

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

CRA-S-No.1967-SB OF 2015
DATE OF DECISION : 23rd July, 2015

Ranjit Singh

.... Appellant

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Vikas Mehsempuri, Advocate for the appellant.

Mr. Amritpal Singh Gill, Assistant Advocate General, Punjab.

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SURINDER GUPTA, J.

1. This appeal is against judgment and order of sentence dated 20.02.2015 passed by Judge, Special Court, SAS Nagar, Mohali, whereby the appellant was convicted for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, NDPS Act) and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment for two months.

2. The case of the prosecution in brief is that on 03.08.2013 SI Amarbir Singh (PW-2) of Police Station Gharuan, along with police party comprising ASI Jasbir Singh (PW-4) and some other police officials were present at the bridge of SYL canal in the area of village Batta, where the appellant was seen coming from the side of village Batta with a polythene bag on his right shoulder. On seeing the police party he took a turn towards

canal embankment on his left side. On the basis of suspicion he was caught. SI Amarbir Singh, after giving his identity to him, expressed his suspicion about the possession of some narcotic substance with the appellant and gave him the option to get his search conducted in the presence of a Gazetted Officer or a Magistrate. The appellant reposed confidence in SI Amanbir Singh. His consent memo Ex. P-2 was prepared. Thereafter efforts were made to join some independent witness, which could not succeed. On search of the bag, it was found containing poppy husk, out of which two samples of 100 Grams each were separated and remaining poppy husk on weighment came to be 9 Kilograms 800 Grams. Separate parcels of sample and remaining poppy husk were prepared and sealed with the seal bearing impression 'AS'. After use the seal was handed over to ASI Jasbir Singh. Case property was taken into possession vide recovery memo Ex.P-5. Ruqa Ex.P-6 was sent to the police station on the basis of which formal FIR Ex.P-7 was registered. The sample of poppy husk along with sample seals were sent to the Chemical Examiner and vide report Ex.P-16 it was declared to be "chura poppy heads".

3. After completion of investigation challan against the appellant was presented in Court. Finding prima facie case for offence punishable under Section 15(b) of the NDPS Act the appellant was chargesheeted to which he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined SI Amanbir Singh as PW-2, who was heading the police party when the appellant was apprehended; ASI Jasbir Singh, witness of recovery of contraband from the possession of the appellant as PW-4; formal witness Head Constable

Palwinder Kumar, who was posted as MHC and with whom the case property along with the sample seal was deposited as PW-1; Constable Harvir Singh, who had taken the sample parcel and delivered the same in the office of Chemical Examiner, as PW-3; ASI Gurnam Singh, who scribed the FIR Ex.P-7 on receipt of Ruqa Ex.P-6, as PW-5 and Head Constable Kesar Singh, who along with SI Amanbir Singh had taken the case property and the appellant to produce him before the area Magistrate, Kharar on 04.08.2013, as PW-5.

5. On completion of the prosecution evidence, the statement of the appellant under Section 313 Cr.P.C. was recorded, wherein he denied the allegation levelled against him and pleaded his false implication. He stated in his defence as follows:

“I am innocent. I have been lifted from my house on 02.08.2014 on the day of voting after pronouncement of result of Panchayat Members and Sarpanch. Person from our side who conducted (sic contested) election of Sarpanch was defeated. I was supporter of defeated Sarpanch and I have been falsely implicated due to enmity by the opposite side of Sarpanch party. No recovery was effected from me. I have been falsely implicated in this case.”

6. I have heard learned counsel for the appellant and learned State counsel and have perused the paper book and the lower Court record with their assistance.

7. Learned counsel for the appellant has argued that the case of the prosecution is based on the testimony of independent witness. As per the case of the prosecution, Head Constable Talwinder Singh and Constable Gursant Singh were sent in the official vehicle to bring the electronic scale and other weighing material. No steps were taken by the investigating officer to direct these two officials to bring any independent witness as well. Even otherwise, the version of the prosecution is neither probable nor reliable. It is not believable that the appellant on witnessing the police party made no attempt to run away from the spot by crossing the SYL canal which, as is well known, is not operational and usually remain dry. In support of his contention he has relied on observations made in the cases of *Beera Singh versus State of Punjab, 2010(2) RCR (Criminal), 384; Sewa Singh versus State of Haryana, 2008(2) RCR (Criminal) 520; Manoj Kumar versus State of Haryana, 2014(2) RCR (Criminal) 811* and *Major Singh versus State of Punjab, 2000(4) RCR (Criminal) 451*.

