

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

CRA-S-1566-SB-2004
Date of decision: 27.08.2015

Hardev Singh

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Vivek Goyal, Advocate for the appellant.

Mr. Ashok Muthreja, D.A.G., Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 20.07.2004, passed by the learned Judge, Special Court, Kurukshetra, vide which accused-appellant Hardev Singh has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after called the 'Act') and the order on quantum of sentence of the even dated, vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.5000/-

and in default of payment of fine, to further undergo rigorous imprisonment for two months.

2- As per the prosecution case, on 11.02.2002 PW8 ASI Naresh Kumar, the Investigating Officer of the case, along with other police officials was present near Bus Stand Tukar on patrol duty. On the basis of a secret information received by the Investigating Officer that accused-appellant Hardev Singh is coming from Punjab for selling poppy husk in the nearby village, they held a picket near the Bus Stand. After 20-25 minutes, they saw that the accused-appellant was coming from the side of Punjab. He was apprehended. The Investigating Officer serviced notice under Section 50 Ex.PG upon the accused. Vide his reply Ex.PG/1, the accused-appellant opted to be searched before a Gazetted Officer. The Investigating Officer produced the accused and witnesses before PW5 Rajbir Singh Dhiman, Tehsildar, Pehowa in his office and in the presence of the Tehsildar, the plastic bag carried by the accused was checked. It was found containing poppy husk. 250 grams of poppy husk was taken out as sample and the residue came to be 1 kilogram. The sample as well as residue were sealed in separate parcels with the seals bearing impression 'NK' and 'RD' and all these articles were taken into possession vide recovery memo Ex.PE. The seal of the Investigating Officer, after use was handed over to HC Amar Nath, whereas the Tehsildar retained his seal with him. The accused was arrested vide arrest memo Ex.PH. Ruqqa Ex.PC was sent to the police station. On the basis of which, formal FIR Ex.PC/1 was registered. The Investigating

Officer prepared the site plan of the place of recovery Ex.PK.

3- Thereafter, the Investigating Officer proceeded for the Police Station and on the way, they met Niranjana Singh, SI/SHO Police Station Pehowa at Pehowa Chowk. He produced the accused along with the case property and the witnesses before the SHO, who put his seal bearing impression 'NS' on the parcels of the case property. The Investigating Officer also submitted the report Ex.PF under Section 57 of the Act before SHO Niranjana Singh, upon which he made his endorsement Ex.PD and the said report was forwarded to Shri Charanjit Singh, D.S.P. Pehowa, who made his endorsement Ex.PD/1. Thereafter, the case property was deposited with the Moharir Head Constable. The sample was sent to the Forensic Science Laboratory, Haryana, Madhuban for examination. After completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (here-in-after called 'Cr.P.C.') was presented in the Court.

4- The accused appellant was charge sheeted for the offence punishable under Section 15 of the Act vide order dated 30.05.2002 by the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

5- In order to substantiate its case, prosecution examined as many as eight witnesses.

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded innocence and false implication at the instance of Harphool Singh, son of Des Raj, resident of village Behru, with whom he

had dispute over a Bara. He stated that he along with one Ram Kumar was forcibly taken from their villages and later on falsely involved in this case.

7- In the defence evidence, accused tendered certified copy of statement of Rajbir Singh Dhiman Tehsildar as Ex.DC, certified copy of statement of ASI Roshan Lal as Ex.DD and certified copy of statement of Basau Ram as Ex.DE. Thereafter, the defence evidence was closed.

8- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused appellant was held guilty and convicted for the offence punishable under Section 15 of the Act and was awarded the sentence as mentioned in the upper part of the judgment.

9- Aggrieved with the aforesaid judgment of conviction and order of sentence the present appeal has been preferred.

10- I have heard Mr. Vivek Goyal, Advocate, learned counsel for the appellant, Mr. Ashok Muthreja, learned Deputy Advocate General for the State of Haryana and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the accused-appellant contended that it is a case of false implication. The accused is alleged to have been apprehended on the basis of secret information, the search and seizure is alleged to have been conducted in the office of the Tehsildar, Pehowa but even then no independent witness has been associated. He further contended that even this fact is not established that

the accused-appellant was in fact produced before PW5 Rajbir Singh Dhiman, Tehsildar due to the contradiction in his statement recorded in this case as well as in case FIR No.37 dated 11.02.2002 certified copy Ex.DC. He further contended that entire proceedings have been fabricated because even on the notice under Section 50 of the Act and the reply thereof, the full particulars of the case have been mentioned.

12- On the other hand, learned State counsel pleaded that from the statements of PW7 HC Amar Nath and PW8 ASI Naresh Kumar, the Investigating Officer of the case, it is established that the accused-appellant was apprehended on the basis of secret information. The statement of PW5 Rajbir Singh Dhiman, Tehsildar shows that search and seizure was conducted in his presence, which led to the recovery of 1 kilogram 250 grams poppy straw. The case of the prosecution is further corroborated from the testimony of PW6 SI Niranjan Singh, the then SHO Police Station Pehowa. Thus, he pleaded that there is no infirmity in the conviction of the appellant recorded by the learned trial Court.

13- I have duly considered the aforesaid contentions.

