

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

Criminal Appeal D-874-DB of 2009

Date of Decision: July 3, 2015

Naveen

.....Appellant

Versus

State of Haryana

..... Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. MAHAVIR S.CHAUHAN**

Present : Mr. J.S.Dahiya, Advocate
for the appellant.

Mr. Deepak Sabharwal, Addl. A.G., Haryana with
Mr. Munish Sharma, Asstt. A.G., Haryana.

T.P.S.MANN, J.

The appellant was tried for committing offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act'), for being found in possession of 3 Kgs of charas on 4.5.2007 without any permit or licence to keep the same. Vide judgment and order dated 30/31.7.2009, learned Presiding Officer, Special Court, Panipat, after holding the appellant guilty for the said offence, convicted and sentenced him to undergo rigorous imprisonment for a period of twelve years and to pay a fine of Rs.1,50,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one year and six months. Hence, the present appeal, wherein, he has prayed for

setting aside the impugned judgment of conviction and order of sentence and for acquitting him of the charge against him.

The case of the prosecution, in nutshell, is that on 4.5.2007, ASI Shri Krishan along with HC Rohtash, Constable Satish and Constable Balwan Singh was present at the gate of grain market, Madlauda, for checking of crime and patrolling. The appellant while holding a polyethene bag in his right hand was seen coming from the side of village Bhalsi. On seeing the police party, he turned back at once and started walking swiftly. On the basis of suspicion, ASI Shri Krishan with the help of his fellow officials apprehended him. On interrogation, appellant disclosed his identity. ASI Shri Krishan served a written notice under Section 50 of the Act to the appellant that he suspected him to be carrying some intoxicant in his bag and he had a legal right to get its search conducted either before a Magistrate or a Gazetted Officer. The appellant, in his written reply, stated that he had full faith in him to conduct a search instead of getting it effected from some Magistrate or Gazetted Officer. ASI Shri Krishan after putting the plastic bag held by the appellant in his right hand, on the ground, conducted its search. It was found to contain charas. ASI Shri Krishan arranged weights and, on weighing, the contraband it came to be 3 Kgs. Two samples of 20 grams each were separated from the recovered charas. The two samples

were put in separate plastic boxes. The residue charas was also put in a plastic bag and converted into a parcel. The boxes containing the samples and the residue charas were duly sealed with the seal of 'BS'. Separate impression of the seal was prepared. The seal after use was handed over to HC Rohtash. The appellant did not possess any permit or licence to keep the contraband. Accordingly, he had committed an offence under Section 20 of the Act. Ruqa Ex.PA was prepared in this regard by ASI Shri Krishan at the spot on 4.5.2007 at 6.45 p.m., and on its basis, an FIR Ex.PA/1 was registered at Police Station Madlauda at 4.5.2007 at 7.00 p.m., by ASI Rajbir Singh.

Further case of the prosecution is that ASI Shri Krishan prepared rough site plan of the place of recovery and recorded the statements of the witnesses. The appellant was formally arrested. Inspector Jagdeep Singh, Station House Officer, Police Station Madlauda, reached the spot. The appellant along with case property consisting of sample parcels, impression of sample seal and parcel containing the residue charas were produced before him. After verification of the facts, Inspector Jagdeep Singh affixed his seal on each parcel. ASI Shri Krishan was directed to deposit the case property with the MHC and put the appellant in police lock-up after medical examination. On 5.5.2007, the case property was taken out by the MHC for

producing the same before the Ilaqa Magistrate in compliance of the provisions of Section 52-A of the Act. After producing the case property, an application was moved and inventory of the case property was prepared. The seal of the parcel containing residue charas was broken. 20 grams was taken out as sample from the same and converted into parcel. Photographs of the case property was taken in the Court room. Appropriate orders were passed by the Ilaqa Magistrate and certificate qua the case property was issued. The case property was, thereafter, deposited with the MHC and the appellant was sent to the police lock-up.

