

In the High Court for the States of Punjab and Haryana at
Chandigarh

...

CRA-S-226-SB of 2014(O&M)

Date of decision: 27.5.2015

Buta Singh

.Appellant

Versus

State of Punjab

..Respondent

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Ms. Puja Chopra, Advocate
for the appellant
Mr. P.S.Paul, DAG,Punjab
for the respondent-State

Mahavir S.Chauhan, J.

CRM-15544-2015

Heard on the application for suspension of sentence.

During the course of hearing, learned counsel for the parties have jointly prayed that instead of the application, the appeal itself be taken up for hearing.

In view of the above, the application is dismissed and with the consent of the parties, the main appeal is taken up for hearing today.

CRA-S-226-SB-2014

Buta Singh, the present appellant was tried, along with Pal Singh, Darshan Singh alias Neela, Amarjit Singh and Kuljit Singh under Section 15 of Narcotic Drugs and Psychotropic Substances Act,1985 (for short,"NDPS Act") and vide judgment/order dated

23.5.2013, he has been convicted and sentenced to rigorous imprisonment for 10 years with fine amounting to Rs. 1 Lac and in default of payment of fine, to further simple imprisonment for two years by learned Judge, Special Court, Ludhiana (for short,"trial Court").

To challenge his conviction and award of punishment, appellant has brought this appeal.

Factual matrix culminating into filing of the instant appeal indicates that on 8.3.2004, Inspector Jasbir Singh (hereinafter referred to as the Investigating Officer) was on patrol duty in the company of a police contingent. At about 3.30 A.M., he received a secret information that Darshan Singh alias Neela, Kuljit Singh alias Ichi, Buta Singh alias Seera, Pal Singh, Amarjit Singh, Bittu and Billu were roaming in the area of villages Hissowal and Mohi and other adjoining villages and were carrying heavy quantity of poppy husk in a truck bearing registration No. RJ-13G-6228. Believing the information to be correct, Investigating Officer wrote an intimation slip (commonly called ruqa) and sent the same to Police Station where a formal first information report was recorded.

On reaching disclosed place, Investigating Officer found the aforementioned truck parked in the area of village Hissowal on the bank of drain and saw some persons transferring jute bags from the truck into a Maruti Car. When the police party reached near the truck, some of those persons escaped in the Maruti Car towards village Boparai. However, one person who was occupying the driver's

seat was apprehended. He disclosed his name as Buta Singh, the present appellant. Another person apprehended on the spot disclosed his name as Pal Singh. Investigating Officer told the apprehended persons that he suspected them to carry some intoxicating substance in the truck and as such the truck was to be frisked. He also told them that they had an option to have the truck frisked by him or before a Gazetted Officer or a Magistrate. Both of them opted to have frisking of the truck in the presence of a Gazetted Officer. The non-consent memoranda of accused were accordingly prepared. DSP Harjit Singh Brar on being requested reached the spot; disclosed his identity before the accused and reiterated before them that they had a right to have frisking of the truck in his presence or in the presence of another Gazetted Officer or a Magistrate. Both the accused opted to have the truck frisked in his presence. On the instructions of DSP Harjit Singh Brar, Investigating Officer searched the truck and recovered therefrom 17 jute bags. On examination, the bags were found to contain poppy husk. From each of the recovered bags, two samples of 100 grams each were separated. Remainder weighed 39 Kg. 800 grams, each bag. The samples were made into parcels which were sealed with seal bearing impression “**JS**” A sample seal was separately prepared. DSP Harjit Singh Brar also affixed his own seal bearing impression “**HS**” on the sample parcels. Bags containing remainder, as also the sample parcels, were taken in possession. Accused were arrested. Statements of witnesses were recorded. Representative samples were sent for chemical

examination and a report was received confirming that contents of the sample parcels contained poppy heads.

On completion of investigation, a report in terms of Section 173(2) of Code of Criminal Procedure, 1973 (for short,"Cr.P.C.") was prepared and presented before the learned trial Court.

On hearing the prosecutor and the defence and appraisal of the report and its enclosures, learned trial Court found a prima facie case punishable under Sections 15 and 25 of the NDPS Act to have been committed by the accused. A charge was accordingly framed. Accused pleaded not guilty to the charge and claimed to be tried.

During trial, prosecution examined SI Amarbir Singh (PW1) Harjit Singh Brar, SP (Operation), Amritsar (Rural) (PW2), SI Jaspal Singh (PW3), SI Teja Singh, (PW3), SI Mohd. Jamil (PW4), DSP Jasbir Singh, (PW5), ASI Pritam Singh (PW6), Ram Chander, a Clerk of the office of DTO, Ganga Nagar (PW7), SI Jaspal Singh Dhaliwal (PW8) besides tendering affidavit of Constable Hari Chand as Exhibit PX and report of Chemical Examiner as Exhibit PY.

