

**(2008) 01 P&H CK 0281**

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

**Case No:** Criminal Appeal No. 325-SB of 1996

Harbans Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Jan. 11, 2008

**Acts Referred:**

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

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

**Bench:** Single Bench

**Advocate:** Bipan Ghai, for the Appellant; Sunil Katyal, DAG, for the Respondent

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**Judgement**

A.N. Jindal, J.

Out of three accused namely Harbans Singh, Mithu Singh and Sube Singh, challaned vide FIR No. 366 dated 29.08.1993, for keeping in their possession 9 bags of poppy husk u/s 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act"), Police Station Tohana, the accused Sube Singh was acquitted, whereas; the accused-appellants Harbans Singh and Mithu Singh (hereinafter referred to as "the accused" were held guilty vide judgment dated 5/6.4.1996 passed by the learned Additional Sessions Judge, Hisar and were sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs. 1.00 lakh each and in default of payment of fine to further undergo rigorous imprisonment for two years.

2. The factual matrix of the case is that on 29.08.1993 at about 2/2.15 A.M., AS1 Subhash Chander PW7 received a secret information regarding transporting of poppy husk by the accused. After taking down the information in the DDR, he started for patrolling. At about 3.30 A.M., when they had gone ahead of village Nanheri and were on katcha passage, they saw Tata four wheeler No. HR17-418 in the light of Gypsy. The four wheeler was surrounded. The accused namely Harbans Singh and Mithu Singh were found sitting on the bags, whereas the accused Sube Singh succeeded in escaping. After giving an option of search by the Gazetted

Officer or a Magistrate, the accused offered to be searched before a Gazetted Officer. So, DSP Tohana was called through wireless message. Thereafter, ASI Subhash Chander searched the bags lying in the Tata four wheeler. The bags were found to be 9 in numbers and were found containing 40 kgs. poppy husk. On Weighment, each bag was found containing 40 kgs of poppy husk. Sample weighing 200 grams was taken out from each bag. Consequently, the samples as well as the bulk poppy husk were converted into parcels and were sealed with the seal of "SC" and "US" and the same were taken into possession vide recovery memo Ex. PE. The Investigating Officer sent ruqa to the police station; prepared rough site plan of the place of occurrence; arrested the accused persons; recorded statements of the witnesses. The case property and the accused were taken to the Police Station and were produced before SI/SHO Mahender Singh, who after verification of the case property and the accused put his own seal "MS" on the case property as well as sealed parcels. Sube Singh was also arrested later on. On completion of the investigation challan against the accused was presented in the Court.

3. Consequently, charge u/s 15 of the Act was framed against the accused to which they opted to contest.

4. During evidence, the prosecution examined ASI Om Parkash PW1, who had recorded the formal FIR on receipt of the ruqa from ASI Subhash Chander.

5. Sher Singh PW2 is also a formal witness who had tendered his affidavit in the evidence. Sher Singh son of Lekh Ram PW3 is a witness to the extrajudicial confession made by accused Sube Singh. Sarwan Singh PW4 is an independent witness associated by ASI Subhash Chander in the raiding party. Ishwar Singh PW5 is a witness to the recovery. DSP Udai Shanker PW6 is a gazetted officer in whose presence search and seizure was made. ASI Subhash Chander PW7 is the Investigating Officer of the case. Constable Amar Singh PW8 is also a formal witness. SI/SHO Mahender Singh PW9 was examined to prove that the case property along with the accused was produced before him and after the verification of the case property directed to deposit the case property in the malkhana.

6. When examined u/s 313 Cr.P.C. the accused denied all the incriminating circumstances appearing against them. Accused Harbans Singh has claimed himself to be innocent and was falsely implicated. He has added that he was coming from Gugamari along with Mithu Singh and he was apprehended by the police while he was standing at the bus stand of village Nanheri. Mithu Singh has also taken the same stand. Sube Singh, however, denied being the driver of this four wheeler at the relevant time. He denied having run away leaving the four wheeler at the spot.

