IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.S-194-SB of 2006
Date of Decision : September 16, 2015

Wazira Singh

....Appellant

VERSUS

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. K.P.S. Virk, Advocate for
Mr. K.S. Dhaliwal, Advocate.

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

The appellant, namely, Wazira Singh son of Phulla Singh, resident of village Dharaudi, Police Station Sadar, Narwana, District Jind was tried for committing an offence punishable under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as 'the NDPS Act'. Vide judgment and order dated 13.10.2005, learned Judge, Special Court, Patiala convicted him for the said offence and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs. One lac and in default of payment of fine, to undergo further rigorous imprisonment for two years.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which stood admitted and the State duly represented.

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According to the prosecution, on 21.10.2002 Inspector Shamsher Singh accompanied by SI Gurpreet Singh, ASI Rulda Singh, ASI Darshan Singh and other police officials was going in a private vehicle for patrol duty and in search of the suspects. When the police party reached the Bhakra canal bridge, one Subeg Singh son of Bela Singh, resident of Patiala met the police party and started conversing with Inspector Shamsher Singh. In the meantime, the appellant came from western embankment of the Bhakra canal and carrying a heavy bag on his shoulder. On seeing the police party, he took a right turn into the ditches. He was apprehended on the basis of suspicion. On interrogation, he disclosed his name and address. Inspector Shamsher Singh informed him about his right of search and asked him as to whether he wanted the bag to be searched before a gazetted officer or a Magistrate. He opted to be searched while in the presence of a gazetted officer. His statement Ex.PA/1 in that regard was recorded. A wireless message was flashed to Shri Bhupinder Singh, DSP (R), Patiala, who reached the spot after about half an hour. The DSP was apprised about the facts of the case. The DSP then disclosed to the appellant that he was a gazetted officer and whether he wanted to be searched before him or some other gazetted officer. The appellant agreed for his search before him. The search of the bag led to recovery of opium, which was wrapped in a glazed paper. Two samples of 10 grams each were drawn and put into tin boxes. The residue came to be 14 kgs. 980 gms., which was put in another big tin box. The samples and the residue opium were converted into three parcels and sealed with seal bearing inscription 'SS' of

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Inspector Shamsher Singh and seal bearing inscription 'BS' of the DSP. Inspector Shamsher Singh handed over his seal after use to Subeg Singh, whereas the DSP retained his seal. The empty bag and the case property were taken into possession vide recovery memo Ex.PC.

It is further case of the prosecution that Inspector Shamsher Singh, prepared ruqa Ex.PE and sent it to Police Station Sadar, Patiala where, on its basis, FIR No.581 (Ex.PE/1) was registered. Site plan Ex.PD of the place of recovery was prepared. The appellant was personally searched and memo Ex.PF in that regard was prepared. He was also informed about the grounds of arrest vide memo Ex.PG. On return to the Police Station, the case property was deposited by Inspector Shamsher Singh with the MHC. On the next day, i.e. 22.10.2002, the samples, case property and the accused were produced before the Ilaqa Magistrate. One of the samples was sent for anylasis. Vide report Ex.PD, the Chemical Examiner opined that the sample was of opium, having 3.75% of morphine. Accordingly, final report under Section 173 Cr.P.C. was presented by the police.

The appellant, when charged under Section 18(c) of the NDPS Act, pleaded not guilty and claimed trial.

In support of its case, the prosecution examined six witnesses.

PW1 HC Faquir Chand tendered in evidence his affidavit Ex.PA wherein he had mentioned that on 25.10.2002 MHC Sudh Singh

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had handed over one parcel containing sample which he deposited in the office of the Chemical Examiner on the same day.

