

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Appeal No.S-2784-SB of 2014 (O&M)

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Date of decision:18.11.2015

Ravinder Singh

...Appellant

v.

State of Punjab

...Respondent

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(2) Criminal Misc. No.M-21105 of 2015

.....

Ravinder Singh

...Petitioner

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Chanan Singh, Advocate for the appellant/petitioner.

Ms Shivali, Assistant Advocate General, Punjab for the
respondent-State.

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Inderjit Singh, J.

This order will dispose of above mentioned Criminal Appeal
No.S-2784-SB of 2014 and Criminal Misc. No.M-21105 of 2015. Criminal
Appeal No.S-2784-SB of 2014 has been filed challenging the impugned

judgment of conviction and order of sentence dated 15.3.2014 passed by learned Judge, Special Court (A), Gurdaspur, whereby the accused/appellant has been held guilty and convicted for the offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). The accused-appellant has been sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹7,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months for the offence under Section 22 of the Act.

Criminal Misc. No.M-21105 of 2015 has been filed under Section 427(2) Cr.P.C. for directing the sentence of four years rigorous imprisonment awarded on petitioner, Ravinder Singh for the offence under Section 22 of the Act vide judgment dated 15.3.2014 in Session's case No.93 of 2009 (FIR No.100 dated 11.10.2008, P.S. Ghuman, District Gurdaspur) by learned Judge, Special Court, Gurdaspur, to run concurrently with the sentence of rigorous imprisonment for three years also awarded on the petitioner for the offence under Section 22 of the Act vide judgment dated 6.2.2014 passed by learned Judge, Special Court, Gurdaspur in Session's case No.92 of 2009 (FIR No.25 dated 28.3.2009), P.S. Ghuman, District Gurdaspur) in the interest of justice and consequently the petitioner may be entitled to be released on bail by suspension of sentence under law in Criminal Appeal No.S-2784-SB of 2014.

The brief facts of the prosecution case are that on 11.10.2008, SI Partap Singh, In-charge, CIA Staff Batala along with other police officials was on patrol duty. When the Police party crossed Village

Ghuman, from Mehta road to Petrol Pump, a person was seen coming on foot from Ghuman Chowk, carrying a cloth bag in his right hand. On the basis of suspicion, he was stopped. He tried to flee away from the spot, but the Police party apprehended him. On inquiry, he disclosed his name as Ravinder Singh alias Laddi. The accused was apprised of his legal right of search from him or from a Gazetted Officer or a Magistrate. He shown his intention to get searched from Gazetted Officer. Then the Investigating Officer informed the DSP (D) through wireless, who reached at the spot. The search was made as per law. One sample of 5 grams was separated. The remaining intoxicant powder came to 445 grams. Separate sealed parcels were prepared. The case property was taken into Police possession vide recovery memo. The 'Ruqa' was sent to the Police Station, on the basis of which formal FIR was registered. The accused was arrested. The statements of witnesses were recorded. After necessary investigation, the challan was presented in Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused-appellant framed charge for the offence under Sections 15 of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Retired Inspector Partap Singh, Investigation Officer, who deposed regarding conducting the investigation in the present case. PW-2 Retired SI Kashmir Singh is the recovery witness, who was with the Police party of then SI Partap Singh and he also supported and corroborated the prosecution

version. PW-3 HC Santokh Singh is a formal witness, who tendered in evidence his affidavit Ex.PW.3/A. PW-4 Inspector Gurwinder Singh was posted as SHO at Police Station, Ghuman. He deposed regarding producing the case property along with witnesses etc. and deposed regarding the verification and also sealing the parcels received, affixing his seal 'GS' also on the parcels. He also deposed regarding depositing the case property etc. PW-5 Kulwant Singh ADCP (Industries), Jalandhar, mainly deposed that he was posted as DSP(D) on 11.10.2008 and he also deposed regarding the prosecution version.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent. He also stated that he is a chemist and nothing has been recovered from him.

In defence, the accused examined DW-1 Kamlesh Kumari, Dealing Assistant, Drug Branch office of Civil Surgeon, Gurdaspur, who mainly deposed that she had brought the summoned record and as per their record, Ravinder Singh-accused was having a valid licence and doing the Chemist shop in the name and style of Laddi Medical Store and subsequently, at present in the name of R.S. Medicos due to the change of place and also produced copies of licence Ex.D.1 to D.2.

