

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-1512-SB of 2004

Date of Decision : September 23, 2015

Jasbir Ram

....Appellant

VERSUS

State of Punjab

...Respondent

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

Present : Mr. B.S. Kathuria, Advocate
for the appellant.

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

The appellant was tried for committing an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), on the allegations that on 8.8.2001 at 6.45 p.m. in the area of village Moron, he was found in possession of 75 kgs. 750 gms. of poppy husk without any permit or license. Vide judgment and order dated 19.7.2004, learned Judge, Special Court, Jalandhar after holding him guilty, convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.one lac and in default of payment of fine, to further undergo rigorous imprisonment for one year. The period of detention already undergone by him during investigation and trial was ordered to be set off.

According to the prosecution, on 8.8.2001 at about 6.45 p.m., ASI Dilbagh Singh, alongwith some other police officials, was present on the drain bridge in the area of village Tooran. He received secret information that the appellant was indulging in the trade of poppy husk and even on that day he had concealed bags containing poppy husk in the bushes by the side of the katcha passage towards eastern side of the bridge of canal in the area of village Moron and while sitting there, waiting for a vehicle. In case a raid was conducted forthwith, he could be apprehended alongwith the poppy husk. On receiving this information ASI Dilbagh Singh, alongwith his party, proceeded towards the designated place. On the way, Balbir Chand resident of village Mandi, Police Station Phillaur was joined with the police party. When the raid was conducted, the appellant was found sitting on the bags of poppy husk. On seeing the police party, he tried to slip away but was apprehended. On being asked, he disclosed his whereabouts. In the meantime, Shri Ashok Bath, DSP, Halqa Phillaur was informed on wireless, who came there in official Gypsy. He introduced himself to the appellant and stated that he was a gazetted officer and he had a suspicion that the bags contained narcotic substance and whether he wanted to get the search of the bag conducted from him or in the presence of a Magistrate. The appellant replied that he had faith in him and he could conduct the search. Statement of the appellant was recorded who put his thumb-impression on the same. ASI Dilbagh Singh, while in the presence of the DSP on opening the bags noticed that they contained poppy husk. From each of the three bags, 250

grams of poppy husk was taken out as sample. The remainder was weighed and came to be 25 kgs. in each bag. The sample parcels and the three bags were duly sealed by ASI Dilbagh Singh with his seal bearing inscription 'DS' and the DSP with his seal bearing inscription 'AB'. Separate impressions of the seals were also prepared. ASI Dilbagh Singh handed over his seal after use to HC Karnail Singh, whereas the DSP retained his seal. As the appellant was found in possession of 75 kgs. 750 gms. of poppy husk, he was found to have committed the offence under Section 15 of the NDPS Act. Accordingly, ruqa Ex.PC was prepared by ASI Dilbagh Singh and sent through Constable Harbans Singh to Police Station Phillaur where on its basis FIR No.154 (Ex.PC/1) under Section 15 of the NDPS Act came to be registered against the appellant on 8.8.2001 at 7.30 p.m.

During the investigation of the case, rough site plan Ex.PD was prepared by ASI Dilbagh Singh. The sample parcels, alongwith seal impressions, were sent to the Chemical Examiner, who vide report Ex.PF opined that the samples were of poppy husk. Upon completion of investigation and presentation of challan, the appellant was charged for the aforementioned offence, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined six witnesses.

PW1 Ashok Bath, DSP testified that on receipt of wireless message from ASI Dilbagh Singh, he reached the spot where ASI

Dilbagh Singh and his party produced the appellant to whom he gave his identity. He then asked the appellant if he wanted his search from him or from a Magistrate. The appellant reposed confidence in him and in that regard consent memo Ex.PA was prepared. Then under his supervision, ASI Dilbagh Singh conducted the search of the three bags, which contained poppy husk. He deposed about the drawing of the samples and preparing of seal impressions.

PW2 Head Constable Kulwant Singh tendered in evidence his affidavit Ex.PC stating therein that so long as the samples and case property remained in his possession, they were not tampered with.

PW3 Head Constable Karnail Singh deposed that he was witness to recovery of the contraband from the appellant. He also supported the prosecution version.

PW4 Sarabjit Rai testified that on 8.8.2001, he was posted as Station House Officer, Police Station Phillaur. On that day, ASI Dilbagh Singh produced the case property and the appellant before him. He verified the investigation and handed over the same to ASI Dilbagh Singh.

PW5 ASI Dilbagh Singh testified that on 8.8.2001, he, alongwith the police party, was present at the drain bridge in the area of village Tooran in connection with naka, where he received secret information about the appellant indulging in the trade of poppy husk and at that time, sitting on the bags near the bank in the area of village Moron. Accordingly, he proceeded towards that place. On the way he

associated PW Balbir Chand. On reaching the spot, he found the appellant sitting on the bags but on seeing the police party, he tried to escape but was apprehended. He further reiterated the prosecution case regarding the arrival of DSP Avtar Bath and the search of the bags which led to recovery of 75 kgs. 750 gms. of poppy husk. He also proved the consent memo Ex.PA, recovery memo Ex.PB, ruqa Ex.PC, FIR Ex.PC/1, rough site plan Ex.PD, arrest memo Ex.PE and report of the Chemical Examiner Ex.PF.

PW6 Constable Bawa Singh tendered in evidence his affidavit Ex.PG stating therein that so long as the samples and case property remained in his possession, he did not tamper it nor allowed anyone to tamper with the same.

