

**In the court of D.P. Singla,
Special Judge, Sri Muktsar Sahib**

**S.C.No. RBT 115 of 2013
Date of institution : 17.01.2013/04.10.2014
File No.85 of 2013
Date of decision : 11.08.2016**

State

versus

Gurpreet Singh son of Karnail Singh son of Chaggar Singh, aged about 35/36 years, Shopkeeper, resident of village Mallan, Tehsil Gidderbaha, District Sri Muktsar Sahib, now resident of Paras Ram Nagar, Street No.10-G, Bathinda.

Accused.

FIR No.62 dated 14.08.2012
U/S 15 N.D.P.S. Act
Police Station : Kotbhai

Present: Sh. R. S. Jauhal, Addl. PP for the State
Accused on bail with Sh. F. S. Sadhu, Advocate

JUDGMENT

1. Accused Gurpreet Singh has been sent to face trial by the police of station Kotbhai for offence under section 15 of Narcotic Drugs and Psychotropic Substances Act 1985 with the allegations that he was found to be in possession of 20 Kgs of poppy husk.
2. Adumbrated in brief, facts of prosecution story are that on 14.08.2012, ASI Daljit Singh along-with other police officials were on private vehicle in connection with checking of suspects. When the police party reached ahead of bridge of canal minor, then

(State Vs. Gurpreet Singh D.O.11.08.2016)

Gurpreet Singh accused was seen coming with a plastic bag on his head. On seeing the police party, accused threw the plastic bag and tried to escape by running, but he was apprehended on suspicion. Accused disclosed his name, address and parentage and after giving him option of search through consent memo, plastic bag was searched. On search of plastic bag, poppy-husk was recovered and 250 grams was separated as sample, whereas remaining on weight came to be 19 Kgs. 750 grams, which was converted into bulk parcel. Both the parcels were sealed with own seal and specimen seal was also prepared. Case property was taken into possession through recovery memo, which was attested by witnesses. Case was got registered by sending the ruqa and arrest memo of accused was prepared. Personal search memo of accused and rough site plan were also prepared. Statements of witnesses were recorded. On return to police station, case property alongwith accused was produced before SHO/Inspector Kuldeep Singh, who has verified the facts and further sealed the case property with his own seal and also affixed the seal on the specimen seal. The case property was taken into possession through entrustment memo and on the next day, he produced the accused alongwith case property before learned SDJM, Gidderbaha alongwith application and inventory report. The Court has passed the orders and on receipt of report of Chemical Examiner and completion of investigation, challan has culminated for trial.

3. On presentation of final report in the court, complete copies of documents relied upon by the prosecution was supplied to the accused free of costs as per provisions of section 207 of Cr. P.C.
4. On scrutinizing of report under section 173 of Cr.P.C and finding a prima facie case punishable under section 15 of the NDPS Act, the accused was charged thereunder and upon the accused pleading not guilty to the charge, prosecution were called upon to lead evidence to support the charge.
5. In order to prove their case, prosecution examined HC Tarsem Singh as PW1, Constable Harjinder Singh as PW2, ASI Daljit Singh investigating officer as PW3, ASI Dharampal Singh being recovery witness as PW4, Inspector Kuldeep Singh as PW5 and thereafter closed their evidence.
6. On close of prosecution evidence, statement of accused was recorded under section 313 Cr.P.C, in which the accused was apprised of the entire incriminating evidence appearing against him to which he has denied and pleaded innocence as well as false implication due to political rivalry. In defence, the accused has examined C. Parampal Singh as DW1 and then closed his defence evidence.
7. I have carefully heard the learned Public Prosecutor for the State as well as learned defence counsel and have gone through the record.
8. Learned Public Prosecutor opened the case of

prosecution that Investigating Officer ASI Daljit Singh appearing as PW3 has narrated the facts of prosecution story, which further finds corroboration from the testimony of recovery witness ASI Dharam Pal as PW4 and SHO/Inspector Kuldeep Singh as PW5. Learned Public Prosecutor also argued with vehemence that the link evidence has also been completed in the testimony of MHC Tarsem Singh as PW1 and sample carrier C. Harjinder Singh as PW2. Learned APP also argued that the poppy husk was recovered from the conscious possession of accused and prayed for his conviction.

