

regular employee unless there is a regular post available and is regularized as per the policy decision of the State Government.

(18) Consequently, we hold that the work-charged employee cannot get pension unless his or her services were regularized. Similarly, the legal heirs of a deceased also cannot get family pension unless the services of the work-charged employee were regularized.

(19) In view of the decision on the question of law, we order that the writ petitions be placed before an appropriate Bench as per roster.

P. S. Bajwa

Before Darshan Singh, J.

JASMEL SINGH — *Appellant*

versus

STATE OF PUNJAB AND ANOTHER — *Respondent*

CRA-S No.1488-SB of 2004

October 21, 2015

Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 15 & 57 — Appellant was apprehended carrying a bag containing 8 kgs. chura poppy husk — One independent witness was joined in whose presence the alleged recovery was made and even the seal was entrusted to him — Independent witness joined was not produced in the witness box, nor has any explanation been given by the prosecution qua his non-examination — Question for consideration is whether non-examination of the independent witness would itself be a ground to discard the testimonies of the official witnesses?

Held, that there is no dispute with the proposition of law that mere non-examination of independent witness is itself not a ground to discard the testimonies of the official prosecution witnesses but in that situation, the prosecution should furnish some explanation for the non-examination of the independent witness.....*Further held*, that when the independent witness was associated in the investigation, even seal after use was entrusted to him but has not been examined without rendering any plausible explanation, the Court is required to carefully, consciously and minutely examine the prosecution case. Even the minor circumstances in that situation assumes significance.

(Para 18)

S.S. Rangi, Advocate
for the appellant.

Manjit Singh Naryal, Addl. A.G., Punjab.

DARSHAN SINGH, J.

(1) The present appeal has been preferred against the judgment of conviction dated 09.07.2004, passed by the learned Judge, Special Court, Patiala, vide which accused-appellant Jasmel Singh has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after called the 'Act') and the order on quantum of sentence of the even dated, vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

(2) As per the prosecution case, on 04.06.2003 PW1 Sub Inspector Ranjit Singh, the Investigating Officer of the case, along with other police officials was on patrol duty. When they reached village Bauran Khurd, Gurcharan Singh Lambardar met them and he was also joined in the police party. From there, they proceeded on their scooters and reached near the scooter factory. Where accused Jasmel was seen coming carrying a bag of blue colour in his hand. On seeing the police party, he tried to slip away. On the basis of suspicion, he was apprehended. The accused was given option to get his search conducted before a gazetted officer or the magistrate but he reposed confidence in SI Ranjit Singh. The bag carried by the accused was checked. It was found containing two bags of polythene filled of chura poppy heads. Two samples of 250 grams each were separated from each bag and the residue came to be 7½ kilograms. The samples as well as residue were sealed in separate parcels with the seal bearing impression 'RS' and all these articles were taken into possession vide recovery memo Ex.PA. The seal after use was handed over to Gurcharan Singh, Lambardar. The accused was arrested vide arrest memo Ex.PB. Ruqqa Ex.PE was sent to the police station. On the basis of which, formal FIR Ex.PE/1 was registered. The Investigating Officer prepared the site plan of the place of recovery Ex.PF.

(3) On return to the police station, the Investigating Officer produced the accused along with the case property and the witnesses before Harbhajan Singh, SHO, who verified the case property and put

his seal bearing impression 'HS' on the parcels of the case property. On the next day, case property was produced before learned Illaqa Magistrate vide application Ex.PG. Learned Illaqa Magistrate, after verifying the case property, passed the order Ex.PG/1. The sample was sent to the Chemical Examiner for examination and vide report Ex.PH, the same was found to be of churra poppy husk. After completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after called 'Cr.P.C.') was presented in the Court.

(4) The accused-appellant was charge-sheeted for the offence punishable under Section 15 of the Act vide order dated 18.12.2003 by the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

(5) In order to substantiate its case, prosecution examined as many as five witnesses.

(6) When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication. He stated that he was taken away by the police in the morning of 04.06.2003 from village Bhauran Khurd in presence of the respectables of the village and later on, this false case has been foisted upon him.

(7) No defence evidence was adduced by the accused.

(8) Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused-appellant was held guilty and convicted for the offence punishable under Section 15 of the Act and was awarded the sentence as mentioned in the upper part of the judgment.

