

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1660-SB of 2005 (O&M)

Date of Decision : January 20, 2015

Jarnail Singh

..... Appellant

Vs.

The State of Haryana

..... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Argued by :Mr. Gulshan Sharma, Advocate
for the appellant.

Ms. Mahima, AAG,Haryana.

RAJ RAHUL GARG, J

This appeal is directed against the judgment of conviction dated 23.07.2005 and order of sentence dated 27.07.2005 rendered by Sh. R.K.Sondhi, the then Additional Sessions Judge, Fatehabad, whereby, the appellant was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1 lac. In default of payment of fine to further undergo simple imprisonment for a period of two years for committing an offence punishable under Section 15 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter to be called as 'NDPS Act').

As per prosecution case, on 22.05.2004 Jagdish Parsad ASI along with other police officials was going from village Sardarewala to

village Laduwas side in connection with patrol and detection of crime. In the meanwhile, a secret information was received against appellant that he indulges in sale and purchase of poppy husk. In case of raid, huge quantity of poppy husk can be recovered. The secret information was recorded into writing and sent to the senior officers. Raiding party was formed and proceeded towards the house of the appellant. On the way, Mangal Singh Chowkidar, met the police party who was joined in the investigation of this case. Raid was conducted at the house of the appellant. When police party reached the house of the appellant; on seeing the police party, he started going out of his house and also tried to ran away from the spot but was apprehended by the police. On inquiry, he disclosed his identity as Jarnail Singh son of Teja Singh. On search of the kotha, meant for keeping fodder, three bags were found lying there. Suspecting some contraband in those bags, notice under Section 50 of the NDPS Act was given to the accused giving him an option as to if he wanted, search of the aforesaid three bags conducted by some Gazetted Officer or in the presence of a Magistrate. Accused exercised his option in favour of DSP. Investigating Officer then called DSP Narender Singh telephonically. On reaching of DSP at the spot, Investigating Officer made him acquainted with the facts of the case. On DSP's directions, Investigating Officer conducted search of the aforementioned bags and found the same contained poppy husk. Two samples of 100 gms. each were separated from each bag and made into parcel and sealed with the seal of 'JP and NS'. Residues are weighed to 39.800 kgs in each bag. Each bag was separately sealed with the seal of 'JP and NS'. Investigating Officer handed over his seal after use to Constable

Darshan Singh whereas DSP kept the seal with himself. All the aforementioned parcels were taken into possession by the police vide recovery memo Ex.PC. Ruqa Ex.PH was sent to the police station for registration of the case whereupon Jagdish Parsad ASI made his endorsement and recorded the formal FIR Ex. PJ. Rough site plan of the spot Ex.PL was prepared. Statements of witnesses were recorded and accused was formally arrested. Thereafter, Jagdish Parsad ASI produced accused, witnesses and case property before Krishan Lal SI/SHO along with report Ex.PD and directed ASI to hand over the case property to MHC. ASI deposited the case property along with sample and sample seal with the MHC of the police station. Report FSL is Ex.PO. After completion of necessary investigation, the challan was put in the Court.

Finding a prima facie case against the appellant for committing an offence punishable under Section 15 of the NDPS Act he was charge sheeted accordingly to which he pleaded not guilty but claimed trial.

After taking prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C. wherein he denied each prosecution allegation and pleaded his innocence. By way of defence, it was pleaded that he is innocent; he has been roped in this false case and in fact no recovery of poppy husk was effected from his house.

In his defence he examined Mangal Singh (independent witness of the prosecution case who was given up as having been won over by the accused) as DW-1.

After hearing learned counsel for the parties and appraising the entire evidence and material coming on record, the learned Additional

Sessions Judge Fatehabad held the appellant guilty for committing an offence punishable under Section 15 (c) of NDPS Act and also sentenced him as mentioned above in the earlier part of the judgment.

I have heard learned counsel for the appellant and learned State counsel, and have gone through the file with their assistance.

The learned trial Judge after going deep into the matter and after recording the detailed reasons and discussing in detail, the statements of Narender Singh (PW-3), Constable Darshan Singh (PW-4) and ASI Jagdish Parsad (PW-6); recorded the judgment of conviction finding that the prosecution has successfully proved the case against the accused beyond a reasonable doubt. Thus, for the sake of brevity, I would not like to discuss the statements of aforesaid three witnesses again.

Before this Court, learned counsel for the appellant simply raised 2-3 points. First of all, it was argued that as per prosecution case secret information was received against the appellant to the effect that he indulges in sale and purchase of poppy husk. There is no evidence on record to show as to whom he was selling and from whom he was purchasing the poppy husk. Mangal Singh (DW-1) deposed that house of Jarnail Singh-appellant was never raided. As such, the prosecution case is not believable. In fact, accused has been falsely implicated in this case and nothing was recovered from his possession. It was also contended that the investigations of this case are virtually incomplete. Big fish is never caught.

