

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

CRA-S-1614-SB-2004

Date of decision: 10.12.2015

Rajpal

..... 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. Angel Sharma, Advocate for appellant.

Mr. Ashok Muthreja, Deputy Advocate General
for the State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 19.07.2004, passed by learned Judge, Special Court, Panchkula, vide which accused-appellant Rajpal has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and the order on the quantum of sentence of dated 21.04.2004, vide which the accused-appellant has been sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/-, in default of payment of fine to further undergo rigorous imprisonment for a

period of 06 months.

2- In nutshell, the allegations of the prosecution are that on 30.11.2002, ASI Mange Ram (the Investigating Officer of the case) along with other police officials, on receiving the secret information, proceeded towards Ramgarh Dhaba for conducting the raid. In the way, Telu Deen, Ex. Sarpanch resident of Tehna Distt. Panchkula met them and he was also joined in the raiding party. Meanwhile, the accused-appellant was seen coming from the side of Ramgarh road on foot carrying a bag (katta) on his shoulder. He was apprehended by the police officials. The Investigating Officer apprised the accused-appellant of his right to get his search conducted in the presence of any magistrate or a gazetted officer by serving the notice under Section 50 of the Act Ex.PC. The accused-appellant opted for his search to be conducted in the presence of a Magistrate. Ashwani Kumar Sharma, Tehsildar-cum-Executive Magistrate, Panchkula was informed through Constable Surinder Kumar and he reached at the spot. The contents of the bag were checked in the presence of Ashwani Kumar Sharma, Tehsildar-cum-Executive Magistrate and the witnesses, which led to the recovery of 30 kilograms of poppy husk. Two samples of 01 kilograms each were separated from the bulk. Separate sealed parcels of the sample parcels and residue were prepared and were sealed with the seals bearing impressions 'MS' and 'JS'. The seals were handed over to independent witness Telu Deen after use. The contraband was taken into possession vide memo Ex.PA. Investigating Officer sent the ruqqa Ex.PG, on the basis of which formal

FIR Ex.PG/1 was registered. The accused-appellant was arrested.

3- On return to the police station, the accused-appellant along with the case property and the witnesses were produced before SI Virender Kumar, SHO Police Station-Chandimandir, who verified the case property and put his seal 'VD' on all the three parcels. The case property in intact condition was deposited with the Mohrir Head Constable. The sample parcel was sent to the Forensic Science Laboratory, Madhuban for examination. On receipt of the report of the FSL Ex.PF and on completion of formalities of investigation, report under Section 173 of Code of Criminal Procedure, 1973 (hereinafter referred to as '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 13.03.2003, to which he pleaded not guilty and claimed trial.

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

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded that he is innocent. No recovery was effected from him. The alleged place of occurrence has been manipulated by the police. The alleged contraband was already lying in the police station and planted upon him, as there were other NDPS cases registered in the police station on that day and recovery of some other accused has been planted upon him.

7- Accused-appellant did not lead any defence evidence.

8- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused-appellant was held guilty 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. Angel Sharma, Advocate, learned counsel for 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 appellant contended that the recovery is alleged to have been effected on the basis of the secret information but the Investigating Officer has not reduced into writing the secret information nor the same was sent to any superior police officer, so the mandatory provision of Section 42 of the Act have been violated.

12- He further contended that as per the statement of PW3 Telu Deen, he returned the seal to the Investigating Officer on the next day, whereas the sample parcel has been sent to the FSL after 17 days of the recovery. So, the seal was available to the Investigating Officer and tampering with of the sample parcel cannot be ruled out. There is also 17 day's delay in sending the sample to the FSL, which is also fatal to the prosecution case.

13- He further contended that the seals on the case property

were not legible and were in broken condition. Thus, the case property produced during the trial is not connected with the case in hand.

14- He further contended that there are some discrepancies in the statements of the prosecution witnesses, which further rendered the prosecution case doubtful.

15- He further contended that the accused-appellant is a poor person. He is having no criminal background and was not involved in any other case. He is facing the agony of these proceedings for the last about 13 years. He has already undergone the actual sentence for about 07 months, which should be considered sufficient in view of the nature of the offence.