8. Learned counsel for the appellant has further argued that there is also delay of 27 days in sending the sample to the Chemical Examiner, which has not been explained by the prosecution.

9. Learned State counsel has argued that the police party which apprehended the appellant was on routine patrolling. It had no secret information and the appellant met the police party all of a sudden. After apprehending the appellant the police party attempted to join independent witness but could not succeed as the independent witness usually avoid joining the police due to various reasons. It has been stated by ASI, Jasbir Singh that one Member Panchayat of Village Batta was passing from there

and they asked him to join as independent witness but he had refused. The appellant has not alleged any reason or motive for the police officials to depose against him. He has come up with a defence plea about his involvement in the instant case at the behest of one Ex Sarpanch, without naming the Sarpanch, whom he supported; who got him involved in this case and did not mention the year of Panchayat election etc. Both the prosecution witnesses have fully supported the prosecution case. It has been stated by both the prosecution witnesses that on seeing the police party the appellant took a turn toward the canal but was apprehended on the basis of suspicion. In these circumstances, it cannot be said that the appellant had not tried to escape from the spot. There is no evidence that SYL canal usually remains dry. The appellant was apprehended in the month of August when there are rain and even seasonal and non-operational canal have enough flowing water during this part of the year.

10. The prosecution case is based on the testimony of SI Amanbir Singh who at the relevant time was posted as SHO of Police Station Gharuan and ASI Jasbir Singh. Both have fully supported the prosecution case. SI Amanbir Singh while deposing as PW-2 has stated that on witnessing the police party the appellant turn towards left side bank of the canal and was intercepted and apprehended on the basis of suspicion. He has stated that the attempts were made to join the private witnesses but none agreed.

11. ASI Jagbir Singh supported and corroborated the testimony of SI Amanbir Singh and has stated that the police party could not succeed in joining the independent witness. One Member Panchayat of Village Batta was passing from there and he was asked to join the police party but he

refused. The testimony of the investigating officer shows that the attempts were made to join the independent witness. It is usually found that the independent witness hesitate to join the police party for various reasons. A common villager avoid to be a witness against his co-villager or a resident of the nearby village to avoid unnecessary enmity and security risk to himself and his family members. Here a question, which arises for consideration is as to why the testimony of the official witness who have fully supported the case of the prosecution, be discarded. The appellant has not alleged any reason or motive for the prosecution witness to depose against him. Though he has come up with a defence of his false implication being a supporter of an Ex Sarpanch, who lost election, but this defence version is not supported by any evidence or was even suggested to the prosecution witnesses to depose against the appellant. In the absence of any evidence to draw inference about the false implication of the appellant or attribute any reason to the prosecution witness to depose against the appellant the testimony of the prosecution witnesses cannot be discarded even if they are official witness. The citations referred by learned counsel for the appellant have been perused but are not applicable to the facts and circumstances of this case. In case of *Beera Singh versus State of Punjab (supra)* the non-joining of independent witness was one of the circumstance which weighed before the coordinate Bench of this Court, while discarding the prosecution version as in that case no attempt had been made for joining the independent witness. This fact, coupled with other facts and circumstances, was taken into consideration while recording the acquittal of the accused. In the case of *Sewa Singh versus State of Haryana (supra)* independent witness was

not joined despite his availability and this coupled with other circumstance weighed in favour of the appellant. While referring to the case of *Manoj Kumar versus State of Haryana (supra)*, the learned counsel for the appellant has pressed upon the observation of a coordinate Bench of this court that accused could have run away as the place where he was apprehended was an open place and the drain nearby was having no water and was dry. In this case, the appellant on seeing the police party had taken turn toward bank of SYL drain but was apprehended by the police party. This reflects that the appellant had tried to avoid the police party but could not succeed. This argument of learned counsel for appellant that SYL canal is non-operational and usually remain dry and could be easily crossed by appellant to avoid his arrest, is not supported by any evidence on record. SYL canal, though non-operational, could not be without water in rainy season. A canal which is not operational may have muddy patches and wild growth of bushes and trees making it difficulty to cross it. No such suggestion was given to any of prosecution witness that SYL canal was dry at the time of arrest of appellant. This argument of learned counsel for the appellant, as such, has no weight and is discarded.

