

Hardip Singh vs State Of Punjab on 20 August, 2008

Equivalent citations: AIR 2009 SUPREME COURT 432, 2008 (8) SCC 557, 2008 AIR SCW 7514, 2009 (2) AIR JHAR R 361, 2008 (3) SCC(CRI) 580, 2008 (11) SCALE 513, (2008) 69 ALLINDCAS 43 (SC), 2008 (69) ALLINDCAS 43, 2008 (72) ALL LR 111 SOC, (2008) 2 GUJ LH 204, (2008) 65 ALLINDCAS 944 (GUJ), (2008) 2 EFR 622, (2008) 11 SCALE 513, (2008) 2 CAL LJ 247, (2008) 4 CHANDCRIC 308, (2008) 4 ALLCRILR 222, 2009 CHANDLR(CIV&CRI) 221, (2008) 2 GUJ LR 1377, (2009) 1 EFR 63, (2009) 1 PUN LR 136, (2008) 4 RECCRIR 97, (2008) 4 CURCRIR 18, (2008) 3 ALLCRIR 2917, (2009) 4 DLT(CRL) 92, (2008) 62 ALLCRIC 904, 2008 (61) ACC (SOC) 58 (GUJ), 2008 (72) ALR SOC 111 (SC)

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Bench: Mukundakam Sharma, Arijit Pasayat

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 737 OF 2007

Hardip Singh

.... Appellant

versus

State of Punjab

.... Respondent

JUDGMENT

Dr. Mukundakam Sharma, J.

1. The present appeal is directed against the judgment and order dated 18.10.2006 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 505-SB of 2000, whereby the High Court dismissed the appeal filed by Hardip Singh and upheld the conviction and the sentence passed against him under the provisions of Section 18 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as the 'Act').

2. Briefly, the prosecution case is that on 20.8.1997 when Inspector Jarnail Singh (examined as PW 5 in the trial), along with SI Sukhwinder Singh and other police officials were standing on a drain bridge falling within the jurisdiction of village Chamairi, a truck bearing registration No. DIG 4615 being driven by Sri Inder Masih was seen coming from Ajnala side, when the truck was stopped. Hardip Singh, the present appellant, was seen sitting by the side of the driver, in the said truck. Meanwhile one Major Singh, who was examined as one of the witnesses in the trial also reached there on a bicycle and upon reaching the place he alighted from the bicycle and joined the police party. Immediately thereafter Inspector Jarnail Singh sent a wireless message to SS Mann, Deputy Superintendent of Police (PW 4), requesting him to reach the place of occurrence, who after receiving the message immediately reached at the place of occurrence.

Thereafter consent memos (Ex. PB & PC) were prepared to show compliance of Section 50 of the Act, which were signed/thumb marked by the appellant and attested by the witnesses including PW 4. On the instruction of PW 4, the DSP, Inspector Jarnail Singh conducted search of the appellant Hardip Singh and upon such search one bag in the right hand of Hardip Singh was found and on search of the said bag, it was found to contain opium wrapped in a glazed paper. The aforesaid opium, thereafter was weighed and on such weighing it was found that there was total of 7 Kgs of opium out of which 250 gms of opium was taken as a sample in one 2 of parcel and the remaining quantity of opium being 6.750 Kgs. was put in another parcel. After preparing two separate parcels, the same were sealed with the seals bearing inscriptions 'SSM' and 'JS' of SS Mann, DSP and Inspector Jarnail Singh respectively. The sealed parcels were taken into possession vide recovery memo, Ex. PD, attested by the witnesses.

Thereafter the search of the driver, namely, Inder Masih was also conducted, in whose possession also 3 kgs. of opium was found, for which two parcels were made out, one of 250 gms. and the other of 2.750 kgs. The said parcels were sealed and were taken into possession vide recovery memo, Ex. PE, attested by the same witnesses. From the personal search of Hardip Singh ten currency notes of the denomination of Rs. 10/- were recovered. These were also taken into possession by making out a memo, Ex. PH. Similarly, the truck bearing No. DIG 4615 was also taken into possession vide memo, Ex. PJ. Ruqqa, Ex. PK, was sent on the basis of which First Information Report (Ex. PK/1) was recorded. A rough site-plan was also prepared at the spot. Thereafter, the present appellant along with Inder Masih and the case property was produced before Inspector Baldev Singh, the then Station House Officer (SHO), Police Station Ajnala, who verified the investigation and kept the said articles in his possession. On 30.9.1997 he sent the two parcels of sample for getting the same deposited in the office of the Chemical Examiner, Amritsar through ASI Surinder 3 of Singh (PW-3). As per the report of the Analyst, the contents of the sample parcels were found to be of opium. On completion of the investigation a charge sheet was filed under the provisions of Section 18 of the Act.