7. In defence, the accused examined Jora Singh DW1.

8. The trial ended in conviction of the accused-appellants. However, after extending benefit of doubt to the accused Sube Singh, he was acquitted of the charge framed against him.

9. Arguments heard. Records perused.

10. Mainly the prosecution banks upon the testimony of Ishwar Singh PW5, DSP Udai Shanker PW6 and AS1 Subhash Ghander Investigating Officer PW7. All the three witnesses are consistent in their statements with regard to time, place and manner in which the recovery was effected. It is not unusual that the independent witnesses do not come to support the State case as they cannot expect any material benefit by doing so, rather they virtually purchase enmity of the accused while appearing against them. However, the official witnesses cannot be discarded merely for their status as such. But, in case of the official witnesses, the Court should come on guard of the accused and scrutinize their statements minutely so as to rule out any false implication against them. 9 bags of poppy husk, each containing 40 kgs, were recovered from the accused on the odd hours of the night in the presence of DSP Udai Shanker PW6. None of the witnesses had any bias or prejudice against the accused for falsely implicating them in this case, nor they could explore sources for fastening such a high valued contraband and heavy recovery upon the accused for no motive on their part. Thus, even in the absence of the independent witness, so joined, having not supported the prosecution case, the testimony of the official witnesses cannot be discarded. While going through the evidence of these three witnesses I have reason to hold that they are quite natural and truthful in their statements with regard to recovery of poppy husk from the accused.

11. The other argument advanced by the Learned Counsel for the appellants is that since Sube Singh was not arrested at the spot and they were sitting on the back of Tata four wheeler over the bags, they cannot be said to be in conscious possession of the same. In this regard, the Learned Counsel for the appellants has relied upon the judgment delivered by the Apex Court in case Avtar Singh v. State of Punjab, 2002 (2) ACJ 402 (S.C.) : 2002 (4) RCR (Cri.) 180 (SC) .

12. Having examined the facts of the instant case and the observations made by the Apex Court in Avtar Singh's case (supra), it would be pertinent to mention here that the aforesaid judgment is not applicable to the facts of the present case. In the instant case, the prosecution has been successful in establishing that the accused were in possession of poppy husk. There is evidence on the record that on seeing the police party, the accused tried to run away. There is no denying a fact that the accused were coming on the dead of the night i.e. at about 3.30 AM. There was nothing else in the Tata four wheeler except those 9 bags of poppy husk. Though, the driver succeeded in running away, yet, the accused were overpowered and apprehended. The accused while sitting over the bags of the contraband could well judge about the contents thereof through smell, therefore, had they not been a party to the crime, then they would not have taken over the Tata four wheeler carrying the contraband. The accused also did not explain if they were stray passengers or they had taken a casual ride. The accused are the residents of Punjab i.e. village Devigarh, Police Station Patran, District Patiala, whereas they were found

moving in the said Tata four wheeler No. HRI7-418 in the area of Haryana i.e. near village Nanheri. The accused have not explained if they were passing the village Nanheri to reach their destination or they had come to the village to meet their relations. The accused even did not represent to the police official as to why they were moving over the Tata four wheeler at this odd hours. The word "possession" no doubt has different shades of meaning and it is quite elastic in its connotation. Possession and ownership need not always go together by the minimum requisite element which has to be satisfied is the custody or control over the goods. Here in this case, the accused while sitting over the bags, thus, knowing fully well about the contents thereof and in the absence of any explanation about their presence at the spot, it would not be unreasonable to have the view against the accused.

No other argument has been raised to assail the impugned judgment.

For the foregoing reasons, I do not find any merit in the appeal amend the same is hereby dismissed.

Chief Judicial Magistrate, Hisar, is directed to take necessary steps to procure the custody of the accused-appellants Harbans Singh and Mithu Singh for serving remaining part of their sentence.