

In the High Court of Punjab and Haryana at Chandigarh

CRA-S- 1689-SB of 2005

Date of Decision:28.1.2015

Rajesh

---Appellant

versus

State of Haryana

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Rahul Rathore, Advocate
for the appellant**

**Mr.Rejesh Gaur, Addl. A.G.Haryana
for the respondent-State**

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

REKHA MITTAL, J.

The present appeal lays challenge to judgment of conviction and order of sentence dated 18.8.2006 and 19.8.2006 respectively passed by the Judge, Special Court, Karnal convicting and sentencing the appellant for offence punishable under Section 20 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short “the Act”), detailed hereinbelow:-

***“To undergo rigorous imprisonment for a period of ten years
and to pay a fine of Rs. One lakh. In default of payment of
fine to further undergo rigorous imprisonment for a period of***

one year.”

The facts noticed from the judgment of the trial court are that on 29.6.2004, ASI Roop Singh alongwith other police officials was coming back to Police Station, Gharaunda after patrolling areas of Barsat, Kalvehri villages. When he reached on pucca road of Kalvehri and Dinger Majra in the area of village Dinger Majra, accused was noticed coming on foot from the side of village Dinger Majra carrying one cloth bag in his right hand. On seeing the police party, he immediately got down in the vacant field situated in the Southern side and started walking fast. On suspicion, he was apprehended and ASI Roop Singh served notice Ex. P1 under Section 50 of the Act apprising him of the right to get the bag searched in presence of a gazetted officer or Magistrate. The accused vide his reply Ex.P2 opted to get the *katta* (bag) searched in presence of some gazetted officer. Deputy Superintendent of Police City, Karnal namely Ravinder Kumar was contacted on mobile phone and was requested to reach the spot. During this period, Rajinder, Dharam Singh, Sanjay son of Surat Singh also came at the spot and requested to join investigation but they expressed their inability. At about 3.30 p.m., DSP Ravinder Kumar alongwith his staff reached the spot. As per direction of the DSP, ASI Roop Singh took search of the bag and it was found containing charas wrapped in polythene. Two samples of 10 grams each were separated and the remainder on weighment came to be 1.400kgs. The samples Ex. P4/MO, P5/MO and the residue Ex, P6/MO were converted into separate parcels, sealed with seal impression 'RS' of ASI Roop Singh and 'RKB' of DSP Ravinder Kumar. Sample seals impression was also prepared. The parcels were taken into possession vide

recovery memo Ex. P3 and the seal after use was handed over to HC Balbir Singh by ASI Roop Singh but DSP Ravinder Kumar kept his seal with him. Ruqa Ex. P11 was sent to the police station for registration of the case on the basis whereof formal FIR Ex. P12 was recorded by ASI Pritam Singh. Site plan Ex. P13 was prepared, statements of the witnesses were recorded and the accused was formally arrested vide arrest memo Ex. P13.

On return to the police station, the case property, the accused and the witnesses were produced before SI Sandip Singh, Station House Officer of the police station and he verified facts of the case and affixed his seal bearing impression 'SS' on the samples and parcel of bulk quantity. The case property was deposited with MHC and the accused was lodged in police lock up. The investigating officer sent report under Section 57 of the Act Ex. P10 to DSP Ravinder Kumar. On receipt of report of the chemical examiner Ex. P18 and completion of investigation, report under Section 173 of the Code of Criminal Procedure (in short "Cr.P.C.") was submitted for commencement of trial.

After due compliance with the provisions of Section 207 Cr.P.C., the accused was charged for committing offence punishable under Section 20 (c) of the Act to which he pleaded not guilty and claimed trial.

To prove its case, the prosecution examined as many as 07 witnesses namely HC Balbir Singh PW1, HC Suresh Kumar PW2, Constable Narinder PW3, HC Surinder Singh PW4, SI Sandip Singh PW5, DSP Ravinder Kumar PW6 and ASI Roop Singh PW7.

The accused was examined in terms of provisions of Section 313 Cr.P.C. and he denied incriminating circumstances appearing in

evidence against him and pleaded his innocence and false implication.

The learned trial court appreciated evidence adduced by the prosecution, plea of the accused raised under Section 313 Cr.P.C. and rival submissions made by counsel for the parties but eventually determined the sole point formulated by the trial court against the accused and resultantly, the accused was held guilty of committing offence charged against him and accordingly he was convicted and sentenced, notice hereinbefore.

The present appeal was preferred in the year 2005 which has now matured for hearing.

Counsel for the appellant has submitted that case of the prosecution is not free from shadow of reasonable doubt, therefore, the learned trial court has fallen into error in holding that the prosecution has successfully proved culpability of the accused. To bring home his contention, he has assailed the prosecution case and judgment of the trial court on few counts.

The first and foremost submission made by counsel is that the investigating officer failed to strictly comply with the provisions of Section 50 of the Act. The accused was not made aware that he had a statutory right to be searched before a gazetted officer or a Magistrate though as per Ex. P1, he was given option to be searched before the Magistrate or gazetted officer.

No public witness was joined during investigation despite people from the public were admittedly available at the spot, as per case of the prosecution.

