

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRA-S No. 958-SB of 2000(O&M)

Date of Decision: June 3 , 2015.

Jagroop Singh

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.K.Gupta, Advocate with
Mr. Gaurav Rana, Advocate
for the appellant.

Ms. Shivali, AAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant Jagroop Singh has preferred this appeal challenging his conviction by the learned Special Judge, Faridkot for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'NDPS Act'). He has been sentenced to undergo rigorous imprisonment for ten years, besides, a fine of ₹1,00,000/- and in default thereof, to further undergo rigorous imprisonment for two years.

Brief facts of the prosecution case are that PW3 ASI Harinder Singh was present at Sadiq Chowk on 26.01.1999 alongwith other police officials. A

barricade was erected there. ASI Major Singh, HC Rachhpal Singh, HC Joginder Singh and one Bhim Sen son of Vir Bhan were joined in the police party. They proceeded to village Jandwala and from there to village Madduman. When they were half a kilometer from village Jandwala, accused Jagroop Singh was seen coming from the opposite side. He had wrapped a shawl around his body. He moved towards his right side on seeing the police party and tried to hide himself behind a heap of earth. He was apprehended on suspicion. ASI Harinder Singh after ascertaining his identity told him that he was suspected of carrying some intoxicant material and it was desired to conduct his search. Accused was apprised of his right to be searched before a Magistrate or a Gazetted Officer. Accused opted to be searched before a Gazetted Officer. Consent Memo Ex.PE duly attested by ASI Major Singh and Bhim Sen was prepared. A message was conveyed to CIA staff Faridkot to send a Gazetted Officer on which Balbir Singh Khera, Superintendent of Police (D), Faridkot arrived at the spot alongwith his gunman. Balbir Singh Khera, Superintendent of Police (D) disclosed his identity to the accused. ASI Harinder Singh was directed to conduct a search of the accused. Opium wrapped in a glazed paper was recovered from the *Parna* (cloth) tied around the waist of the accused. 20 grams of opium was extracted as a sample and remaining was found to be 1 Kg. and 980 grams on weighment. Two parcels, that of the sample and of the remaining opium was prepared and sealed with the seals 'HS' and 'BSK'. Seals after use were handed over to ASI Major Singh. Sample seal Ex.P1 was prepared. Sample as well as the remaining opium was taken in possession vide recovery memo Ex.PF which was signed by ASI Major Singh, Bhim Sen and

Balbir Singh Khera, Superintendent of Police(D). Grounds of arrest were disclosed to the accused vide memo Ex.PG. On personal search, ₹120/- were recovered from the accused (Ex.PH). Rough site plan, Ex.PI, was prepared. Ruqa, Ex.PK, was sent on the basis of which formal FIR No.07 dated 26.01.1999 was registered by Sukhdev Singh MHC. Case property was deposited with the SHO Mukhtiar Singh on reaching the police station, which was taken in possession by SHO Mukhtiar Singh after sealing it with seal 'MS'. Information regarding arrest of the accused was conveyed to his family vide Ex.PL.

On completion of investigation, challan/report under Section 173 Cr.P.C. was presented on 17.04.1999. Charge was framed against the accused for offence punishable under Section 18 of the NDPS Act to which he pleaded innocence and claimed trial.

Prosecution examined as many as seven witnesses to buttress its case. Accused while denying the incriminating material and evidence put to him, pleaded false implication and innocence in his statement under Section 313 Cr.P.C. Appellant took a stand that there was scuffle and a verbal duel with Balbir Singh Khera, Superintendent of Police on 22.01.1999 when he was in drunken condition and his bicycle ran into the car of the Superintendent of Police. He was given thrashing for his behaviour. Thereafter, he was brought from his village in respect to which telegram was sent to higher officials. It is stated that prosecution has built up a false case with the help of stock witness. Four witnesses were examined in defence.

