

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-980-SB-2004

Date of decision: 12.8.2015

Ramesh

.....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

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Present: Mr. Sagar Aggarwal, Advocate for Mr. Ashit Malik, Advocate for the appellant(s).

Mr. Chetan Sharma, AAG, Haryana.

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 9.3.2004 vide which accused-appellant has been held guilty and convicted for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called 'the Act') and the order on quantum of sentence of the even dated vide which the appellant has been 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, he was further ordered to undergo rigorous imprisonment for a period of two and a half year.

2. The case of the prosecution in nutshell is that on 7.3.2001, PW-5 Sub Inspector Rattan Singh along with other police employees was present on the bridge of drain in the area of village Beholi. PW-4 Ram Gopal met him. They were talking. In the meanwhile, the accused-appellant came from the side of village Beholi carrying a polythene bag on his right shoulder. On seeing the police party, he turned back and started walking fastly. He was apprehended on suspicion by SI Rattan Singh with the help of his companions. Suspecting some intoxicant in his possession, the Investigating Officer served a notice under Section 50 of the Act giving him the option of his search in the presence of a Gazetted Officer or a Magistrate. In the reply thereof, the accused-appellant opted for his search in the presence of a Gazetted Officer. Sub Inspector Rattan Singh gave a wireless message to PW-7 Kuldip Singh, DSP, Samalkha to reach at the spot. On his arrival, he verified the facts and gave directions to the Investigating Officer to take the search of the accused as per law. On checking of the polythene bag, 2 kg charas was recovered from the possession of the appellant. 100 gm charas was separated as sample. The separate sealed parcels of the sample and the residue charas were prepared bearing seal impression 'RS'. The DSP also affixed his seal bearing 'KS' on both the parcels. The aforesaid parcels were taken into possession vide memo Ex.PE. The Investigating Officer sent ruqa Ex.PF to the police station on the basis of which FIR Ex.PF/1 was registered. He also prepared the site plan of the place of recovery Ex.PG. Accused was arrested. The sample parcel was

sent to the Forensic Science Laboratory, Madhuban Karnal and the contents thereof were found to be of charas. On completion of the formalities of investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C.') was presented in the Court.

3. After compliance of the provisions of Section 207 Cr.P.C, the accused-appellant was charge-sheeted for the offence punishable under Section 20 of the Act to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, the prosecution examined as many as 7 witnesses.

5. When examined under Section 313 Cr.P.C., accused pleaded that he is innocent and has been falsely implicated, however, no evidence was led by him in his defence.

6. On appreciating the evidence on record and the contentions raised by the learned counsel for the parties, the learned trial Court held guilty and convicted the appellant for the offence punishable under Section 20 of the Act and awarded the sentence as mentioned in the upper part of the judgment.

7. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

8. I have heard Mr. Sagar Aggarwal, Advocate, learned counsel for the appellant and Mr. Chetan Sharma, learned AAG, Haryana and have meticulously examined the record of the case.

9. Initiating the arguments, learned counsel for the appellant contended that the entire case of the prosecution is based on the

testimonies of the official witnesses. PW-4 Ram Gopal, the alleged independent witness associated in the investigation, has not supported the prosecution version. Rather he has categorically deposed that neither the accused was apprehended in his presence nor any contraband was recovered from his possession, which totally contradicts the prosecution story.

10. He further contended that the seal after use was handed over to the police official. There is no explanation as to why the seal was not entrusted to PW-4 Ram Gopal, the independent witness. He further contended that the presence of PW-7 DSP Kuldip Singh is extremely doubtful at the spot as he could not tell which constable was sent to bring the weighing material, from where he brought the said weighing material and how many seals were affixed by him on the sample parcel and the residue. He also could not tell as to how many seals were affixed by the SHO. He has stated that he stayed at the spot only for 15-20 minutes. So, his presence at the spot is extremely doubtful. He further contended that in the affidavit of PW-2 Head Constable Jindal Kumar, it is mentioned that the sample parcel was having only two seals whereas in the report of the FSL, it is mentioned that the sample parcel was having four seals of 'RS' and three seals of 'KS'. Thus, he contended that even the sample parcel has been tampered with.

