

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

**CRA NO. S-155-SB OF 2004(O&M)
DECIDED ON : 28.01.2015**

Labh Singh @ Labha

...Appellant

versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

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

Mr. Yogesh Gupta, AAG, Punjab.

K. C. PURI, J. (ORAL)

The appellant has directed the present appeal against the judgment of conviction and order of sentence dated 09.11.2002 passed by Shri V. P. Soni, Special Judge, Sangrur, vide which the accused/appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (in short "the Act") and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1000/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.

The prosecution story in brief is that on 05.01.1998, ASI Balbir Singh along with his fellow officials was on patrolling

duty near canal minor in the area of village Bhatiwala Kalan. The accused was seen coming on scooter with a bag on it. On the basis of suspicion, he was apprehended. ASI Balbir Singh told the accused that his bag is required to be searched and if desired, the search can be conducted in the presence of a Gazetted Officer or a Magistrate. The accused opted to be searched in the presence of a Gazetted Officer. Accordingly, his consent statement was recorded which was thumb marked by C. Jatinder Mohan. DSP Rajbachan Singh was called to reach the spot. Accordingly, DSP reached the spot and disclosed his identity to the accused. Accused opted to get himself searched by the DSP. Accordingly, memo was prepared. The bag was searched and poppy husk was recovered from there. Out of it, two samples of 250 gm each were separated and the remaining poppy husk was put in the same bag. The remainder was also weighed and found to be 18 kgs. The samples and remainder were sealed in separate parcels and sealed with seal bearing impression 'BS'. Sample seal was also prepared. The seal after use was handed over to the NC Paramjit Singh. The entire case property along with scooter bearing registration No. CH01-A-1045 were taken into police possession. From the personal search of accused, ₹230/- were recovered which were taken into possession vide separate memo. Ruqa was sent to the police station on the basis of which, formal FIR was recorded. The accused was arrested. Statements of witnesses were recorded. After completion of

necessary investigation challan against the accused was presented in the Court.

Copies of the documents as envisaged under Section 207 Cr.P.C, were supplied to the accused free of costs.

On finding a prima facie case made out against the accused, charge under Section 15 of the Act was framed against the accused, to which, he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined SI/SHO Rajwinder Singh as PW-1, HC Pritpal Singh as PW-2, HC Paramjit Singh as PW-3, C. Lakhbir Singh as PW-4, ASI Balbir Singh as PW-5, DSP Rajbachan Singh as PW-6 and closed the prosecution evidence.

Thereafter the statement of accused under Section 313 Cr.P.C was recorded wherein all the incriminating evidence was put to him to which he denied and pleaded false implication.

The accused was called upon to lead defence evidence and he examined Sher Singh as DW-1, C. Balwinder Singh as DW-2 and closed the defence evidence.

The learned trial Court, after appraisal of the evidence, convicted the accused and sentenced him to undergo rigorous imprisonment and fine, as narrated above.

Feeling dissatisfied with the aforesaid judgment of conviction and order of sentence dated 09.11.2002, the present appeal has been directed.

I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

Learned counsel for appellant has submitted that although according to prosecution story, DSP was present but he has not put his seal on the case property as well as sample memo. In fact the DSP was not present but his signatures were taken later on.

The argument advanced by learned counsel for the appellant looks attractive but is without any force.

The consent memo, recovery memo, personal search memo have been attested by the DSP and as such, the presence of DSP cannot be doubted.

Learned counsel for the appellant has further submitted that according to prosecution story, the police party was on private vehicle but no particulars of that vehicle have been given . So, the prosecution story is doubtful.

I have carefully considered the said submission but do not find any force in the same.

Mere fact that the prosecution witnesses could not disclose about the details of vehicle in which they were patrolling is not a ground to discard the prosecution story.

Learned counsel for the appellant has submitted that Form No. 29 was not prepared at the spot and as such, the prosecution story is doubtful.

I have considered the said submission but do not find any force in the same.

The Investigating Officer has not been specifically cross-examined on this point and as such, the appellant cannot draw benefit of the aforesaid contention.

Learned counsel for the appellant has further submitted that there is delay in sending the sample and no independent witness was examined. So, prosecution story is doubtful.

I have carefully considered the said submissions and do not find any force in the same.

Learned counsel for the appellant could not point out any evidence on file from which it can be concluded that sample has been tampered with at any stage of trial. The joining of independent witness is not rule of law but rule of precaution. The court sometimes insist on independent corroboration when the prosecution story is somewhere doubtful. In the present case, no reason has been given by the accused for falsely implicating him. There was no animosity on the part of any of the independent witness. It is the case of chance recovery. The prosecution has proved the guilt of accused beyond the reasonable doubt.

Learned counsel for the appellant has submitted that in the body writing of consent memo Exhibit P-3, it is mentioned that accused has thumb marked whereas the thumb marks are at the end of the writing. The said fact creates dent in the

prosecution story.

I have carefully considered the said submission but do not find any force in the same.

The consent memo bears the thumb impressions and mere fact that in the consent memo it is mentioned that same is thumb marked by the accused does not create any doubt in the prosecution story.

Learned counsel for the appellant has further submitted that there is non-compliance of Sections 52, 52-A and 57 of the Act. Although these are not mandatory but their non-compliance creates doubt in the prosecution story.

I have considered the said submissions but do not find any force in the same.

Section 52-A of the Act came into existence by amendment in the year 2001 which came into force with effect from 02.10.2001 whereas the recovery is prior to the amendment in the Act. So, Section 52-A was not in existence when the recovery was effected from the accused. Otherwise also, learned counsel for the appellant has failed to point out how the case of appellant is prejudiced by non-compliance of Section 57 of the Act.

It cannot be said that there is non-compliance of Section 52 of the Act as the accused has been produced before the Magistrate. Mere fact that DSP has signed the sample seal in a different ink does not create dent in the prosecution story.

The argument advanced by learned counsel for the appellant to the extent that the sample seal was not prepared at the spot, is diluted by itself when he argues that the sample seal was signed by the DSP. So, the sample seal was prepared at the spot.

Learned counsel for the appellant has further submitted that the prosecution story regarding weighment is doubtful as according to the prosecution story, the weighment was done with spring balance. The prosecution witnesses have stated that the poppy husk was separated. So, weighment of separated poppy husk cannot be done with the help of spring balance weight.

I have carefully considered the said submission but do not find any force in the same also.

The witnesses were not cross-examined on this point that how the weighment was done. The weighment may have been done along with bag after reputed the contraband in the bag.

Learned counsel for the appellant has further submitted that as per the affidavit of MHC Pritpal Singh Exhibit P-A, two samples of 250 gms each were handed over to Lakhbir Singh but the report of chemical examiner is in respect of one sample only. So, this creates doubt in the prosecution story.

I have considered the said submission but do not find any force in the same.

In fact the prosecution story is that two samples of 250 gms each were drawn which were deposited with MHC Pritpal Singh and out of which one sample was sent for chemical analysis through C.Lakhbir Singh. This fact is clear from para no.4 of Exhibit P-A i.e affidavit of C. Lakhbir Singh. Ex.P-A has to be read in whole and not in consonance. No other point has been urged before me.

In view of the above detailed discussion, the appeal is without any merit and the same stands dismissed. The accused be taken into custody to undergo the remaining part of sentence.

The appeal stands disposed of accordingly.

A copy of the order be sent to the trial court for strict compliance.

JANUARY 28, 2015
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(K. C. PURI)
JUDGE