9. Learned defence counsel refuted the above contentions on the grounds that in this case neither any independent witness was associated by the police party despite availability and nor any information has been sent to the relative of accused. Learned defence counsel further referring to testimony of IO PW3 ASI Daljit Singh and PW4 ASI Dharam Pal contended with vehemence that they have contradiction and discrepancies on all the material points, because even no seal impression has been affixed and proved in this Court on Form M-29 or even by a separate sealed impression on Ex.PB as well as Ex.PC. Learned defence counsel further elaborated the argument that both the are alleging that separate seals were affixed and IO filled Form M-29, but unfortunately, this Form M-29 neither bears the signatures of IO and nor any seals have been affixed over the same or even no separate seal impression has been produced and proved on record.

Learned defence counsel further referring to cross-examination of both these witnesses also argued with vehemence that both have alleged that triplicate M-29 Form were prepared, but on cross-examination, they have admitted the fact that the signature is of original, whereas on perusal of same, it has revealed that it was in the carbon copy. Learned defence counsel also argued that in this case even representative sample have also been destroyed by the police, therefore no primary evidence has been produced and proved before this Court, which is clearly fatal to the prosecution story.

10. Learned defence counsel also argued that compliance of Section 50 of the Act has been made on one hand and the witnesses are alleging that the poppy husk were seen, when the plastic bag was thrown by the accused on the ground, then why they have given option of search to accused is total mystery, which has not been explained by any of the witnesses. Learned defence counsel further referring to testimony of SHO also contended with vehemence that SHO has also mentioned the wrong seals, which are not tallying with the seals in the order passed by the Court proved on record as Ex.PM. Learned defence counsel also argued that SHO has also mentioned the wrong date even in detailed report Ex.PN and similarly seal impressions have also been differently mentioned, therefore whole proceedings as well as documents have been fabricated by the police officials, which is clear from their own admissions. As such their credit has been impeached and they

are unreliable.

11. Learned defence counsel also argued that there is dent in the chain of link evidence, which is clear from the testimony of PW1 MHC Tarsem Singh and Constable Harjinder Singh as PW2. He also pressed that defence witness Constable Parampal Singh also made dent in the entire story of prosecution. He further argued that the prosecution has failed to prove their story beyond shadow of reasonable doubt and prayed for acquittal of accused on these grounds.

12. After hearing their above respective submissions and perusal of evidence on record, following points have arisen for discussion and determination in this case:-

- 1) **Whether accused was found in possession of twenty Kgs of poppy-husk without any license or permit on 14.08.2012 and committed an offence punishable under section 15 of NDPS Act?**
- 2) **Whether the prosecution has been able to prove their story beyond shadow of reasonable doubt?**

Points No. 1 and 2 :-

13. Both these points are taken up together for the sake of discussion and determination being interconnected, as the whole story hinges upon the same evidence.

14. To substantiate the charge and allegations of

prosecution story, investigating officer ASI Daljit Singh as PW3 has narrated the facts that on 14.08.2012, he alongwith ASI Dharam Pal and other police officials were present in connection with checking of suspects and on patrolling. PW3 also narrated that when the police party reached two acres ahead of bridge of canal minor, then Gurpreet Singh accused was seen coming alongwith plastic bag on his head. On seeing the police vehicle, he threw away the plastic bag and tried to escape, but he was apprehended on the basis of suspicion. IO inquired about his name, address and parentage. He further deposed that due to throwing of plastic bag on the ground, the mouth of the bag got opened and poppy husk was found visible and scattered on the ground. IO further deposed that he tried to join independent witness, but none was ready and he told the accused about his suspicion of poppy husk in the plastic bag in his possession and accused has legal right of search in the presence of gazetted officer or Magistrate, but the accused reposed faith in him through consent memo Ex.PA. After preparing consent memo Ex.PA, when search of plastic bag was conducted, then poppy husk was recovered and 250 gram was separated as sample, whereas remaining on weight came to be 19 Kgs 750 gms, which was converted into parcel. Both the parcels were sealed with his own seal bearing impressions 'DS' and specimen seal was prepared on cloth at Ex.PB. PW3 further deposed that Form M-29 Ex.PC was also prepared at the spot and seal after use was handed over to ASI