16- On the other hand, learned State counsel contended that 30 kilograms poppy husk has been recovered from the possession of the appellant. He contended that the provision of Section 42 of the Act were not applicable in this case as the recovery was not effected from any conveyance, building or enclosure. Moreover, there was no definite secret information available to the Investigating Officer. He further contended that even then the Investigating Officer has sent the written information Ex.PB to the Executive Magistrate, Panchkula. He further contended that from the statements of PW2 Ashwani Kumar the then Tehsildar-cum-Executive Magistrate, Panchukula, PW3 Telu Deen, an independent witness and PW6 ASI Mange Ram, the Investigating Officer of the case, it is established that 30 kilograms poppy husk was recovered from the possession of the appellant. The chain of the link evidence is also

complete. Thus, he pleaded that there is no infirmity in the conviction of the appellants and the sentence awarded to him is also just and appropriate.

17- I have duly considered the aforesaid contentions.

18- As per the prosecution case, on 30.11.2002 ASI Mange Ram, the Investigating Officer of the case along with other police employees was present at Ramgarh Naka Road, when he received a secret information that the appellant indulges in selling the poppy husk and he was coming on that day carrying a plastic bag containing poppy husk and has alighted from a truck near the Dhabas of Ramgarh. If a search is made, the accused can be apprehended along with poppy husk. The secret information received by ASI Mange Ram, the Investigating Officer of the case, was not accurate and definite. He has simply received the secret information that appellant indulges in selling the poppy husk and on that day he had alighted from a truck having a plastic bag containing poppy husk near the Dhabas in Ramgarh and if a search is conducted, he can be apprehended. It was not disclosed in the secret information as to at what exact point of time he has alighted from the truck and at what place he can be apprehended. Such indefinite and vague secret information does not fall within the purview of Section 42 of the Act. To support this view reference can be made to case ***Piar Kaur Vs. State of Punjab, 2009 (3) RCR (Criminal) page 403***. Moreover, in the secret information it was not disclosed that the contraband was kept or concealed in any building conveyance or enclosed place. Rather it was disclosed that appellant

having the poppy husk in a plastic bag had alighted from a truck and if a search is conducted by going towards the Dhabas of Ramnagar, he can be apprehended. Even the recovery has been effected from the bag on apprehension of the appellant when he was going on foot at the vacant place near the public road i.e. a public place. Thus, there is no question of the applicability of Section 42 of the Act. To support this view reference can be made to the authoritative pronouncements of Hon'ble Apex Court in cases *State of Punjab Vs. Baldev Singh 1999 (3) RCR (Criminal) 533*, *State of Haryana Vs. Jarnail Singh and others 2004(2) RCR (Criminal) 960*, *State (NCT of Delhi) Vs. Malvinder Singh 2007 (3) RCR (Criminal) 602* and *K. Chithhayan Vs. State of Tamil Nadu, 2008(3) RCR (Criminal) 195*.

19- Moreover, in the instant case the Investigating Officer has sent the information under Section 42/43 of the Act Ex.PB to the Executive Magistrate-cum-Tehsildar, Panchkula, who had reached at the spot. The Investigating Officer has also sent the ruqqa Ex.PG to the Police Station, wherein the entire substance of secret information was incorporated on the basis of which the FIR Ex.PG/1 was registered. The copy of the FIR was transmitted to the superior police officers. The same was also received by the Judicial Magistrate on 30.11.2002 itself at 10:15 P.M. i.e. within four hours of the recovery. The Investigating Officer was also on move at the time of receiving the secret information and was not present in the Police Station. So, the plea raised by learned counsel for the appellant with respect to the violation of provision of Section 42

carries no substance.

20- No doubt as per the statement of PW3 Telu Deen he had returned the seal to the Investigating Officer on the next day. But the case property was already deposited on 30.11.2002 itself with PW1 Head Constable Ramesh Kumar, the MHC Police Station - Chandi Mandir. HC Ramesh Kumar while appearing in the witness box has categorically deposed that the parcels of the case property were deposited with him on 30.11.2002 by SI/SHO Varendra Kumar and Mange Ram ASI, which were sealed with seal bearing impression 'MR', 'JS' and 'VD' and on 17.12.2002, he handed over one sealed parcel to Constable Ram Kumar for taking to FSL, Madhuban for chemical examination. This witness has categorically stated that during the time the parcel remained with him, he did not tamper with the same nor allowed anybody to tamper with the same. Constable Ram Kumar has also stepped into the witness box as PW4. He also deposed that till the parcels remained with him, he did not tamper with same nor allowed anybody to do the same. The report of the FSL Ex.PF shows that the sample parcel was duly sealed with the seal bearing impression 'MR', 'VD' and 'JS'. It is further mentioned that the seals were intact and tallied with the specimen seals as per the forwarding authority. So, from the aforesaid evidence, it is established that the sample parcel was not tampered with at any point of time and remained intact till it reached the hands of the Chemical Examiner. Mere this fact that the sample has been dispatched to the FSL with a delay of 17 days is also no ground to infer that the sample parcel was tampered with. The