3. The learned Sub Divisional Magistrate, Ajnala committed the case for trial to the learned Court of Sessions Judge. Under order dated 4.3.1998, the learned Sessions Judge, Amritsar framed charges against both the accused under the provisions of Section 18 of the Act to which they pleaded not guilty and pleaded for trial.

4. The prosecution examined altogether four witnesses whereas appellant Hardip Singh examined five defense witnesses. The report of the chemical examiner was tendered in evidence. The appellant and the other accused were also examined under Section 313 of the Code of Criminal Procedure, 1973.

5. On completion of the trial, the learned Addl. Sessions Judge heard the arguments and thereafter passed the judgment and order convicting both the accused persons including the present appellant under Section 18 of the Act and sentenced them to undergo rigorous imprisonment for a period of ten years with rupees one lakh as fine and in default of 4 of payment of fine to undergo rigorous imprisonment for a period of two years, which is the minimum sentence provided under the Act.

6. Being aggrieved by the aforesaid judgment and order of conviction and sentence, Hardip Singh, the present appellant and the other accused, Inder Masih filed an appeal before the High Court of Punjab and Haryana, which was heard and disposed by Judgment and Order dated 18.10.2006. The order of conviction and sentence passed against the present appellant was maintained and confirmed whereas the order of conviction against Inder Masih was set aside and he was acquitted of the charges. Being aggrieved by the said judgment and order the present appeal is filed by Hardip Singh on which we have heard the learned counsel for the parties who have taken us through the entire evidence on record.

7. Mr. Mahabir Singh, the learned senior counsel appearing for the appellant strenuously submitted before us during the course of his arguments that the High Court as also the trial court were not justified in rejecting the defense case, as the case put up by defense was a probable case and in that view of the matter benefit of doubt should have been given to the present appellant. It was also submitted by him that one of 5 of the accused persons having been acquitted by the High Court on almost similar facts an order of acquittal should also have been passed in favour of the present appellant, particularly, when there was no sufficient evidence on record for justifying conviction of the present appellant. His next submission was that the investigating officer did not comply with the mandatory provisions of Section 55 of the Act after effecting recovery from the accused. He also strenuously urged that the sample having been sent to the analyst for chemical examination after a time gap of 40 days, the appellant should have been acquitted by holding that the entire case of the prosecution is doubtful. The other submission of the counsel was that PW 5 being an interested person bearing grudge against the appellant and also being the complainant should not have been made the investigating officer.

8. We may now proceed to examine the aforesaid submissions of the counsel appearing for the appellant in the light of the evidence on record and also in the light of the submissions of the counsel appearing for the respondent, who strenuously urged that the defense case which was put up by the appellant was nothing but a got up story, and therefore, both the courts below have rightly rejected the same.

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9. The defense story which was put up by the appellant was that he had been falsely implicated by Inspector Jarnail Singh (PW 5) on account of a grudge that he nourished against the appellant due to a vehicular accident which occurred on 26.7.1997, which was ultimately compromised by a written apology, Ex. DB. The story was sought to be corroborated and strengthened by certain complaints sent to higher ups, Ex. DC and Ex. DD on 18.8.1997 and also a telegram Ex. DF sent on 19.8.1997 in that regard by Gurdial Singh, the father of the appellant. The story was further sought to be substantiated by stating that the mere fact that Jarnail Singh had allegedly recovered the said opium and also the fact that he was the investigating officer of the case prima-facie proves that the appellant has been falsely implicated in the present criminal case on account of personal grudge against the appellant.

10. We have carefully perused the record in view of the aforesaid allegations, alleging that the investigating officer was nourishing a grudge against the appellant over the vehicular accident which occurred on 26.7.1997. A perusal of the document of apology, exhibited as Ex. DB., shows that it carries the signatures of various persons including Gurdial Singh (DW 3) and Harjap Singh (DW 5) but the signature of Jarnail Singh (PW 5), the investigating officer of the case was not of appearing in the said document. PW 5 was also examined and cross examined at length but not a single question was put to him about the execution of the aforesaid document of apology. No suggestion was given to him that the said document was executed in his presence and that he was also a consenting party to the said document of apology. Therefore, the learned trial court as also the High Court were justified in raising doubt about the genuineness of the said defense case. A document can always be created falsely by obtaining signatures of few persons but the said document when produced in evidence must be able to stand the test of genuineness. In our considered opinion the said document is a doubtful document and the genuineness of the same could not be proved by the appellant since he had failed to bring it to the notice of PW 5, during his cross examination, the fact that the same was executed in his presence and with his consent.

11. So far as the complaints, Ex. DC and Ex. DD, allegedly sent are concerned, the same are produced by Gurdial Singh, the father of the appellant, only during the course of his examination. Whether or not such complaints were in fact sent and were received by the addressee should have been and were required to be proved in order to establish that they were actually sent and received, as alleged. All the aforesaid 8 of document were also pressed before the trial court as also the High Court and they have given cogent reasons for rejecting the defense version as also for rejecting evidentiary value of the said documents. Therefore, in our considered opinion the aforesaid defense version, which is put up by the appellant is not trustworthy and stands rejected.