11. He further contended that the provisions of Section 50 of the Act have also not been complied with. Notice Ex.PD is only a paper work. Thus, he pleaded that the conviction of the appellant has been wrongly recorded by the learned trial Court.

12. On the other hand, learned State counsel pleaded that from the consistent testimonies of PW-5 SI Rattan Singh and PW-7 DSP Kuldip Singh, it is established that 2 Kg charas was recovered from the possession of the appellant. He contended that Section 50 of the Act is not applicable in this case as the recovery was effected from the polythene bag and not from the personal search of the appellant. He further contended that there is no discrepancy about the number of seals and there is no material to prove that the sample was tampered with at any stage. Thus, he pleaded that there is no infirmity in the conviction of the appellant as recorded by the learned trial Court.

13. I have duly considered the aforesaid contentions.

14. No doubt, as per the version of the prosecution, PW-4 Ram Gopal was associated in the investigation of the case but while appearing in the witness box, he has not supported the prosecution version and deposed that he does not know anything about this case but in the cross-examination by the learned Public Prosecutor, he has admitted that notice Ex.PD, consent Ex.PD/1 and the recovery memo Ex.PE bears his signatures. However, he alleged that those signatures were obtained on the blank papers in the police station but this version of PW-4 Ram Gopal does not inspire any confidence. He has not explained or mentioned for what purpose he visited the police station when his signatures were allegedly procured on the blank papers. It is generally seen that in such type of cases, the independent witnesses generally resiles from their statements due to various reasons. PW-4 Ram Gopal as well as accused-appellant

Ramesh both belongs to District Panipat. So, PW-4 Ram Gopal might have been won over by the accused or being resident of the same area, he would not have deposed against him just to avoid inviting any wrath from the side of the accused.

15. The prosecution case has been fully supported by PW-5 SI Rattan Singh, the Investigating Officer of the case and PW-7 DSP Kuldeep Singh on the point of search, seizure and recovery of the contraband. In the absence of any animosity between the accused-appellant and official witnesses, there is nothing wrong in relying on the testimonies of the official witnesses and the documents prepared by them. There is nothing on record to show as to why the statements of the official witnesses should be treated untrustworthy. There is no absolute rule that police officers cannot be cited as witnesses and their depositions should be treated with suspicion. When the testimonies of the police officials appear to be cogent and credible those can safely be relied upon. Thus, mere this fact that PW-4 Ram Gopal has not supported the prosecution version is no ground to discredit or discard the testimonies of PW-5 SI Rattan Singh and PW-7 DSP Kuldeep Singh, particularly when the accused-appellant has not alleged or proved any ill will or motive on their part to falsely implicate him.

16. As per the prosecution case, the seal after use was handed over by the Investigating Officer to Head Constable Jagat Singh. This is also not a ground to render the prosecution version doubtful. There is no statutory provision that the seal must be handed over to the independent witness. In case **Jit Singh @ Gholi**

and others versus State of Punjab 2013 (3) RCR (Criminal) 204 (DB), the seal was not handed over by the Investigating Officer to the independent witness. A Division Bench of this Court held that this has no bearing on the case especially when no circumstance has come on record to show that the case property was tampered with during the investigation. The ratio of law laid down in that case is a complete answer to this contention raised by the learned counsel for the appellant. In the instant case also, there is no material on record to show that the case property has been tampered with at any stage. In this situation, entrustment of the seal to the police officials does not cause any dent in the prosecution case.

