IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.1400-SB of 2003

Date of Decision : April 30, 2008

Karnail Singh S/o Kartar Singh, ...Appellant
R/o village Jallah, P.S.Sirhind.

Versus

The State of Punjab ....Respondent

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. Kunal Siag, Advocate, for
Mr. G.S.Punia, 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, and the order of sentence dated 21.7.2003, rendered by the Special Judge, Fatehgarh Sahib, vide which it convicted the accused/appellant Karnail 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 three years, and to pay a fine of Rs.3000/-, and in default of payment of the same, to undergo rigorous imprisonment for another period of three months, for having been found in possession of 23 Kgs. poppy-husk, now falling within the ambit of non-commercial quantity.

2. The facts, in brief are that, on 15.8.1998, Sohan Lal, SI, alongwith other police officials, had gone for patrolling, in a Govt. Vehicle, bearing registration No.PB-11-D-1847, driven by Ranjit Singh, and was present at Bus Stand Bhaddal Thua. At about 7.00 PM, when the members of the police party were talking to each other, one person was spotted coming from the side of

Amloh road. On seeing the police party, he abruptly tried to turn towards his left. On suspicion, he was asked to stop. On enquiry, he disclosed his name as Karnail Singh son of Kartar Singh. At that time, he was carrying a bag, on his head. On search of the bag, in accordance with the provisions of law, in the presence of Gurmeet Singh, DSP, who was called to the spot, by sending a wireless message, recovery of 23 Kgs. poppy-husk was effected. A sample of 250 grams was taken out of the same, and the remaining poppy-husk was put into the same bag. The sample, and the bag, containing the remaining poppy-husk, were converted into parcels, and sealed with the seals, bearing impressions 'SL' belonging to Sohan Lal, and 'GS' belonging to Gurmeet Singh, DSP. Thereafter, the sample, and the case property, were taken into possession vide a separate memo. Ruqa was also sent to the Police Station, on the basis whereof, the FIR was registered. The accused was arrested. The statements of the witnesses were recorded. After the completion of investigation, the accused was challaned.

3. On his 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 the accused, to which he pleaded not guilty, and claimed Judicial trial.

4. The prosecution, in support of its case, examined Basir, HC (PW-1), Pritam Singh, Constable (PW-2), Baldev Singh, HC (PW-3), Mohan Singh, HC (PW-4), Sohan Lal, SI (PW-5), Hans Raj, HC (PW-6), Gurmeet Singh, DSP (PW-7). Thereafter, the Addl. PP for the State, closed the prosecution evidence.

5. The statement of the accused under Section 313 Cr.P.C., was recorded. He was put all the incriminating circumstances, appearing against him, in the prosecution evidence. He pleaded false implication. He, however, examined Rajinder Singh (DW-1), and, thereafter, closed his defence evidence.

6. After hearing the Addl. 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 the mandatory provisions of Section 50 of the Act, were not complied with, as a result whereof, the investigation and the subsequent trial, stood vitiated. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. The provisions of Section 50 of the Act, were not applicable, to the instant case, as the recovery was not effected, from the person of the accused, but from the bag, which he was carrying. In ***State of Punjab Vs. Baldev Singh, 1999(6) S.C.C. 172***, a Constitution Bench of the Apex Court, settled beyond doubt that the language of Section 50, was implicitly clear that the search had to be in relation to a person, and not search of premises, vehicles, or articles. Similar, view was taken in ***Smt. Krishna Kanwar Thakuraeen Vs. State of Rajasthan, JT 2004(1) S.C. 597***. In these circumstances, it can be said that the consistent, and particularly, the view of the larger Bench of the Supreme Court appears to be that the search, must relate to the person, and not vehicle, other luggage and articles, and then alone the provisions of Section 50, would be attracted. The principle of law, laid down, in the aforesaid authorities, is fully applicable to the facts and circumstances of the present case. Since the provisions of Section 50 were not applicable, to the facts of the present case, the question of non-compliance of the provisions of Section 50 of the Act, paled into insignificance. The submission of the Counsel for the appellant,

being without merit, must fail, and the same stands rejected.

10. It was next submitted by the Counsel for the appellant, that no independent witness was joined, despite availability. He further contended that no effort was made to join an independent witness. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. Mohan Singh, HC (PW-4), during the course of his cross-examination, stated that, they asked a few persons to join the police party, but none joined. To the same effect, was the statement of Sohan Lal, SI (PW-5). It means that an effort was made to join an independent witness, but none was ready to join the same. The evidence of the official witnesses, cannot be distrusted and disbelieved, merely on account of their official status. 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 and 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."*

10-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 appellant, stands rejected.

