

In the Court of Rajeev Goyal Addl. Sessions Judge-cum-Special Judge (under NDPS Act, 1985), Kurukshetra

Sessions Case No.331 of 2013.

Computer ID No.202700039582013.

Date of Institution: 26.4.2012.

Date of Decision: 5.12.2014.

State	Versus	1. Himmat Singh son of Ranjeet Singh, aged 38 years, agriculturist,
		2. Malkiat Singh son of Rajender Singh, aged 20 years, labourer,
		Both residents of village Shambhu Kalan, District Patiala (Punjab).

FIR No.28 Dated 28.3.2014.

Under Section: 15 of The Narcotic Drugs and Psychotropic Substances Act, 1985.

Police Station: Ismailabad.

Present: Shri Dinesh Sabharwal, Public Prosecutor for State.
Accused Himmat Singh on bail in this case but in custody in some other case, whereas accused Malkiat Singh on bail represented by Shri Arun Tanwar, Advocate.

JUDGMENT

The accused above named have been sent up by the SHO Police Station Ismailabad to face trial for commission of offence punishable under Section 15 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act” only).

2. On 28.3.2012, at about 8.00 p.m., ASI Dharam Pal alongwith other police personnel was present at Hisar-Ambala Road near Bus Stand Jalbera in connection with patrol and crime detection. Check point was put up there for the purpose of vehicle checking. In the

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meanwhile, from the side of Malikpur, a Nano car bearing registration No.HR-99KZ(T) 1999 came, which was signaled to stop and when the car was checked, a plastic bag colour yellow was seen on the seat adjoining the driver seat. It was opened and was found containing some substance like poppy husk. Driver of the car was asked about his name and address, who disclosed his name as Himmat Singh son of Ranjit Singh, Caste Kamboj Sikh, resident of Shambhu Kalan, P.S. Shambhu, District Patiala. In the rear seat of the car, a person was sitting who on seeing the police party attempted to drag the plastic bag colour white underneath the seat. However, ASI Dharampal checked the said plastic bag which too was containing a substance like poppy husk. Said person gave his name as Malkiat @ Kala son of Rajinder Singh, Caste Balmiki, resident of Shambhu Kalan, P.S. Shambhu, District Patiala. Both of them did not give any satisfactory reply with regard to the above said substance like poppy husk. Based upon his experience and after smelling the same, ASI Dharampal came to know that said substance was in fact “poppy husk”. Passers by were asked to join recovery proceeding but no one agreed. A computer weigh balance was arranged and the bag recovered from Himmat Singh was weighed, which came to 8 kilograms 100 grams, whereas the other bag recovered from Malkiat @ Kala was weighing 9 kilograms 100 grams. Out of both the recovered bags, two-two samples of 200 grams each i.e. four in total were drawn, which were made into parcels. Seal 'DP' three in number was affixed on each of the parcels.

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Sample seals were prepared. Seal after being used, was handed over to HC Mahinder Singh 669. All the four sample parcels, parcels containing residue poppy husk, car bearing registration No.HR-99KZ(T) 1999 and sample seals were taken by police in its possession vide separate recovery memo Ex.P11. Thus, it has been alleged that both the accused Himmat Singh and Malikat @ Kala by keeping in their possession 17 kilograms 200 grams poppy husk committed offence punishable under Section 15 of the Act.

3. Written information (ruqua) Ex.P21 was sent to Police Station Ismailabad, where upon formal FIR Ex.P2 was registered. Report Ex.P23 under Section 55 of the Act was prepared, which alongwith accused, sample parcels, case property, Nano car as also the witnesses was produced before SHO, Police Station Ismailabad, who made his endorsement Ex.P20 thereon after verifying the facts pertaining to the present case. Site plan Ex.P22 was prepared. The case property was got deposited in the Maalkhana of the police station and on the next date i.e. 29.3.2013, same was produced before Id. Area Magistrate for the purpose of certification of the inventory under Section 52A of the Act. Report Ex.P7 under Section 57 of the Act was also prepared which was sent to the DSP concerned. Sample parcels and sample seals were were sent to FSL Madhuban for chemical analysis, report whereof is Ex.P6 on the file. Statements of witnesses under Section 161 Cr.P.C. were recorded. After completion of all usual formalities of investigation, report under Section

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173 Cr.P.C. was prepared and presented in the Court for putting the accused on trial.

4. As envisaged under Section 207 Cr.P.C., copies of challan were supplied to the accused free of costs.

5. On finding a prima-facie case, accused were charge-sheeted under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 on 4.7.2012 by the Court of Shri Lalit Batra, Id. Sessions Judge, Kurukshetra, to which, they pleaded not guilty and claimed trial.

