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**(2001) 12 P&H CK 0115**

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

**Case No:** Criminal Appeal No. 618-SB of 2001

Shiv Charan Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Dec. 13, 2001

**Acts Referred:**

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18

**Citation:** (2001) 2 CriminalCC 227 : (2002) 1 RCR(Criminal) 801

**Hon'ble Judges:** R.C. Kathuria, J

**Bench:** Single Bench

**Advocate:** N.K. Sanghi, for the Appellant; Rajnish Kumar Dhanda, Asstt. AG, Haryana, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

R.C. Kathuria, J.

This appeal is directed against the judgment dated 5.4.2001 passed by the Additional Sessions Judge, Panipat, convicting the appellant-accused u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and sentencing him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 1,00,000/-. In default of payment of fine, he was directed to undergo further rigorous imprisonment for a period of two years.

2. Put shortly, the facts of the prosecution case are that on 2.10.1999, Assistant Sub Inspector Varinder Singh along with other members of the police party was present at Bus Stand, Panipat. He noticed the accused coming with a bag in his hand. On seeing the police, he got perplexed and started walking at a fast speed. On suspicion, he was secured. Assistant Sub Inspector Varinder Singh informed him that it was suspected that he was carrying a narcotic substance in the bag. Thereafter, Assistant Sub Inspector Varinder Singh served notice (Exhibit P.D.) upon the accused. He was asked that his search could be conducted in the presence of a

Gazetted Officer or a Magistrate. The accused signed the said notice, which was also attested by Constables Sham Lal and Sewa Ram. The accused stated before the Investigating Officer that his search be conducted before a Gazetted Officer. The Investigating Officer then informed Assistant Superintendent of Police Hanif Quareshi and secured his presence at the spot. After his arrival, search of the accused was conducted by the Investigating Officer, which led to the recovery of 1 kilogram and 150 grams of opium. Two samples of 50 grams each were drawn from the opium and these were put in two plastic boxes and the residue opium was put in a container. The plastic boxes containing samples and the container in which the residue opium was kept were sealed with the seal of "VK" and taken into possession vide seizure memo Exhibit P.B. attested by Assistant Superintendent of Police Hanif Qureshi, Constable Sham Lal and Constable Sewa Ram. The seal after use was handed over to Constable Sham Lal. Ruqa Exhibit P.E. was sent to the Police Station on the basis of which formal First Information Report Exhibit P.E/1 was recorded by Assistant Sub Inspector Harnarain. The Investigating Officer prepared rough site plan Exhibit P.F. of the place of recovery. On return to the Police Station, the accused along with the case property was produced before Station House Officer Sub Inspector Rajinder Singh. He verified the investigation and affixed his own seal "RS" on both the samples and the residue opium. Thereafter, the case property was deposited by Assistant Sub Inspector Varinder Singh with the Moharrir Head Constable of the Police Station. On analysis, the Chemical Examiner in his report Exhibit P.H. found the contents of the sample to be opium. After completion of investigation, report u/s 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") was filed. The accused was charged and tried, which led to his conviction and sentence, as noted above.

3. To link the accused with the crime, the prosecution examined four witnesses. In addition, report of the Chemical Examiner Exhibit P.H. and affidavit of Head Constable Sumer Chand Exhibit P.I. were also tendered in evidence. Moharrir Head Constable Naresh Kumar (P.W. 2) is a formal witness as he has tendered in evidence his affidavit Exhibit P.C. in his affidavit, he stated that while he was posted as Moharrir Head Constable in Police Station City Panipat, on 2.10.1999, Assistant Sub Inspector Varinder Singh had deposited with him two samples and residue opium, which were sealed with the seals of "VK/RS". On 15.10.1999, he handed over one of the samples to Head Constable Sumer Chand for its delivery in the office of Forensic Science Laboratory, Madhuban (for short "FSL") Head Constable Sumer Chand, in his affidavit Exhibit P.I., corroborated the contents of the affidavit of Moharrir Head Constable Naresh Kumar Exhibit P.C. He too testified that he had delivered the sample in the office of FSL on 15.10.1999. Inspector Rajinder Singh (P.W. 3) has deposed with regard to the production of the accused along with the case property by Assistant Sub Inspector Varinder Singh on 2.10.1999, while he was posted as Station House Officer of Police Station City Panipat. According to him, he had verified the investigation and then affixed his own seal of "RS" on the samples and

the residue opium. After completion of investigation, he had submitted the report u/s 173 of the Code to the Court. The recovery of 1 kilogram and 150 grams of opium from the possession of the accused on 2.10.1999 at Bus Stand, Panipat, has been corroborated by Assistant Superintendent of Police Hanif Quareshi (P.W. 1) and Sub Inspector Varinder Singh (P.W. 4), who at the time of recovery was posted as Assistant Sub Inspector.