After evidence of the prosecution was complete, the accused were examined under Section 313, Cr.P.C. and were confronted with incriminating circumstances appearing against them. They denied all the circumstances as false and incorrect and reiterated plea of their innocence and false implication.

Accused did not lead any evidence in defence.

On hearing the prosecution and the defence and on perusal of evidence available on record, learned trial Court came to the conclusion that the prosecution was able to prove conscious possession of 17 bags of poppy husk by the accused and accordingly convicted and sentenced them to rigorous imprisonment for 10 years with fine amounting to Rs. 1 lac and in default of payment of fine, further simple imprisonment for 2 years, each.

I have heard learned counsel for the parties besides examining the record of the case.

Learned counsel for the appellant has argued that the impugned judgment/order are liable to be set aside, firstly because the learned trial Court has failed to take note of the fact that provisions of Section 42 of the NDPS Act were not complied with insofar as the secret information was not reduced into writing; secondly because link evidence in the matter is missing as Constable Hari Chand has not been examined as a witness and thirdly because the samples were sent for chemical examination after a delay of 28 days.

On the contrary, learned State counsel has defended the impugned judgment/order and has submitted that Section 42 of the NDPS Act was not applicable to the recovery as it was effected from an open truck. Constable Hari Chand could not be examined as he had expired and his affidavit Exhibit PX was placed on record without any objection having been raised on behalf of the defence and on account of delay in sending the sample parcels for chemical

examination no prejudice is shown to have been caused to the appellant.

Nothing more has been argued on either side.

It is not the case of the appellant that when secret information was received by the Investigating Officer, he was present in the police station. In fact, it is the case of the prosecution that when secret information was received by him, Investigating Officer was on ;patrol duty. In such circumstances, the register meant for recording of information of commission of offences was not available with him. From the circumstances appearing on record, it also comes out that the secret information was to the effect that the accused persons were roaming in rural area carrying heavy quantity of contraband in a truck presumably for the purpose of selling it to the villagers. It was at about 3.30 A.M. Any delay in reaching the spot could result into the accused persons fleeing from the spot or the contraband and/or evidence of commission of the offence being destroyed or concealed. That being the situation, non-compliance of the provisions of Section 42 of the NDPS Act immediately before proceeding to the spot of recovery was not possible or say advisable. In any case, an intimation in the matter was sent to the quarters concerned after recovery of the contraband was effected. Thus, provisions of Section 42 of the NDPS Act were complied with after recovery had been effected. It is settled law that non-compliance of Section 42 of the NDPS Act is fatal to the case of the prosecution but deferred compliance thereof, as in the case in hand, is permissible.

It is true that sample parcels were sent to chemical examiner after a delay of 28 days. However, poppy husk is not shown to have a shelf life. To put it straight, poppy husk is not a substance that would deteriorate or would lose its characteristics with the passage of time. Therefore, delay in sending the sample parcels for chemical examination is rendered inconsequential more so in view of the fact that no prejudice on that account is shown to have been caused to the appellant.

As regards non-examination of Constable Hari Chand, suffice it to say that it happened on account of his unfortunate death before he could be produced before the Court and his duly sworn affidavit Exhibit PX was produced on record by the prosecution without any objection having been raised on behalf of the defence. Therefore, this contention is not available to the appellant.

In the evidence of DSP Jasbir Singh (PW5), SP Harjit Singh Brar (PW2) and SI Amarbir Singh (PW1), it has been proved beyond any manner of doubt that from possession of the appellant and his co-convict Pal Singh, 17 bags containing 40 Kgs. Poppy husk, each, were recovered. Section 35 of the NDPS Act raises a presumption about mental culpability while Section 54 of the NDPS Act raises a presumption about conscious possession of the contraband. Nothing has been brought on record either in the cross-examination of the witnesses of prosecution or by leading evidence in defence to rebut this presumption.

In view of the above, I do not find any reason to interfere

with the impugned judgment of conviction. Accordingly, judgment of conviction is maintained.

However, as regards order on quantum of sentence, it is found that award of two years simple imprisonment in default of payment of fine is on the higher side and deserves to be brought down appropriately.

Consequently, while maintaining the award of rigorous imprisonment for 10 years and fine amounting to Rs.1 lac, imprisonment in default of payment of fine is reduced to 6 months simple imprisonment.

With the aforesaid modification in the order on quantum of sentence, the appeal fails and is dismissed.

May 27,2015
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(MAHAVIR S.CHAUHAN)
JUDGE