17. The contentions raised by the learned counsel for the appellant with respect to the discrepancy in the number of the seals used is against the record. In the affidavit of PW-2, Jindal Kumar Ex.PA, it is nowhere mentioned that only two seals were affixed on the sample parcels. Rather in para No.2 of the affidavit, he has simply mentioned that the sample parcel bearing seal impressions 'RS' and 'KS' was deposited with him. PW-5 SI Rattan Singh, the Investigating Officer of the case, has categorically stated that he has affixed four seals on the sample parcel as well as the residue parcel and DSP has affixed three seals on each parcel, so, as per the statement of this witness four seals of 'RS' and three seals of 'KS' were affixed on the sample parcel and the residue. In the report of the FSL Ex.PK also, it has been mentioned that the sample parcel was having four seals of 'RS' and three seals of 'KS'. Thus, the testimony of the Investigating Officer and the FSL report are

consistent with respect to the number of seals affixed on the sample parcel which completely rules out any tampering with of the case property.

18. It is a fact that generally the police officials take part in number of such investigations. So, it is not possible that they could remember the minute details of each and every case in which they had associated in the investigation. The human memory fades with the lapse of time. The recovery in this case was effected on 7.3.2001. Statement of PW-7 DSP Kuldip Singh was recorded on 19.9.2003 i.e after more than two and a half year. With a lapse of time, PW-7 Kuldip Singh may have forgotten about some insignificant details. So, if he has not been able to tell as to which Constable had brought the weighing material and from where and similarly, if he has not been able to tell as to how many seals were affixed on the sample parcel and the residue parcel, the same is not going to diminish the evidentiary value of his testimony on the point of search and seizure. These minor omissions are also no ground to doubt his presence at the spot.

19. The recovery in this case has been effected from the polythene bag which was being carried by the accused-appellant on his shoulder and the recovery is not from the personal search of the accused. In these circumstances, Section 50 of the Act is not applicable. Reliance can be placed on cases **State of Rajasthan versus Ram Chander (2005) 5 Supreme Court Cases 158, State of Himachal Pradesh versus Pawan Kumar 2005 Supreme Court Cases (Criminal) 943 and Ajmer Singh versus State of Haryana**

2010 (3) SCC 746. Moreover, learned counsel for the appellant has not been able to point out as to how there is non-compliance of Section 50 of the Act.

20. PW-5 SI Rattan Singh, the Investigating Officer of the case, has categorically deposed about the apprehension of the accused having a polythene bag on his shoulder. Thereafter, he served a notice under Section 50 of the Act upon the accused-appellant, in consequence thereof he opted for his search in the presence of a Gazetted Officer. So, PW-7 DSP Kuldeep Singh arrived at the spot. On his direction, the search of the accused was conducted which led to the recovery of 2 kg charas. PW-7 DSP Kuldeep Singh has also fully corroborated the version of SI Rattan Singh. Learned counsel for the appellant has not been able to point out any discrepancy/contradiction in their statements. There is also no other material on record to render their testimonies unworthy of credence. Thus, I have no reason to differ with findings of the learned trial Court and the prosecution has been able to prove beyond shadow of reasonable doubt that the accused-appellant was found in conscious possession of 2 kg of the charas.

21. Consequently, there is no illegality or infirmity in the conviction of the appellant as recorded by the learned trial Court and the same is hereby upheld or maintained.

22. Learned counsel for the appellant has also contended that the sentence awarded to the appellant in default of payment of fine is harsh. He is a poor person and the only breadwinner of the family. I found substance in this plea of learned counsel for the

appellant. The accused-appellant deserves some leniency in the matter of sentence in default of payment of fine. So, instead of rigorous imprisonment for a period of two and half years, as awarded by the learned trial Court, it will be suffice to meet the ends of justice if the appellant is ordered to further undergo rigorous imprisonment for a period of one year in default of payment of fine. Except the above modification, the sentence awarded by the learned trial Court calls for no interference.

23. Resultantly, except for modification in the sentence in default of payment of fine of Rs.1,00,000/- from rigorous imprisonment for a period of two and a half years to rigorous imprisonment for a period of one year, the present appeal has no merits and the same is hereby dismissed. The accused-appellant is on bail. His bail stands cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Panipat, who shall send him to jail to undergo the remaining part of his sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Panipat, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

August 12, 2015
ps

(DARSHAN SINGH)
JUDGE

