

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-38-SB of 2010

DATE OF DECISION: NOVEMBER 18, 2015

MOTA RAM

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. G.S.SANDHU, ADVOCATE FOR THE APPELLANT.
MR. KULDEEP SHARMA, AAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused Mota Ram has challenged in the present appeal the conviction under Section 18 of the Narcotic and Psychotropic Substances Act, 1985 (for short 'NDPS Act') vide which he was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of ₹1 lac and in default, to undergo a further period of 6 months simple imprisonment.

2. It is the case of the prosecution that PW8 Gurdayal Singh, S.I., CIA Staff, Dabwali received a secret information when he was on patrolling duty that the accused had indulged in opium deal. PW8 prepared a report Ex.P22 as contemplated under Section 42 of the NDPS Act and despatched the same to Superintendent of Police, Sirsa through Constable Surinder Kumar. He also requested PW7 Ram Phal, DSP, Dabwali to reach the spot. The house of the accused Mota Ram in village Jotawali was surrounded by the raiding party headed by PW8. Sensing the presence of police around his house, the accused came out of the house with a dolli. He was apprehended

with dolli. PW8 served a notice Ex.P-19 on the accused as required under Section 50 of the NDPS Act. The accused was required to exercise his option to be searched either in the presence of a Gazetted Officer or a Magistrate. He preferred to be searched in the presence of a Gazetted Officer. PW7 DSP Ram Phal reached the spot alongwith the staff in his Government gypsy. PW8 conducted search of the dolli. A polythene packet containing opium milk and another polythene packet containing solid opium were recovered from the dolli. Two samples of 20 gms. each were separated from each packet. The residue opium milk weighed 2.660 kgs. and the residue solid opium weighed 260 gms. The same were converted into separate parcels. The sample parcels of the dolli were sealed by PW8 with his seal 'GS' and PW7 put his seal 'RPP' on each parcel. PW8 handed over the seal after use to EHC Ramesh Kumar and PW7 retained the seal after use. The sample parcels and the residue parcels were recovered under memo Ex.P21 which was signed by PW6 Sattar Singh, PW9 Ramesh Kumar and Sadhu Ram, H.C. The accused was arrested and the accused alongwith the material objects were produced before the Judicial Magistrate.

3. In the statement under Section 313 Cr.P.C., the accused stated that he was innocent. Nothing was recovered from him. The entire proceedings were conducted only in the police station but he was falsely implicated at the instance of the Sarpanch of the village due to party faction.

4. The trial Court having thoroughly evaluated the evidence of PW1 EHC Ramdhari, PW4 SI/SHO Dalip Singh, PW6 Sattar Singh, Chowkidar of village Jotawali, PW7 DSP Ram Phal, PW8 Gurdayal Singh who conducted the raid and PW9 EHC Ramesh Kumar arrived at a

conclusion that the accused was found in conscious possession of opium.

5. The evidence of PW6 Sattar Singh, chowkidar of village Jotawali, PW7 DSP Ram Phal and PW8 S.I. Gurdayal Singh establishes the case of the prosecution that PW8 having received a secret information about the contraband dealing by the accused reduced the same into writing and despatched it to his superior officer and thereafter conducted raid at the house of accused and recovered on search in the presence of PW7 DSP Ram Phal, 2.700 gms. of opium milk and 300 gms. of solid opium. The FSL report also discloses that the samples sent for examination were nothing but opium. The evidence of PW7 and PW8 has been completely corroborated by the independent witness PW6 Sattar Singh, chowkidar of village Jotawali. PW8 also complied with the mandatory provisions under Section 42 of the NDPS Act, the moment he received secret information about the dealing of contraband by the accused at his residence. I do not find any reason to suspect the evidence of PW7 and PW8 in the face of solid testimony from an independent witness, namely, PW6. In spite of thorough cross examination, the defence could not demolish the evidence of PW7 and PW8.

6. Learned counsel appearing for the appellant submitted that the mandatory provisions under Section 42 of NDPS Act were not complied with. *Per contra*, learned counsel for the State submits referring to the evidence of PW8 that Ex.P22 which was reduced into writing was despatched to the Superintendent of Police, Sirsa for information.