PW2 HC Sudh Singh, who stood posted as MHC, Police Station Sadar, Patiala on 21.10.2002 tendered in evidence his affidavit Ex.PB wherein he had mentioned that on 21.10.2002 Inspector Shamsher Singh, Station House Officer, Police Station Sadar, Patiala had handed over one parcel containing residue opium weighing 14 kgs. 980 gms. two sample parcels of 10 grams each, one empty bag and jamatalashi of Rs.250/- to him and he made entry in that regard in register No.19. He had also mentioned that on 22.10.2002, the aforementioned articles were taken out and entrusted to ASI Darshan Singh, who after producing the case property and the accused in the Court, returned the case property for being kept in the Malkhana. He also stated that on 25.10.2012, he had entrusted one sample parcel to HC Faquir Chand for being deposited in the office of the Chemical Examiner.

PW3 ASI Darshan Singh testified that on 21.10.2002, he was posted at Police Station Sadar, Patiala and on that day he was member of the police party headed by Inspector Shamsher Singh, Station House Officer. He also deposed that when the police party was proceeding in connection with patrolling and checking of suspected persons from village Passiana side towards Bhakra canal and reached the bridge, Subeg Singh met them. Inspector Shamsher Singh started talking with Subeg Singh. In the meantime, the appellant came from the side of

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Patiala-Sangrur Road on the bank of Bhakra canal. He was having a bag hanging on his right shoulder. On seeing the police party, he turned towards right side ditches. On suspicion, Inspector Shamsher Singh, alongwith others apprehended him and enquired about his name and address. Inspector Shamsher Singh also told him that he had suspicion that the bag carried by him contained some contraband and accordingly, he expressed his intention to conduct its search. However, the Inspector gave an offer to the appellant that the search of the bag could be conducted in the presence of a gazetted officer or Magistrate. The appellant desired that the search be conducted in the presence of a gazetted officer. In this regard, his statement Ex.PA was recorded. Inspector Shamsher Singh then requested DSP Bhupinder Singh to reach the spot. When DSP Bhupinder Singh reached there, he disclosed his identity to the appellant and told him that he was a gazetted officer and also offered to him that whether he wanted to be searched in his presence or in the presence of another gazetted officer or a Magistrate but the appellant reposed confidence in him and agreed to be searched in the presence of the DSP. Under the directions of the DSP, Inspector Shamsher Singh conducted search of the bag carried by the appellant and recovered opium wrapped in a glazed paper. Two samples of 10 grams each were separated and put in two small tin boxes and the remaining opium was found to be 14 kgs. 980 gms., which was also put in a big tin. The parcels of samples and the remaining bulk of opium were prepared and duly sealed. The case property was taken into possession and personal search of the appellant led to recovery of

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Rs.250/-. The appellant was arrested. The Inspector arrested the appellant and served grounds of arrest upon him. On the following day, he took the case property from MHC Sudh Singh and produced the same as well as the accused before the Magistrate. On return to the Police Station, he re-deposited the case property with MHC Sudh Singh.

PW4 Inspector Shamsher Singh, the star witness of the prosecution also testified on the same and similar lines as was deposed to by PW3 ASI Darshan Singh.

PW5 DSP Bhupinder Singh deposed about being summoned by Inspector Shamsher Singh to the spot and on reaching there, disclosing his identity to the appellant and offering him that if he so wanted, he could be searched in the presence of some other gazetted officer or a Magistrate but the appellant reposing confidence in him. He also deposed about the recovery of opium wrapped in a glazed paper and contained in the bag. He further deposed that he had affixed his seal bearing inscription 'BS' on the sample parcels and the parcel of the remaining bulk.

PW6 SI Gurpreet Singh, who was also member of the police party headed by Inspector Shamsher Singh, corroborated the testimonies of PW3 ASI Darshan Singh and PW4 Inspector Shamsher Singh.

When examined under Section 313 Cr.P.C., the appellant claimed himself to be innocent. According to him, nothing was

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recovered from him and he was falsely involved in the case. He was picked up from his house in the presence of Shamsher Singh, Panch, Ranbir Singh and Subhash Sharma, Sarpanch.

However, in his defence, the appellant did not examine any evidence.

After hearing learned counsel for the parties and on going through the record, the trial Court accepted the prosecution case and, accordingly, convicted and sentenced the appellant, as mentioned above.