6. In support of its case, prosecution examined nine witnesses. Prosecution evidence was closed by learned Public Prosecutor on 26.8.2014.

7. Statements of accused under Section 313 Cr.P.C. were recorded wherein they pleaded false implication and claimed innocence.

8. No evidence in defence was led and same was closed on 5.12.2014.

9. Learned Public Prosecutor and learned defence counsel have been heard and file has been perused carefully.

10. Learned Public Prosecutor appearing for State argued that prosecution by leading reliable and trustworthy evidence has successfully proved the guilt of the accused beyond shadow of reasonable doubt for the alleged offences and, therefore, made a prayer for convicting and sentencing the accused there-under.

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11. On the other hand, Sh. Arun Tanwar, Advocate Id. defence counsel argued that neither any independent witness despite availability was joined nor FSL Form was filled at the spot and further that no identification mark was put on the sample parcels and, therefore, it is not clear whether the sample drawn from both the bags was sent to FSL Madhuban for chemical analysis or not. He also argued that FSL report Ex.P6 is inadmissible in evidence under Section 293 Cr.P.C and, therefore, entire case of prosecution being based upon unreliable and untrustworthy evidence, is liable to be rejected. A prayer was made for acquittal of the accused.

12. In the wake of the allegations of the prosecution against accused, point for determination in the present case would be whether accused Himmat Singh and Malkiat @ Kala on 28.3.2012, at about 8.00 p.m., in the area of Bus Stand Jalbera, were found in their possession 17 kilograms 200 grams poppy husk without any permit or licence and thereby committed an offence punishable under Section 15 of the Act.

13. Prosecution to prove its case has examined as many as nine witnesses, gist of whose testimonies is being discussed as under:

14. C. Paramjeet Singh PW1 is the one who had delivered special reports to Superintendent of Police, DSP Pehowa and Area/Illaq Magistrate on 28.3.2012.

15. C. Nasib Singh PW2 had taken photograph Ex.P1 of the case property in the Court of Id. SDJM, Pehowa on 29.3.2012.

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16. SI Jai Pal PW3 had recorded formal FIR Ex.P2. He had made endorsement Ex.P3 on ruqua.

17. C. Manisha Devi PW4 had sworn her affidavit Ex.P4 to the effect that she had deposited two sample parcels and sample seals at FSL Madhuban on 2.4.2012.

18. HC Sita Ram PW5 at the relevant time was posted as MHC of the Police Station Ismailabad. He swore his affidavit Ex.P5 as to deposit of sample parcels, sample seals, parcels containing residue case property, Nano car etc. in the *maalkhana* of the police station by the IO and he having handed over the two sample parcels and sample seals to C.Manisha Devi on 2.4.2012 for being deposited at FSL, Madhuban.

19. ASI Ramesh Kumar PW6 on 29.3.2012 was posted as Reader to DSP Pehowa. He deposed that on that day, he received report under Section 57 of the Act in his office in routine dak. He proved computerized copy thereof as Ex.P7 and original report as Ex.P9 as also his endorsement Ex.P8 made on the report Ex.P7. He also identified the endorsement Ex.P10 made by DSP Shri Taken Raj on original report Ex.P9.

20. HC Mohinder Singh PW7 is one of the recovery witnesses, whereas ASI Dharampal PW9 is the investigating officer of the present case. Both these witnesses deposed as to apprehension of accused Himmat Singh and Malkiat @ Kala on 28.3.2013 at about 8.00 p.m. and recovery of poppy husk from their Nano car. They also deposed as to the manner in

which recovery was effected and process of sampling and sealing was carried through. In their cross-examination, it was suggested to them IO already was having custody of a truck containing poppy husk weighing 200 Kgs. out of which poppy husk weighing 17 Kg. 200 gms. Was separated and planted upon the accused which was denied by the witnesses.

21. Inspector Rajbir Singh PW8 was posted as SHO of Police Station Ismailabad on 28.3.2012. He deposed that at that time, he was present at Bus stand Ismailabad, where ASI Dharampal had produced before him witnesses, case property and accused alongwith report under Section 55 of the Act and Nano car. He stated that he verified the facts from the witnesses and accused and found the same as correct. He had also checked the case property which was bearing three seals of 'DS' and he affixed his two seals bearing inscription 'BR' on all the case property i.e. four samples, two parcels containing residue poppy husk and specimen seal impression sheets. He made endorsement on report under Section 55 of the Act and had directed the investigating officer to deposit the case property with the MHC of the police station and lodge the accused in police lock up.