Upon completion of the investigation, final report under Section 173 Cr.P.C. was prepared by Inspector Jagdeep Singh. The appellant was, thereafter, charged for committing offence punishable under Section 20 of the Act, to which, he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as nine witnesses. PW1 Ishwar, Photographer, deposed that he had taken the photographs Mark-A and B of case property, sample parcel and sample seal with the digital camera.

PW2 ASI Rajbir Singh stated that on receipt of ruqa Ex.PA, he had recorded the formal FIR Ex.PA/1 on 4.5.2007.

PW3 Constable Balwan Singh tendered into evidence

his affidavit Ex.PB stating therein that on 17.5.2007 MHC Dinesh Kumar handed him over sealed pullanda of sample parcel and sample seal for the purpose of depositing them with Forensic Science Laboratory, Madhuban. After depositing the same, he had handed over the receipt to the MHC. Till the time, the case property remained in his possession, it was not tampered with.

PW4 HC Jagdish testified that ASI Rajbir Singh handed him over three envelopes regarding special reports for delivering the same to the Ilqa Magistrate, Superintendent of Police (Panipat) and Deputy Superintendent of Police (Headquarter), which were, accordingly, delivered.

PW5 HC Joginder Singh tendered into evidence his affidavit Ex.PC deposing therein that on 4.5.2007, ASI Shri Krishan deposited the sealed pullanda of case property, sample parcel, sample seal and, thereafter, withdrawn the same on 5.5.2007 for producing the same in the Court and on the same day, they were deposited back in the Malkhana. He remained MHC till 8.5.2007 and till the time the case property remained in his possession, it was not tampered with.

PW6 HC Dinesh Kumar tendered into evidence his affidavit Ex.PD deposing therein that after taking over the charge on 8.5.2007 as MHC, he had taken the charge of sealed pullanda of case property, sample parcel and sample seal. He handed over

the sample seal and sample parcel to Constable Balwan Singh for the purpose of depositing them in the Forensic Science Laboratory, Madhuban. Till the time, the sealed pullanda of case property remained in his possession, it was not tampered with.

PW7 Inspector Jagdeep Singh testified that on 4.5.2007, he along with his staff was on patrol duty. When he reached Anaj Mandi Gate of Madlauda, ASI Shri Krishan produced the appellant along with the case property, sample parcel, sample seal and witnesses before him. He verified the facts of the case and finding the same to be correct, affixed his seal and instructed ASI Shri Krishan to deposit the case property and put the accused in police lock-up. Notice under Section 57 of the Act was sent to higher authorities. After completion of the investigation, he prepared final report under Section 173 Cr.P.C.

PW7 (wrongly numbered) Ravinder Singh, Additional Ahlmad to the Court of the Illaqa Magistrate identified the signatures of Ms. Rajni Yadav, the then Judicial Magistrate 1st Class, Panipat on certificate Ex.PF issued by her.

PW8 ASI Shri Krishan, Investigating Officer of the case, testified in detail about the manner, in which, the appellant was apprehended on the basis of suspicion and the search of the plastic bag carried by him in his right hand, on checking was found to contain charas. He also deposed about the taking of

samples out of the contraband recovered and converted them into parcels. He further deposed about preparing ruqa Ex.PA and sending the same to the police station for registration of FIR. He prepared rough site plan of the place of recovery and recorded the statements of the witnesses. The appellant was also formally arrested by him. After the arrival of Inspector Jagdeep Singh at the spot, he had produced the appellant along with the case property, sample parcels and sample seal before him. He also testified that on 5.5.2007, the case property, sample parcels and sample seal were taken out by the MHC for producing the same before the Ilqa Magistrate in order to comply with the provisions of Section 52-A of the Act. After producing the case property before the Judicial Magistrate 1st Class, Panipat, he moved an application Ex.PJ and prepared inventory Ex.PJ/1. On seeing the case property, the Ilqa Magistrate broke the seal of the remainder parcel and took another sample of 20 grams. The remainder parcel and sample were duly sealed with the Court seal.