11. It was next contended by the Counsel for the appellant, that Balwinder Singh, a public witness, signed Ex.PC, the memo with regard to the grounds of arrest of the accused, but he was not examined. It is, no doubt, true that Balwinder Singh signed the aforesaid memo. He was not examined by the prosecution. There was no necessity of examination of Balwinder Singh aforesaid, by the prosecution, as he was not a witness to the search and seizure, in the instant case. Had he been a witness to the search and seizure, it would have been said that his non-examination, proved fatal to the case of the prosecution. The arrest of the accused, in the instant case, is not a matter of dispute, but what the accused disputed was that he was falsely implicated, in the instant case. Under these circumstances, the submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

12. It was next submitted by the Counsel for the appellant, that the defence evidence produced by the accused/appellant, was not discussed by the trial Court, in its judgment. He further submitted that, on account of non-discussion of the defence evidence, produced by the accused, by the trial Court in its judgment, a prejudice was caused to the accused, and, as such, it must

result into the remand of the case. The Counsel for the appellant, in this regard, cannot be accepted. In para No.32 of its judgment, the trial Court held as under:-

> *"The defence counsel has thus not been able to make any dent in the prosecution case. The stand taken by the accused in his statement under Section 313 Cr.P.C. that he has been falsely implicated does not inspire confidence. Rather there is ample evidence to the contrary. The evidence led by the accused in his defence in the shape of statement of DW-1 Rajinder Singh does not inspire confidence and is not cogent and sufficient enough to discard the statements made by the official witnesses in discharge of their official duties. Further there is nothing on record to suggest as to why the accused may have been falsely implicated as there is no evidence or any suggestion of enmity of the accused with the police party. The recovery stands duly prove fully from the statements of PW-4, PW-5, and PW-7, who have stated consistently in support of the prosecution case. The link evidence is complete. No other point has been urged by the learned counsel for the accused."*

12-A. From Para No.32 of the judgment of the trial Court, extracted above, it is evident that it held that that the statement of Rajinder Singh (DW-1), examined by the accused, did not inspire confidence, in the mind of the Court. It was further held by the trial Court, in this para, that the evidence of Rajinder Singh (DW-1), was not cogent, and sufficient enough, to discard the statements made by the official witnesses, in the discharge of their official duties. Under these circumstances, to say that the defence evidence, produced by the accused, was not discussed, by the trial Court, cannot be held to be correct. It appears that, Rajinder Singh (DW-1), though Member Panchayat

was introduced later on, by the accused, to help him. During the course of cross-examination, it was stated by him, that he came to know about the case, against the accused after 2 days. In case, he had come to know, that the accused had been falsely implicated, in the instant case, he being a Member Panchayat of the Gram Panchayat of the Village, was required to put forward a move for passing the resolution, in that regard, and in relation to the illegal activities of the Police. He, however, did not take any such step, for the reasons best known to him. He also did not bring any copy of the application, allegedly moved before the Police, regarding the false implication of the accused. It means, that his evidence was rightly discarded by the trial Court, in the face of the cogent, convincing, and reliable evidence of the official witnesses. This witness kept quiet and slept over the matter, for a period of about more than 2 ½ years, and, ultimately, came to the Court, to depose that the accused was falsely implicated. The defence version, being an afterthought, was rightly discarded by the trial Court. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

13. Last of all, the Counsel for the appellant submitted that though the recovery of poppy-husk effected from the accused, falls within the ambit of non-commercial quantity, yet the sentence awarded to him, by the trial Court, being harsh, be reduced. He further submitted that the appellant has already undergone detention for a period of 8 months, during the course of investigation, trial, and the pendency of appeal. The submission of the Counsel for the appellant, in this regard, appears to be correct. The recovery was effected on 15.8.1998, and the accused was convicted and sentenced, by the trial Court on 21.7.2003. Now it is 2008. The appellant/accused has been facing the ordeal of criminal proceedings, for the last about 10 years. He has, thus, already suffered much. In this view of the matter, it is a fit case, in which the substantive sentence of the appellant should be reduced to 9 months, from

3 years. To this extent the submission of the Counsel for the appellant, is accepted.

14. In view of the above discussion, it is held that the judgment of conviction, rendered by the trial Court, is based on the correct appreciation of evidence, and law, on the point. The order of sentence, rendered by the trial Court, deserves to be interfered with, and the substantive sentence of the appellant, is required to be reduced to a period of 9 months from 3 years.

15. For the reasons recorded, hereinbefore, the appeal is partly accepted. The judgment of conviction, rendered by the trial Court is upheld, and the order of sentence, is modified. The substantive sentence awarded to the appellant is reduced to 9 months, from 3 years, whereas, the sentence of fine, and the sentence, in default of payment of fine, awarded by the trial Court, are maintained. The bail bonds of the appellant, if he is already been granted bail by the Appellate Court, shall stand cancelled. The Chief Judicial Magistrate, Fatehgarh Sahib, shall comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Code of Criminal Procedure.

April 30, 2008 **(SHAM SUNDER)**
Vimal **JUDGE**