

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-114-DB-2010
Date of Decision: 18.08.2015

Sandeep

...Appellant

Versus

State of Haryana

...Respondent

CORAM: Hon'ble Mr. Justice Hemant Gupta
Hon'ble Mrs. Justice Raj Rahul Garg

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

Argued By: Mr. Abhinav Oberoi, Advocate for the appellant.

Mr. Rajesh Gaur, Addl. Advocate General, Haryana.

Raj Rahul Garg, J.

Sandeep, accused/appellant, assailed the judgment of conviction dated 14.01.2010 and order of sentence dated 16.01.2010 rendered by the then Additional Sessions Judge-III, Bhiwani, whereby he was convicted for keeping in his possession 7 Kgs. of Charas without any permit or licence. He was sentenced to undergo rigorous imprisonment for a period of life and to pay a fine of Rs. 1,00,000/- (Rupees one lac only) with default clause for committing offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (*hereinafter referred to as 'NDPS Act'*).

As per prosecution case, on 12.01.2009, SI Raj Kumar along with other police officials was present in front of BITS College, Bamla, on Delhi-Bhiwani road, on patrol. In the meanwhile, a private jeep came from Rohtak side. One person alighted from that jeep with a bag in his hand. On seeing the police party, he turned back and started walking briskly towards BITS College. On the basis of suspicion, he was apprehended with the help of police officials. On inquiry, he disclosed his name as 'Sandeep son of Rajender Parshad'. On the basis of suspicion that he was having contraband in his possession, a notice under Section 50 of the NDPS Act was given to him telling him his right to get the search of his bag conducted in the presence of a Gazetted Officer or a Magistrate. To this, accused/appellant exercised his option in favour of a Gazetted Officer. Consequently, DSP Ram Avtar was called at the spot. On the direction of the DSP and in his presence, the bag of the accused/appellant was searched whereupon Charas was found in the same. Two samples of 100 grams each were separated. The residue was weighed to 6.800 Kgs. Residue was again put into the same bag. Both the samples as well the bag were separately sealed with the seal of 'RK'. DSP Ram Avtar also put his seal impression 'RA' on each parcel and the same was taken into police possession, vide recovery memo. Seal after use was handed over to ASI Dlibag Singh. Ruqqa was sent to the police station whereupon formal FIR was registered. Rough site plan of the site was prepared and accused was arrested.

Thereafter, the accused, witnesses, case property and samples were produced before Sh. Gajender Singh, SHO of the police station who after verifying the facts from the witnesses and the accused affixed his seal with the seal of 'GS' and made his endorsement on the report.

On 13.01.2009, accused/appellant and case property were produced before the court of ACJM, Bhiwani. Thus, compliance of Section 52-A was made. After completion of necessary investigation, challan was presented in the court.

Accused was charge-sheeted for committing offence punishable under Section 20 of the NDPS Act for keeping in his possession 7 Kgs. of Charas. To the charge, he did not plead guilty and claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded. Accused/appellant has taken the defence that he is innocent. He stated that one Bharat Shah son of Bhola Shah and Suganti Devi, wife of Hari Chand came to Kalanaur on 02.01.2009 with narcotics i.e. 17 Kgs. Charas. They use to supply narcotic to Ram Singh resident of village Kalanaur. Said Bharat Shah and Suganti Devi were having illicit relations. Secret information was received by the CIA Bhiwani about arrival of Charas in Kalanaur. Police officials of Bhiwani went to Kalanaur and had apprehended said Bharat Shah and Suganti Devi and Ram Singh. That appellant/accused and Ashok son of Suganti Devi objected the illicit relation with Bharat Shah but they continued illicit relations. After arrest of Bharat Shah, Suganti Devi and Ram Singh; the police made inquiries from those persons as to from where the Charas was brought and Bharat Shah told the police, to avenge and revenge, the name of accused and that of Ashok. Accordingly, the police managed to have telephonically called the accused and Ashok from the wife of Ram Singh aforesaid and the wife of Ram Singh telephonically informed accused and Ashok to come to Kalanaur as mother of Ashok was arrested by the police. Thereafter, accused along with Ashok

reached Rohtak on 11.01.2009 and from there, they telephonically asked the situation of house of Ram Singh from his wife. Thereafter, accused and Ashok came to Kalanaur and when they reached there, they both were apprehended by the police of Bhiwani as the officials were already present there. Accused and Ashok were brought to CIA Bhiwani, where Bharat Shah, Suganti Devi and Ram Singh already there. Accused narrated all these facts to the police but all in vain. Out of 17 Kgs. of Charas, seized from Bharat Shah, Suganti Devi and Ram Singh, 7 Kgs. was foisted on accused. Ashok was allowed to go. Accused, Bharat Shah and Ram Singh were produced on 13.01.2009, while Suganti Devi was produced in the court at Bhiwani on 12.01.2009. Since, Ashok son of Suganti Devi was friend of accused and being a friend accused helped him in giving beating to Bharat Shah and objected about the illicit relations of Bharat Shah and Suganti Devi. That accused was implicated in a false case. That accused was not arrested from the place as alleged by the prosecution and nothing was recovered from him. Jagdish Chander, Ahlmad of the Court at Bhiwani, was examined as DW-1.

