

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1690-1691 OF 2012
(Arising out of S.L.P. (Crl.) Nos. 9415-9416 of 2011)

Sumit Tomar Appellant(s)

Versus

The State of Punjab Respondent(s)

J U D G M E N T

P.Sathasivam,J.

- 1) Leave granted.
- 2) These appeals are directed against the judgment and order dated 31.01.2011 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 2079 SB of 2009 whereby the High Court dismissed the criminal appeal filed by the appellant herein and also of the order dated 17.05.2011 passed by the High Court in Crl.M. No. 26283 of 2011 regarding correction of the date in the judgment.
- 3) **Brief facts:**

(i) According to the prosecution, on 27.06.2004, at about 5.00 p.m., a special barricading was set up by the police party at Basantpur Bus Stand, Patiala. At that time, the police party signaled to stop a silver colour Indica Car bearing No. DL-7CC-0654 which was coming from the side of Rajpura. The driver of the said car (appellant herein), accompanied with one Vikas Kumar (since deceased), who was sitting next to him, instead of stopping the car tried to run away, but the police party immediately blocked the way and managed to stop the car. On suspicion, the police checked the car and found two plastic bags containing 'bhooki' opium powder from the dickey of the said vehicle. The contents of both the bags were mixed and two samples of 250 gms. each were taken out. The remaining contraband weighing 69.50 kgs. was sealed in two bags and the samples were sent to the Forensic Science Laboratory (FSL) for examination.

(ii) On the same day, i.e., 27.06.2004, a First Information Report (FIR) being No. 105 of 2004 was lodged by the police against the appellant herein and Vikas Kumar under Sections 8, 15, 60, and 61 of the Narcotic Drugs & Psychotropic Substances, Act, 1985 (in short "the NDPS Act").

(iii) On receipt of the report of the Chemical Examiner and after completion of all the formalities relating to investigation, the case was committed to the Special Court, Patiala and numbered as Sessions Case No. 118T/06.09.04/17.11.08. During the pendency of the case, Vikas Kumar died. The Special Court, Patiala, by order dated 20.08.2009, convicted the appellant herein under Section 15 of the NDPS Act and sentenced him to undergo rigorous imprisonment (RI) for 10 years alongwith a fine of Rs. One lakh, in default, to further undergo R.I. for one year.

(iv) Being aggrieved, the appellant herein filed Criminal Appeal No. 2079 SB of 2009 before the High Court of Punjab & Haryana. Learned single Judge of the High Court, by impugned order dated 31.01.2011, dismissed the said appeal. Questioning the same, the appellant has filed these appeals by way of special leave before this Court.

4) Heard Mr. V. Giri, learned senior counsel for the appellant and Ms. Noopur Singhal, learned counsel for the respondent-State.

5) Mr. V. Giri, learned senior counsel for the appellant raised the following contentions:

i) one Kaur Singh, an independent witness, was allegedly joined by the prosecution but has not been examined. Though the prosecution claimed that the presence of Kaur Singh at the spot was natural, since he was not examined, the entire story of the prosecution has to be rejected;

ii) in the absence of independent witness, conviction based on official witnesses, cannot be sustained; and

iii) inasmuch as after the alleged seizure of contraband in two separate bags, there is no need for the officers to mix both the samples which was an irregularity and goes against the prosecution case.

6) On the other hand, Ms. Noopur Singhal, learned counsel for the State submitted that the person who was present at the time of seizure was Kaur Singh and, hence, he is a natural witness and to show their *bona fide*, the prosecution summoned him for examination, but he failed to appear. She further submitted that mixing of poppy husk found in two bags is not an irregularity, on the other hand, according to her, the prosecution has proved its case beyond reasonable doubt and prayed for confirmation of the order of conviction and sentence.

7) We have carefully considered the rival submissions and perused all the relevant materials.

