

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No.680-SB of 1998

Date of Decision : April 30, 2008

Sarwan Singh S/o Bir Singh,
R/o Bazigar Basti, Dhuri,
District Sangrur.

....Appellant

Versus

The State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. Narinder Singh, Advocate,
for the appellant.

Mr. S.S.Bhullar, DAG, Punjab,
for the respondent.

SHAM SUNDER, J.

This appeal is directed against the judgment of conviction, dated 7.8.1998, and the order of sentence dated 10.8.1998, rendered by the Court of Sessions Judge, Sangrur, vide which it convicted the accused/appellant Sarwan Singh, for the offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter called as 'the Act' only) and sentenced him to undergo rigorous imprisonment for a period of ten years, and, to pay a fine of Rs.1 lac, and in default of payment of the same, to undergo rigorous imprisonment for another period of one year, for having been found in possession of 3 bags, each containing 35 Kgs. poppy husk, without any permit or licence.

2. The facts, in brief, are that on 2.6.1994, Gurbax Singh, SI of CIA Staff, Bhawanigarh, accompanied by Amrik Singh, ASI, Teja Singh, HC, and other police officials, was proceeding from the side of village Kakra towards Village Sakraudi, in Government vehicle, for the search of suspected places,

through unmetalled passage, and when the police party reached near the drain, in the area of village Kakra, it saw a piece of cloth with checks (Dabidar Parna) in wild growth of reeds (sarkandas). It raised suspicion, in the mind of the police officials, that someone was hiding there. Gurbax Singh, SI, with the help of other police officials, encircled that place. The police party entered the wild growth of reeds (sarkandas), and found three bags. Sarwan Singh, accused, was sitting on those bags. The bags were searched, in the presence of, Tulsi Ram, DSP, who was called to the spot, as a result whereof, each bag was found containing 35 Kgs. Poppy-husk. Two samples of 250 grams from each of the bags, were taken out, and the remaining poppy-husk was kept in the same bags. The samples and the remaining poppy husk, were converted into parcels, duly sealed with the seal, bearing impression 'SS', and thereafter, taken into possession vide a separate recovery memo. Ruqa was sent to the Police Station, on the basis whereof, formal FIR was registered. Personal search of the accused was also conducted, but no recovery was effected. Memo Ex.PD, in this regard, was prepared. Rough site plan of the place of recovery, with correct marginal notes, was prepared. The statements of the witnesses were recorded. The accused was arrested. After the completion of investigation, the accused was challaned.

3. On appearance, in the Court, the copies of documents, relied upon by the prosecution, were supplied to the accused. Charge under Section 15 of the Act, was framed against him, to which he pleaded not guilty and claimed judicial trial.

4. The prosecution, in support of its case, examined Baldev Singh, HC (PW-1), Nachhatar Singh, Constable (PW-2), Tulsi Ram, DSP (PW-3), Amrik Singh, ASI (PW-4), and Gurbax Singh, SI (PW-5). Thereafter, the Public Prosecutor for the State, closed the prosecution evidence.

5. The statement of the accused under Section 313 Cr.P.C., was

recorded, and he was put all the incriminating circumstances, appearing against him, in the prosecution evidence. He pleaded false implication. It was stated by him, that no poppy-husk was recovered from him. It was further stated by him, that he was illegally detained in the Police Station, and the poppy-husk aforesaid, was foisted upon him. He, however, did not lead any evidence, in his defence.

6. After hearing the Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused/appellant, as stated hereinbefore.

7. Feeling aggrieved, against the judgment of conviction and the order of sentence, rendered by the trial Court, the instant appeal, was filed by the accused/appellant.

8. I have heard the learned counsel for the parties, and have gone through the evidence and record of the case, carefully.

9. The Counsel for the appellant, at the very outset, contended that no independent witness, despite availability, was joined, as a result whereof, the case of the prosecution became doubtful. It may be stated here that the recovery, in this case, was effected at about 4.00 AM, from the wild growth of reeds (sarkandas), where the accused concealed himself, alongwith bags, containing poppy-husk. At about 4.00 AM, when the sun had not yet risen, it could not be imagined that any independent witness, could be available to the Investigating Officer, for being joined with the police party. Not only this, Gurbax Singh, SI, (PW-5), during the course of his cross-examination, stated that the place of recovery is at a distance of about 14/15 kilometers from Dhuri. He further stated that the abadi of Sarkraudi, from the place of recovery, was at a distance of 2/3 kilometers. He further stated that the place of recovery is at a distance of 1 ½ kilometers from village Kakra. It was, under these circumstances, that no independent witness, could be joined. The evidence of