7. Though Ex.P22 did not bear the office seal of the Superintendent of Police, we do not find any reason to suspect the

authenticity of Ex.P22. In my considered view, the trial Court has rightly relied upon Ex.P22 to come to a conclusion that PW8 had despatched the information he reduced into writing immediately on receipt of the secret information. Therefore, it is held that the investigating official has complied with the mandatory provisions under Section 42 of the NDPS Act.

8. It was argued by learned counsel appearing for the appellant that independent witness was not examined. Referring to the evidence of PW6 Sattar Singh, learned counsel appearing for the State submitted that PW6 had been associated as an independent witness during the course of investigation.

9. As rightly pointed out by learned counsel for the State, PW6 Sattar Singh, Chowkidar of village Jotawali who is a respectable person of the village had been associated during the course of raid of the house of the accused and recovery of contraband from the accused. Even otherwise, it is a common knowledge that independent witnesses are scared of associating themselves in such cases. Further PW8 has categorically deposed that his efforts to associate other independent witnesses proved futile. Under such circumstances, I am of the considered view that the investigating official has rightly associated PW6 as an independent witness. Non-participation of other independent witnesses responding to the call of PW8 does not throw any doubt on the case of the prosecution.

10. Learned counsel appearing for the appellant-accused submitted that the seal bearing letters 'RPP' allegedly affixed by PW7 DSP Ram Phal was not noted down by the official of the Forensic Science Laboratory. The

State counsel referring to the proceedings of the Judicial Magistrate before whom the contraband was produced submitted that the seals were broken by Judicial Magistrate in order to verify the content therein.

11. As rightly pointed out by learned counsel for the State, the proceedings recorded by the Judicial Magistrate on production of the contraband disclosed that the seals affixed on the sample parcels and the residue were broken by the Judicial Magistrate in order to verify the content therein. Thereafter, PW8 alone had put his seal after repacking the parcel before the Judicial Magistrate. The evidence of PW4 Dalip Singh discloses that he also affixed his seal 'DS' after the samples and the bulk quantities were produced by PW8 before him. No wonder, the seal bearing letters 'RPP' was not found, whereas the seal put by PW4 and PW7 were found on the samples received by the FSL. The fact remains that the Forensic Science Laboratory had received the samples for examination with seals intact. Therefore, I do not doubt the samples collected by PW8 in the presence of the witnesses.

12. Learned counsel appearing for the appellant further submitted referring to the evidence of PW8 and PW9 that they had come out with contradictory version as regards the time of arrest of the accused. Learned State counsel submitted that though PW8 apprehended the accused at the very inception at 9.45 a.m., he formally arrested the accused only after entire formalities were over at the place of recovery.

13. PW8, of course, has deposed during the course of cross-examination that the accused was apprehended at 9.45 a.m. On a careful

perusal of the entire testimony of PW8, I find that PW8 had come out with a clarification that he effected formal arrest of the accused only after completing all the formalities at the place of recovery. Therefore, the testimony of PW9 EHC Ramesh Kumar that accused was arrested at 2.30 p.m. on the day of occurrence does not contradict the evidence of PW8.

14. Lastly, it was submitted by learned counsel appearing for the appellant that there had been some contradiction as regards the number of weighing scales found at the residence of the accused by PW8. It is true that PW7 has deposed that two weighing scales were found in the house of the accused, whereas PW8 has stated that only one weighing scale was found in the house of the accused which was used for weighing the contraband recovered from the accused. The point for consideration is whether the contraband was properly weighed by PW7 who headed the raiding party. In fact, there was no challenge as to the weighment done by PW8 in the presence of PW6 and PW7. The number of weighing scales found in the house of the accused was completely immaterial to the charge faced by the accused.

15. In view of the above facts and circumstances, I am of the considered view, that the trial Court has rightly considered the evidence in proper perspective and convicted the accused. There is no ground for interfering with the well considered judgement of the trial Court. Therefore, the appeal stands dismissed.

16. The accused-appellant is on bail. His bail bond stands cancelled. He shall surrender within 15 days from the date of this

judgement before the Chief Judicial Magistrate, Sirsa who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Sirsa shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

November 18, 2015
Gulati

(M. JEYAPPAUL)
JUDGE