

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

**CRA NO.S-4022-SB OF 2014(O&M)
DECIDED ON : 21.02.2015**

Darshan Singh

..... Appellant

versus

State of Punjab

..... Respondent

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

Present : Mr. B. S. Aulakh, Advocate,
for the appellant.

Mr. Yogesh Gupta, AAG, Punjab.

K. C. PURI, J. (ORAL)

Challenge in this appeal is to the judgment of conviction and order of sentence dated 01.09.2014 passed by Shri Ajaib Singh, Special Judge, Fatehgarh Sahib, vide which the accused/appellant has been convicted under Section 20 of the Narcotic Drugs and Pshychotropic Substances Act (in short "the NDPS Act") and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

The facts as enumerated from the record are that on 02.09.2011 at about 5.00 PM, ASI Baldev Singh along with fellow officials was on patrolling duty near the bridge of small canal in the area of village Ajnali. The accused was seen coming on foot from the side of GT road, Bus Stand Ajnali. He was carrying a plastic bag in his hand but on seeing the police party at once he tried to turn back. On the basis of suspicion, he was apprehended by ASI Baldev Singh with the help of fellow officials. Upon inquiry the accused disclosed his name and whereabouts. ASI Baldev Singh disclosed his identity to the accused and told him that the accused is suspected of having contraband in the plastic bag carried by him and he showed his intention to conduct search of the said bag. He also apprised the accused of the fact that accused had a right to get the bag searched either by a Magistrate or by a Gazetted Officer and if he desire, the said officer could be called at the spot. The accused reposed confidence in ASI. Accordingly, the bag was searched which led to recovery of ganja. Two samples of 100 gm each were separated from the same. On weighing, the remaining ganja came to 1 kg 800 gms. The samples and the bulk parcels were sealed by ASI Baldev Singh with his seal bearing impression 'B.S'. The sample of seal was prepared. The sealed case property was taken into police possession vide separate memo. Ruqa was sent on the basis of which formal FIR was recorded. Investigation was carried out. The accused was arrested. After completion of

necessary investigation challan against the accused/appellant was presented in the Court.

Copies of the documents as envisaged under Section 207 Cr.P.C, were supplied to the accused free of costs.

On finding a prima facie case made out against the accused, charge under Section 20 of NDPS Act was framed against the accused, to which, he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ASI Baljinder Singh as PW-1, HC Jiwan Singh as PW-2, ASI Baldev Singh as PW-3, SI Bhagwan Singh as PW-4, ASI Harwinder Singh as PW-5 and closed the evidence.

Statement of the accused under Section 313 Cr.P.C was recorded wherein all the incriminating evidence was put to him to which he denied and pleaded false implication.

The accused was called upon to lead defence evidence but he has not examined even a single witness in his defence.

The learned trial Court, after appraisal of the evidence, convicted the accused under Section 20 of the NDPS Act and sentenced him to undergo rigorous imprisonment and fine, as narrated above.

Feeling dissatisfied with the aforesaid judgment of conviction and order of sentence dated 01.09.2014, the accused has preferred the present appeal.

Learned counsel for the appellant has submitted that no independent witness has been joined in the investigation. It is further contended that no Gazetted Officer was also joined in the investigation. It is further contended that the recovery is stated to have effected on 02.09.2011 but the sample for analysis was sent on 05.09.2011. It is further contended that the CFSL Form was not prepared at the spot which creates dent in the prosecution story.

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

The joining of independent witness is not the rule of law but rule of caution. In case the evidence of official witnesses is trustworthy, in that case conviction can be maintained on the testimony of official witnesses alone. The non-joining of Gazetted Officer does not create any dent in the prosecution story. The delay of two days in sending the sample for chemical analysis is not fatal. Even according to the instructions, the sample can be sent within 72 hours. Mere fact that CFSL Form was not prepared at the spot is not a ground for acquittal. No reasoning has been given by the appellant as to why false case has been registered against him. From the conviction slip, it is revealed that appellant has been convicted in another case under the NDPS Act and has been sentenced to undergo rigorous imprisonment for a period of ten years. There is nothing on file to show that the sample was tampered at any stage of the trial.

Learned counsel for the appellant has further submitted that there is discrepancy in the statement of PW-2HC Jiwan Singh and PW-3 ASI Baldev Singh (Investigating Officer) regarding weighing and scale of the contraband. It is submitted that PW-2 HC Jiwan Singh during his examination in the trial court has deposed that the weighing scale was with the Investigating Officer whereas PW-3 ASI Baldev Singh has deposed that the same was procured from the nearby shop.

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

In this case recovery was effected on 02.09.2011 but the witnesses were examined on 01.05.2012 and 30.11.2012 respectively. So due to lapse of memory, the above said discrepancies have occurred. The said discrepancy is not such which goes to the root of the case.

Lastly, learned counsel for the appellant has submitted that in case the court is not inclined to accept the prayer for acquittal of the appeal, in that case the sentence of the present case in respect of FIR No. 139 of 02.09.2011 under Section 20 of NDPS Act Police Station Gobindgarh, be ordered to run concurrently with the sentence awarded in respect of FIR No. 120 dated 15.06.2010 under Section 22 NDPS Act Police Station Gobindgarh.

The said prayer has been opposed by learned State counsel.

As per conviction slip, the appellant is not facing trial in any other case except the case in hand and in respect of FIR No.120 dated 15.06.2010 under Section 22 NDPS Act Police Station Gobindgarh. In the later case i.e FIR No.120/15.06.2010, he has been convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of ₹One lac.

In view of the above discussion, the conviction recorded by the trial court does not call for any interference and the same stands affirmed. However, in view of Section 427 Cr.P.C, the sentence can be made to run concurrently in appropriate cases. Since the appellant is not facing trial in any other case except the above mentioned two cases, the sentence of present case i.e FIR No.139 dated 02.09.2011 under Section 20 NDPS Act Police Station Gobindgarh as well as sentence in respect of FIR No.No.120 dated 15.06.2010 under Section 22 NDPS Act Police Station Gobindgarh, are ordered to run concurrently.

With the above said observations, the appeal stands dismissed.

A copy of the order be sent to the trial court for strict compliance.

FEBRUARY 21, 2015
shalini

(K. C. PURI)
JUDGE