
(2008) 02 P&H CK 0317
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 445-SB of 2003
Major Singh

Date of Decision : 14-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 35, 42, 54

Citation : (2008) 02 P&H CK 0317

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Advocate : Rohit Mahajan and K.D.S. Hooda, for the Appellant; O.P. Dabla, AAG, Punjab, for the Respondent

Judgement

Sham Sunder, J.—This judgment shall dispose of the aforesaid three appeals, arising out of the decision dated 6.2.2003, rendered by the `under, Special Court, Ludhiana, vide which it convicted all the accused/appellants, for the offence punishable u/s 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter called as `the Act" only) and sentenced them to undergo rigorous imprisonment, for a period often years each, and to pay a fine of Rs. 1 lac each, and in default of payment of the same, to undergo further simple imprisonment for a period of two years each.

2. The facts, in brief, are that, on 6.7.2000, Paramjit Singh, Inspector, at the relevant time posted as S.H.O., Police Station Focal Point, Ludhiana, accompanied by Shiv Charan, ASI, Murlidhar, ASI, Waryam Singh, ASI, and other police officials, was present in the area of drain bridge, (Kasha Path), Gobindgarh, in connection with special operation. At about 5.30 PM, truck LP, bearing No. RRA-0-8481, came from the side of Railway Crossing, Gobindgarh, in the area of Ludhiana, which was intercepted, on the basis of suspicion. On interrogation, the driver of the truck told his name as Sheesh Ram S/o Umrao Singh. On checking the truck, three persons were found, sitting on the gunny bags, lying in the truck. They told their names as Major Singh S/o Jit Singh,- Ramesh Chander S/o Mohan Lal, and Bachan Singh S/o Bahal Singh. In the

meanwhile, a public witness, Hardeep Singh S/o Darshan Singh, R/o Dhandari Kalan, also reached there. He was associated with the police party. Paramjit Singh, Inspector, also sent the message to Gurjit Singh, D.S.P of Industrial Area, Ludhiana, who reached the spot. Thereafter, Paramjit Singh, Inspector, on the direction of Gurjit Singh, D.S.P., conducted search of the bags, lying in the truck. The bags were 10 in number. Each bag contained 35 Kgs. Poppy- husk. Two samples of 250 grams from each of the bags, were taken out. The remaining poppy-husk, after weighment, was kept in the same bags. The sample parcels, and the bags containing the remaining poppy-husk, were converted into parcels, duly sealed with the seals bearing impressions `PS" of Paramjit Singh, Inspector, and `GS" of Gurjit Singh, D.S.P., Separate sample seal was prepared. Thereafter, the entire case property, was taken into possession. Seal after use was handed-over to Murlidhar, ASI by Paramjit Singh, Inspector, whereas Gurjit Singh. D.S.P., retained his own seal with him. The truck, in question, was also taken into possession, vide a separate recovery memo. Grounds of arrest were disclosed to all the accused. and they were formally arrested. The statements of the witnesses were recorded. On reaching the Police Station, on the same day, the case property, and the accused were produced before Darshan Singh, ASI, officiating S.H.O., who verified the facts, interrogated the accused, and checked the case property. He also put his seal, hearing impression `DS", on the case property, and the parcels. Thereafter, he deposited the case property with Kuldeep Singh, MHC, at 2.15 AM on 7.7.2000. After the completion of investigation, the accused were challaned.

3. On their appearance, in the Court of the Committing Magistrate, the copies of documents relied upon by the prosecution, were supplied to the accused. After the case was received by commitment, in the Court of Sessions, charge u/s 15 of the Act, was framed against the accused, to which they pleaded not guilty, and claimed usual trial.

4. The prosecution, in support of its case, examined Gurjit Singh, D.S.P. (PW-1), Paramjit Singh, Inspector (PW-2), Murlidhar, AS; (PW-3), Kuldeep Singh, HC (PW-4), Shiv Charan, ASI (PW-5). Rajesh Kumar, LDC (PW-6), Piara Singh, HC (PW-7) and Darshan Singh, ASI (PW-8). file Addl. PP for the State, also tendered into evidence Ex.PZ. report of the Chemical Examiner, and thereafter, closed the prosecution evidence.

