

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal D-1063-DB of 2009
Date of Decision : September 04, 2015

Prithvi Raj

.....Appellant

VERSUS

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Ashish Kumar Gupta, Advocate
for the appellant.

Mr. S.S.Dhaliwal, Addl. A.G., Punjab.

T.P.S. MANN, J.

The appellant, namely, Prithvi Raj son of Madhu Lal, aged 24 years, resident of Borkhedhi, Tehsil Malhargarh, District Mandsour (MP) was tried for committing an offence punishable under Section 18 of the the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as '**the NDPS Act**') for being found in possession of 3½ kgs of opium without any permit or licence. Vide judgment and order dated 8.10.2009, learned Judge, Special Court, Patiala convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for eleven years and to pay a fine of Rs.1,00,000/-

and in default of payment of fine, to further undergo rigorous imprisonment for one year. The period of detention already undergone by him was ordered to be set off against the sentence of imprisonment as per Section 428 of the Code of Criminal Procedure.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which stood admitted. However, he has not been granted the concession of suspension of his sentence of imprisonment.

The case of the prosecution, in nutshell, is that on 20.12.2007, ASI Baldev Singh alongwith HC Jaswant Singh, HC Amritpal Singh, HC Gurmeet Singh, HC Devinder Nath and HC Mohinder Singh was present on motor cycles and scooters on the main road near the gate of Gurdwara Sahib Baba Shri Chand, village Madanpur Jhaleri in connection with checking of bad elements. In the meanwhile, one Sampuran Singh Sandhu, native of village Madanpur Jhaleri and residing at House No. 186, Kasturba Road, Rajpura town came on a motor cycle and started talking with ASI Baldev Singh. Then in the meantime, one clean shaven person carrying a bag of khaki colour on his right shoulder was seen coming on the link road from the side of GT road. When he tried to pass, ASI Baldev Singh apprehended him on suspicion. He then searched the bag which contained opium

in a polythene carrybag. On being asked, the suspect gave his name, parentage and address. ASI Baldev Singh separated two samples of 10 grams each and put them in a plastic container. When weighed, the remaining opium came to be 3 kg 480 grams. The mouth of the bag was then tied and the bag put in a plastic container of white colour. The two sample parcels of 10 grams each and the parcel of plastic container were sealed with his seal bearing his inscription 'BS'. Separate impression of seal was also prepared. The seal after use was handed over to HC Jaswant Singh. The two sample parcels, parcel containing remainder and the sample impression of seal alongwith the bag of khaki colour were taken into police possession by preparing a memo which was attested by the witnesses. As the suspect was found in possession of opium, he committed an offence under Section 18 of the NDPS Act. Accordingly, ruqa Ex. PW5/A was prepared by ASI Baldev Singh on 20.12.2007 at 8.10 p.m. and sent to Police Station Sadar, Rajpura through HC Amritpal Singh where on its basis, FIR No. 276 dated 20.12.2007 (Ex.PW5/B) was registered against the appellant under Section 18 of the NDPS Act by SI Roshan Lal, Station House Officer, Police Station Sadar, Rajpura.

During the investigation of the case, ASI Baldev Singh prepared personal search memo Ex. PB of the appellant, notice of arrest Ex. PC, notice to legal heirs Ex. PD and also of free

legal aid to the appellant vide Ex. PE. Rough site-plan Ex.PW5/C of the place of occurrence was also prepared and the statements of the witnesses recorded. On return to the Police Station, ASI Baldev Singh produced the case property, witnesses and the appellant before the Station House Officer, who verified the factum of recovery from the witnesses and sealed the case property with his seal besides attesting the sample impression of seal. The Station House Officer deposited the case property with MHC Sudh Singh. On 21.12.2007, ASI Baldev Singh took the case property from the MHC for producing the same alongwith the appellant in the Court. He then moved application alongwith inventory prepared by him, application Ex. PW5/D for inventory and application Ex.PW5/E regarding sealing of the case property. He was ordered to deposit the case property in judicial malkhana. The Court also separated one representative sample from the remainder opium and sealed the remaining case property whereas the appellant was sent on police remand. On return, ASI Baldev Singh deposited the sample with MHC and other case property deposited with the judicial malkhana at Patiala. One sample and the sample impression of the seal was sent to the Chemical Examiner and after obtaining report Ex. P1 from the Chemical Examiner to the effect that the sample parcel contained morphine and meconic acid were present. As the morphine was

4%, it was declared that the sample was of opium. Accordingly, after completing the investigation, final report under Section 173 Cr.P.C. was submitted against the appellant. The appellant was then charged for the aforementioned offence to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 HC Jaswant Singh, PW2 Inspector Krishan Kumar, PW3 HC Davinder Nath, PW4 MHC Sudh Singh, PW5 Constable Kulwant Singh besides ASI Baldev Singh, who was also numbered as PW5. The prosecution also tendered in evidence report Ex. P1 of the Chemical Examiner besides judicial orders Ex. PX and PX/1.