14- It is admitted case of the prosecution that the recovery is alleged to have been effected on receiving the secret information. PW8 ASI Naresh Kumar, the Investigating Officer, has stated that after receiving the secret information he started holding Naka near Bus Stand Tukar. After 20-25 minutes, the accused came from the side of Punjab, so the Nakabandi was being held near the public place i.e. Bus Stand Tukar. The accused is alleged to have been apprehended in the day time at 3:00

P.M. Thereafter, the accused is alleged to have been taken to the office of PW5 Rajbir Singh Dhiman, Tehsildar for conducting the search and seizure in his presence. PW5 Rajbir Singh Dhiman, Tehsildar stated that his office is situated in Judicial Complex at Pehowa. D.S.P. Office is also there. So, that was also a public place. The presence of public men at such public places could not be disputed but no independent witness has been associated in the instant case by the Investigating Officer during investigation. PW8 ASI Naresh Kumar has stated that he requested one person to join the investigation but he refused to become the witness. He had not initiated any proceedings against them. This witness has categorically admitted the presence of the public men at Bus Stand Tukar and Tehsil Complex Pehowa. PW7 HC Amar Nath, the witness of recovery, has also deposed that people were present there in large number. They requested to many persons but they refused to join the investigation. So, in these circumstances when number of independent persons were available to the Investigating Officer but none of them had been associated in the investigation, the Court is required to scrutinize the prosecution evidence minutely.

15- As per the basic story of the prosecution, the search and seizure was conducted in the office of PW5 Rajbir Singh Dhiman, Tehsildar, Pehowa. PW5 Rajbir Singh Dhiman has admitted in the cross-examination that he had appeared as a witness in case State Vs. Ram Kumar under Section 15 of the Act, P.S. Pehowa and had deposed in that case that on 11.02.2002 accused Ram Kumar was produced before him.

He further admitted that he had stated on 02.09.2002 in case State Vs. Ram Kumar that no other person except Ram Kumar resident of Pehowa was produced before him on 11.2.2002. In the defence evidence, accused has brought on record the certified copy of the statement this witness recorded in case State Vs. Ram Kumar, which is Ex.DC. In this statement he has stated that said accused was produced before him in his office at 04:30 P.M. by the Investigating Officer. The search was conducted at 04:40 P.M. and the police party remained with him till 5:30 P.M. and, thereafter left his office. So, as per statement Ex.DC ASI Roshan Lal along with accused Ram Kumar of case FIR No.37 dated 11.2.2002 under Section 15 of the Act was present in the office of PW5 Rajbir Singh Dhiman the then Tehsildar, Pehowa on 11.02.2002 from 04:30 P.M. to 05:30 P.M. In the instant case also, PW5 Rajbir Singh Dhiman, Tehsildar has stated that the present appellant was produced before him at 04:00 P.M. on 11.02.2002. The accused as well as police party remained with him till 05:00 P.M. and he further stated that no other person except accused was produced before him in between 04:00 PM and 05:00 P.M. on that day. So, the statements given by PW5 Rajbir Singh Dhiman, Tehsildar in both the cases are highly contradictory.

16- PW7 HC Amar Nath, the recovery witness has stated in the cross-examination that they reached Tehsil Office at 04:00 P.M. and left the Tehsil Office at 05:15 P.M. He further deposed that no other person namely Ram Kumar was produced by Pehowa police before the Tehsildar till they remained there i.e. from 04:00 P.M. to 05:00 P.M.

PW8 ASI Naresh Kumar the Investigating Officer stated that ASI Roshan Lal, HC Bassau Ram and Constable Mool Chand were also posted in Police Station Pehowa on 11.02.2002. He further deposed that he had not met ASI Roshan Lal, HC Bassau Ram and Constable Mool Chand on that day. He further categorically stated that they left Tehsildar's office at 5:00 P.M. Ram Kumar accused in case FIR No.37 of Police Station Pehowa was not produced by the police of Police Station, Pehowa in his presence before the Tehsildar from 04:00 P.M. to 05:00 P.M. The version of these witnesses is contrary to the statement of PW5 Rajbir Singh Dhiman recorded in this case as well as the statement Ex.DC recorded in case FIR No.37 dated 11.2.2002 under Section 15 of the Act. In view of these material contradictions even the search and seizure of the contraband from the possession of the appellant in the presence of PW5 Rajbir Singh Dhiman, the then Tehsildar Pehowa, is rendered extremely doubtful and this version of the prosecution does not inspire any confidence.

17- The proceedings of the case have also not been conducted in the manner as projected by the prosecution. It is the admitted case of the prosecution that notice under Section 50 of the Act Ex.PG was served upon the accused even before the registration of the case and the recovery of the contraband. But in the notice Ex.PG the complete particulars of the case i.e. the FIR number, date of offence, under Section 15 of the Act and the case through ASI Naresh Kumar, Police Station, Pehowa are categorically mentioned. Even before taking the search of the appellant how the Investigating Officer was sure about

the nature of the contraband in his possession. Thus, the particulars mentioned in the notice Ex.PG shows that the proceedings have been fabricated later on just to complete the paper formality which also renders the prosecution case doubtful.

18- Thus, keeping in view my aforesaid discussion and the totality of the circumstances narrated above, the prosecution has not been able to establish its case beyond shadow of reasonable doubt. Consequently, the conviction of the appellant as recorded by the learned trial Court and the sentence awarded to him cannot be sustained in the eyes of law.

19- Resultantly, the present appeal is hereby allowed. The conviction and sentence of appellant is hereby set aside. As a result of the benefit of doubt, the accused-appellant stands acquitted of the charges. The amount of fine deposited by him with the trial Court be refunded to him as per rules.

Dated: 27.08.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**