PW9 HC, Rohtash, who was present along with ASI Shri Krishan at the time of apprehension of the appellant, deposed about the recovery of the contraband and taking of samples out of the same. He also testified about the Investigating Officer producing the case property, sample parcel and seal

impression, the appellant and the witnesses before Inspector Jagdeep Singh, who verified the facts and finding the same to be correct affixed his seal and directed the Investigating Officer to make further compliance.

Before closing the evidence of the prosecution, learned Public Prosecutor tendered in evidence report Ex.PK of Forensic Science Laboratory, Madhuban. Constable Satish Kumar, who was present in the Court, was, however given up.

When examined under Section 313 Cr.P.C. the appellant denied the material brought on record by the prosecution. He pleaded innocence and being falsely implicated due to party fraction in the village. According to him, the contraband was recovered from one Naresh son of Ram Kishan of village Adiyana, however, his signatures were obtained by the police on blank papers.

In defence, the appellant examined six witnesses. DW1 Ishwar Singh stated that no information was given to him regarding the arrest of the appellant, who was his nephew. He was detained by the police on 3.5.2007 due to political friction in the village. On that day, HC Rohtash came in his office and asked him to affix his signatures on blank papers as a guarantor for the release of the appellant at about 10.00 a.m. As he was busy with his official work and believing the Head Constable, he affixed his

signatures on the blank papers as guarantor. According to him, the appellant never dealt in contraband. However, after 6/7 days, he came to know that the appellant had been falsely implicated in the present case.

DW2 Satbir Singh Nain, who worked in Market Committee, Madlauda, produced the auction register regarding wheat. He stated that the season of wheat ran up to 18/20th May. The weighment of the wheat would run till night time upto 11 p.m./12.00 mid night. He proved the photocopy of auction register pertaining to 3.5.2007 as Ex.DW2/A and photocopy Ex.DW2/B pertaining to 4.5.2007. He also deposed that during the peak season, the weighment would run till 11.00 p.m./12.00 noon but in the month of May it lasted till 7/8 p.m. Till that time, many people used to remain in Mandi.

DW3 Mahabir Singh, who claimed to run a tea stall on the backside of Gate No. 3 of the Mandi testified that his stall was open upto 11.00 p.m. on 4.5.2007. Many persons had taken tea at his shop and many persons were coming and going for their work. There was heavy rush in the Mandi. He also stated that ahead of his shop, a road led to Madlauda, Thirana and Shera and the roads were frequented by people. There was Housing Board in front of his shop and labourer used to work there. On 3.5.2007 also, no person was arrested by the police.

DW4 Jora Singh stated that the appellant was a labourer. On 3.5.2007 at about 6/7 a.m., when he was standing in front of his house, two police officials came there and asked him about the house of Vir Bhan, father of the appellant. He accompanied them to the house of Vir Bhan from where the appellant was picked up and taken to the police station. He along with Vir Bhan went to police station at about 8.00 a.m. On enquiry, they learnt that there was some complaint against him from the village. They were again summoned in the police station on the next morning. On 4.5.2007, they met the Superintendent of Police, Panipat, before whom, Vir Bhan, father of the appellant moved an application regarding involvement of appellant. On 5.5.2007, they came to know that a false case had been planted upon the appellant. They had never heard about the appellant indulging in contraband, who was only running a Karyana shop.

DW5 ASI Ranbir Singh produced Registers No. 19 and 21 and proved the entries of Register No. 19 made at Serial No. 1058 (Ex.DW5/A), photocopy (Ex.DW5/B) of Register No. 21, photocopy of Daily Diary Register (Ex.DW5/C) and photocopy of ruqa (Ex.DW5/D). He further deposed that entry in this regard was made at Serial No. 16 and Rawangi was made vide Serial No. 10.

DW6 Kiran Kumar, Senior Scientific

Officer-cum-Ex.Officio Assistant Chemical Examiner to the Government of Haryana, FSL (H), Madhuban, stated that he had not mentioned the percentage of resin in his report Ex.PK, as the whole of the sample was identified as charas.

The trial Court after hearing learned counsel for the parties and on going through the evidence, believed the prosecution case and convicted and sentenced the appellant, as mentioned above.

We have heard learned counsel for the parties and perused the evidence.

