

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA S-1623-SB of 2014.

Date of decision : 21.1.2015.

Satinder Singh @ Sunny

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR.JUSTICE K.C.PURI

Present : Mr. L.M. Gulati, Advocate,
for the appellant.

Mr. Rajesh Mehta, Addl. AG, Punjab.

K.C.PURI, J.

This appeal has been directed against the judgment and order dated 17.1.2014 passed by Sh. K.K. Goyal, Judge, Special Court, Amritsar vide which the accused appellant was convicted under Section 22 read with Section 8 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and sentenced to undergo rigorous imprisonment for a period of 2 years and to pay fine of Rs.5000/- and in default of payment of fine to undergo further RI for 3 months.

The brief facts of the case are that on 15.10.2011 SI Kuldip Singh along with other police officials was present at T-point, Kabir Park in connection with patrolling and detection of bad elements duty. He received secret information that Sunny son of Chamkaur Singh accused in FIR No.170/2011 U/S 379 IPC is present outside Guru Nanak Dev University and in case a raid is conducted, he could be apprehended. SI Kuldip Singh along with other police officials reached at the disclosed

place. On seeing police party, one young boy proceeded towards his left side. He was apprehended and on asking he told his name Satinder Singh alias Sunny son of Chamkaur Singh. SI Kuldip Singh was questioning him. In the meantime, he took out a polythene envelope from right pocket of his trouser and tried to throw it on the ground. SI Kuldip Singh apprehended him and took polythene envelope from him. Before checking polythene envelope, he tried to join a witness from the public but no one joined. On checking of the said envelope, intoxicating powder was found. Two samples of 10 gms each were taken out and the remaining powder was found to be 240 gms. Three parcels were thus prepared. All were sealed with seal "KS" by SI Kuldip Singh. Sample seal impression was separately taken. All the said parcels were taken in possession vide separate memo. Seal was handed over to HC Tarsem Singh after use. Ruqa was sent to the Police Station whereupon formal FIR was recorded. After completion of investigation, challan against the accused was presented in the Court.

Charge under Section 22 read with Section 8 of the NDPS Act was framed against the accused to which he denied and pleaded not guilty and claimed trial.

The prosecution in order to prove its case examined PW-1 SI Kuldip Singh, PW-2 HC Uttam Gurbinder Singh, PW-3 HC Tarsem Kumar and PW-4 DSP Dinesh Singh and closed the prosecution evidence.

The statement of the accused was recorded under Section 313 Cr.P.C and all the incriminating circumstances appearing in the prosecution evidence were put to him to which he denied and pleaded false implication.

No defence evidence was led by the accused.

After appraisal of the evidence, learned trial Court vide impugned judgment and order dated 17.1.2014 convicted and sentenced the accused to undergo imprisonment and fine as narrated above.

Feeling dis-satisfied with the judgment and order dated 17.1.2014, the accused appellant has preferred the present appeal.

I have heard learned counsel for the parties and have gone the record of the case.

Learned counsel for the appellant has laid much stress on the delay in sending the sample. It is submitted that recovery was stated to have been effected on 15.10.2011 but the sample was sent for analysis on 20.10.2011. According to the instructions, the sample has to be sent within 72 hours of the recovery. There is no reasonable explanation for delay in sending the sample.

Learned counsel for the appellant has further submitted that no independent witness has been joined and as such, the conviction of the appellant cannot be affirmed. To support his contention, he has relied upon authorities **(i) Gurnam Singh vs. State of Haryana 2014(2) CrL. CC 549;** **(ii) Nachhattar Singh vs. State of Haryana 2014(1) Cr.C.C. 630;** **(iii) Rajpal Singh @ Raju vs. State of Punjab 2014(1) RCR (Criminal) 40;** **(iv) Mukhtiar Singh vs. State of Punjab 2014(1) RCR (Criminal) 705;** **(v) Din Dayal vs. State of Punjab 2014(1) CrL. C.C. 624.**

