
(2008) 08 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 745-SB of 2003

Sukhwinder Singh @ Sukha

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

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

Citation : (2008) 27 CriminalCC 548

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : Satinder Khanna, for the Appellant; C.S. Brar, DAG, for the Respondent

Final Decision : Dismissed

Judgement

Harbans Lal, J.—This appeal is directed against the judgment/order of sentence dated 18.02.2003 rendered by the Court of learned Judge, Special Court, Patiala, whereby he convicted and sentenced Sukhwinder Singh @ Sukha accused/appellant to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 1 lac and in default of payment of the same, to further undergo rigorous imprisonment six months u/s 15 of the Narcotics Drug and Psychotropic Substances Act, 1985 (for brevity "the Act").

2. The minimal facts of the prosecution case are that on 24.11.1999, SI Hans Raj among other police officials including SI Budh Ram happened to be present on the turning of Village Daftriwala, Ghagga Road Patran. In the meanwhile, one Maruti car bearing registration No.PB-11-0422 was spotted approaching. The same was signalled to stop with torch light by SI Hans Raj. The driver of the car, after having brought it to halt, made an endeavour to flee from the spot. He was intercepted by SI Hans Raj with the aid of his companions. On inquiry, he disclosed his name as Sukhwinder Singh @ Sukha (accused). In the meantime, PW Pala Singh came at the spot. He was associated with the police party. SI Hans Raj told the accused that his car was suspected carrying some contraband

articles. He should tell whether he wanted to have his own as well as his car's search in the presence of some gazetted officer or a Magistrate. He opted to have search before some gazetted officer. The aforementioned SI Hans Raj recorded his statement. On receipt of wireless message, DSP Gursharan Singh Bedi came at the spot. He also disclosed his identity to the accused as a Gazetted officer. Under his directions, SI Hans Raj carried out search of the car, which yielded gunny bags containing poppy husk. On counting, these were found to be four in number. Two samples of 250 grams each from each bag were drawn and converted into parcels. The remainder of each bag, when weighed came to 159.500 kgs, which was also turned into parcels. All the parcels were sealed with seal "HR" as well as "GS" and were seized vide recovery memo. The specimen impression of the seal was also prepared. The seal of SI Hans Raj, after use was entrusted to PW Pala Singh. The DSP retained his seal in his own possession. The SI Hans Raj sent ruqa to the police station, where on its basis, formal FIR was registered, prepared visual site plan showing the place of recovery, recorded the statements of witnesses arrested the accused and on return the police station, deposited the case property with seals intact with MHC Balbir Singh. On receipt of Chemical Examiner's report and after completion of investigation, the charge-sheet was laid in the Court for trial of the accused.

3. The accused was charged u/s 15 of the Act to which he did not plead guilty and claimed trial. The prosecution examined six witnesses and closed its evidence. When examined u/s 313 of Code of Criminal Procedure, the accused denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded innocence. He put forth that he was called from his house and falsely involved in this case. He did not lead any evidence in defence.

4. After hearing the learned Additional Public Prosecutor for the State, the learned defence counsel and examining the evidence on record, the learned trial Court convicted and sentenced the accused/appellant as noticed at the outset. Feeling aggrieved with his conviction/sentence, he has preferred this appeal.

5. I have heard the learned counsel for the parties, besides perusing the record with due care and circumspection.

6. To begin with Mr.Satinder Khanna, Advocate appearing on behalf of the appellant, urged with a good deal of force, that Pala Singh-PW, an independent witness to whom the seal after use, was allegedly entrusted, has been kept off the witness box and thus, firstly the accused/appellant has lost his right to cross-examine this witness and secondly, for his non-cross examination, the dent has been caused in the prosecution case. He further pressed into service that there is delay of as many as five days in sending the samples to the Chemical Examiner for analysis and thus, the link evidence is missing.

7. PW-Pala Singh has been given up on the specific pretext of his having been won over by the accused. The possibility cannot at all be ruled out that the witness of the prosecution can later on join hands with the accused and in that

eventuality, the prosecution cannot be expected to produce the same as its witness, who to its own knowledge is not going to support its case. In this view of the matter, I derive support from the observations made by the Apex Court Masalti Vs. State of U.P., wherein it has been held as under:

it is undoubtedly, the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case, but it would be unsound to lay down it as a general rule that every witness must be examined, even though his evidence may not be very material or even, if it is known that he has been won over or terrorised.