Dharam Pal. Case property was taken into possession through recovery memo Ex.PD attested by witnesses. PW3 also proved other material documents i.e. Rough site plan as Ex.PE, FIR as Ex.PF, endorsement as Ex.PF/1, arrest memo as Ex.PG, personal search memo as Ex.PH. IO further narrated that on return to the police station, he produced the accused alongwith entire case property before Inspector Kuldeep Singh, who verified the facts and sealed the case property with his own seal and also attested the specimen seal bearing seal impressions 'KS' and took the case property into his possession through entrustment memo Ex.PS. IO further narrated that his statement was also recorded and proved personal search recovery memo as MO1 and entries in regard to disposal of bulk parcel and representative sample by the Drug Disposal Committee in register No.19 as Ex.PW3/A and rod certificate as Ex.PW3/B and another entry as Ex.PW3/C.

15. Prosecution examining ASI Dharam Pal as PW4 has also brought evidence on these very lines to further corroborate the above story narrated by investigating officer, but cross-examination of both these witnesses are very material, which not only shakes their credit, but also makes clearly a doubt in the entire story of prosecution. Investigating officer in his examination-in-chief narrated the fact that specimen seal was prepared on cloth at Ex.PB, but in his cross-examination, he has admitted the fact that he prepared Form M-29 at the spot in three copies and affixed his seal

'DS' on all the three copies. The matter does not end here, because IO further admitted that Inspector Kuldeep Singh also affixed his seal impression on that very Form M-29. He further admitted that of the three copies of Form M-29, one is on the judicial file and the same is Ex.PC, whereas another copy is in the office of SSP and third copy went to the office of Chemical Examiner, but this Ex.PC neither bears his seal impression and nor of Inspector Kuldeep Singh. He further admitted the fact that Ex.PC is also not signed by him at any place and nor it was seen and signed by the Court. Accordingly, these material admissions falsify his previous stand taken in the examination-in-chief and in regard to preparing of separate specimen seal on cloth, because he himself has admitted that the seals were affixed on triplicate Form M-29. As such admissions of this investigating officer has impeached his own credit.

16. Furthermore, both IO and the alleged recovery witness in their examination-in-chief deposed the fact that when the plastic bag was thrown by the accused, then poppy husk was visible due to opening of the mouth of bag then what was the fun for further giving option of search by the IO to the accused through consent memo Ex.PA. There is no explanation from the mouth of IO or recovery witness that for what purpose this consent memo was prepared. Moreover, these facts have also not been recited in consent memo Ex.PA, which further shows that he has also

concealed the material facts even at the time of preparing of consent memo. Moreover, preparing of this document also loses significance. Similarly, testimony of PW4 recovery witness also alleged that IO prepared specimen seal chit Ex.PB and affixed on CFSL Form Ex.PC at the spot. This very witness in his cross-examination also admitted the fact that Form M-29 was prepared through carbon process filled by IO ASI Daljit Singh, but the same does not bear his signatures. Similarly, Ex.PB also does not bears sample seal. PW4 in his cross-examination specifically deposed that sample seals were prepared directly on Form M-29 and it was not prepared on a separate chit. As such this witness has contradicted the story of prosecution as well as falsifies the stand of investigating officer.

17. Moreover, on above account it is further worth mentioning that accused by way of defence, summoning DW1 Constable Parampal Singh from the SSP office, Sri Muktsar Sahib has also got proved the fact that there was no sample chit attached with Form M-29, rather it was forwarded to the Chemical Examiner as it is. As such, this defence witness has also falsified the stand of prosecution as well as investigating officer on this account. Accordingly, when documents have been forged by the investigating officer in such a manner that he has neither signed this Form M-29 anywhere on the spot and nor got it checked from the Court, then no reliance can be placed upon the testimony of such

time of investigating officer, because his whole credit has been rightly impeached by the defence. As such, both these witnesses are neither found to be reliable and nor trustworthy.