12. In the case of *Major Singh versus State of Punjab (supra)* recovery was effected on secrete information and it was observed that secret information was not reduced in writing and was not sent to the superior officers. In this case there was no secret information against the appellant and it was a chance recovery.

13. The main stress of learned counsel for the appellant was on the fact that the testimony of official witnesses, bereft of independent

corroboration, cannot be believed. I have well considered the above contentions. In the case of *Piara Singh & etc. vs. State of Punjab, 2009(3) Cri.CC, 185* it was observed that where the evidence of official witness is found tenable, non-joining of independent witness does not make the prosecution case doubtful. In the case of *Karaj Singh versus State of Punjab, 2010(3) Criminal Court Cases (P&H) 228*, it was observed that where recovery of contraband was effected from a public place and none has come forward to witness the recovery proceedings (as in this case), it is not fatal to the prosecution case. Non-joining of independent witness did not vitiate the testimony of the official witness regarding the search and seizure of the contraband and is also not fatal to the case of the prosecution. In case of *State of Haryana versus Mai Ram, 2008(8) SCC 292* the Apex Court observed that where the testimony of official witnesses do not suffer from any infirmity, the same can be relied. In this case, no material was brought on record to discredit the testimony of official witnesses, who have fully supported prosecution version.

14. There is delay of 27 days in sending the sample to the chemical examiner. In the case of *Mohan Lal Verses State of Rajasthan, 2015 (2) RCR (Criminal) 779*, it has been observed by the Apex Court that in the absence of any evidence that sample was tampered, the mere delay in sending the sample is no reason to discard the prosecution case. The observations of apex Court in para 31 in above case read as follows:

“31. Another submission that has been advanced by the learned counsel for the appellant is that the seized articles were not sent immediately for chemical

examination. The FSL report, Ex. P-14, dated 15.9.1986 states that a letter along with a sealed packet was received with seals intact. The said report further mentions that packet was covered in white cloth and on opening of the packet, the examiner found a cylindrical tin and the substance on examination was found to be an opium having 1.44% morphine. The seal being intact, the description of the case number and the impression of seal having been fixed on memo of recovery, there is no reason or justification to discard the prosecution case on the ground of delay on this score. In Hardip Singh v. State of Punjab, a two-Judge Bench while dealing with the question of delay in sending the samples of opium to the FSL, opined that it was of no consequence, for the fact of the recovery of the said sample from the possession of the appellant had been proved and established by cogent and reliable evidence and that apart, it had also come in evidence that till the date of parcels of samples were received by the Chemical Examiner, the seal put on that parcel was intact. Under these circumstances, the Court ruled that the said facts clearly proves and establishes that there was no tampering with the aforesaid seal in the sample at any stage and the sample received by the analyst for chemical examination contained the same opium which was recovered from the possession of the appellant. The plea that there was 40 days delay was immaterial and would not dent the prosecution case.”

15. In this case the report of the Chemical Examiner Ex. P-16 indicates that seals were intact when it reached the office of Chemical Examiner. The link evidence is complete. In these circumstances mere fact

that there is delay of 27 days in sending the sample is irrelevant and not fatal to prosecution case.

16. From the above discussion and on perusal of the judgment of the lower Court, I find no factual or legal infirmity therein calling for any interference. Consequently, the conviction of the appellant for offence punishable under Section 15(b) NDPS Act is upheld.

17. Learned counsel for the appellant submits that the appellant is not a previous convict. The recovery effected from him is also of non commercial quantity. As per the custody certificate produced on record, he has already undergone five months nineteen days of imprisonment. He has requested for reduction in sentence awarded to the appellant.

18. The appellant was of 45 years of age when apprehended. However, he is not a previous convict or have any adverse antecedents. Keeping in view the above facts and circumstances and quantum of recovery, the sentence awarded to the appellant is modified and is reduced from rigorous imprisonment from one year to rigorous imprisonment for nine months. The sentence of fine is, however, maintained.

19. The appeal is disposed of with above modification of sentence of the appellant.

23rd July, 2015
'raj'

(SURINDER GUPTA)
JUDGE