evidence adduced by the prosecution as discussed above, established that the sample parcel remained intact and were not proved to be tampered with at any point of time. So, mere delay of 17 days in sending the sample parcel to the FSL has not resulted in any prejudice to the accused. Hence, it is not fatal to the prosecution case. To support this view reference can be made to cases ***Mohan Singh Vs. State of Punjab 2007(4) RCR (Criminal) 705***, ***State of Orissa Vs. Kanduri Sahoo 2004(1) RCR (Criminal) 196 (SC)*** and ***Baggar Singh alias Gaggi Vs. State of Haryana 2009(4) RCR (Criminal) 183***.

21- The recovery in this case was effected on 30.11.2002. The statement of the Investigating Officer has been recorded on 26.04.2004. During the course of his statement, the case property has been produced in the Court. So, the case property has been produced in the Court after about two and a half year of the recovery. It is a fact of common knowledge that there is no proper place for storage of the case property in the Malkhanas and due to this reason the seals on the bags can break and the case chit can also be removed due to moisture etc. The case property has also to be presented to Court. So, in that process the seals may break. Moreover, the case property is only a corroborative evidence, when the substantive evidence adduced by the prosecution is cogent, convincing and reliable to establish the recovery of the contraband, even the non-production of the case property will be no ground to reject the prosecution case. Thus, the fact that seals affixed on parcels of the case property were not legible and broken, is also no

ground to discard the prosecution version.

22- PW7 ASI Mange Ram, the Investigating Officer of the case and PW3 Telu Deen, the independent witness of recovery, have consistently deposed about the manner in which the accused-appellant was apprehended. Thereafter, on receiving the message from the Investigating Officer, PW2 Ashwani Kumar, Tehsildar-cum-Executive Magistrate, Panchkula has reached at the spot in whose supervision, the search and seizure was conducted which led to the recovery of 30 kilograms poppy husk from the possession of present appellant stored in a plastic bag. The case of the prosecution is also corroborated from the testimony of PW5, SI Varender Kumar, the then SHO Police Station-Chandimandir, before whom the case property along with accused was produced immediately after the recovery. Learned counsel for the appellant has not been able to point out any material discrepancy in their testimonies. The statement of all these four witnesses are consistent, cogent and reliable, which are sufficient to establish beyond shadow of reasonable doubt that accused-appellant was found in conscious possession of 30 kilograms of the poppy husk. Thus, I do not find any legal infirmity in the conviction of the appellant recorded by the learned trial court.

23- However, I find substance in the contentions raised by learned counsel for the appellant for reduction in the quantum of sentence. The learned trial Court has recorded the statement of the appellant on 21.07.2004 on the quantum of sentence, which shows that he

has old mother to look after. His father has already expired. He is the only bread earner in his family. The appellant is also facing the agony of this litigation for the last more than 12 years. During this period he has not indulged in any such criminal activity. The custody certificate placed on record by the learned State counsel shows that he has already undergone 06 months and 25 days out of the sentence of three years awarded by the learned trial Court. There is also no material on record to show that appellant is a previous convict. Thus, keeping in view the antecedents of the convict, the facts and circumstances of the case even the reduction of the sentence will suffice the ends of the justice.

24- Thus, keeping in view my aforesaid discussion, I do not find any legal infirmity and impropriety in the conviction of the appellant recorded by the learned trial Court and the same is hereby affirmed. However, the sentence awarded to the appellant by the learned trial Court is hereby modified. The appellant is sentenced to undergo rigorous imprisonment for a period of two years. The penalty of the fine will remain the same. The amount of fine has already been paid by the appellant, as mentioned in the impugned order of sentence and the order of suspension of sentence dated 21.07.2004, passed by the learned trial Court.

25- With this modification in the matter of sentence, the present appeal having no merits is hereby dismissed.

Dated: 10.12.2015
sunil yadav

(DARSHAN SINGH)
JUDGE