5. The statements of the accused u/s 313 Cr.P.C., were recorded, and they were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. In defence, Ramesh Chander, accused, pleaded that he was in drunken condition. He was detained in the Police Station, and later on, the present case was planted against him. Bachan Singh, accused, in his statement recorded u/s 313 Cr.P.C. slated that he was having some money dispute, with some persons, and was implicated in the present case falsely, at the instance of those persons. Sheesh Ram, accused, in his statement recorded u/s 313 Cr.P.C. stated that his truck had struck against

the vehicle of Police Station, Focal Point. His vehicle was illegally detained by the Police of Police Station Focal Point. and, later on, the present case was planted against him. Major Singh, accused, in his statement recorded u/s 313 Cr.P.C., stated that he was a hosiery worker. He was detained, in the Police Station illegally, for some days, and later on, the present case was planted against him. They, however, examined Balwinder Singh, C-1, as DW-1, and thereafter, closed their 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, as stated hereinbefore.

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

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 accused/appellants, at the very outset, contended that the accused/appellants, were not in conscious possession of the poppy- husk, referred to hereinbefore. It was further contended by them that. the prosecution miserably failed to prove this factum. The submission of the Counsel for the appellants, in this regard, does not appear to be correct. From the cogent, convincing, reliable, and trustworthy evidence of Gurjit Singh, D.S.P. (PW-1), Paramjit Singh. Inspector (PW-2), the Investigation Officer, and Murlidhar, ASI (PW-3), a witness to the recovery, it was proved beyond a reasonable doubt that on 6.7.2000, at about 5.30 PM, in the area of Gobindgarh, Industrial Area, Ludhiana, truck bearing No. RRA-0-8481, came from the side of Gobindgarh, which was being driven by Sheesh Ram, one of the accused, whereas, the remaining accused/appellants, were sitting on the bags, lying in the body of the truck. On search of the bags, in accordance with the provisions of law, by Paramjit Singh, Inspector, in the presence of Gurjit Singh, D.S.P., which were 10 in number, poppy-husk was found therein. On weighment, each bag was found containing 35 Kgs. poppy-husk. It is also proved, from the evidence of Rajesh Kumar, Lower Division Clerk, Office of the Regional Transport Officer, Alwar (Rajasthan) (PW-6), that Sheesh Ram, accused, was the owner of the truck, aforesaid, at the relevant time. It could not be imagined that such a big quantity of poppy-husk, contained in 10 gunny bags, escaped the notice of the accused. The bags were lying in the body of the truck. It was not a small quantity of poppy-husk, which was lying in the truck, which could escape the notice on the accused. Sheesh Ram, being the owner of the truck, knew as to which contraband, he was carrying in his truck. The remaining accused, while sitting on the gunny bags, were also aware of the contents thereof. The plea taken up by the accused u/s 313 Cr.P.C., was to the effect, that they were falsely implicated, in the present case. No ill-will, grudge, or enmity, against the prosecution witnesses, was either alleged, or proved. Such a big haul of poppy-husk, could

not be planted, against the accused. Since, the bags containing poppy-husk, were found in the body of the truck, the accused could be safely held to be in physical possession of the same. Section 54 of the Act *ibid* reads as under:

"Presumption from possession of illicit articles:- In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of:-

- a) any narcotic drug or psychotropic substance or controlled substance:
- b) any opium poppy cannabis plant or coca plant growing on any land which he has cultivated:
- c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance: or
- d) any material which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or Controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

9-A. Section 35 which relates to the presumption of culpable mental state, is extracted as under:

"Presumption of culpable mental state:- (1). In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the offence charged as an offence in that prosecution.

Explanation - In this section "culpable mental state" Includes intention motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact shall be said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

9-B. From the conjoint reading of the provisions of Sections 54 and 35, referred to hereinbefore, it becomes abundantly clear, that once an accused, is found to be in possession of a contraband, he is presumed to have committed the offence, under the relevant provisions of the Act until the contrary is proved. According to Section 35 of the Act *ibid* the Court shall presume the existence of mental state, for the commission of an offence, and it is for the accused to prove otherwise. In *Madan Lal and another v. State of H.P.*, 2003 SCC Cri. 1664 it was held as under:

The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

Once possession is established, the person who claims that it was not at

conscious Possession has to establish it, because how he ante to he in possession is within his special knowledge Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles."