We have heard Mr. Abhinav Oberoi, Advcoate, learned counsel for the accused/appellant and Mr. Rajesh Gour, Additional Advocate General, counsel for the State of Haryana besides appraising the entire evidence and material on record.

First of all, learned counsel for the accused/appellant argued that in this case prosecution has not joined any independent witness though, admittedly, available at the spot as the Investigating Officer categorically stated that during the period of their stay, people and vehicles were coming and going on the road. The Investigating Officer did not take any action against anyone of

them who refused to join the investigations. This case entails stringent punishment. The Investigating Officer cannot absolve himself of his duty to join the independent witnesses by merely stating that the independent witnesses had refused to join the investigations.

Of-course, it is a case of serious nature in which commercial quantity i.e. 7 Kgs. of Charas was recovered from the possession of appellant and stringent punishment is provided, once the offence stands proved against him. Rule of prudence desires that in such like cases there should be some independent corroboration but at the same time the Court can loose sight of the fact that there is general apathy to join investigations. There is nothing on record to show that the official witnesses were in any way biased against appellant or had malice to implicate him. By now it is the settled proposition of law that the testimonies of the official witnesses are at par with the testimonies of non-official witnesses if the same inspires confidence in the mind of the court regarding guilt of the appellant. In such like cases, the the court is required to examine the statements with more care and caution to see if the testimonies of the official witnesses are consistent and inspire confidence regarding guilt of the accused or not. The present case is the one of heavy recovery of 7 Kgs. of Charas. Such a heavy quantity of contraband cannot be planted by the police particularly when the recovery was effected in the presence of DSP who is a Gazetted Officer. As such this contention of learned counsel for the appellant is devoid of any force.

It was next argued by learned counsel for the appellant that there are contradictions in the statements of PW-8 ASI Dilbagh Singh and PW-9 SI Raj Kumar. As such the prosecution case is not free from doubt. It was pointed

out that PW-8 deposed that they had gone by private bus whereas PW-9 deposed that they had gone by three-wheeler. Even PW-9 deposed that they came back from the spot by a private jeep. The prosecution did not keep either driver of the private bus or that of private jeep as witness in this case. As such, the genuineness of the prosecution case is doubtful.

If we peruse the statements of PW-8 and PW-9, we find no discrepancy in the statements of both the witnesses at the point of use of mode of conveyance. PW-9 SI Ram Kumar categorically deposed that from Special Cell, Bhiwani they had gone by three-wheeler to Bus Stand, Bhiwani and from there they had boarded the bus for going to the spot. While coming back from the spot they stopped a private jeep and boarded the same for Bhiwani. To the same effect is the statement of PW-8 ASI Dilbagh Singh. The statements are not at all inconsistent or contradictory on this point. They used the bus for coming to the spot. The recovery of the contraband was effected afterwards. There is no infirmity if the driver of the bus has not been joined as witness of this case. Likewise, non-joining of the driver of private jeep was also not at all material when on completion of investigation, the prosecution is said to have stopped a private jeep. Consequently, As such the above argument of learned counsel for the appellant is not sustainable.

It is also the argument of learned counsel for the appellant that the Investigating Officer is also the complainant of this case. As such for this very reason the investigations are tainted as he being interested person in the success of the case. This argument is again not sustainable and even not applicable on the facts and circumstances of the present case. In this case, SI Raj Kumar, Investigating Officer, along with police officials was present in front of BITS

College, Bamla on the Delhi-Bhiwani Road in connection with patrol duty. Appellant alighted from a private jeep carrying a bag in his hand. On seeing the police party, he turned back and started walking briskly whereupon a suspicion was raised and he was apprehended by the police and then after following due procedure, search of the bag, carried by the accused/appellant, was conducted whereupon 7 Kgs. Charas was recovered. Recovery was effected in the presence of DSP Ram Avtar. Under these circumstances, when the proceedings conducted by SI Ram Kumar were done in the supervision of DSP Ram Avtar, it cannot be said that SI Raj Kumar is the complainant of this case and also the Investigating Officer. In fact SI Raj Kumar apprehended the accused/appellant on the basis of suspicion and then on search of the bag contraband was recovered. Thus, this contention of learned counsel for the accused/appellant is devoid of any force.