8) As regards the first two contentions raised by learned senior counsel for the appellant, it is true that Kaur Singh, according to the prosecution, is an independent witness, however, he was not examined on the side of the prosecution. It is the case of the prosecution that on 27.06.2004 while Kaur Singh was just passing through, he met the police party who had laid a special *nakabandi* near Basantpur Bus-stand for nabbing the anti-social elements. In such circumstance, his presence cannot be doubted, on the other hand, his presence seems to be natural and a perusal of the consent memo, the recovery memo and the arrest memo shows that he was present at the time when the recovery was effected from the accused. His signatures appended in all these memos show that he has witnessed the recovery. It is true that the prosecution could have examined him. For this, it is the stand of the prosecution that in spite of necessary steps taken by issuing summons, he did not appear for which the prosecution case cannot be thrown out.

9) In order to substantiate its claim, the prosecution examined Shri Lakhwinder Singh, Head Constable as PW-1, Shri Devinder Kumar, owner of the car as PW-2, Shri Gurdeep Singh, Assistant Sub-inspector of Police as PW-3 and Shri Mohan Singh, Head Constable as PW-6. The Special Court as well as the High Court, on going through the evidence of the above-mentioned official witnesses and the documents, namely, FIR, seizure memo, FSL report etc., accepted the case of the prosecution. Even before us, learned senior counsel for the appellants took us through the evidence of the above-mentioned prosecution witnesses and the connected materials. In a case of this nature, it is better if the prosecution examines at least one independent witness to corroborate its case. However, in the absence of any animosity between the accused and the official witnesses, there is nothing wrong in relying on their testimonies and accepting the documents placed for basing conviction. After taking into account the entire materials relied on by the prosecution, there is no animosity established on the part of the official witnesses by the accused in defence and we also do not find any infirmity in the prosecution case. It is not in dispute that the present

appellant (A-2) was driving the car in question which carried the contraband. PW-2, owner of the car was also examined and proved its ownership and deposed that Sumit Tomar demanded the said car for personal use. In view of the above discussion, we hold that though it is desirable to examine independent witness, however, in the absence of any such witness, if the statements of police officers are reliable and when there is no animosity established against them by the accused, conviction based on their statement cannot be faulted with. On the other hand, the procedure adopted by the prosecution is acceptable and permissible, particularly, in respect of the offences under the NDPS Act. Accordingly, we reject both the contentions.

10) The next contention, according to the learned senior counsel for the appellant, is that the prosecution has committed an irregularity by mixing up the contraband found in the bags and taking samples thereafter. We find no substance in the said argument. The present appellant was driving the car in which two bags of contraband were loaded. He further pointed out that in view of Section 15 (c) of the NDPS Act, which prescribes minimum sentence of 10 years

and which may extend to 20 years where the contravention involves commercial quantity, the mixing of two bags is a grave irregularity which affects the interest of the appellant. We are unable to accept the said contention. It is true that Section 15 of the NDPS Act speaks about punishment for contravention in relation to poppy straw. As per sub-section (a) where the contravention involves small quantity, the rigorous imprisonment may extend to six months or with fine which may extend to ten thousand rupees or with both whereas under sub-section (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, rigorous imprisonment may extend to 10 years and with fine which may extend to one lakh rupees. Sub-section (c) provides that where the contravention involves commercial quantity, the rigorous imprisonment shall not be less than 10 years but which may extend to 20 years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. Merely because different punishments have been prescribed depending on the quantity of contraband, we are satisfied that by mixing the said two bags, the same has not caused any

prejudice to the appellant. Even after taking two samples of 250 grams each, the quantity measured comes to 69.50 kgs which is more than commercial quantity (small quantity 1000 gms/commercial quantity 50 kgs. and above). In view of the same, the contention that the police should have taken two samples each from the two bags without mixing is liable to be rejected.

11) Taking note of all the materials, the evidence of official witnesses, PW-2, owner of the car which was involved in the offence, possession of commercial quantity, FSL report which shows that the contraband is poppy straw and is a prohibited item, we are in entire agreement with the conclusion arrived at by the trial Court and affirmed by the High Court. Further, taking note of the fact that the quantity involved is 70 kgs. of poppy straw which is more than a commercial quantity, the Special Judge rightly imposed minimum sentence and fine in terms of Section 15(c) of the NDPS Act. We are in agreement with the said conclusion.

12) In the light of the above discussion, we do not find any merit in the appeals, consequently, the same are dismissed.

.....J.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

NEW DELHI;
OCTOBER 19, 2012.

SUPREME COURT OF INDIA



JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT