

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

**CRA-S No.571-SB OF 2004
DATE OF DECISION : 05.08.2015**

MAHENDER

.....APPELLANT

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether reporters of local newspaper may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the digest?

Present : Mr. Sunil Panwar, Advocate
for the appellant.

Mr. Manish Sharma, AAG Haryana.

FATEH DEEP SINGH, J.

Consequent upon his conviction by the Court of learned Special Judge, Rohtak for the offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”) whereby he has been sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1.00 lac and in default of payment of fine to further undergo rigorous imprisonment for a period of two years, the appellant has come up to challenge the same before this Court in this appeal.

Heard. Mr. Sunil Panwar, Advocate for the appellant and Mr. Manish Sharma, AAG, Haryana for the State and perused the records of the case.

The present case was got registered on 28th December, 2001 when Police Party headed by ASI Kartar Singh of CIA Staff-II, Rohtak were present at Bus Stand Titoli, during patrolling had received secret information that appellant who was peddling in drugs was to come along with contraband comprising of charas. It was on the basis of this information a Naka was laid and thereafter accused was apprehended coming on foot after alighting from a bus holding a bag in his hand.

The investigating Officer served notice Ex.PB, seeking option of search from accused, who gave his consent Ex.PG/1 consenting to search before a Gazetted Officer. Gurbachan Singh, D.S.P. arrived and in whose presence upon search 1 Kg. of charas was recovered, out of which two samples, each 100 grams was separately drawn and the contraband along with the sample parts were prepared into separate individual parcels and taken into Police possession sealed with seals 'KS' through Memo Ex.PD. Ruqa Ex. PB was sent after endorsement Ex.PB/1, FIR Ex.PA was registered. Meanwhile, Investigating Officer prepared rough site plan Ex.PD/1 recorded statements of the witnesses and deposited the articles. On receipt of report of Analysis Ex.PC, the same was found to contain charas.

At the trial, the prosecution examined PW1-Sh. Dalip Singh,

A.S.I. who proved F.I.R. Ex.PA and endorsement Ex.PB/1. PW2-S.H.O. Mahender Singh proved the deposit of the articles and their despatch, whereas, D.S.P. Gurbachan Singh testified as PW3 along with PW4-Ajmer Singh, MHC, PW5-Satyawan, Constable and PW6-Banarsi Dass, A.S.I. who witnessed the recovery and lastly PW7-Rakesh Kumar, Constable, PW8-Kartar Singh, A.S.I. brought about formal evidence and thus proved the prosecution story.

The accused denied the allegations in his stand taken under Section 313 Cr.P.C. and did not lead any evidence in defence except examining Sh. Jai Dev Singh, Head Constable-DW1 to prove the animus and enmity.

Appreciating the arguments that have been advanced, the submission that it was for the prosecution to prove its case beyond shadow of reasonable doubt, is squarely conceded even by the State counsel. It is the stand of the appellant side that on the basis of secret information the case has been registered and thus violation of provisions of section 42 of the Act has been controverted on behalf of the State. The learned counsel for the appellant has drawn the attention of the court to the deposition of PW8-Kartar Singh, Investigating Officer, from where it is reflected that the secret information was received around 11/11:15 AM and that it was around 1:00 PM the accused was apprehended, shows that the Police had almost 2 hours at their disposal and which as per the statement of this witness they spent while sitting at the roadside tea stall.

The very plain reading of Section 42 of the Act shows that the same is in respect of concealed thing in any building, conveyance etc. However, in the present scenario the recovery has been effected from a public place on the roadside and, therefore, the case is covered under the provisions of Section 43 of the Act and it is during the course of transit in a public place the contraband has been recovered and, therefore, this argument of the counsel for the appellant does not holds good.

The second limb of submissions by the learned counsel for the appellant revolves around non-joining of independent witness and it is laid with much stress that in spite of ample opportunities as well as time at their disposal, the Police has failed to join any independent witness has been well controverted on behalf of the State and the opposition that has been put-forth certainly is acceptable. There is no provision of law that testimony of official witnesses cannot be accepted, though the Courts need to be cautious in their approach to rule out any false implication but merely because these are Police officials cannot mean or can be construed that their testimonies needs to be discarded especially when the recovery has been effected in the very presence of a Gazetted Officer and, thus, their evidence certainly needs to be accepted . The last submission revolves around the element of history of previous enmity and non-fulfillment in letter and spirit of the requirements of Section 57 of the Act.

Though on the basis of the deposition of DW1-Jaidev Singh,

Head Constable, the defence has sought to bring about the version which is only in respect of recovery of ₹30.00 as Jama Talashi from the person of the accused not much to hold for and accept the stand of the accused in statement under Section 313 Cr. P.C. There is nothing suggestive to show any animus of the Police not even oral testimony has come forth from the stand of the defence as to the alleged case of false implication, though faint murmur of arguments is sought to be advanced that the seal was not handed over to any independent witness does not come to the rescue of the defence. Though, DSP Gurbachan Singh, has retained his seal with himself whereas the Investigating Officer has handed over the seal to PW6-ASI Banarsi Dass, but the report of the Chemical Analysis which through the testimonies of PW2-SI Mahender Singh, PW4-MHC Ajmer Singh, PW5-Constable Satyawan by means of their affidavits Ex.PE and PF and report of analysis Ex.PC establishes beyond any doubt that the samples have reached the laboratory in an intact state nor it could be satisfactory shown by the defence as to the likelihood of even tampering with the same. Search and recovery has been effected in the presence of a Gazetted Officer and, therefore, not much having come in the cross-examination of these witnesses whose credibility could not be shaken leads to irresistible conclusion that the story of the prosecution is not only truthful but also that it has succeeded in making and proving a complete chain of events in its story.

The learned trial Court has rightly brushed aside the defence

stand holding that the accused was guilty of commission of the offences and, thus, has come to a totally correct and firm findings by rightly appreciating the evidence and the law. The appeal of the appellant is certainly without merit and deserves to be dismissed and hence, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

AUGUST 05, 2015
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