10. The facts of Madan Lays case (supra) in brief, were that accused Manjit Singh was driving the Car and the remaining four accused were sitting therein. One steel container (dolu) in a black coloured bag, was recovered froth the said Car which contained 820 gms, charas. The accused were convicted and sentenced by the trial Court, holding that they were found in conscious possession of charas. The Apex Court held that the trial Court, was right, in coming to the conclusion, that the accused were found in conscious possession of charas as they had failed to explain, as to how, they were travelling in a Car together, which was not a public vehicle. The Apex Court upheld the conviction and sentence awarded to the accused. In the instant case the accused failed to explain, as to how, they were travelling together, in the truck, referred to above, and proceeding towards the same destination, how they were not aware of the contents of the bags, lying in the body of the truck, and how they were not in conscious possession of 350 Kgm. of poppy husk. The facts of Madan Lal's case (supra) are similar and identical to the facts of the present case. The principle of law, laid down, in Madan Lal's case (supra) is fully applicable to the facts of the present case. In the instant case, in their statements u/s 313 Cr.P.C., no plea was taken by the accused, that they had taken the lift in the truck, and did not know, as to what was contained in the bags, lying in the body thereof. Once the accused were found in possession of the gunny bags, containing poppy-husk, the onus lay upon them, as per the provisions of Section 54 and Section 35 of the Act, to rebut the statutory presumption, operating against them, that they were not in conscious possession thereof. The accused miserably failed to rebut the presumption operating against them, as per the provisions of Section 35 and 54 of the Act ibid. In this view of the matter, the submission of the Counsel for the accused/appellants, that the prosecution failed to prove that the accused were found to be in conscious possession of poppy-husk, aforesaid, being without merit, must fail, and the same stands rejected.

11. The Counsel for the accused/appellants, however, placed reliance on Kashmir Singh v. State of Punjab, 2006 (2) R.C.R. (Cri) 477, a case decided by the Full Bench of this Court, to contend that the accused were not found in conscious possession of poppy husk. The principle of law, laid down, in the said authority, was to the effect that the prosecution was not entitled to avail of the presumptions operating under Sections 35 and 54 of the Act, unless and until, an opportunity to the accused, had been given, to rebut the same, by the trial Court. There is, no dispute, with the preposition of law, laid down, in the said authority. In the instant case, the charge was framed against the accused, to the effect that they were found in possession of 350 Kgs. poppy-husk, contained in 10 bags, without any permit or licence. From the charge, it is evident that the

accused were informed that they were found in possession of a contraband or in other words a controlled substance. When they were duly informed, vide the charge framed against them, they could rebut the presumption, operating under Sections 35 and 54 of the Act, during the course of the cross-examination of the prosecution witnesses. Not only this, when their statements u/s 313 Cr.P.C. were recorded, they were put all the incriminating circumstances, that on search of the truck aforesaid, ten gunny bags, containing 35 kgs. poppy-husk each, were recovered therefrom. Sheesh Ram was also put a specific question, that he was driving the truck, whereas, the remaining accused were put specific question, u/s 313 Cr.P.C., that they were found sitting on the bags, containing poppy-husk. They however, did not lead any defence evidence, to rebut the presumption, operating against them under Sections 35 and 54 of the Act. This all goes to show that full opportunity was granted to the accused, to rebut the presumption, operating against them, under Sections 35 and 54 of the Act, but they miserably failed to satisfactory rebut the same. In these circumstances, no help, whatsoever, can be drawn, by the Counsel for the appellants, from Kashmir Singh's case (supra). The submission of the Counsel for the appellants, being without merit, must fail, and the same stands rejected.