There are discrepancies in the statements of the witnesses and

in absence of corroboration from independent source, these discrepancies assume greater significance. Counsel has pointed out that as per HC Balbir Singh, the police party left the police station at 12'O Clock but ASI Roop Singh deposed that they left the police Station of 9-45 a.m. H.C.Balbir Singh has deposed that the police party reached the place of recovery at 2-45 p.m. but according to the investigating officer, they reached there at 2.00 p.m. The investigating officer has deposed that the police party was in official vehicle but Ravinder Kumar DSP has deposed that the police party was on motor cycles.

It has been further argued that presence of DSP at the spot becomes doubtful as carbon copy of seizure memo does not contain signatures of the DSP in carbon print. The consent memo of the accused in response to notice under Section 50 of the Act does not bear his signatures on the carbon copy Ex. D1.

Counsel for the State, on the other hand, has supported the judgment of the trial court with the submissions that minor discrepancies in statements of the witnesses cannot be used to discard and disbelieve credible and reliable evidence produced by the prosecution. It is not expected from the prosecution to prove the offence by mathematical demonstration. The statements of officials witnesses cannot be discarded merely because these do not find corroboration from a public witness particularly in the circumstances that the accused has not alleged any ill will or animosity against him by the investigating officer or members of the police party. Any lapse on part of the officer/official who prepared the seizure memo and consent memo to ensure that there was carbon beneath

the original document at the time of obtaining signatures of DSP on the seizure memo and of the accused on consent memo can not enure to benefit of the accused. The recovery witnesses including DSP Ravinder Kumar were cross examined at length but nothing material and tangible has been elicited during their cross examination to entertain their version with an eye of suspicion.

I have heard counsel for the parties and perused the records.

The recovery of contraband was effected from the bag carried by the accused in his hand and not from his person, therefore, Section 50 of the Act is not attracted. This apart, the accused was given proper opportunity to exercise option to be searched before a gazetted officer or a Magistrate and he candidly gave consent to be searched before a gazetted officer and in compliance thereof, Ravinder Kumar DSP was called at the spot and search of bag was conducted under his supervision. In this view of the matter, there is no merit in the contention of the appellant that the investigating officer either failed to comply with the provisions of Section 50 of the Act or the accused is entitled to gain any benefit from the contentions raised by his counsel.

No witnesses from the public was associated during recovery proceedings despite the fact that certain persons were available at the spot as admitted by the witnesses. It has been deposed that those persons were not ready to join investigation and expressed their inability to associate the proceedings. It is an unfortunate situation that people from the public show an indifferent attitude towards police proceedings, may be due to fear of animosity against the accused or harassment during trial. There is no denial

that the investigating officer can initiate action for refusal by a public man to join investigation but his failure to take such an action is not sufficient to doubt his version that he had made effort to associate public witnesses during investigation. This apart, statements of official witnesses cannot be rejected merely on account of non-corroboration from a public witness. There is no such principle in law that statement of an official witness even if creditworthy and reliable cannot form basis for conviction without looking for corroboration. I am well conscious that if the prosecution case hinges solely upon evidence of official witnesses, the Court is enjoined upon to be more circumspect in evaluating their evidence to rule out possibility of false implication. In the case at hand, there is no such plea raised by the accused that the police party had any reason to get him falsely indicted in the crime if he actually did not possess the suspect material. Under these circumstances, the accused cannot get any aid to his contention for want of joining a public witness during recovery proceedings.

Counsel for the appellant has pointed out certain contradictions in testimony of official witnesses but in my considered opinion, these contradictions are neither material nor go to root of the prosecution case. The minor discrepancies do not erode credibility of a party's case as these do occur due to lapse of time between the date of occurrence and date of recording evidence. I would hasten to add that minor discrepancies on trivial matters which do not affect core of the case of the prosecution cannot be allowed to reject evidence in its entirety as the court has to examine whether evidence read as a whole appears to have a ring of truth. In the light of evidence on record, I find myself unable to give any

weightage to the discrepancies pointed out by learned counsel at the cost of discarding credible and consistent evidence.

Counsel has pointed out that seizure memo on its carbon copy does not bear signatures of DSP in carbon print and the consent memo does not bear signatures of the accused in carbon print. The accused has not denied his signatures on the original consent memo nor there is any challenge to the statements of the witnesses that carbon copy of consent memo was prepared simultaneously. It appears that due to some lapse on part of the investigating officer in ensuring that carbon is kept beneath the original documents throughout the proceedings, the carbon copy of seizure memo does not bear signatures of DSP in carbon print and of the accused on carbon copy of the consent memo. The witnesses of the prosecution were put to searching cross examination by defence counsel but no such fact has been brought forth which can create doubt about presence of Ravinder Kumar DSP during recovery proceedings. In this view of the matter, the discrepancies pointed out by counsel cannot be taken seriously much less fatal to case of the prosecution.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed. The judgment of conviction and order of sentence passed by the trial court are affirmed. The appellant, if on bail, be taken into custody to suffer the remaining sentence.

(REKHA MITTAL)
JUDGE

28.1.2015
PARAMJIT