The main thrust of the arguments advanced on behalf of the appellant is that the signatures of ASI Shri Krishan as appearing on the notice Ex.PG are different from the one appearing on reply Ex.PG/1 given by the appellant to the notice Ex.PG. Further, in the photocopy of notice, which was supplied alongwith the challan to the appellant, the signatures of ASI Shri Krishan are not present which shows that they were inserted later on. It is also submitted that in the notice Ex.PG, the FIR number, its date, the section relating to the offence and the name of the police station had already been written which shows that the FIR was registered first and the appellant was apprehended later on. As such, it can safely be concluded that the appellant has been falsely implicated in the case.

Merely because, the notice Ex.PG bore FIR number, date, section and the police station, is not sufficient to conclude that FIR already stood recorded and various legal formalities which ought to have been completed before the registration of the FIR, were in fact completed after the registration of the FIR.

PW8 ASI Shri Krishan, who was the one to give notice Ex.PG to the appellant and obtaining his reply Ex.PG/1 was not asked any question during his cross-examination as to how the FIR number, date of FIR, particulars of the offences and of the name of the police station appeared on the notice Ex.PG. On the other hand, before the final report under Section 173 Cr.P.C. was to be prepared, various documents prepared during the investigation of the case, were required to be put in order. By that point of time, the FIR number, date of the FIR, the section under which the offence was committed and name of the police station would have been mentioned, so that various documents did not get mixed up with the documents of other cases.

Even otherwise, nothing turns on the notice Ex.PG and the reply Ex.PG/1 of the appellant, as recovery of the contraband was made from a plastic bag carried by the appellant in his hand and not from his person. Section 50 of the Act would not come into play in the present case. For the aforementioned reason, even if any defect is shown in the notice Ex.PG, no

benefit of the same can be extended to the appellant.

Another objection raised by the defence is regarding non-association of any independent witness. In this regard, the attention of the Court has been drawn towards the cross-examination of PW8 ASI Shri Krishan, wherein, he admitted that he had not called any public person. Similarly, PW9 HC Rohtash admitted that the place of occurrence was a busy place and there were shops near the place of occurrence. Reliance has also been placed upon the testimonies of DW2 Satbir Singh Nain and DW3 Mahabir Singh, tea vendor, who deposed about many persons available close to the place from where the alleged recovery was shown to have been effected from the appellant. However, in his cross-examination, PW8 Shri Krishan stated that he had left the police station at 5.00 p.m. on foot and reached the spot at 5.30 p.m. At that very time, the appellant was apprehended. It took him about four years in conducting the proceedings at the spot. The Station House Officer had reached the spot at 8.25 p.m. and left at 9.00 p.m. Constable Balwan Singh, who had taken the ruqa at 6.45 p.m., had returned at 8.00 p.m. At that time, all the Khokhas were closed. One or two heaps of wheat were lying in Mandi. He further stated that it was not a common thoroughfare. He also stated that one or two persons who had passed by that side were

asked to join but they refused. He, once again, reiterated that the place of occurrence was not a busy place. From the deposition of PW8 ASI Shri Krishan, it is made out that though the place was not very well frequented, yet he had made an attempt to join independent witness, who had passed by that side, but they refused to do so. Merely because ASI Shri Krishan had not taken any action against them, is no ground to conclude that no such attempt had been made by him to associate independent witness in the investigation of the case.

Certain discrepancies in the statements of various witnesses produced by the prosecution have been pointed out by the learned counsel representing the appellant. However, it may be noticed that star witnesses of the prosecution were examined after a period of about one year had elapsed since the apprehension of the appellant. Such like contradictions and discrepancies can creep in the testimonies of truthful witnesses. Even otherwise, the so called discrepancies and contradictions are trivial, which do not go to the root of the case. Therefore, no benefit on that account can be extended to the appellant.