(9) Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

(10) I have heard Mr. S.S. Rangi, Advocate, learned counsel for the appellant, Mr. Manjit Singh Naryal, learned Additional Advocate General for the State of Punjab and have meticulously examined the record of the case.

(11) Initiating the arguments, learned counsel for the appellant contended that as per the prosecution version, one Gurcharan Singh, Lambardar was associated as independent witness, in whose presence, the recovery is alleged to have been effected. Even the seal after use was alleged to have been entrusted to him but he has not been produced in the witness-box, nor any explanation has been given by the

prosecution for his non-examination, which renders the prosecution case doubtful. To support his contentions, he has relied upon case *Mukhtiar Singh versus State of Punjab*¹.

(12) He further contended that there is delay of five days in sending the samples to the Chemical Examiner. This delay is also not explained by the prosecution, which further renders the prosecution case doubtful, as the tampering with of the case property is not ruled out.

(13) He further contended that the proceedings have not been conducted in the manner alleged by the prosecution. The Investigating Officer has alleged that the consent memo, vide which the accused has reposed confidence in him and had foregone his search in the presence of a gazetted officer or the magistrate, was prepared and was got attested by the witnesses and thumb marked by the accused, but the said memo is not available on the record. The absence of said memo demolishes the whole case of the prosecution.

(14) He further contended that the Investigating Officer has also not sent the report under Section 57 of the Act to his superior police officers. SI Ranjit Singh is himself the complainant as well as the Investigating Officer. In these circumstances, the non-submission of the report under Section 57 of the Act has caused prejudice to the accused.

(15) He further contended that the story of the prosecution is highly improbable. PW2 Head Constable Major Singh, the witness of recovery, has admitted that the village of the accused was at a distance of 15-16 kilometers from the place of recovery. As per the prosecution story, the accused was on foot. It is not believable that he will cover such a long distance on foot carrying 8 kilograms poppy husk. He contended that the statements of the prosecution witnesses are also discrepant. Thus, he contended that the cumulative effect of the aforesaid circumstances renders the prosecution case doubtful.

(16) On the other hand, learned State counsel contended that from the statements of PW1 SI Ranjit Singh and PW2 HC Major Singh, it is established that 8 kilograms poppy husk was recovered from the possession of the accused-appellant. Mere non-examination of the independent witness Gurcharan Singh, Lambardar, will not affect the credibility of their testimonies. Learned counsel for the appellant has not been able to point out any material contradiction in their statements.

¹ 2014(1) RCR (Criminal) 705

He further contended that the provisions of Section 57 of the Act are not mandatory. The chain of link evidence is also complete. So, the delay in sending the samples to the Chemical Examiner is of no legal consequences. Thus, he contended that there is no legal infirmity in the conviction of the appellants.

(17) I have duly considered the aforesaid contentions.

(18) As per the admitted version of the prosecution, Gurcharan Singh, Lambardar, resident of village Harigarh was associated in the investigation. The search and seizure was effected in his presence. The seizure memo and other documents were allegedly attested by him. Even the seal after use was handed over to him. But he has not been produced in the Court. There is no dispute with the proposition of law that mere non-examination of independent witness is itself not a ground to discard the testimonies of the official prosecution witnesses but in that situation, the prosecution should furnish some explanation for the non-examination of the independent witness. But in the instant case, the prosecution is totally silent and no explanation at all has been given as to why Gurcharan Singh, Lambardar was not produced in the witness-box. He has also not been given up by the learned Public Prosecutor. So, there is absolutely no explanation from the side of the prosecution for non-examination of independent witness Gurcharan Singh, Lambardar. In these circumstances, when the independent witness was associated in the investigation, even seal after use was entrusted to him but has not been examined without rendering any plausible explanation, the Court is required to carefully, consciously and minutely examine the prosecution case. Even the minor circumstances in that situation assume significance.