12. It was next submitted by the Counsel for the accused/appellants, that there was a secret information, with the Police party, against the accused, but the same was not reduced into writing, nor sent to the Officer superior, and as such, there was complete-violation of the provisions of Section 42 of the Act. It was further contended by the Counsel for the appellants, that non-compliance of the provisions of Section 42 of the Act, would result into vitiation of the investigation, and subsequent proceedings. The submission of the Counsel for the appellants, in this regard, does not appear to be correct. There is no evidence, on record, that there was any secret information. with Paramjit Singh. Inspector, against the accused, that they were coming in a truck, in which poppy-husk was loaded. In the ruqa, nothing was mentioned, that any secret information was received against the accused. On the other hand, the Police party, as is evident from ruqa Ex.PC, was present at the spot, in connection with special operation. To the same effect, are the statements of Paramjit Singh. Inspector (PW-2), and Murlidhar, ASI (PW-3). No doubt, during the course of cross-examination, Gurjit Singh, D.S.P. (PW-1), stated that the Investigating Officer had secret, information, against the accused, due to which, special operation (naka) was held. Had the Investigating Officer been having secret information against the accused, he would have certainly disclosed the same, while appearing as PW-2. Paramjit Singh, Inspector (PW-2), was conspicuously silent, with regard to this aspect of the matter. In this view of the matter, no reliance can be placed on the statement of Gurjit Singh, D.S.P., that the Investigating Officer was having a secret information, against the accused. Even if, it is assumed, for the sake of arguments, that there was a secret information against the accused with the Investigating Officer, compliance of the provisions of Section 42 would have certainly caused delay, as a result whereof, the accused could escape. The police

party was not present in the Police Station, but at the spot, in connection with special operation. Even, otherwise, non-compliance of the provisions of Section 42 of the Act, does not vitiate the investigation, as also the subsequent proceedings. If there is non-compliance of the provisions of Section 42 of the Act, the Court is put on guard to determine, as to whether, any prejudice was caused to the accused, on account of that reason. If the Court comes to the conclusion that on account of non-compliance of the provisions of Section 42 of the Act, prejudice was caused to the accused, the case of the prosecution would become doubtful. In the instant case, no prejudice was shown to have been caused to the accused, on account of non-compliance of the provisions of Section 42 of the Act. In this view of the matter, the case of the prosecution did not become doubtful. The submission of the Counsel for the appellants, being without merit, must fail, and the same stands rejected.

13. It was next contended by the Counsel for the accused; appellants that an independent witness, in the name of Hardeep Singh, was joined, but he was not examined. No doubt, Hardeep Singh was joined as a public witness, but he was not examined by the Addl. P.P. for the State, for the reasons best known to him. It is to be seen, as to whether, non-examination of Hardeep Singh in any way, cast doubt, on the prosecution story. In the instant case, the evidence of Gurjit Singh, D.S.P. (PW-1), Paramjit Singh, Inspector (PW-2), and Murlidhar. ASI (PW-3), as stated above, on reappraisal, has been found to be cogent, convincing, reliable, and trustworthy. The trial Court. thus, held that since their evidence was consistent, with regard to the date. time, and place of recovery, and no dent could be caused, in their evidence, during the course of cross-examination, non-examination of Hardeep Singh, did not at all, make the case of the prosecution doubtful. In my opinion, the trial Court was right, in coming to such a conclusion. In *State of NCT of Delhi v. Sunil* (2000) 1 SCC 748 [652]., 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. "

13-A. In *Appa Bai and another v. State of Gujarat*, 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. No adverse inference, could be drawn, against the prosecution for non-examination of Hardeep Singh, a public witness, when the evidence of the prosecution witnesses, has been held to be cogent, convincing, reliable, and trustworthy. In this view of the matter, the submission of the Counsel for the appellants, stands rejected.

14. No other point, was urged, by the Counsel for the parties.

15. 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. The same are liable to be upheld.

16. For the reasons recorded, hereinbefore, appeal Nos-445-SB of 2003, 507-SB of 2003, and 908-SB of 2003, are dismissed. The judgment of conviction and the order of sentence dated 6.2.2003, are upheld. If the accused/appellants are on bail. The Chief Judicial Magistrate, Ludhiana, shall take necessary steps, in accordance with the provisions of law, to get arrested the accused/appellants, for undergoing the remaining part of their substantive sentence. The trial Court, did not pass any specific order with regard to the confiscation of the truck. The truck referred to hereinbefore, shall stand confiscated to the State of Punjab. Necessary steps shall also be taken, to take the said truck into possession, if already, the same has not been taken into possession, and disposal thereof be made, in accordance with the provisions of law.