After going through the evidence on record, the learned trial Court vide its impugned judgment and order convicted and sentenced the accused-appellant for the offence as mentioned above. Aggrieved against

the judgment, the present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that firstly, the appellant was having a valid licence and is running a chemist shop. He argued that the appellant has been falsely implicated in the present case. He further argued that as per the FSL report Dextropropoxyphene is stated to have been recovered and notification regarding the same was issued only by the Central Government on May 23, 2013 and before the issuance of this notification possession of salt was not an offence. He further argued that the presence of Kulwant Singh, DSP on the spot is also doubtful as he failed to tell the direction. He also pointed out discrepancies in the statements that four-five hours were taken to complete the investigation and writing work was done there on the spot while sitting on a chair and table, which were brought from a nearby place or the Police party remained on the spot for only two hours and that the writing work was done while sitting in the Police vehicle. He also argued that no independent witness has been joined in the investigation. He argued that in the absence of independent witness, the case of the prosecution is doubtful.

On the other hand, learned Assistant Advocate General, Punjab appearing for the respondent-State argued that the case of the prosecution has been duly proved. The PWs have consistently deposed regarding the prosecution version. There are no material contradictions or material improvements in the statements of the witnesses. The mandatory provisions of the Act have been complied with. She argued that there is no merit in the

appeal and it should be dismissed.

I have heard learned counsel for the appellant and learned Assistant Advocate General, Punjab appearing for the respondent-State and have gone through the record.

From the record, I find that as regards the independent witness, it is now settled law that testimony of Police officials is as good as of any other witness unless some enmity or motive of the Police officials against the accused is alleged and proved. In the present case, there is no such enmity or motive of the Police officials to falsely implicate the appellant. Secondly, I find that the Police party was on patrol duty and the recovery from the accused/appellant was sudden and by chance. 450 Grams of intoxicant powder was recovered which falls in non-commercial quantity as per FSL report and there is no explanation regarding the possession of the same with the accused/appellant. The fact that the accused/appellant is a chemist and also runs a chemist shop is of no benefit to the accused because he was not apprehended from the chemist shop for possessing tablets etc. Rather, he was apprehended in the way carrying this intoxicant powder in a bag in his hand.

As regards the presence of Kulwant Singh, DSP, I find that there is nothing on the record from which the presence of Kulwant Singh can be held as doubtful. The mere fact that he could not tell the surrounding/directions regarding the place of occurrence will not create any doubt in view of the fact that he also put his seal impression on the parcels. Further nothing in his cross-examination has come out from where it can be

held that DSP was not present on the spot. PWs have consistently deposed regarding the prosecution version and there is nothing on the record from which presence of Kulwant Singh on the spot can be doubted.

As regards the discrepancy pointed out by the learned counsel for the appellant, these are minor in nature and, in no way, these discrepancies go to the root of the the case. Such type of discrepancies used to occur in the statements of the truthful witnesses due to gap of time and their memory etc. and also that the witnesses used to appear in so many cases as witnesses.

As regards the notification, the argument of learned counsel for the appellant that this offence has been made regarding possessing of this salt only vide notification dated 23.5.2013. A perusal of the notification shows that the Central Government vide this notification suspended the manufacturing for sale and distribution of the following drugs with immediate effect:

“Dextropropoxyphene and formulations containing
Dextropropoxyphene for human use.”

This salt has been duly mentioned in the chart in the NDPS Act and there is nothing that before issuance of this circular, the possession of this salt was not an offence. A perusal of the evidence on record shows that the PWs have consistently deposed regarding the prosecution version. There are no material contradictions or improvements in their statements. There is nothing in the cross-examination of the witnesses which may make their statements unreliable. The mandatory provisions have been complied with.

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The accused/appellant has been rightly convicted and sentenced by the learned Judge, Special Court. The prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt.

Therefore, finding no merit in Criminal Appeal No.S-2784-SB of 2014, the same is dismissed.

Cr. Misc. No.M-21105 of 2015:

I have heard learned counsel for the petitioner.

The present petitioner has been convicted by the Judge, Special Court, Gurdaspur vide judgment dated 6.2.2014 in Session's case No.92 of 2009 (FIR No.25 dated 28.3.2009) registered at Police Station Ghuman, District Gurdaspur for possessing 500 grams of the intoxicant powder and has been sentenced to undergo imprisonment for a period of three years and to pay a fine of ₹5,000/-. As per the judgment in the present case i.e. Criminal Appeal No.S-2784-SB of 2014, he has been convicted on 15.3.2014 under the NDPS Act in FIR No.11 of 2010, therefore, under Section 427 Cr.P.C., both the sentences are ordered to run concurrently.

The criminal miscellaneous petition is accordingly disposed of.

November 18, 2015.

(Inderjit Singh)
Judge

hsp