12. So far as the question of delay in sending the samples of opium to the Forensic Science Laboratory (FSL) is concerned, the same in our opinion has no consequence for the fact that the recovery of the said sample from the possession of the appellant stands proved and established by cogent and reliable evidence led in the trial. PW 5 has categorically stated and asserted about the recovery of opium from the possession of the appellant, which fact is also corroborated by a higher officer, namely, SS Mann, DSP who was also examined at length during the trial. The said recovery was effected in the presence of the said SS Mann, DSP, as senior police officer, who also put his seal on the said parcels of opium. The then Station House Officer, Inspector Baldev Singh, who was

examined as PW 1, was posted at Police Station Ajnala on the date of occurrence. He received the said samples of opium along with case material, being produced before him by PW 5. It has come on evidence that Inspector Baldev Singh kept the entire case property with him till it was deposited in the office of the Chemical Examiner, Amritsar on 30.9.1997 through ASI Surinder Singh, (PW-3). It has also come on evidence that till the date the parcels of sample were received by the Chemical Examiner, the seal put on the said parcels was intact. That itself proves and establishes that there was no tampering with the aforesaid seal in the sample at any stage and the sample received by the analyst for chemical examination contained the same opium which was recovered from the possession of the appellant. In that view of the matter, delay of about 40 days in sending the samples did not and could not have caused any prejudice to the appellant. The aforesaid contention, therefore, also stands rejected.

13. The contention of Mr. Singh that Section 55 of the Act, which is a mandatory provision, was violated is also found to be without merit in the light of the decision of this Court in *Karnail Singh v. State of Rajasthan* [(2000) 7 SCC 632] relied by him in order to buttress his argument, wherein, a similar contention was raised that after the seizure the goods were sent to the Superintendent, Central Narcotics Bureau, Kota, who, as per law, was in charge of a police station but had not affixed his seal on the articles and the samples, and therefore the whole of the procedure followed became illegal, entitling the appellant to be acquitted. In the light of the aforesaid submissions, the Supreme Court proceeded to hold that with the application of Section 51 read with Sections 52 and 53, the officer required to affix the seal etc., under Section 55, would be "the officer in charge of the nearest police station"

as distinguishable from an officer in charge of a police station empowered under Section 53. It was also held that if the arrested person and the seized articles are forwarded under Section 52(3)(b) to the officer empowered under Section 53, the compliance with Section 55 cannot be insisted upon. The Supreme Court further held in the said case that keeping in view the multifarious activities and the duties cast upon the officer in charge of the police station under the Code of Criminal Procedure and he being apparently busy with the duties under the Code, the officers mentioned in Section 53 of the Act have been mandated to take action for disposal of the seized narcotic drugs and psychotropic substances by filing an application which, when filed, has to be allowed by the Magistrate as soon as may be.

The appellant has also failed to show any prejudice caused to him for not putting the seal in the sample by the officer-in-charge of the police station. PW 5 has categorically stated that on reaching the Police Station, Ajnala, he handed over the case property with the seals intact to the officer- in-charge of the said police station, who was examined in the trial as PW 1.

11 of PW 1 in his deposition has also stated that Inspector Jarnail Singh produced before him the case property and sample on 20.8.1997 with seals intact. He has also stated that so long the said articles remained in his custody and possession, the same were not tampered with. In the light of aforesaid nature of evidence on record, no prejudice is caused to the appellant on that count.

In the case of Ouseph v. State of Kerala, [(2004) 10 SCC 647] it was held by this Court that under the provisions of Section 55 of the Act, the requirement may not be mandatory. However in that case in view of peculiar facts of the case and as the contraband articles were kept in totally unsealed condition for near about two months it was held that the same creates doubt.

14.As far as the submission that as Inspector Jarnail Singh was the complainant he should not have been made the investigating officer is concerned we may make reference to the decision of this Court in State v. V. Jayapaul, [(2004) 5 SCC 223], wherein it was held as under:

"We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased"

Concurring with the Courts below we have already held that the version of the defense is nothing more than a got up story of his own whims and caprices, thus in the facts and circumstances of the present case the question of bias does not arise. Sri Jarnail Singh made the recoveries of the opium and seized the same and therefore, he was rightly made the Investigating Officer in the case. The defense case which is found to be a got up story was sought to be made out only during the trial by which time investigation was complete. This contention therefore is also found to be without merit.

15.In view of the aforesaid observations and findings recorded by us, we find no merit in the appeal, which is accordingly dismissed. The appellant, who is in the custody, shall serve the remaining sentence, in accordance with law.

.....J. (Dr. Arijit Pasayat)J. (Dr. Mukundakam Sharma) 13 of
New Delhi, August 20, 2008 14 of