(19) It is the bounden duty of the prosecution to establish its case in the manner alleged by it. But in the instant case, the basic story of the prosecution itself has been contradicted by none else than the Investigating Officer of the case himself. As per the ruqqa Ex.PE, on the basis of which FIR Ex.PE/1 has been registered, it has been categorically mentioned that the Investigating Officer asked the accused-appellant that he suspected some narcotic substance in his bag and his search was to be conducted. It is further mentioned that accused-appellant was made aware that if he desires his search to be taken in the presence of any gazetted officer or the magistrate, then he can get it done but the accused replied that he does not want to bring on record the solid evidence against him and the Investigating Officer can take the search and he reposed faith in him. It is further categorically

mentioned that the consent memo was reduced into writing, which was witnessed by Gurcharan Singh, Lambardar and Head Constable Major Singh. Accused-appellant Jasmel Singh also thumb-marked the same and, thereafter, the Investigating Officer took the search of the bag of the accused. The aforesaid consent memo is the foundation for taking the search of the appellant by the Investigating Officer and was the most material document, but the same is not available on record. In his examination-in-chief, PW1 SI Ranjit Singh, the Investigating Officer of the case, has nowhere stated that any such consent memo was prepared and reduced into writing. The Investigating Officer has even contradicted this version in his cross-examination. He has stated that he had not prepared any memo, whereby the accused has consented for his search to be conducted by him. The Investigating Officer himself is contradicting the document i.e. ruqqa Ex.PE prepared by him. The version mentioned in ruqqa Ex.PE loses its sanctity and no reliance can be placed on such document. This fact also shows that the proceedings have not been conducted in the manner alleged by the prosecution and the documents appear to have been manipulated later on just to complete the formalities. In view of this glaring infirmity in the prosecution case, the statements of the official witnesses cannot be relied upon.

(20) PW1 SI Ranjit Singh has stated in the cross-examination that he has send the special report from the spot and the special report was sent from the spot through PHG Chand Singh. He admitted that the said report is not available on judicial file. But this version has been contradicted by PW2 HC Major Singh, the witness of recovery, stating that the special report was not sent by the Investigating Officer in his presence. So, both these witnesses are discrepant about the report under Section 57 of the Act. Whether the report under Section 57 of the Act is mandatory or directory, is a different question. Herein in this case, the Investigating Officer has taken a definite stand that he had prepared the report at the spot itself and sent the same to the superior police officers through PHG Chand Singh from the spot itself. But PW2 HC Major Singh, the witness of recovery, has stated that no such report was sent by the Investigating Officer in his presence, which further creates a dent in the genuineness of the prosecution version.

(21) As per the prosecution version, the accused, the witnesses and the case property were produced before PW5 Inspector Harbhajan Singh, who verified the investigation from the prosecution witnesses but PW2 HC Major Singh, the witness of recovery, is totally silent about this fact. He has nowhere stated that he accompanied the

Investigating Officer, accused and the case property to the police station and appeared before PW5 Inspector Harbhajan Singh, SHO of the police station for verification of the recovery/investigation. This omission in the statement of PW2 HC Major Singh and his contradictory statement to the Investigating Officer with respect to the report under Section 57 of the Act, renders even the presence of PW2 HC Major Singh doubtful at the spot and in consequence thereof, the prosecution version is rendered extremely doubtful.

(22) As per the statement of PW2 HC Major Singh in the cross-examination, accused is resident of village Samundgarh Chhanna, Police Station - Dhuri, which is at a distance of 15-16 kilometers from the place of recovery. The recovery is alleged to have been effected in the day time at about 04:15 P.M. It is alleged that when the accused was apprehended, he was on foot. It is not believable that accused will come on such a long distance from his village on foot in the present time, when the private and public transports are easily available.

(23) As a sequel to the aforesaid discussion, as independent witness Gurcharan Singh, Lambardar has not been produced in the witness-box without rendering any sort of explanation, the version of the Investigating Officer is contradictory to the basic story of the prosecution and there are some other circumstances discussed above, the cumulative effect of all the afore-mentioned circumstances is sufficient to render the version of the prosecution case doubtful. Consequently, the prosecution has not been able to establish its case beyond shadow of reasonable doubt. So, the conviction and sentence of the appellant recorded by learned trial Court, is not sustainable in the eyes of law.

(24) Thus, keeping in view my aforesaid discussion, the present appeal is hereby allowed. The conviction and sentence of the appellant is hereby set aside. As a result of the benefit of doubt, the accused-appellant is hereby acquitted of the charges. The amount of fine deposited by him with the trial Court be refunded to him as per rules.

S. Sandhu