Another plea of the appellant is about delay of thirteen days in sending of the sample to the Forensic Science Laboratory. According to the prosecution, the recovery was effected on 4.5.2007 whereas sample parcel was sent to the

Forensic Science Laboratory on 17.5.2007. However, even the said stand of the appellant would not be sufficient to reject the prosecution case as the contents of the sample did not undergo any change in the *interregnum*. Even otherwise, PW3 Constable Balwan Singh, PW5 HC Joginder Singh and PW6 HC Dinesh Kumar, who had handled the sample parcel at different points of time, and deposed on oath that till the time they remained in their possession, they were not tampered with.

It is also submitted on behalf of the appellant that CFSL form was not filled up by the Investigating Officer, which is against the mandatory provisions of the Act and fatal to the prosecution. However, the defence did not cross-examine any of the prosecution witnesses as to whether CFSL form was prepared at the spot or not. In the absence of any specific question, it can not be presumed that such a form was not prepared.

Learned counsel for the appellant has also submitted that the law requires taking out 25 grams of the contraband from the recovered material as sample whereas in the present case, each, of the two samples weighed 20 grams. In this regard, reliance has been placed upon the Central Government's Standing Instruction No. 1/88. However, it is the settled law that the standing instructions are only directory in nature and not mandatory. Even

otherwise, the appellant has failed to point out as to how he has been prejudiced on account of the sample drawn weighed 20 grams and not 25 grams. Thus, no benefit accrues to the appellant on that ground as well.

The provisions of Section 52-A of the Act stood fully complied with in the present case, as after the apprehension of the appellant and taking out of the samples, the case property was produced before the Illaqa Magistrate. After taking out the Court sample, residue was again put into sealed parcel, which was deposited and kept in Malkhana. Memo Ex.PJ prepared by ASI Shri Krishan regarding observing/inspection of the case property is available on the record and so also the inventory list Ex.PJ/1. Ishwar Singh, a neighbour of the appellant was also informed on 4.5.2007 vide arrest memo Ex.P4 regarding the arrest of the appellant in the case. Said Ishwar Singh tried to wriggle out of the said circumstance by saying that he had only signed on blank papers. The fact remains that he admitted his signatures on arrest memo Ex.P4. Apparently, he has tried to help the appellant, who was his neighbour by deposing that no intimation regarding arrest of the appellant was given to him. DW4 Jora Singh deposed that the police had apprehended the appellant from his house on 3.5.2007 at about 8.00 a.m. and, on the next date, he had accompanied Vir Bhan, father of the

appellant, so as to complain to the Superintendent of Police regarding false implication of the appellant. He stated that the father of the appellant moved an application regarding involvement of the appellant but he did not produce copy of the said application. As regards the testimony of DW6 Kiran Kumar, Senior Scientific Officer-cum-Ex. Officio, Assistant Chemical Examiner to Government of Haryana, FSL (H), it may be noticed that once the presence of resin was found in the contraband and so stated in the report Ex.PK, it stood established that the sample was of *charas*. It was also mentioned in the report Ex.PK that the tests were positive for the presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol. Besides, characteristics trichomes were present. Under these circumstances, no benefit can be extended to the appellant on the ground that the percentage of resin was not mentioned in the report Ex.PK.

In view of the above, no case is made out for any interference in the impugned judgment of conviction.

As regards the quantum of sentence, it may be noticed that the appellant is not shown to be involved in any other criminal case. He has been facing the agony of criminal prosecution since 4.5.2007, the day he was apprehended with the contraband and, accordingly, arrested. When examined by the trial Court under Section 235 Cr.P.C. he had claimed that he was

the eldest in the family and his father had died. He had two minor children and he is the only bread earner in the family. His mother was too old to work.

Taking into consideration the totality of the circumstances, this Court is of the considered view that the sentence of imprisonment for twelve years imposed upon the appellant is on the higher side. Ends of justice would be amply met if the same is reduced to ten years.

Resultantly, the conviction of the appellant under Section 20 of the the Narcotic Drugs and Psychotropic Substances Act, 1985, is upheld. His substantive sentence of imprisonment is reduced from twelve years to rigorous imprisonment for ten years. The sentence of fine along with its default clause is maintained.

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

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

July 3, 2015
amit rana

**(MAHAVIR S. CHAUHAN)
JUDGE**