4. The accused, in his statement recorded u/s 313 of the Code, took up the stand of complete denial of allegations against him. He pleaded false implication, but led no evidence in defence.

5. The learned trial Judge, after considering the prosecution evidence and the stand taken by the accused, accepted the prosecution version and convicted and sentenced the accused, as stated above.

6. At the threshold of the arguments, Learned Counsel representing the accused, assailed the prosecution evidence on the ground that the recovery was made at the Bus Stand, Panipat at about 3.30 P.M. but available independent witnesses were deliberately not associated by the Investigating Officer, which warranted rejection of the statements of the prosecution witnesses. In support of this argument, strength was sought by him from the observations made in the case of *Narain v. State of Haryana*, 1997(1) RCR 414, wherein one of the reasons which prevailed for rejecting the recovery of drug from the appellant was that the independent witness joined by the prosecution, who was an employee of the Railway Department, had turned hostile and denied any such recovery. Reference was also made by the Learned Counsel to the case of *Khuba Ram alias Khuba v. State of Haryana*, 1995 (3) RCR 316. In this case, the independent witnesses were available, but were not associated. The Court found that the statements of the official witnesses were contradictory and for the reason, besides taking note of other reasons the accused was acquitted.

7. Sub Inspector Varinder Singh in his deposition has stated that he had left the Police Station at about noon time and had reached the place of recovery within fifteen minutes. He had spotted and apprehended the accused at 3.30 P.M. He admitted that the place of recovery being Bus Stand was a busy place and the public had gathered there. In addition there were many "Rehriwalas". The explanation rendered by him for non-association of independent witnesses is that he had tried to join such witnesses but they did not agree to do so. He failed to specify the names of the persons who were asked by him to join and witness the recovery proceedings. Assistant Superintendent of Police Hanif Qureshi in his deposition stated that on 2.10.1999 at 3.45 P.M. he had received the information on telephone that the accused had been apprehended by Assistant Sub Inspector Varinder Singh on the suspicion that he was having some narcotics. Thereafter, he reached the place of recovery. He also admitted that many "Rehriwalas" were present near the place of recovery. He explained that the Investigating Officer had tried to join the available independent witnesses to witness the recovery, but they did not oblige him. Thus, it

cannot be disputed that independent witnesses were available, but they had not witnessed the recovery proceedings because they had declined to do so. By now it is well-settled that where the recovery is supported by the official witnesses only, that per se is no ground to discard their testimonies. The only rule of caution is that their statements should be examined with extra care in order to find out whether they inspire confidence and are worthy of reliance. Applying this yardstick to the facts of the present case, I find no reason or justification to discard the statements of Assistant Superintendent of Police Hanif Qureshi and Sub Inspector Varinder Singh who have given a cogent explanation for non-association of the available independent witnesses at the time of recovery. Under the circumstances, the observations made in Narain's case (supra) and Khuba Ram alias Khuba's case (supra) would not apply to the facts of the present case.

8. It was also argued by the Learned Counsel representing the accused that in this case the samples and the residue opium were deposited with the Moharrir Head Constable by the Investigating Officer on 2.10.1999 and the sample was despatched to FSL on 15.10.1999. No explanation has been submitted from the side of the prosecution as to why the Moharrir Head Constable of the Police Station took so much time to send the sample for analysis. Reliance in this regard was placed by him on the case of Darshan Singh v. State of Punjab, 1998 (1) RCR (Cri) 426. Co-related with the above plea was the contention of the Learned Counsel that the contents of the affidavits of Moharrir Head Constable Naresh Kumar and Head Constable Sumer Chand have not been verified as required under the law and for that reason these should be excluded from consideration. The net result, according to the Learned Counsel, would be that the link evidence being missing, the conviction recorded by the learned trial Judge would be vitiated. Strength was sought by him from the observations made in the case of Jeeto v. State of Haryana, 1998 (1) RCR (Cri) 764 wherein it was observed that the prosecution has to prove affirmatively that from the stage of seizure till it reached the hands of Chemical Analyst, there was no possibility to change or tamper with the recovered material. It was also observed that in the absence of this vital link, the conviction of the appellant would be flawed.