When examined under Section 313 Cr.P.C., the appellant claimed that he was innocent. No recovery of opium was effected from him. Instead, false recovery was planted upon him. While he was going to pay obeisance for the good health of his wife to Mata Vaishno Devi on Bus No. HR-65-1705 from Delhi to Jalandhar, he was taken out from the bus by the police officials at Rajpura octroi post. His personal search was conducted and one ticket taken into possession by the police. His mobile, gold chain, gold ring and some cash were also taken by the police but the same were neither mentioned in the documents nor returned to him. He was taken to Police Station Sadar, Rajpura where he was given beatings. He was not even allowed to give information

to his family and to meet any higher officials.

In his defence, the appellant produced three witnesses, namely, DW1 Rajinder Kumar, DW2 HC Baldev Singh and DW3 HC Karnail Singh.

After hearing learned counsel for the parties and on going through the evidence brought on the record, the trial Court came to the conclusion that the prosecution had proved its case against the appellant beyond any shadow of doubt and, accordingly, after holding him guilty, convicted and sentenced him, as mentioned above.

Learned counsel for the parties have been heard and the evidence scanned with their able assistance.

Learned counsel for the appellant has submitted that in order to prove its case against the appellant, the prosecution has examined only official witnesses. The presence of independent witness, namely, Sampuran Singh at the time of alleged apprehension and recovery of the contraband from the appellant is also doubtful as the seal after use was not handed over by ASI Baldev Singh to him.

It is the case of the prosecution that when the police party headed by ASI Baldev Singh was present near Gurdwara Sahib in the area of village Madanpur Jhaleri in connection with patrolling and catching of bad elements, Sampuran Singh came there on a motor cycle and started talking with him. In the

meantime, the appellant was seen coming on the link road and carrying a bag on his right shoulder. On the basis of suspicion, he was apprehended and in the presence of the independent witness, the recovery of the contraband was effected from the appellant. The sample parcels and the parcel containing remainder opium were duly sealed by ASI Baldev Singh with his seal bearing inscription 'BS'. After preparing sample impression of the seal, it was handed over to HC Jaswant Singh. Merely because ASI Baldev Singh did not hand over his seal after use to Sampuran Singh is no ground to disbelieve his presence at the time of apprehension of the appellant and recovery of the contraband from him. Said Sampuran Singh was cited by the prosecution as one of its witness in order to prove its case. However, before he could be examined, he joined hands with the appellant and, accordingly, given up by the prosecution as won over. Therefore, no benefit can be extended to the appellant if the prosecution case consists of the testimonies of only police officials.

Learned counsel for the appellant has submitted that the provisions of Section 50 of the NDPS Act were not complied with by the prosecution while effecting recovery of the contraband from the appellant. Neither the appellant was apprised about his right to get the search effected in the presence of a Gazetted

Officer or a Magistrate nor he was taken to any such Officer. Therefore, the conviction of the appellant is vitiated.

It is the case of the prosecution that at the time of his apprehension, the appellant was carrying a bag of khaki colour on his right shoulder. On the basis of suspicion, the search of the bag was conducted by ASI Baldev Singh which led to recovery of opium weighing 3.5 kgs. It is not the case of the prosecution that the recovery of the contraband was effected from the person of the appellant. As the recovery was from the bag, the provisions of Section 50 of the NDPS Act do not come into play and, therefore, the trial would not stand vitiated.

Learned counsel for the appellant has further submitted that as per FIR Ex. PW5/B, it was SI Roshan Lal, who was the SHO whereas according to report Ex. P1 of the Chemical Examiner, SI Hazur Singh was the Station House Officer. Inspector Krishan Kumar whom the prosecution examined as PW2 testified that on 28.12.2007, he was posted as Station House Officer while according to PW5 ASI Baldev Singh he had produced the case property, witnesses and the appellant before Shri K.K.Painthey, who was the Station House Officer. Thus, it cannot be said that who had taken care of the case property while it was stored in the malkhana and at the time when the same was produced before the Ilaqa Magistrate. As such there was no

compliance of the provisions of Section 55 of the NDPS Act.