18. Leaving aside above aspect, defence in the cross-examination of PW4 also brought the material that there were two private vehicles used by the police party, which further shows that they have used these vehicles without any legal right, which is not comprehensible in view of law laid down in **Swaranjit Singh alias Raja Vs. State of Punjab, CRA-S-69-SB of 2003 (O&M)** decided on 22.07.2015. PW4 in his cross-examination admitted that the fields were cultivated with paddy, which was of the height of 2 ft, but they have not inquired about the ownership of the area. As such, these admissions in the cross-examination of PW4 further reveals that they have neither investigated the matter properly and fairly, rather they have concealed the facts even from the Court. PW4 also admitted that even in site plan Ex.PI, no village area has been depicted and even the roads are not explained, therefore he is unable to disclose the same. PW4 also admitted the fact that he does not remember if any relative was informed regarding arrest of accused and his production before the Magistrate. IO in his cross-examination deposed the fact that he has informed to the sister of accused regarding his arrest, but no memo was prepared in this regard. As such on this account it further shows that this investigating officer has acted beyond the prescribed procedure of

law even to allegedly arrest the accused, when he has neither intimated to any of the relative of the accused and nor prepared any such memo on the spot. Accordingly, doubt has been created at each and every step in the cross-examination of investigating officer, therefore in such circumstances, non-joining of independent witness is also fatal to prosecution story. The material contradictions and discrepancies surfacing in the testimony of IO and recovery witness have also shaken their veracity, therefore they are found to be incredible.

19. Leaving aside above aspect, prosecution examining Inspector Kuldeep Singh as PW5 has tried to corroborate the version of investigating officer, but again this very witness in his cross-examination deposed the fact that Court had sealed the representative sample and bulk parcel with the seal bearing impressions JMIC, Gidderbaha as per Ex.PN, but he has written different seal impressions, which are not tallying. PW5 deposed that it is a clerical mistake, but in his cross-examination he has again further admitted the fact that when sample was sent before Chemical Examiner, then Form M-29 was also sent. SHO PW5 in his cross-examination also deposed that the seal was affixed on Form M-29 itself when the case property was produced before him, but no separate chit on sample seal was prepared. Again PW5 in his cross-examination also admitted the fact that Ex.PB and Ex.PC does not bear any sample seal of him. PW5 also admitted that

carbon copy also bears the signatures and the date has been written as 14.08.2012 with the pen directly over it. As such this admission in the cross-examination of PW5 also proves that the documents were also tampered by the police officials in the police station for the reasons best known to them, but doubt has been raised, which goes in favour of the accused. PW5 also admitted that Form M-29 attached with the challan Ex.PB and Ex.PC neither bears any attestation or signatures of the Court. Furthermore, he has also admitted that in detailed report sent by him Ex.PN, he has mentioned the date in regard to production of accused before Magistrate on 15.08.2012, though order Ex.PM mentions the date as 14.08.2012. As such this SHO has also acted carelessly and negligently at the time of preparing of detailed report Ex.PN as well as qua affixation of seal impression, therefore no proper compliance of Section 57 has been made by him.

20. IO PW3 in his examination-in-chief deposed the fact that bulk parcel and representative sample have been disposed of by the Drug Disposal Committee and in this regard he has proved the documents as Ex.PW3/A to Ex.PW3/C. The above deposition of IO is very material, which shows that the police has not made proper compliance of Section 52-A of the NDPS Act, rather they have acted against the notification dated 10th May, 2007 by destroying the representative sample, which has to be treated as primary evidence before this Court. Unfortunately, when these samples have

been destroyed, then merely report of Chemical Examiner does not prove the stand of prosecution. Moreover, in this regard turning to report Ex.PK, it is nowhere specifically mentioned that how the seal impressions were affixed, whether it was on Form M-29, rather the Form M-29 attached with this very report not bearing any kind of seal impressions. As such it is also a total mystery that with what kind of seal impressions, the sample was compared by the concerned lab. Furthermore, when representative sample has been destroyed by the concerned police station, then it is also against the standing instructions of the Central Government contained in notification dated 10th May, 2007. Accordingly, on this account, this Court is also of considered view that these police officials have not only found to be incredible, rather they have violated and flouted the mandatory provisions of law even by destroying the representative sample. Accordingly, no reliance can be placed upon testimony of such type of police officials, who are acting against the law.