Learned trial court on appreciation of the evidence on record, concluded that the prosecution has proved its case beyond reasonable doubt

against the appellant-accused thereby, convicting and sentencing as aforementioned. Aggrieved therefrom he has preferred the instant appeal.

Learned counsel for the appellant vehemently argues that the present is a clear-cut case of false implication by the police. First and foremost, the so-called witness Bhim Sen is a stock witness. Furthermore, he has not even been examined by the prosecution having been given up as won over by the accused. He should at least have been examined so that the initial statement made by him could be put to him.

Furthermore, link evidence in this case is conspicuous by its absence as the sample which was sent on 01.02.1999 was returned by the Chemical Examiner as it was found to be stitched from the wrong side. Thus, sample was resealed and thereafter, sent back. But there are no documents to show how the seals were appended for the second time. In such a situation otherwise also, second sample should have been sent. Admittedly, only one sample had been drawn. It is further submitted that even if second sample was not there, it should have been drawn again from the bulk of the recovered contraband. It is further submitted that mandatory provisions of Section 50 of the NDPS Act were not complied with. Link evidence in this case is missing. Seal in question after use was never handed over to independent witness who was alleged to be present. All these facts coupled with the plausible defence raised by the appellant that he was being victimized for having rammed into the Superintendent of Police's car in a drunken condition, entitles him to acquittal in this case.

Learned counsel for the State however refutes the abovesaid arguments and submits that there is overwhelming and cogent evidence on

record to show that the prosecution has proved its case beyond reasonable doubt. There is no ground whatsoever for setting aside the conviction and sentence imposed upon the appellant.

I have heard learned counsel for the parties and gone through the record.

It is a matter of record that the independent witness Bhim Sen was not examined as he was given up having been won over by the defence. Argument of learned counsel that Bhim Sen was a stock witness of the police and therefore, benefit thereof has to accrue to the appellant entitling him to acquittal, is misplaced. Once Bhim Sen has not even been examined, court is to scrutinize the other evidence on record to determine the veracity of the prosecution version.

Great stress has been laid by the learned counsel on the fact that the sample which was sent to Forensic Science Laboratory for chemical examination on 01.02.1999, was returned with the objection that it was stitched from the outside/wrong side. It is urged that this objection does not find mention anywhere on the record. Furthermore, when the sample was resent, all the three seals were arranged for whereas, PW7 Balbir Singh Khera, Superintendent of Police is stated to have denied giving his seal again. It is additionally argued that in case sample was to be resent it should have been drawn afresh from the bulk rather than sending the same sample again. Sample not being drawn from the bulk reflects that the contents of the bulk were also suspect.

A perusal of the testimony of PW1 SI Mukhtiar Singh reveals the complete facts. It is stated by PW1 SI Mukhtiar Singh that on 26.01.1999 when he was posted as SHO Police Station, Sadiq, the accused was produced before

him alongwith one sample parcel containing 20 grams opium and one containing 1 Kg. and 980 grams of opium alongwith sample seal. These parcels were duly sealed bearing seal impressions 'HS' and 'BSK' and seals were intact on the parcels. After verifying the facts from the accused and the witnesses, he affixed his own seal bearing impression 'MS' on both the parcels. He took them in possession vide Ex.PA. Case property was retained in his custody. It was produced alongwith accused before the Duty Magistrate, Shri A.S.Katari, JMIC. His request is Ex.PB and the orders passed thereon is Ex.PB/1. He further reveals that sample was sent for chemical examination through Constable Sukhmander Singh but it was returned on 03.02.1999 with the objection of Chemical Examiner, Punjab, Chandigarh. Sample was produced on 08.02.1999 before Shri A.S.Katari, JMIC vide SHO Mukhtiar Singh's request Ex.PC, who passed the order Ex.PC/1 giving permission to open and reseal the sample as required under the law. Thereafter, the sample parcel was deposited with MHC Sukhdev Singh. Sample remained with MHC Sukhdev Singh from 03.02.1999 to 08.02.1999.

