. 19 and the daily diary.

8. The learned Judge, Special Court, Mansa, accepted the prosecution version while rejecting the defence evidence and held both the appellants guilty of the offence.

9. According to the learned counsel for the appellants, the prosecution had failed to examine the independent witness Beant Singh and informer HC Gurcharan Singh. These two witnesses would have given the exact details of the activities of the accused but were withheld at the trial. It was further submitted that secret information was not reduced into writing and was not sent to higher authorities as required in terms of Section 42 of the Act. The prosecution story that the appellants were sitting on a heap of bags was unnatural, improbable and unconvincing. The appellants have been implicated because the police were annoyed with them as they had made applications to the higher authorities complaining against the police.

10. The investigation in the present case was indeed somewhat flawed. SI Harpal Singh (PW-2) received detailed information from HC Gurcharan Singh who had

earlier been sent out by him in advance to gather intelligence. HC Gurcharan Singh informed that Phuman Singh and Janga Singh were indulging in sale of poppy straw and had kept a huge quantity of poppy straw in a mustard field. HC Gurcharan Singh had also described the location of the field and the way to get there. Inspite of receiving such exact and "reliable" information, SI Harpal Singh did not send any report u/s 42 of the Act to his immediate official superior. Instead SI Harpal Singh straightway went to the spot and found the accused sitting on the bags of poppy straw. They were apprehended and were asked to disclose their identity and addresses. They were then informed that they were suspected to be in possession of poppy straw. They were told about their right to be searched before some Gazetted Officer or Magistrate. Thereupon, both the appellants expressed a desire to be searched before the some Gazetted Officer. Their respective option memos were recorded and a wireless message was sent to the Police Control Room, Mansa. DSP Balwinder Singh Romana (PW-1) reached the spot after an hour. He disclosed his identity and after the accused reposed faith in him, search was carried out by SI Harpal Singh and the poppy straw was recovered. Recovery memo was witnessed by DSP Balwinder Singh Romana (PW-1), Beant Singh and ASI Hardam Singh.

11. The defects in the above investigation were that the provisions of Section 42 of the Act were not complied with, while the provisions of Section 50 of the Act were not applicable to the present case. On both counts the Investigating Officer was wrong. Furthermore, no satisfactory reason was given why independent witness Beant Singh was not examined or why HC Gurcharan Singh was also not examined. Both these witnesses would have cast corroborative light on the prosecution case. But the prosecution was content with the evidence of the police officials only.

12. The above defects in the investigation become significant because the defence evidence seems to confirm that, in the first instance, Janga Singh was picked up along with his sons on January 16, 2001. Janga Singh's sons were released on the morning of January 17, 2001 and they dispatched telegrams to the Director General of Police, Punjab, Chandigarh, Deputy Inspector General of Police, Faridkot and Senior Superintendent of Police, Mansa, regarding their wrongful arrest. This shows that something was certainly amiss. Perhaps if the telegram had not been sent, Janga Singh may also have been released in due course. Dispatch of the telegram ensured that Janga Singh would be arrested. However, it is clear that Janga Singh had been detained under entirely different circumstances and certainly not while sitting on 50 bags of poppy husk.

13. The prosecution evidence regarding arrest and recovery cannot be accepted. There had been no compliance of Section 42 of the Act and unnecessary compliance of Section of 50 of the act. The main witnesses were not examined. The defence version had cast a serious doubt on the prosecution version of the episode.

14. In view of the above, we find that this appeal deserves to succeed. This appeal is allowed. The appellants are hereby acquitted of the charge. They shall be released

forthwith unless wanted in some other case.