22. After giving my thoughtful consideration to the rival contentions and evidence led on the file, this Court is not convinced with the case set up by prosecution and evidence led to prove its allegations against the accused. Admittedly, at the place of recovery, members of

public were very much available but none was joined. Though the statements of the police officials cannot be brushed aside lightly and same have to be considered and appreciated whatever worth they carry but non joining of independent witnesses in given case may assume considerable significance and that may itself become a ground of acquittal. It is so when it is proved on the record that there was every possibility of tampering with the sample parcels which were sent to FSL Madhuban for the purpose of chemical analysis. In the present case, the seal witness HC Mohinder Singh PW7 categorically stated in cross-examination that he had returned the seal to the IO after two days i.e. on 30.3.2012. ASI Dharampal PW9 (IO) also admitted this fact in his cross-examination. It is also an admitted fact that sample parcels and sample seals were sent to FSL Madhuban through C. Manisha Devi PW4 on 2.4.2012 which makes it very much clear that samples were sent after about five days of the recovery and prior to that, seal had already been returned by the seal witness to the investigating officer. It is well settled proposition of law that seal cannot be returned by the seal witness to the investigating officer till the sample parcels and sample seals reach Forensic Science Laboratory for the purpose of chemical examination and in case, seal is returned before deposit of the sample parcels at Forensic Science Laboratory then the possibility of tampering with the samples cannot be ruled out. In the present case, no representative samples were drawn in the presence of Magistrate. Sample parcels were produced upon having been

prepared at the spot and same after more than five days, were sent to FSL Madhuban for the purpose of chemical analysis. Seal was admittedly returned to investigating officer on 30.8.2013 and, thus, there being possibility of tampering with the samples, nothing can be said with certainty that what was sent to FSL Madhuban in shape of sample parcels was in fact containing what was really recovered from accused on 28.3.2012 and produced before Id.Area Magistrate on 29.3.2012 at the time of taking proceedings under Section 52 A of the Act. This makes the entire case of prosecution as doubtful and this also brings into light the importance of joining independent witnesses at the time of recovery. In the present case independent witnesses were very much available. Only explanation given by investigating officer is that he had made efforts to join independent witnesses but they had refused to join the investigation citing their personal reasons. However, investigating officer did not take the pain of recording the names of the persons who refused to join as independent witnesses, in the police zimni which proves that no real efforts was made for the joining the independent witnesses into investigation. In view of this, testimonies of police witnesses which do not find corroboration from an independent source cannot be relied upon and, thus, both the accused are liable to be acquitted.

23. As per the standards fixed by the Narcotic Control Bureau, samples should be sent to FSL within 72 hours of the recovery of the contraband but in the present case, said norms were blown to wind as

samples were admittedly sent after 72 hours and in fact, same were sent through C. Manisha Devi on 5th day after recovery. This fact also makes the case of prosecution as doubtful.

24. It is the case of the prosecution that two bags containing poppy husk 8 kilograms 100 grams and 9 kilograms 100 grams were recovered from accused Himmat Singh and Malkiat @ Kala and thereafter, from each of the bags, two samples weighing 200 grams each were separated as samples which were made into parcels and out of these four samples, two samples were sent to FSL Madhuban for the purpose of chemical analysis. It has come in the statements of prosecution witnesses that no identification marks were put on the parcels so as to ascertain as to which of the sample parcels pertained to which of the bags of poppy husk carried by the accused persons in their car. In these circumstances, it is not clear whether one sample drawn from each of the bags was sent to FSL Madhuban or not or both samples which were sent to FSL Madhuban pertained either to bag recovered from accused Himmat Singh or the bag recovered from accused Malkiat. Even FSL form was not filled at the spot. Though this lapse by itself may not have much bearing upon the merits of a case pertaining to offences under the Act but it can not be denied that filling FSL form at the spot is one of the important safeguards and police is pressed upon to do so, in order to rule out the possibility of false implication of the accused. In peculiar facts and circumstances of the

present case as discussed above, this lapse does assume lot of significance which too proves fatal.

25. Recovery in the present case was 17 kilograms 200 grams which was quite less than the commercial quantity and therefore, there is every possibility of recovery having been planted upon the accused. It is well settled proposition of law that “stringent the punishment, stricter the proof”. Keeping this principle of law in mind, unless the prosecution has led reliable and trustworthy evidence to prove its case beyond shadow of reasonable doubt, accused can not be held guilty. Hence, prosecution in the present having failed to prove the guilt of the accused Himmat Singh and Malkiat @ Kala beyond all reasonable doubts, they are hereby acquitted.

Pronounced in open Court;
5.12.2014.

(Rajeev Goyal)
Addl. Sessions Judge-cum-Special
Judge (under NDPS Act, 1985),
Kurukshetra.

Note: All Eleven pages of this judgment have been
checked and signed by me.

(Rajeev Goyal)
Addl. Sessions Judge-cum-Special
Judge (under NDPS Act, 1985),
Kurukshetra.5.12.2014.