

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-676-SB of 2004

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Date of decision:2.9.2015

Ajit Singh

...Appellant

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Jasbir Mor, Advocate, Legal Aid Counsel and Mr. Mukesh Sharma, Advocate for Mr. Parveen K. Kataria, Advocate for the appellant.

Mr. B.S. Bhullar, Assistant Advocate General, Punjab
for the respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed by appellant-Ajit Singh challenging the impugned judgment of conviction and order of sentence dated 20.2.2004 passed by learned Judge, Special Court, Patiala, whereby he has been held guilty and convicted for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). He has been sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo rigorous imprisonment for two months for the offence under Section 15 of the Act.

The appeal was admitted. Notice was issued to the learned Advocate General, Punjab. Mr. B.S. Bhullar, learned Assistant Advocate General, Punjab, has put in appearance on behalf of the respondent-State and contested this appeal. The record of the lower Court was also summoned.

The brief facts of the prosecution case are that on 23.11.2000, ASI Kehar Singh along with his Police party after joining PW Mihan Singh held a 'Naka' and the accused Ajit Singh, who was coming on foot, carrying a bag on his head was apprehended on the basis of suspicion. From the said bag poppy husk was recovered, out of which two samples of 250 grams each were separated and remaining poppy husk came to 9.5 kgs. The parcels of the samples were prepared, sealed and the case property was taken into possession vide recovery memo Ex.PB. Site plan was prepared. The accused was arrested. The statements of witnesses were recorded. 'Ruqa' was sent to the Police Station, on the basis of which formal FIR was recorded and on return to the Police Station the case property, PWs and the accused were produced before SI/SHO Krishan Kumar, who after verifying the factum of recovery affixed his seal bearing impression 'KK' on the case property.

Next day, ASI Kehar Singh took the case property and the accused to produce before the Illaqa/Duty Magistrate, Patiala. Report Ex.PH of the Chemical Examiner was received. After necessary investigation, the challan was presented in the Court.

On presentation of challan, the trial Court finding *prima facie*

case against the accused, framed charge for the offence under Section 15 of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Constable Darshan Singh, ASI Kehar Singh as PW-2, HC Surinderpal as PW-3, HC Labh Singh as PW-4 and Inspector Krishan Kumar as PW-5 and closed its evidence.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent.

In defence, the accused examined DW-1 Constable Bhola Singh, who produced copy of register No.19.

After going through the evidence on record, the learned trial Court, vide its impugned judgment and order, convicted and sentenced the accused-appellant for the offence as mentioned above. Aggrieved from the impugned judgment and order this appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that no independent witness has been examined in the present case and only official witnesses have supported the prosecution version. Therefore, learned counsel for the appellant argued that a reasonable doubt exists in the prosecution version and the appellant should be acquitted accordingly.

On the other hand, learned Assistant Advocate General, Punjab appearing for the respondent-State argued that the case of the prosecution

has been duly proved by all the PWs. Learned counsel argued that there is no enmity or motive of the Police officials to falsely implicate the appellant. Further, the link evidence is also complete. Therefore, he argued that the appellant has been rightly convicted and sentenced and there being no merit in the appeal, it should be dismissed.

I have heard learned counsel for the appellant and learned Assistant Advocate General, Punjab appearing for the respondent-State and have gone through the evidence on record minutely and carefully.

From the record, I find that the recovery witnesses as well as the Investigating Officer have duly supported the prosecution version. Independent witness was also joined with the Police party, but he had been given-up as won over by the accused. The non-examination of the independent witness, in no way, can be held as fatal to the prosecution case. It is settled law that the testimony of Police officials is as good as of any other independent witness unless some enmity or motive is alleged and proved. In the present case, there is no such enmity or motive alleged by the accused-appellant against the Police officials, therefore, I find that there is no reason or ground to implicate the appellant falsely in the present case. Otherwise also, there is no evidence in this case to show that the appellant made any complaint or representation to the higher authorities regarding his false implication. The link evidence is complete. The provisions of Act have been duly complied with. From the evidence on record, I find that the prosecution has duly proved its case by leading cogent evidence beyond any reasonable doubt. Therefore, the impugned judgment of conviction passed

against the appellant is upheld being as per evidence and law.

As regards the sentence, learned counsel for the appellant requested for taking lenient view. In the present case, the appellant has been sentenced to undergo rigorous imprisonment for one year and he has already undergone the substantive sentence. The appellant was also ordered to pay fine of ₹2,000/-.

Keeping in view the facts and circumstances of the present case, the sentence of fine is reduced to ₹1,000/- and in default of payment of fine, the respondent to further undergo rigorous imprisonment of fifteen days.

With the above modification in the sentence of fine and in default of payment of fine, the appeal is dismissed.

September 2, 2015.

(Inderjit Singh)
Judge

hsp