Inspector Krishan Kumar, whom the prosecution examined as PW2 testified that on 28.12.2007 when he was posted as Station House Officer, Police Station Sadar, Rajpura, ASI Baldev Singh produced before him the case property, the appellant and the witnesses. He after enquiring from the witnesses and interrogating the appellant, verified the investigation and also sealed the parcel with his seal bearing inscription 'KK' besides putting his seal on sample seal Ex. P1. He then deposited the case property with MHC Sudh Singh with seals intact. During his cross-examination, he testified that he did not check the case property by breaking open the seal. He also did not weigh the case property. He denied the suggestion that he had deposed falsely. However, the defence did not challenge his assertion that on the relevant day, he was posted as Station House Officer. Even otherwise, the Station House Officer of the Police Station does not remain in the Police Station throughout the day. He is required to be in the area in connection with his duties besides meeting senior police officers practically everyday. In the absence of the Station House Officer, the senior most police official present in the Police Station assumes the status as Station House Officer and once the regularly appointed Station House Officer comes back, the junior official moves back to his

own posting. Roshan Lal and Hazur Singh, who were described in FIR Ex. PW5/B and report Ex. P1 of the Chemical Examiner respectively stood posted as Sub Inspectors on the relevant date whereas Krishan Kumar stood posted as Inspector and was the one, who was the regularly appointed Station House Officer. Therefore, no benefit on this ground can be extended to the appellant. Even otherwise, the provisions of Section 55 of the NDPS Act are not mandatory, they are obligatory in nature and non-compliance thereof would not take the wind out of the sails of the prosecution.

Learned counsel for the appellant has also submitted that as the CFSL form was not prepared/filled at the spot, the prosecution version is rendered doubtful.

The arguments advanced by the learned counsel for the appellant is contrary to the settled law that merely because the test memo was not prepared at the spot but prepared after the return of the police party, the prosecution case is rendered doubtful. There is no rule of evidence or procedure that all the documents must be prepared at the spot where the recovery itself is effected. The preparation of CFSL form was only for the purpose of sending the case property to the Chemical Examiner. Therefore, if the same is not prepared at the spot, no prejudice is caused to the appellant.

It is further submitted by the learned counsel for the appellant that no special report was sent to any higher/superior officers regarding the factum of recovery. As such the provisions of Section 57 of the NDPS Act had not been complied with by the prosecution.

The arguments advanced by the learned counsel for the appellant is contrary to the records. After the recovery of the contraband was effected, ASI Baldev Singh had prepared ruqa Ex. PW5/A on 20.12.2007 at 8.10 p.m. and on its basis, FIR came to be registered the same evening at 8.45 p.m. After the recording of the FIR was completed, its special report was handed over to Constable Kuljit Singh, who delivered the same to the Ilaqa Magistrate at about midnight i.e. on 21.12.2007 at 12.00 a.m. as is clear from the endorsement made on the FIR. There was, thus, no violation of the provisions of Section 57 of the NDPS Act.

Learned counsel for the appellant has referred to certain discrepancies and contradictions in the statements of the prosecution witnesses and submitted that the prosecution case be thrown out on that ground. However, the discrepancies and contradictions are so trivial in nature that they do not affect the very substratum of the prosecution. No benefit of such like discrepancies or the contradictions can be extended to the

appellant.

Coming to the defence evidence, it may be noticed that though DW1 Rajinder Kumar brother of the appellant deposed about the appellant going to Mata Vaishno Devi to pay obeisance and when he did not return back within five days, he started searching for him and one and a half months later received a letter from the appellant that he was confined in jail in a false case, yet in his cross-examination, he admitted that he never made any application against the false implication of the appellant to any higher officers. He also did not make a request to the Court in that regard. He was also not present on 20.12.2007 when the opium was recovered from the appellant. Similarly, from the testimonies of DW2 HC Baldev Singh and DW3 HC Karnail Singh, no benefit can be extended to the appellant as it is not made out as to whether at the time of his apprehension, the appellant was carrying mobile, gold chain, gold ring and cash or that the same had been taken from him by the police.

In view of the above, no case is made out for any interference in the impugned judgment to the extent of convicting the appellant under Section 18 of the NDPS Act. At the same time, the sentence of imprisonment of eleven years imposed upon the appellant is somewhat on the higher side. Ends of justice

shall be suitably met if the same is reduced from eleven years to ten years.

Resultantly, the conviction of the appellant under Section 18 of the NDPS Act is upheld. His substantive sentence of imprisonment is reduced from eleven years to rigorous imprisonment for ten years. The sentence of fine alongwith its default clause is maintained.

But for the modification in the quantum of sentence of imprisonment, as indicated above, the appeal fails and is, therefore, dismissed.

**(T.P.S. MANN)
JUDGE**

September 04, 2015
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**(GURMIT RAM)
JUDGE**