9. Dealing with the submission made, it may be noticed that Inspector Rajinder Singh (P.W. 3), who was posted as Station House Officer of Police Station City, Panipat, at the relevant time, has stated that after he had affixed his deal "RS" on the samples and the residue opium, the same were handed over by him to Assistant Sub Inspector Varinder Singh to deposit the same with the Moharrir Head Constable. He being incharge of the Police Station, no information whatsoever was sought from him from the side of the accused as to why the sample in question was despatched to the office of Chemical Examiner on 15.10.1999. Sub Inspector Varinder Singh in his deposition has categorically stated that after the Station House Officer Rajinder Singh had affixed his seal on the samples as well as residue opium, he had deposited the case property with the Moharrir Head Constable on the same

day with seals intact. Moharrir Head Constable Naresh Kumar, who appeared in the witness box as P.W. 2, stated that the case property was deposited with him on the same day at 7 P.M. No information whatsoever was sought from him from the side of the accused as to why the case property was sent to FSL on 15.10.1999. In his affidavit (Exhibit P.C), he has categorically stated that the case property including the samples remained with him with seals intact after it was deposited with him till the date he entrusted the sample to Head Constable Sumer Chand for delivering the same in the office of Chemical Examiner. Therefore, whatever was the defect in the verification stood cured because he (Moharrir Head Constable Naresh Kumar) stated on oath with regard to the contents of the affidavit and the accused had the opportunity to cross-examine him. As regards the affidavit of Head Constable Sumer Chand, no doubt contents of paras No. 1 to 4 have been verified on the basis of knowledge and belief and there is no specific verification as to which paras were based on belief and which paras were based on knowledge, but this lapse is inconsequential for the simple reason that in the Chemical Examiner's report (Exhibit P.H.) it has been clearly mentioned that the sample of opium contained in a plastic container was sealed with four seals of "VK" and four seals of "RS". Thus, the seals used for sealing the sample by the Investigating Officer Assistant Sub Inspector Varinder Singh and Station House Officer Rajinder Singh, were found tallying with the specimen seals sent to FSL along with the sample. Thus, it cannot be said that after the sample was deposited with the Moharrir Head Constable on 2.10.1999, it could have been tampered with before the same was delivered to the office of Chemical Examiner on 15.10.1999. At this stage, it would be appropriate to refer to the observations made by the Apex Court in the case of [Sarjudas and Another Vs. State of Gujarat](#), . In this case, a plea was raised from the side of the accused that identity of the articles seized from them and the articles examined by the Forensic Scientific Laboratory had not been established by the prosecution. The submission was that the seal which was affixed on the articles seized from the appellants was different from the seal which was found on the packet received by the Forensic Scientific Laboratory for analysis. Rejecting the submission, it was observed as under:-

"The seal which was affixed on the seized articles, as stated by PSI Chavda in his evidence, was of Police Inspector, Sabarmati. The seal on the packet which was received by the Forensic Scientific Laboratory read "Police Inspector, Sabarmati, Ahmedabad City". A small lapse on the part of the PSI Chavda while deposing before the Court has led to this discrepancy which is more apparent than real. Sabarmati is a locality within Ahmedabad City. The specimen of seal sent to the Forensic Scientific Laboratory also tallied with the seal on the packet sent to it. Therefore it is not possible to hold that the seal which was found on the packet was different and therefore a doubt arises whether the material which was seized from the appellants was the same as was examined by the Forensic Scientific Laboratory."

11. In the present case, as stated above, the seals which were used in sealing the sample received by the Chemical Examiner were intact and tallied with the specimen seals sent along with the sample. Thus, no prejudice whatsoever had resulted to the accused on this count. In the facts and circumstance of the present case, the judgments upon which reliance has been placed from the side of the accused do not support his case.

12. Lastly, it was argued by the Learned Counsel for the appellant that in this case the seal after use had been given to Constable Sham Lal, but he had not been examined by the prosecution. The position in this regard has been explained in [Piara Singh Vs. State of Punjab](#), wherein it has been held that the law does not required that the seal used for sealing the case property must be handed over to non-official nor it is the mandate of law that such non-official must be examined. Therefore, this submission again is without any merit and has to be rejected.

For the aforesaid reasons, this appeal fails and is, accordingly, dismissed.