It is true that these days drug menace is on its extreme. With impunity people are indulging in drug trafficking. Receipt of secret

information is enough for the police to swing into action. It is not necessary for the police before registration of the case of recovery of poppy husk, to collect evidence regarding customers, to whom the appellant was selling poppy husk and also about the persons dealing in this trade and from whom the appellant was purchasing poppy husk. Thus for want of this evidence, no relief can be given to the appellant.

It was next argued by learned counsel for the appellant that Mangal Singh is the independent witness of this case. He did not support the prosecution case. He was not even examined by the prosecution. He was given up as having been won over by the accused. It was necessary for the prosecution to examine him even if he was won over by the accused so as to know the true story. Accused-appellant had taken the trouble to examine him as DW-1. This witness categorically stated that no raid was conducted at the house of the appellant and nothing was recovered from his possession. This witness is the Chowkidar of the village and knows the accused. Taking into consideration the statement of DW-1, the prosecution case cannot be said to be free from doubt.

Of course, Mangal Singh is an independent witness of the prosecution but he did not support the prosecution case. Yet it cannot be said that since he did not support the prosecution, therefore, the testimonies of PW-3, PW-4 and PW-6 are to be discarded. In fact, as per statements of aforementioned three witnesses raid was conducted at the house of appellant. He was found present in the house. When police reached his house, he was found at the gate of the house and then three bags of poppy husk were recovered from kotha fodder of his house. In the presence of a

Gazetted Officer of the rank of DSP, the aforesaid three bags were opened and poppy husk was found in those bags. Samples were duly drawn from each bag and also sealed with the seals of 'JP and NS'. PW-5 Krishan Lal, also deposed that Jagdish Parsad, Investigating Officer, produced before him case property, witnesses and accused and after verifying the facts, he put his seal impression of 'KL' on the same. Statement of Kulwant Singh, Head Constable (PW-1) and that of Sahab Ram, Head Constable (PW-2), in view of their affidavits Ex.PA and Ex. PB respectively and the statement of Jagdish Parsad (PW-6) and further in view of FSL report Ex.PO, the link evidence stands proved and further with the FSL report Ex.PO, it stands proved that the contents of samples sent to FSL were identified as poppy straw (choora post) of *papaver somniferum* L. Therefore, if the prosecution did not examine Mangal Singh as he was won over by the accused, it is not fatal for the prosecution case.

It was next argued by learned counsel for the appellant that the prosecution has failed to comply with the provision of Section 42 of the NDPS Act. No intimation was given to the Police Officer about the receipt of secret information by the Investigating Officer. The present case is the case of house search. It was necessary for the prosecution to reduce into writing the secret information and to send the same to the senior police officer, before conducting house search. Thus non-compliance of Section 42 of the NDPS Act, is fatal for the prosecution case. In support of his contention he has cited the judgment **Paramjit Singh Vs. State of Punjab, 2008 (2) R.C.R. (Criminal), 514.**

The above contention of learned counsel for the appellant is not

sustainable in view of Ex.PM. After receipt of secret information, the same was recorded into writing which is Ex.PM and then the same was sent to the senior police officers through Constable Dalbir Singh. So has also been stated by Jagdish Parsad (PW-6), Investigating Officer of this case. Thus in the light of this oral as well as documentary evidence, it cannot be said that provision of Section 42 of the NDPS Act has not been complied with by the prosecution.

It was next argued by learned counsel for the appellant that there is no evidence on record, to whom, the kotha fodder, from where poppy husk in question was allegedly recovered, belongs. In the absence of this evidence on the file, prosecution has failed to prove that appellant was in conscious possession of aforementioned three bags of poppy husk. In support of his contention he has cited judgment titled as *Avtar Singh Vs. State of Punjab, 2002 (4) RCR (Criminal) 180 (Supreme Court of India).*

The principle expounded in the aforesaid judgment is not disputed. In the case in hand poppy husk was recovered from the house of the appellant. At the time of raid, he was found present in the house. In his presence three bags of poppy husk were recovered from kotha fodder of his house. There is no evidence on the file to show that there was any other male member living in that house. As such since the house from where recovery was effected belongs to the accused, therefore, he is said to be in the conscious possession of recovered three bags of poppy husk. Even Mangal Singh (DW-1) knows the accused. Mangal Singh is the Chowkidar of the village of the accused. There is nothing on record to show that the house from where the poppy husk recovered was not occupied by Avtar

Singh. As such, the above contention of learned counsel for the appellant is not sustainable.

No other point was urged before me.

For the aforesaid reasons, finding no merit in this appeal, it is ordered to be dismissed. If the appellant is on bail, his bail bonds, shall stand cancelled and he be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District & Sessions Judge, Fatehabad, shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(RAJ RAHUL GARG)
JUDGE

January 20, 2015
smriti