A perusal of the record reveals that vide Ex.PC, after revealing all the facts including the sending back of the sample with the objection as aforesaid, a prayer was made that the sample parcel be permitted to be opened before the court to be stitched properly and thereafter, be resealed so that the objection raised by the FSL could be removed and the same could be sent for examination. On this application dated 08.02.1999, Judicial Magistrate First Class, passed the following order:-

“Present: SI Mukhtiar Singh, SHO P.S. Sadiq.

Allowed to reopen and reseal the packet as required under the law with seals bearing marks 'HS', 'BSK' and 'MS' in my

presence. Seals deposited with me.

Sd/-
JMIC
8.2.1999”

In the face of this application and the specific order passed by the Judicial Magistrate First Class on 08.02.1999, reference by the learned counsel to a discrepancy regarding preparation of a docket, does not survive. Appellant cannot derive any benefit from the discrepancies sought to be projected from the statement of HC Sukhdev Singh, PW2 or PW7 Balbir Singh Khera, Superintendent of Police.

Similarly, contention of learned counsel for the appellant that there is non-compliance of the mandatory provision of Section 50 of the NDPS Act, is not tenable. It has been argued that the offer made to the accused in terms of Section 50 of the NDPS Act is not proper inasmuch as ASI Major Singh, PW6 has deposed that the accused was asked whether he wanted to be searched before a police officer or a Gazetted Officer whereas he should have been asked whether he should be searched before a Gazetted Officer or a Magistrate. This argument is not sustainable for the reason that the consent memo Ex.PE clearly reveals that the accused had been given an offer to be searched before a Magistrate or a Gazetted Officer. PW7 Balbir Singh Khera, Superintendent of Police (D), Faridkot had reached the spot and it was in his presence that the search of the accused was conducted. No fault can be found with the offer which was made to the accused in terms of Section 50 of the NDPS Act. It cannot be said that there is non-compliance of this mandatory provision.

It is thus clear from the evidence on record that the prosecution has

proved its case beyond reasonable doubt. There are no chinks in the link evidence, the benefit of which can accrue to the accused. Mandatory provisions of the NDPS Act have been duly complied with.

In this situation, learned counsel for the appellant submits that appellant is a first offender and is not involved in any other case. As the quantity of contraband recovered is 2Kg. opium which is below the commercial quantity as specified in the NDPS Act after the amendment notified on 02.04.2001, sentence imposed upon the accused should be reduced.

Doubtlessly as confirmed by learned counsel for the State, appellant is not involved in any other case. However, the Hon'ble Supreme Court in **Basheer @ N.P.Basheer v. State of Kerala, 2004(3) SCC 609** has held that the amending Act is applicable only in a situation where the trial had concluded prior to 02.04.2001. Benefit of the amendment cannot be extended to matters pending appeal. Section 41(1) of the Amending Act, 9 of 2001 reads as under:-

“41. *Application of this Act to pending cases.*- (1) Notwithstanding anything contained in sub-section (2) of section 1, all cases pending before the courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:

Provided that nothing in this Section shall apply to cases pending in appeal.”

In this situation, Hon'ble Supreme Court has specifically held that “in all cases where the trials had concluded and appeals were pending on 02.10.2001, when Amending Act, 9 of 2001 came into force, the amendments introduced by the Amending Act, 9 of 2001 would not be applicable and they would have to be disposed of in accordance with the Narcotic Drugs and Psychotropic Substances Act, 1985 as it stood before 2nd October, 2001”.

In this situation, it is not permissible to interfere in the quantum of sentence imposed upon the appellant as trial admittedly concluded on 20.09.2000. Appellant was convicted and sentenced vide impugned judgment and order dated 20.09.2000 rendered by the Special Judge, Faridkot. Present appeal was filed in October, 2000.

Consequently, this appeal is dismissed.

June 3 , 2015.
'om'

(LISA GILL)
JUDGE