

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

Criminal Appeal No.S-235-SB of 2004

Date of Decision : March 11, 2015

Dilbagh Singh

.....Appellant

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. Vikas Mohan Gupta, Advocate and
Ms. Sonal Dutta, Advocate
for the appellants.

Mr. Vikram Bishnoi, Assistant A.G., Punjab.

T.P.S. MANN, J.

This appeal has been directed against the judgment and order dated 17.12.2003 passed by the Judge, Special Court, Hoshiarpur, whereby the appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/-. In default of payment of fine, he was ordered to undergo rigorous imprisonment for one year. The period already undergone by him during investigation, inquiry and trial was ordered to be set off against the substantive term of imprisonment.

The case of the prosecution, in nutshell, is that on 20.6.2002, SI Paramjit Singh, alongwith fellow police officials, was proceeding in an official vehicle in connection with patrolling towards Sarhala Kalan and Rupowal. When the police party reached near the Choe of Rupowal, it noticed that one person was sitting in the elephant-grass and was carrying scales and weights, besides four

bags containing some narcotic substance. One scooter was parked nearby. On seeing the police party, that person tried to slip away but was apprehended by SI Paramjit Singh, with the help of his companions, on the basis of suspicion. On enquiry, the person apprehended disclosed his identity. SI Paramjit Singh informed him that he was posted as SHO, Police Station Mahilpur and the bags kept by him were to be searched. The suspect had the option to get the search conducted in the presence of some gazetted officer or a Magistrate. The suspect consented to be searched in the presence of a gazetted officer. Memo. prepared in that regard was thumb-marked by the suspect. SI Paramjit Singh used wireless to request Shri Navjot Singh, Deputy Superintendent of Police, Garhshankar to reach the spot. On his arrival, the Deputy Superintendent of Police again gave an offer to the suspect that the four bags were to be searched and whether he wanted the search to be conducted by him or some Magistrate. The suspect reposed confidence in the Deputy Superintendent of Police. Consent memo. in that regard was again prepared, which was thumb-marked by the suspect. In the presence of the Deputy Superintendent of Police, SI Paramjit Singh conducted the search of four bags, which were found to contain poppy husk. Three of those bags weighed 35 kgs. each, while the fourth bag weighed 30 kgs. Two samples of 250 grams each were taken from each of the four bags and converted into parcels. The sample parcels and the four bags, duly sealed, were taken into possession. The scales and weight of 1 kg., besides the scooter were also taken into possession. SI Paramjit Singh, thereafter, sent ruqa to the Police Station through Constable Amarjit Singh, on the basis of which FIR No.103 dated 20.6.2002 under Section 15 of the NDPS Act was recorded at Police Station, Mahilpur. The personal search of the suspect conducted by SI Paramjit Singh led to recovery of currency notes worth Rs.500/-. The suspect was arrested. Rough site plan of the place of occurrence was prepared. Statements of the witnesses were recorded. The accused and the case property were taken to the

Police Station, Mahilpur. While the accused were kept in the police lock-up, the case property was deposited with the Moharrir Head Constable Gurmail Singh. Samples were subsequently sent to the Chemical Examiner to Government of Punjab, Chandigarh and on the basis of the analysis, they were found to be of poppy husk. Upon completion of the investigation, final report under Section 173 Cr.P.C. was submitted against the accused. This was followed by the trial Court framing charge under Section 15 of the NDPS Act against the accused, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Constable Makhan Singh, PW2 HC Gurmail Singh, PW3 DSP Navjot Singh, PW4 ASI Sohan Singh and PW5 SI Paramjit Singh. The report Ex.PL of the Deputy Chemical Examiner was also tendered in evidence.

When examined under Section 313 Cr.P.C., the accused denied the prosecution allegations and pleaded false implication. However, no evidence in defence was led by him.

The trial Court, after hearing learned counsel for the parties and going through the file, came to the conclusion that the prosecution had been successful in establishing the guilt of the accused. Accordingly, he was convicted and sentenced, as mentioned above.

Learned counsel for the appellant has submitted that the field from where the alleged recovery of contraband had been effected did not belong to the appellant. Therefore, he cannot be said to be in possession of the contraband. It is further submitted that the appellant was polio afflicted and, therefore, neither he could walk nor drive scooter. It is further submitted that in support of its case, the prosecution has relied upon the testimonies of only official witnesses. There is no independent corroboration to the prosecution case.

Per contra, learned State counsel has submitted that the prosecution, by producing cogent, convincing and reliable evidence, was successful in establishing the guilt of the appellant under Section 15 of the NDPS Act.

Having heard learned counsel for the parties and going through the evidence, this Court finds that though the field, from where the recovery of contraband had been effected, did not belong to the appellant yet the fact remains that, at the relevant time, the appellant was found sitting in the elephant-grass and four bags containing the contraband were lying by his side. Besides, he was in possession of scales and weights. One scooter was also found parked nearby. Once the appellant was found sitting with the contraband, he was in actual and physical possession of the same. Merely, because the field did not belong to him is not sufficient to hold that the appellant was not in possession of the contraband.

As regards the plea of the appellant of being polio afflicted, it would be worthwhile to refer to the statement of PW4 ASI Sohan Singh, who, during his cross-examination, testified that the right leg of the appellant was affected by polio but he could not say whether the appellant was suffering from polio since his childhood. To the same effect was the testimony of PW5 SI Paramjit Singh. However, merely because the appellant was polio afflicted is no ground to hold that neither he could walk nor could drive the scooter. The defence did not suggest anything to the aforementioned two witnesses about the appellant being not in a position to walk or drive the scooter on account of being afflicted with polio. Therefore, no benefit on this ground can be extended to the appellant.

Coming to the issue of corroboration to the prosecution case, it would be worthwhile to refer to the testimony of PW5 SI Paramjit Singh, who testified that the police party had started from the Police Station at 8.40 p.m. and the appellant was apprehended at

about 9.15 p.m. Further, while Rupowal village was at a distance of $\frac{1}{2}$ or $\frac{3}{4}$ kms. from the spot, Sarhala village was at a distance of one km. Almost to the same effect was the testimony of PW4 ASI Sohan Singh. The place where the appellant was apprehended and the time when he was apprehended would rule out the availability of any independent person to be associated by the police party in the proceedings. Moreover, it is not the case of the defence that any of the police officer was inimical towards him and for that reason, a false case was planted upon him. Even otherwise, testimonies of the official witnesses are as good as that of any independent witness, more so when these testimonies are found to be reliable so as to establish that the appellant was found in possession of 135 kgs. of poppy husk at the time of his apprehension.

Half hearted argument has been advanced by learned counsel for the appellant regarding non-compliance of the provisions of Section 50 of the NDPS Act. However, it being a case of recovery of contraband from four jute bags lying nearby the appellant at the time of his apprehension and not from his person, Section 50 of the Act is not attracted. Hence, any non-compliance of the said provision of law would not be sufficient to absolve the appellant of the offence under Section 15 of the NDPS Act.

In view of the above, there is no merit in the appeal and the same is dismissed. The conviction and sentence of the appellant, as recorded by the trial Court, are upheld.

The appellant is on bail. He be taken into custody to serve the remaining sentence of imprisonment imposed upon him.

(T.P.S. MANN)
JUDGE

March 11, 2015

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