the official witnesses, cannot be distrusted and disbelieved, merely on account of their official status. The mere fact that no independent witness could be joined, for the reasons recorded hereinbefore, is not sufficient to disbelieve and distrust, the evidence of the official witnesses. In the absence of any corroboration, through an independent source, the Court is put, on guard, to scrutinize the evidence of the official witnesses, carefully and cautiously. After careful and cautious scrutiny, if the Court comes to the conclusion, that the same does not suffer from any serious infirmity, the same can be believed. The evidence of the prosecution witnesses, has been carefully perused. Nothing could be brought out, during the course of their cross-examination, which may go to discredit their evidence. The evidence of the prosecution witnesses, on reappraisal, has been found to be cogent, convincing, reliable, and creditworthy. In **Akmal Ahmed Vs. State of Delhi, 1999(2) RCC 297 (S.C.)**, it was held that, it is now well-settled that the evidence of search or seizure, made by the police will not become vitiated, solely for the reason that the same was not supported by an independent witness. In **State of NCT of Delhi Vs. Sunil (2000)I S.C.C. 748**, it was held as under:-

“It is an archaic notion that actions of the Police officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature.”

9-A. In **Appa Bai and another Vs. State of Gujrat, AIR 1988 S.C. 696**, it was held that the prosecution story cannot be thrown out, on the ground,

that an independent witness had not been examined, by the prosecution. It was further held, in the said authority, that the civilized people, are generally insensitive, when a crime is committed, even in their presence, and they withdraw from the victims side, and from the side of the vigilant. They keep themselves away from the Courts, unless it is inevitable. Moreover, they think the crime like a civil dispute, between two individuals, and do not involve themselves in it. The principle of law, laid down, in the aforesaid authorities, is fully applicable to the facts of the present case. In these circumstances, mere non-joining of an independent witness, when the evidence of the prosecution witnesses, has been held to be cogent, convincing, creditworthy, and reliable, and there was no reason, on their part, to falsely implicate, the accused, no doubt is cast on the prosecution story. In this view of the matter, the submission of the Counsel for the appellants, stands rejected.

10. It was next submitted by the Counsel for the appellant, that the recovery was allegedly effected from an open place. He further contended that, as such, it could not be said that the accused was in conscious possession of the bags, containing poppy-husk. The submission of the Counsel for the appellant, in this regard, is not at all correct. The recovery of bags, containing poppy-husk, was effected from wild growth of reeds (sarkandas). The police party entertained suspicion, when from a distance, it saw a piece of cloth, with checks, (dabiddar parna), and when it reached near the wild growth of reeds, it found the accused, sitting on the bags, containing poppy-husk. It was for him to explain, as to, under what circumstances, he was sitting on the bags, containing poppy-husk, in such a concealed place. It means that the accused was found in possession of and control over the bags, containing poppy-husk. Once the possession and control over the bags, containing poppy-husk, of the accused was established, then the statutory presumption under Sections 35 and 54 of the Act, operated against him, that he was in conscious possession

thereof. The onus then shifted on, to him, to explain, as to whom those bags, containing poppy husk, belonged, if the same did not belong to him, and, as to how, he was found sitting on those bags, containing poppy-husk. No such explanation was furnished by the accused, in this, case. The plea of the accused was that of simple denial, and false implication. In *Megh Singh Vs. State of Punjab, (2003) 8 SCC 266*, on 22.2.1993, three persons were found sitting, on the gunny bags, containing poppy husk. The appellant was arrested, while the other two fled. 25 bags containing poppy husk, were found, at the spot, which were seized. The appellant was convicted and sentenced by the trial Court, and the appeal filed by him was also dismissed by the High Court. The Apex Court, upheld the conviction and sentence of the appellant, observing that he was in conscious possession. The word 'conscious' means awareness about a particular fact. It is the state of mind, which is deliberate or intended. It was further held that possession in a given case, need not be physical possession, but can be constructive, having power and control over the article, while the person to whom the physical possession is given holds it subject to that power or control. It, therefore, could not be said that the accused was not aware of the bags, containing poppy-husk. It was not a small quantity of poppy-husk, which was concealed, and, as such, could escape the notice of the accused. Keeping in view the principle of law, laid down, in the aforesaid case, the provisions of Sections 35 and 54 of the Act, and the evidence produced, on record, the trial Court, in my opinion, was right in coming to the conclusion, that the accused was in conscious possession of 3 bags, each containing 35 Kgs. poppy-husk. In this view of the matter, the submission of the Counsel for the appellant, in this regard, being without merit, must fail, and the same stands rejected.

11. No other point, was urged, on the behalf of the appellant.

12. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the trial Court, are based on

the correct appreciation of evidence, and law, on the point. The same do not warrant any interference, and are liable to be upheld.

13. For the reasons recorded, hereinbefore, the appeal is dismissed. The judgment of conviction dated 7.8.1998, and the order of sentence dated 10.8.1998, are upheld. The bail bonds of the appellant are cancelled. The Chief Judicial Magistrate, Sangrur, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of Section 428 of the Code of Criminal Procedure.

April 30, 2008
Vimal

(SHAM SUNDER)
JUDGE