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**(2003) 12 P&H CK 0055**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Crl.M.No. 55643 of 2003 with Crl.A.No. 120-SB of 2002

Surinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision :** 15-12-2003

**Acts Referred:**

**Citation :** (2004) 2 AICLR 167 : (2004) 1 CCC 163 : (2004) 1 CCJ 26 : (2004) 1 RCR(Criminal) 657

**Hon'ble Judges :** K.C.Gupta, J

**Advocate :** J.S. Brar and J.S. Bhatti, Advocates. S.S. Behl, Addl. A.G., Punjab.,  
Advocates for appearing Parties

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## **Judgement**

K.C. Gupta, J. (Oral)

1. This appeal has been preferred by the appellant, Surinder Singh, against his conviction and sentence under Section 21 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, "the Act") awarded by Special Judge, Ferozepur, vide judgement dated 8.1.2002 and order dated 9.1.2003 by which he was sentenced to RI for 10 years and a fine of Rs. one lac and in default of payment of fine, he was further sentenced to undergo RI for one year.

2. Briefly stated, the facts are that on 12.3.1995, Balwinder Singh, Sub Inspector, while on patrol duty, received secret information that the appellant alongwith his son was in the habit of selling intoxicant injections on payment and if raid was conducted, then he could be apprehended red handed. After a short while, Balwinder Singh, Sub Inspector, noticed a scooter coming from the side of Village Kotla in the light of Canter. When the scooter came near the police party, it was signalled to stop. The said scooter was being driven by Harpreet Singh son of Surinder Singh whereas Surinder Singh was sitting on the pillion seat. Balwinder Singh, Sub Inspector apprehended both of them on suspicion. Surinder Singh, appellant, was carrying a bag in his right hand. Balwinder Singh, Sub Inspector, gave offer to the appellant to get the bag searched in the presence of a Gazetted Officer but the appellant reposed confidence in the

Investigating Officer and the consent memo was prepared. The coaccused, Harpreet Singh, also signed that consent memo. Thereafter, the bag, which the appellant was carrying, was searched. It was found to contain seven boxes, which contained 50 injections each and one box was containing 100 injections alongwith 2 syringes and 8 needles. 2 voils of spirit and cotton were also recovered from the bag, which Surinder Singh, appellant, was carrying. One injection was separated from each of the boxes. Samples, 9 in number, and the boxes containing remaining injections were sealed separately with the seal of 'BS' and were taken into possession vide memo attested by the witnesses. The scooter was also taken into possession. From the personal search of Surinder Singh Rs. 210/ currency notes were recovered whereas Rs. 165/ currency notes were recovered from Harpreet Singh. The same were also taken into possession.

3. The Investigating Officer, Balwinder Singh, sent ruqa to the Police Station, on the basis of which formal FIR was recorded by Jagir Singh, ASI. Special reports were sent to the Ilqa Magistrate and higher authorities. Rough site plan of the place of recovery was also prepared. Statements of the witnesses were recorded. After the receipt of the report of the Chemical Examiner, the challan was put up in the Court.

4. The challan against Harpreet Singh was separated as he was a juvenile and the challan was sent for trial before the Juvenile Tribunal.

5. Having made out a prima facie case, the appellant was charged under Section 21 of the Act, to which he pleaded not guilty and claimed trial.

6. In order to prove the allegations, the prosecution examined 7 witnesses.

7. After the closure of the prosecution evidence statement of the appellant was recorded under Section 313 Cr.P.C., wherein he denied the allegations of the prosecution and pleaded false implication.

8. After hearing learned PP for the State and the defence counsel, the appellant was sentenced under Section 21 of the Act vide judgment dated 8.1.2002 by Special Judge, Ferozepur and sentenced vide order dated 9.1.2002 as stated in the earlier part of the judgment.

9. Aggrieved by the said judgment and order, the accused has filed the present appeal.

10. I have heard Mr. J.S. Brar, counsel for the appellant, Mr. S.S. Behl, Addl. A.G., Punjab, for the respondent and carefully gone through the record.

11. Counsel for the appellant contended that no case is made out against the appellant as the presence of morphine in injections, which were allegedly recovered from the appellant, was less than .2% and for making the appellant liable under the Act, the extent of morphine in each injection should be more than .2%. For this contention, he placed reliance upon a authority of this Court i.e. Sewak Singh v. State of Punjab, 1998(4) RCR(Criminal) 832 , in which it was

observed that if the strength of morphine in each injection is less than .2% then conviction against the appellant could not be recorded. In the present case, in the report of the Chemical Examiner, Ex.P.13, presence of morphine and sulphate have not been separately mentioned but only stated that morphine and sulphate are present. Therefore, it cannot be said that the presence of morphine in each injection is more than .2%.

Counsel for the appellant next contended that the offer given to the appellant was partial inasmuch as it was not stated that he could be searched in the presence of a Magistrate but the investigating Officer had simply stated that he could be searched in the presence of a Gazetted Officer. Thus, there is a partial offer, which is noncompliance of Section 50 of the Act.

12. Keeping in view the facts and circumstances of the case, the appeal is accepted and the appellant is acquitted of the charge levelled against him.