

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

CRA S No.453 SB of 2004
Date of decision 07 .01.2015.

Sukhdev Singh

..... Appellant.

versus

State of Punjab

..... Respondent.

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

1. Whether Reporters of Local Newspapers 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 : Ms. G.K. Mann, Advocate for appellant.
Mr. K.D. Sachdeva, Additional AG, Punjab .

K.C.PURI, J.

Accused-appellant Sukhdev Singh has directed the present appeal against the judgment and order dated 21.02.2004 passed by Shri M.S.Chauhan, the then learned Special Judge, Amritsar, vide which accused-appellant stood convicted under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short – the NDPS Act) and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of fifteen days.

2. Prosecution story in brief is that on 15.06.2002 ASI Shiv Darshan Singh along with other police officials met ASI Mukhwinder

Singh along with his police party near Gate Hakima, Amritsar. There secret information was received to the effect that some persons were selling opium to truck drivers near the Oil Dump and a raid could lead to their apprehension and recovery of the contraband. The police contingent set out for the disclosed place. PW Ashok Kumar was also joined from near Aman Avenue. Police party when approached the Indian Oil Dump two persons, on the sight of the police posse, tried to sneak away. They were apprehended by the Seizing Officer and ASI Mukhwinder Singh. One caught by the Seizing Officer disclosed his name as Satnam Singh alias Satta, the present accused. Seizing Officer told the accused that he was suspected of carrying some narcotic and his person was to be searched. He was also asked if he wanted his person to be searched before the Seizing Officer or before some Gazetted Officer. Accused stated to be searched before Gazetted Officer. In this respect consent memo was prepared which was signed by him. QST message was sent to DSP Chaman Lal with the request to reach at the spot and accordingly he reached at the spot immediately. DSP Chaman Lal disclosed his identity to the accused being a Gazetted Officer and told the accused that he wanted to conduct search of the person of accused to which accused reposed confidence in him. Under the directions of the DSP, the investigating Officer conducted the search of the accused and from left hand side pocket of his pant worn opium wrapped in a glazed paper was recovered. Out of it sample weighing ten grams was separated. Remainder weighed 290 grams. Sample and remainder were made into two separate parcels which were sealed with seal bearing

impression MS. Case property was taken into possession vide separate recovery memo. Site plan was prepared. The accused was arrested. Statements of the witnesses were recorded. After investigation challan was presented against the accused.

3. Copies of the documents as required under Section 207 Cr.P.C. were supplied to the accused, free of costs. On finding a prima facie case charge under Section 18 of the NDPS Act was framed against the accused, to which he pleaded not guilty and claimed trial.

4. Prosecution, in order to prove its case, examined PW-1 ASI Shiv Darshan Singh, PW-2 Constable Dilbagh Singh, PW-3 Dy. S.P. Chaman Lal, PW-4 SI/SHO Harjinder Singh, and closed its evidence.

5. The accused was examined under Section 313 Cr.P.C. and all the incriminating evidence were put to him, to which he denied and pleaded his false implication. In addition to this accused Sukhdev Singh has stated that in fact he along with Satnam Singh, Kartar Singh and Nirmal Singh were picked up by the police from his house and was falsely implicated in this case. He examined HC Lubhaya Ram as DW-1.

6. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused vide judgment and order dated 21.02.2004, as aforesaid.

7. Feeling dissatisfied with the aforesaid judgment and order dated 21.02.2004, the present appeal has been directed by appellant.

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

9. Learned counsel for the appellant has submitted that there is non-compliance of Section 42 of the Act as secret information has not been reproduced into writing.

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

11. The recovery was not effected from the building, conveyance or enclosed place and as such the provisions of Section 42 of the Act are not attracted.

12. Counsel for the appellant has further submitted that independent witness Ashok Kumar has not been examined and that said Ashok Kumar is a stock witness of the prosecution.

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

14. This aspect of the case has been considered by the trial Court. Learned trial Court has rightly observed that Ashok Kumar cannot be said to be a stock witness as he was witness in four recovery cases on the same date. In normal circumstances, independent witnesses do not come forward to support the case of the prosecution. So, Ashok Kumar has been rightly given up as having been won over by the accused.

15. Counsel for the appellant has further submitted that there is delay of ten days in sending the sample. The recovery was alleged to be effected on 15.06.2002 sample was sent on 25.6.2002. Form No.29 was not prepared at the spot. So, the prosecution story is doubtful.

16. I have carefully considered the said submission but do not find

any force in the said submission.

17. There is nothing on the record to show that sample of the case property has been tampered with at any stage of the trial. Mere delay in sending the sample is not fatal for the prosecution. Mere fact that investigating officer has not stated specifically that form No.29 has not been prepared at the spot, does not create dent in the prosecution story.

18. Counsel for the appellant has further submitted that there is non-compliance of Section 50 of the Act. DSP has given option to be searched before himself or Magistrate and i.e. is partial offer.

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

20. As per prosecution version at initial stage investigating officer has given option to the appellant whether he wanted search before Gazetted Officer or Magistrate. That fact has been proved from the file. Thereafter DSP reached at the spot and recovery was effected from the accused in his presence. So, it cannot be said that there is non-compliance of Section 50 of the Act.

21. Counsel for the appellant has further submitted that seal after use was not handed over to the independent witness which creates doubt in the prosecution version.

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

23. It is not requirement of the law that seal after use should be handed over to the independent witness.

24. Counsel for the appellant has further submitted that appellant was apprehended from the house and not from the spot as per prosecution version. The defence witnesses have proved the said fact. So, the prosecution story is doubtful.

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

26. The trial Court has rightly discarded the testimony of defence witnesses. Their testimony does not inspire confidence. Co-villagers normally come forward to support the case of villager.

27. Lastly, counsel for the appellant has further submitted that the occurrence relates to the year 2002 and lenient view be taken regarding quantum of sentence.

28. I have carefully considered the said submission also.

29. No doubt, the occurrence relates to the year 2002 but sentence of only six months has been awarded to the accused/appellant. Drugs and intoxicants are eating the roots of the society and the same should be guarded with heavy hand. So, no ground for lenient view on the quantum of sentence are warranted.

30. No other point has been urged or raised before me.

31. Consequently, the appeal is without any merit and the same stands dismissed.

32. The accused is stated to be on bail. He be taken into custody to undergo the remaining part of his sentence.

33. A copy of this order be conveyed to the trial Court for strict compliance.

January 07 , 2015

SV

**(K. C. PURI)
JUDGE**