When examined under Section 313 Cr.P.C., the appellant denied the prosecution allegations and pleaded that he was innocent. However, in his defence, he did not examine any evidence.

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

This Court has heard learned counsel for the parties and scanned the evidence with their able assistance.

Primary objection of learned counsel for the appellant is that the prosecution has examined only official witnesses in support of its case. Balbir Chand, who was an independent witness and shown to be

present at the time of recovery of the contraband from the appellant, has not been examined.

It is true that after receiving the secret information, ASI Dilbagh Singh, while proceeding towards the designated place had associated Balbir Chand, an independent witness with him and subsequent to reaching the spot and at the time of recovery of the contraband said Balbir Chand was present there. The consent memo Ex.PA, recovery memo. Ex.PB and information regarding arrest Ex.PE were duly signed by said Balbir Chand. While presenting the final report under Section 173 Cr.P.C., Balbir Chand was also cited as a prosecution witness. However, learned Additional Public Prosecutor gave him up as having been won over by the appellant. Under these circumstances, no benefit on account of non-production of Balbir Chand, independent witness before the trial Court can be extended to the appellant. Even otherwise, private witnesses usually do not come forward to support the case of the prosecution fearing that in case he deposed against the offender, he might invite trouble for himself. Therefore, instead of supporting the prosecution case, they find it appropriate to join hands with the offenders. Even otherwise, merely because the independent witness had not been produced before the trial Court is no ground to reject the prosecution case, especially when the Court finds that the prosecution evidence is trustworthy. All the prosecution witnesses have consistently deposed with regard to the time, manner and place of the recovery of contraband from the appellant.

It is also submitted by learned counsel for the appellant that

the provisions of Section 50 of the NDPS Act have not been strictly complied by the prosecution inasmuch as that only partial offer was made to the appellant regarding his search from a Magistrate, whereas no offer was given to him that such search could be conducted in the presence of a gazetted officer. However, it may be noticed that after the appellant was apprehended, Shri Avtar Bath, DSP, Phillaur had reached the spot and after introducing himself to the appellant, he told him that he was a gazetted officer and suspected him to be carrying some contraband and whether he wanted his search to be conducted from him or a Magistrate. The appellant, while reposing confidence in the DSP opted for his search in his presence. Being a gazetted officer himself, Shri Avtar Bath, DSP first gave the offer to the appellant for his search before him or in the presence of a Magistrate. Apparently, the offer made by Shri Avtar Bath, DSP was in conformity with the provisions of Section 50 of the NDPS Act. Even otherwise, the provisions of Section 50 of the NDPS Act are not applicable to the facts and circumstances as the recovery of the contraband was effected from the bags lying at the spot and not from the person of the appellant.

Learned counsel for the appellant further submits that as ASI Dilbagh Singh had received secret information to the effect that the appellant was indulging in the trade of poppy husk while sitting in the area of village Moron, he was required to send information in writing to the senior officers as envisaged by Section 42 of the NDPS Act. The fact remains that no such intimation was sent and, thus, there was non-compliance of provisions of Section 42 of the NDPS Act.

Section 42 of the NDPS Act comes into play in case the search is required to be conducted on buildings. However, where raid is confined at a public place and not in any building or dwelling house, there is no such requirement of sending of intimation in writing to the senior officers. Even otherwise after effecting the recovery, ASI Dilbagh Singh had prepared ruqa Ex.PC at the spot and sent it through Constable Harbans Singh to the Police Station, where on its basis FIR No.154 dated 8.8.2001 came to be registered. In the police proceedings, as mentioned towards the end of the FIR it was clearly stated that special report had been prepared and being sent through Constable Bawa Singh to the Ilaqa Magistrate at Phillaur and other senior officers. There was, thus, sufficient compliance of the provisions of Section 42 of the NDPS Act.

Learned counsel for the appellant lastly argued that the prosecution failed to prove the conscious possession of the appellant. He also submitted that the recovery was said to have been effected from a place within the revenue estate of village Moron, whereas the appellant belonged to village Mandi and the police did not make any investigation as to how three bags of poppy husk were transported by the appellant to the place of recovery. In this regard he has relied upon the judgment of the Hon'ble Supreme Court in State of Punjab Vs. Balkar Singh, AIR 2004 SC 4606.

It is the case of the prosecution that ASI Dilbagh Singh had received secret information about the appellant waiting for some transport after concealing bags of poppy husk in the bushes near the canal. When the police party reached the spot, the appellant tried to run

away but was apprehended. It was followed by recovery of three bags which contained poppy husk, in all 75 kgs. 750 gms. As he was found sitting on the bags, he was presumed to be in possession of the contents thereof. At the relevant time, he was waiting for some transportation. Meaning thereby that he was to take contraband to some other place. He was, thus, in possession of commercial quantity of poppy husk at the time of his apprehension. The judgment in the case of Balkar Singh (supra) is not strictly applicable to the facts and circumstances of the present case. In the said case there was no secret information with the raiding party. Rather, the raiding party was doing patrol duty and when it reached at a place which was one kilometer away from the bridge across Ghaghar river they found cluster of bags kept in fields and the offender therein sitting on them. On the other hand, in the present case there was secret information with ASI Dilbagh Singh that the appellant was sitting on the bags containing poppy husk and was waiting for some transportation.

In view of the above, no fault can be found with the impugned judgment of conviction and sentence passed by the trial Court.

The appeal is without any merit and, accordingly, dismissed.

September 23, 2015
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(T.P.S. MANN)
JUDGE