

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-2291-SB-2015 (O&M)

Date of decision: 06.07.2015

Adhi Ram Thakur

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. HS Dhindsa, Advocate for the appellant.

Mr. Gazi Mohd., DAG, Punjab.

R.P. NAGRATH, J.

Aggrieved by the judgment of conviction dated 16.12.2014 and order of sentence dated 18.12.2014 passed by the learned Judge, Special Court, Ludhiana, the instant appeal has been preferred by the appellant. The appellant faced trial of the charge under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. The facts of the case briefly, stated, are that on 03.03.2011, the police party headed by PW-1 Sub Inspector (SI) Kulwant Singh, the Investigating Officer (IO) was present near the godown of gas cylinders in the area of village Kadian, in connection with patrol duty and checking. In the meantime, the appellant came from the side of G.T.

Road but on seeing the police party, he tried to slip away from the spot. He was apprehended on suspicion. SI Kulwant Singh, informed the accused that he suspected some contraband article in his possession and that his search was to be conducted. The appellant was also informed of his legal right to get the search conducted in the presence of a Magistrate or a Gazetted Officer but the appellant reposed confidence in the Investigating Officer (IO). Consent memo Ex. PA of the appellant was reduced into writing which was signed by him and attested by the witnesses.

3. On search of right pocket of the jacket worn by the appellant, opium wrapped in a glazed paper weighing 500 gms. was recovered. Two samples of 10 gms. each were separated in small tin containers and rest of the commodity on weight was found to be 480 gms. The sample containers and the bulk commodity were prepared into separate sealed parcels and sealed with the seal of IO bearing impression 'KS' and seal after its use was handed over HC Gurtehal Singh. The sample seal was also prepared separately. The case property was taken into police possession vide recovery memo Ex. PB. Rough site plan of the place of recovery is Ex. PH. Ruqa Ex. PF from spot was also sent to police station by the IO, on the basis of which formal FIR Ex. PG was recorded.

4. On return to police station, the case property was produced before ASI Surinder Singh, Incharge SHO of police station who after verifying the facts put his own seal bearing impression 'SS' on the case property and also prepared the sample seal impression of his seal. The case property was then handed over to MHC of the police station.

5. On 04.03.2011, the case property was produced before the Area Magistrate, by PW-1 along with Form No. 29. Ex. PJ is the application regarding production of case property before the Area Magistrate and the inventory of articles is Ex. PK. The learned Magistrate, passed an order Ex. PK/1 that the case property i.e. a parcel containing 480 gms. of opium and two sample parcels of 10 gms. each with seals 'KS' and 'SS' was produced before him. It was also recorded that photographs of the case property were taken. Another sample of 10 gms. was further drawn as representative sample from the bulk before the learned Area Magistrate and the remaining opium weighing 470 grams was prepared into another parcel. This representative sample was sealed with the seal bearing impression 'PK' of the learned Area Magistrate. The learned Magistrate also certified that the sample has been extracted from the parcel and thereafter the seals have been appended. The case property along with sample parcel was directed to be deposited with the Judicial Malkhana, Ludhiana. The photographs of the parcels are Ex. PM and PN.

6. The prosecution examined 5 witnesses in support of its case. Statement of the appellant under Section 313 Cr.P.C. was recorded in which he denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded that he has been falsely implicated at the instance of one Ram Bahadur who is a stock witness of the police. Said Ram Bahadur had an enmity with the appellant. In defence, the appellant examined DW-1 Rajinder Rai and DW-2 Constable Balraj Singh.

7. The learned trial Court convicted the appellant of the offence

under Section 18 of the Act and awarded him the sentence to undergo rigorous imprisonment for a period of 01 year and to pay a fine of ₹ 5000/- in default of payment of fine to further undergo rigorous imprisonment for 03 months.

8. I have heard learned counsel for the appellant, learned State counsel and carefully perused the records of trial Court with their able assistance.

9. There is overwhelming evidence to prove the prosecution story about recovery of 500 gms. of opium from possession of the appellant. All the necessary witnesses were examined. The evidence brought on record brings out meticulous compliance of all the important requirements of various provisions of the Act. The story with regard to recovery is testified by PW-1 SI Kulwant Singh (IO) and supported by PW-2 HC Gurtehal Singh, a recovery witness to whom seal of IO after use over the parcels was handed over. These witnesses have been extensively cross-examined and they are quite consistent with regard to various time factors relating to recovery including the time at which the police party started from police station, apprehended the appellant and returned to the police station, after completion of investigation. According to both the witnesses, the implements of weighment were already with them. According to PW2 the Investigating Officer was having with him the computerized scale. There was no suggestion to the recovery witnesses that any of the police officials had ulterior motive against the appellant to implicate him in a false case.

10. It was for the first time that the appellant came up with a plea

of false implication at the instance of one Ram Bahadur, statedly a stock witness of the police. There was neither any suggestion to the recovery witnesses that Ram Bahadur aforesaid was cited as prosecution witness in any of the investigations conducted by the police station concerned. Any record of police station has also not been summoned in defence to support the aforesaid contention.

11. DW-1 Rajinder Rai, examined by the appellant in defence stated that appellant was running a Barber's shop in Basti Jodhewal. He further stated that on 03.03.2011 at about 10.00 a.m., three police officials came in the shop of appellant and took him along with them. DW-1 further stated that no recovery of opium was made from possession of the appellant. Therefore, the defence version is also about apprehension of the appellant on 03.03.2011 itself, as is the prosecution story and thus, there was no scope of contending that the appellant was illegally detained for some days and thereafter the recovery was planted. The house of DW-1 is adjoining the shop of appellant and that is the reason for him trying to support the appellant.

12. PW-3 SI Surinder Singh, who was then Incharge of the Police Station stated about the production of accused and the case property before him and after verification of facts, he sealed the case property with his seal bearing impression 'SS'. The testimony of PW-4 HC Raj Kumar and PW-5 HC Gurjinder Singh is to connect the report of Chemical Examiner with the recovery made from the appellant. PW-4 HC Raj Kumar was the MHC of police station who tendered his affidavit Ex. PW-4/A and PW-5 HC Gurjinder Singh was entrusted with the

samples to be deposited in the office of Chemical Examiner, Kharar.

13. In view of the overwhelming evidence led by the prosecution, as discussed above learned counsel for the appellant has not been able to challenge the findings of conviction recorded by the trial Court. Learned counsel confined his arguments only qua the quantum of sentence.

14. Learned appellant's counsel submits that the fine of ₹ 5000/- imposed by the trial Court has since been deposited by the appellant on 03.07.2015. This is otherwise for the trial Court or the Jail Authorities to look into. As per the custody certificate dated 06.07.2015, placed on record by learned State counsel, the appellant has almost undergone about 8 months of imprisonment, out of the actual sentence of 01 year awarded to him. There is no instance of any previous FIR against the appellant. Looking into the factors as discussed above and the quantity of recovery, I find that period of sentence undergone by the appellant should be considered as sufficient punishment.

15. In view of above discussion, the instant appeal is dismissed on merits but partly allowed qua the quantum of sentence by reducing the period of substantive sentence from 01 year rigorous imprisonment to the period already undergone maintaining the imposition of fine and the default clause. Copy of this judgment be sent to all concerned immediately for compliance.

July 06, 2015
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(R.P. NAGRATH)
JUDGE