It was next argued by learned counsel for the appellant that in fact Bharat Shah, Suganti Devi and Ram Singh are involved in the narcotic business. Bharat Shah and Suganti Devi have been supplying narcotic to Ram Singh resident of village Kalanaur. On 02.01.2009, information was received by the police that Charas has reached in Kalanaur. Bharat Shah and Suganti Devi were having illicit relations to which appellant and his friend Ashok objected. Bharat Shah continued with the illicit relations. After arrest of Bharat Shah, Suganti Devi and Ram Singh, the police made inquiries from those persons as to from where Charas was brought. Bharat Shah then told the police that in order to take revenge from him, he implicated him (appellant) and Ashok in this case. Police then managed to call him and Ashok through the wife of Ram Singh telephonically to Kalanaur telling that the mother of Ashok was arrested by the police. Under these circumstances, when they reached Kalanaur they

were apprehended by the police. In fact Bharat Shah and Suganti Devi brought 17 Kgs. of Charas to Kalanaur on 02.01.2009. Out of this contraband, 7 Kgs. of Charas was planted on the accused/appellant. In order to prove the same, accused/appellant examined DW-1 Jagdish Chander, Ahlmad of the Court of Additional Sessions Judge-III, Bhiwani who brought the summoned record and proved FIRs, Ex. DA to Ex. DC, registered against Suganti Devi, Ram Singh and Bharat Shah dated 12.01.2009. The registration of aforesaid FIRs do not go to show that the present case is false and against appellant. Rather it gives presumption that the present accused/appellant is having some connection with them and nothing beyond that. As such it cannot be said that the appellant was not arrested at the spot as per prosecution case but was arrested by calling him to the police station from his house. Thus, the defence propounded by the appellant is not probable.

Lastly, it was argued by learned counsel for the accused/appellant that in this case there is total non-compliance of provisions of Section 42 as well of Section 57 of the NDPS Act. In support of his contention he has cited *Kishan Chand vs. State of Haryana, 2013(2) SCC 502; Jarnail Singh vs. The State of Punjab, 2007(1) RCR (Criminal) 313 and Ritesh Chakarvarti vs. State of Madhya Pradesh, 2006(1) RCR (Criminal) 480*. The facts and circumstances of the aforesaid judgments are not applicable to the present case. The present case is not the one based upon secret information. Police party was present on patrol duty at the spot when accused/appellant alighted from the jeep at the spot with the bag in his hand. On seeing the police party he turned back and started walking briskly, whereupon, on the basis of suspicion he was apprehended and thereafter DSP was called as desired by the accused/appellant and then 7 Kgs. of Charas was recovered from his possession. Under these

circumstances, there was no point for the Investigating Officer to send separate information to the police. The Investigating Officer had, in fact, given the information about this case to his superior officer i.e. DSP who came at the spot and in whose presence the contraband was recovered. DSP Ram Avtar as PW-7 fully supported the prosecution story in all material particulars. He also categorically stated that he received report under Section 57 of the NDPS Act, Ex. PF, on the same day. He signed the same at point 'A' at Ex. PF. Thus, with this statement of DSP Ram Avtar PW-7, it cannot be said that there is non-compliance of aforesaid provisions of law.

Learned counsel for the appellant also raised point that there is delay in dispatch of sample to FSL for test as the sample was taken out on 12.01.2009 whereas it was sent to FSL on 15.01.2009. This delay in sending the sample is fatal for the prosecution case. This argument is again not sustainable as the requirement of sending sample to laboratory within 72 hours of its seizure is as per standing instructions issued by the Narcotic Control Bureau to the police officers. But these instructions do not vitiate the proceedings in case sample was produced before Judicial Magistrate even prior to 72 hours of its seizure. Still further, the investigation in this case have been conducted by the police. The instructions are for internal working of the NCB and not of police. Still further, this Court has examined the requirement of sending samples within 72 hours and found the argument unsustainable in a judgment rendered in CRA No.826-DB of 2009 titled '*Sucha Singh vs. State of Punjab*' decided on 06.07.2015. Still further, SI Raj Kumar PW-9 categorically stated that, on 13.01.2009, he took the parcels from MHC of the police station and produced along with appellant and application under Section 52-A of the NDPS Act, Ex.

PD and Ex. PD/1, before Illaqa Magistrate for certification of inventory. The Learned ACJM, Bhiwani certified the inventory, vide order Ex. PD/2. Photographs, Ex. P1 to Ex. P3, were taken on the direction of the ACJM, Bhiwani. Besides this, seals were found intact in the FSL, Madhuban. Thus from this, it is evident that contraband articles were kept in proper and safe custody. As such, delay in sending the sample, nowhere vitiates the trial.

While perusing the order of sentence, we found that the sentence of life imprisonment is not provided in Section 20 of the NDPS Act. We also find that the present is the only case lodged against him. Therefore, the appellant is sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1,00,000/- (Rupees One lac only) and in default of payment of fine, he would further undergo simple imprisonment for a period of 6 months. Benefit of Section 428 Cr.P.C. shall also be given to him.

For the aforesaid reasons, finding no merit in this appeal, while maintaining the impugned judgment of conviction dated 14.01.2010 but by modifying the the order of sentence dated 16.01.2010 as indicated above.

This appeal is, thus, dismissed accordingly.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

18.08.2015

Waseem