However, learned State counsel has submitted that joining of independent witness is not the rule of law. The delay in sending the sample is not fatal unless the accused is able to prove that the sample has

been tempered with. To support this contention, learned State counsel has relied upon the following authorities (i) Jarnail Singh vs.State of Punjab 2011(1) RCR (Criminal) 925; (ii) Hardip Singh vs. State of Punjab 2008(4) RCR (Criminal) 97; (iii) Beggar Singh @ Gaggi vs. State of Haryana 2009(4) RCR (Criminal) 183; (iv) Jagdish and another vs. State of Haryana 2014(4) RCR (Criminal) 540; (v) Jagiro @ Jagir Kaur vs. State of Punjab 2014(3) RCR (Criminal) 717.

No doubt, there are instructions No.1-88 dated 15.3.1988 issued by the Narcotics Drugs Control Bureau that sample should be sent for chemical analysis within 72 hours but the question before this Court is whether mere delay in sending the sample is fatal for the prosecution. The answer to that question has been given by the Hon'ble Apex Court in authority Hardip Singh's case (supra). In that case relying upon its earlier authority, the Hon'ble Apex Court has held that even delay of 40 days in sending the sample is not fatal where seals were found intact. In the present case, there is no evidence on the file that sample has been tampered with at any stage of trial. Even this fact has not been argued by learned counsel for the appellant.

Again the Hon'ble Apex Court in Jarnail Singh's case (supra) has held that delay of 12 days in sending the sample is not fatal for the prosecution. Even two Hon'ble Division Benches of this Court in authorities reported in Baggar Singh @ Gaggi and Jagdish and another 's cases (supra) held that mere delay in sending the sample is not fatal for the prosecution.

So, in view the authoritative pronouncements of the Hon'ble Apex Court and the Hon'ble Division Benches of this Court, authorities **Gurnam Singh, Nachhattar Singh, Rajpal Singh @ Raju, Mukhtiar Singh, Din Dayal's cases (supra)** relied upon by learned counsel for the appellant cannot be given effect. Otherwise also, there were other circumstances which led to acquittal of the accused in those cases which are missing in the present case.

Non-joining of the independent witnesses is also not fatal. Joining of independent witness is not the rule of law but rule of caution. The Courts sometime insist on independent corroboration where the prosecution story is doubtful. There is nothing to discredit the prosecution story in the present case. The Hon'ble Division Bench of this Court in **Jagdish's case (supra)** has dealt with the point of joining of independent witness. Again in authority **Jagiro @ Jagir Kaur's cae (supra)** conviction was upheld where the only independent witness was given up and was examined as defence witness.

Learned counsel for the appellant has submitted that there is non compliance of Section 42 of the NDPS Act. It was a case of secret information and no intimation was sent to higher authorities.

I have considered the said submission but do not find any force in that submission.

The provisions of Section 42 of the NDPS Act are not attracted. Moreover, the ruqa was sent from the place to the concerned SHO for the registration of the case.

Lastly, learned counsel for the appellant has submitted

that the appellant has been facing trial since 2011. The recovery is of non-commercial nature so, lenient view be taken regarding quantum of sentence. He has submitted that as per custody certificate, the appellant has already undergone incarceration for a period of 1 year, 2 months and 10 days out of the substantive sentence of 2 years. He is not accused in any other NDPS case so, lenient view be taken regarding quantum of sentence.

I have considered the said submission.

The abuse of drugs is eating the fibre of the society. No doubt, the appellant has undergone incarceration for a period of 1 year, 2 months and 10 days as per custody certificate but that amount of sentence is not sufficient in respect of recovery of 260 gms of Dextropropoxyphene. However, since the appellant has been facing trial for the last about four years and he is not a previous convict, nor any other case of NDPS Act is pending against him as per custody certificate, so, the sentence of the appellant stands reduced to one and a half years instead of two years awarded by the trial Court. However, the sentence of fine stands affirmed.

The appeal stands disposed of accordingly.

A copy of the judgment be conveyed to the trial Court for compliance.

21.1.2015
SN

(K.C.PURI)
JUDGE