8. An identical view has been taken by the Hon''ble Supreme Court Bava Hajee Hamsa and Others Vs. State of Kerala,

9. In re: Piara Singh v. The State of Punjab, 1982, CLR(2) 447, the Full Bench, of this Court ruled that in the ultima ratio criminal trials ordinarily turn and must continue to do so on the credibility and acceptability of the evidence on record. It is not possible to hold that a criminal trial would succeed or fail merely on the technicality of the delivery of an investigating seal to a third person or the latter''s refusal or inability to appear as a witness about the same. It is more so, in the admitted position that there is no statutory requirement whatsoever to this effect. To conclude, it must be held that there is neither a statutory requirement nor a precedential mandate for handing over the seal used by the police officer in the course of investigation to a third person forthwith. It necessarily follows therefrom that even where it has been so done, the non-production of such a witness cannot by itself affect the merits of the trial.

10. In view of these observations, the contention raised by the learned counsel for the appellant pales into insignificance.

11. In re: State of Orissa v. Kanduri Sahoo, 2004(1) Criminal Court Cases 779 (S.C.): 2004(1) RCR(Criminal) 196 as much as 12 kg of cannabis (ganja) was recovered from the unauthorized possession of the accused. The sample was sent for chemical examination after four days. The evidence showed that the contraband articles were kept in proper and safe custody. The Apex Court held that there was no ground to quash the prosecution on account of delay when articles were in proper and safe custody. The affidavit Ex.PA of Balbir Singh HC, the statement of AS1 Jagdish Chand PW4, the affidavit of C.Amrik Singh PW5, coupled with FSL report Ex.PN go a long way in proving that the sample parcels were kept in proper and safe custody. Thus, the link evidence is complete.

12. Mr.Khanna, further assailed the prosecution edifice by contending that the alleged recovery was effected after sunset and that being so, the investigator was obligated to observe the mandatory provisions of Section 42(1) of the Act. The non- observance of this provision vitiates the trial. Again, I regret my inability to be one with Mr.Khanna for the discussion follow hereunder:

13. Of course, the recovery was effected after sunset from the vehicle, but it

being a chance recovery in the public place did not require the compliance of the afore-referred provisions of law. In re: Ram Kumar v. Central Bureau of Narcotics, 2008(4) Criminal Court Cases 268 (S.C.) : 2008(3) RCR(Criminal) 600, 800 grams of brown sugar was seized from co-accused Aziz which was kept inside the shoes and 710 grams of brown sugar was seized from the appellant at 8.00 P.M. It was held by the Apex Court that it is to be noted that this is a case of a chance recovery and Section 42 has no application. The evidence of witnesses clearly established that it was a case of chance recovery in a public place effected during routine checking. In the case in hand too, as is borne out from the evidence of recovery witnesses, it was a case of chance recovery in a public place effected during routine checking. Thus the contention is jettisoned.

14. Last of all, Mr.Khanna canvassed at the bar that the conscious possession of the accused/appellant is not established. This contention does not find favour with me. Right from the stage of framing of the charge till the conclusion of prosecution evidence, the appellant was aware as to what charge he was facing and what sort of evidence is being.

15. In re: Madan Lal & Anr. v. State of Himachal Pardesh, 2004(1) Apex Court Judgments 260 (S.C.): 2004(2) Criminal Court Cases 361 (S.C.): 2003(6) Scale 483, the Apex Court ruled that once the possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the. position in terms of Section 54 of the Act, where also presumption is available to be drawn from possession of illicit articles. Reverting back to the facts of the present case, as observed supra, the prosecution has established possession. So, the onus shifted on to the accused/appellant to demonstrate that it was not his conscious possession for the reason that it was only within his special knowledge as to how he came to be in possession of the poppy husk bags.

16. In re: Megh Singh v. State of Punjab, 2003(2) Apex Court Judgments 422 (.S.C.): 2003(4) RCR(Criminal) 319, when the police party was little short of the drain, they saw three persons sitting on gunny bags. Two of them fled from the spot and the third one, accused/appellant Megh Singh was apprehended. 25 bags containing poppy husk were found at the spot. The Hon''ble Supreme Court held that in the factual scenario of the present case not only possession but conscious possession has been established. It has not been shown by the accused/appellant that the possession was not conscious in the logical background of Section 35 and 54 of the Act. On the dint of these observations, there can be no escape from the finding that the presumption arising under Sections 35 as well as 54 of the Act operates in favour of the prosecution. Thus, the prosecution has been able to prove that the accused/appellant was in conscious possession of the recovered bags.

No other material point has been urged or agitated by either counsel.

As a sequel of the preceding discussion, this appeal fails and is dismissed.