Learned counsel for the parties have been heard and the evidence scanned with their able assistance.

Learned counsel for the appellant has submitted that the prosecution has only examined official witnesses in support of its case. Subeg Singh, an independent witness, who, according to the prosecution, was present at the time of the apprehension of the appellant and recovery of the contraband has not been examined. Even otherwise, the presence of Subeg Singh was doubtful as PW4 Inspector Shamsher Singh after affixing his seal bearing inscription 'SS' on the sample parcels and the case property, did not hand over the same to Subeg Singh.

It is the case of the prosecution that when the police party headed by PW4 Inspector Shamsher Singh reached the Bhakra canal bridge, Subeg Singh son of Bela Singh, resident of Patiala met the police party and he started conversing with Inspector Shamsher Singh. In the

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meantime, the appellant was seen coming on the western bank of the Bhakra canal and carrying a heavy bag on his shoulder. In the presence of Subeg Singh, Inspector Shamsher Singh apprehended the appellant on the basis of suspicion as on seeing the police party he had turned towards the right side ditches. Subsequently, the search of the bag was conducted in the presence of Subeg Singh and found to contain opium weighing 15 kgs. in all. Two samples of 10 grams each were separated. All the documents prepared in that regard were duly witnessed by Subeg Singh. However, when the time came for his appearance before the trial Court in support of the prosecution case, the prosecution had no other option but to give him up as he had been won over in the meantime. For that reason the prosecution cannot be blamed for not producing him before the trial Court in support of its case. Even otherwise, no material has been brought on record by the appellant that the police was inimically disposed towards him and for that reason he was falsely implicated in the case. Simply suggestion to the various prosecution witnesses that he was picked up from his house in the presence of so many villagers and a false case being registered against him after bringing him from his village, is not sufficient to come to the conclusion that he was falsely implicated in the case. During his examination under Section 313 Cr.P.C., he had stated that he was picked up from his house in the presence of Shamsher Singh, Panch, Ranbir Singh and Subhash Sharma, Sarpanch, however, he took no steps to produce and examine anyone of them in support of his plea.

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The testimonies of PW4 Inspector Shamsher Singh, PW3 ASI Darshan Singh, PW6 SI Gurpreet Singh and PW5 DSP Bhupinder Singh are above board. No material contradiction or discrepancy could be pointed out by the defence in their respective testimonies. All of them had successfully withstood the test of cross-examination.

While referring to the testimony of PW4, Inspector Subeg Singh, who deposed that he had not sent special report from the place of recovery, learned counsel for the appellant has submitted that the prosecution case deserves to be discarded on that short ground alone. However, from the evidence, it is made out that immediately after the recovery of the contraband from the appellant, ruqa Ex.PE was prepared by PW4 Inspector Shamsher Singh on 21.10.2002 at 6.55 p.m. from the place of apprehension of the appellant. On its basis, FIR Ex.PE/1 came to be registered at Police Station Sadar, Patiala on 21.10.2002 at 7.35 p.m. The said ruqa is nothing but a special report of the case and sent to the police station and after FIR was registered on its basis, the special reports were sent to the senior police officers. It may also be not out of place to mention here that PW5 DSP Bhupinder Singh, who was an officer, superior in rank to PW4 Inspector Shamsher Singh, on receipt of wireless message, had reached the spot and in his presence the recovery of the contraband was effected from the appellant.

For the aforementioned reasons, this Court is of the considered view that the conviction of the appellant for the offence

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under Section 18(c) of the NDPS Act is well merited and deserves no interference.

Resultantly, the conviction of the appellant under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 is upheld. His substantive sentence of rigorous imprisonment for ten years and fine of Rs. One lac are maintained. However, in default of payment of fine, he shall undergo further rigorous imprisonment for one year instead of two years, as earlier ordered by the trial Court.

But for the modification in the quantum of sentence of imprisonment in default of payment of fine, the appeal fails and is, therefore, dismissed.

(T.P.S. MANN)
JUDGE

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