21. Prosecution examining MHC Tarsem Singh as PW1 has brought his affidavit Ex.P1 and Constable Harjinder Singh as PW2 has brought his affidavit as Ex.P2, but MHC again in his cross-examination deposed the fact that separat sample seal pasted on Form M-29 was deposited with him, which is now not on Form M-29. MHC also admitted the fact that there is no signatures of IO on Form M-29 and no sign of any gum on Ex.DA i.e. Form M-29.

Moreover, testimony of this MHC has also been falsified by other witnesses, who have deposed that seal was affixed directly on Form M-29. As such credit of his MHC has also been shaken rightly by defence. MHC in his cross-examination also deposed that he has not rubbed out the letters or written fresh letters as SDJM/GDB, but those are visible to the naked eye. Accordingly admissions in the cross-examination of this MHC also clearly make a dent in the chain of link evidence. In such circumstances, doubt has been created that what has been sent to the Chemical Examiner and how it was analyzed, when it has not been connected with the case property in question.

22. Keeping in view of above discussion, documents and evidence brought on record, it is clear that the prosecution has failed to brought any cogent, convincing, reliable and unimpeachable evidence to prove the factum of recovery of 20 Kgs of poppy husk from the conscious possession of the accused and testimonies of prosecution witnesses are found to be untrustworthy and impeachable in nature. It has also been laid down by Hon'ble Apex Court in **Makhan Singh versus State of Haryana, 2015 (2) RCR(Criminal) 834**, that when punishment is stringent, then provisions have also to be complied with strictly, which has not been done by the prosecution in the present case. As such, prosecution has failed to prove the ingredients of offence under section 15 of NDPS Act against the accused beyond shadow of

reasonable doubt. Consequently, both these points shall stand decided against the prosecution and in favour of accused.

23. As an upshot of above discussion and decision on the points, prosecution has failed to substantiate the charge against the accused for the offence under section 15 of the Act. Accordingly, accused Gurpreet Singh is acquitted of the offence under section 15 of the Act. The accused is on bail and his bail bonds and surety bonds shall stand discharged, whereas, the accused is ordered to make compliance of Section 437-A of the Cr.P.C by way of furnishing bonds in the sum of Rs.20,000/. Personal search articles be returned to the accused. The concerned police station has violated the notification dated 10.05.2007 and also violated Section 52(A) of the Act by destroying the representative sample, therefore action be taken against the concerned police officials after inquiring into the matter. Further directions be also given to all the concerned police stations not to destroy the representative sample in future in this District. As such copy of this judgment be sent to worthy SSP for doing the needful at his own level. File be consigned to the record room after due compilation.

Announced
11.08.2016

(D.P.Singla)
Special Judge,
SriMuktsar Sahib.

State versus Gurpreet Singh

Present: Sh. R.S. Jauhal, Addl. PP for the State
Accused on bail with Sh.F.S.Sandhu, Advocate

Accused has closed his defence evidence. Arguments heard.

Vide my separate detailed judgment of even date, accused shall stand acquitted for the offence under Section 15 of N.D.P.S.Act as stated therein. The accused is on bail and his bail bonds and surety bonds shall stand discharged, whereas, the accused is ordered to make compliance of Section 437-A of the Cr.P.C by way of furnishing bonds in the sum of Rs.20,000/-. Personal search articles be returned to the accused. File be consigned to the record room after due compilation.

Announced
11.08.2016

(D.P.Singla)
Special Judge,
Sri Muktsar Sahib.