

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-461-SB of 2014
Date of Decision: December 02, 2015

Gurmeet Kaur

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Pheruman, Advocate
for the appellant.

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

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 17.01.2014 passed by learned Judge, Special Court, Amritsar, whereby she was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹1 lac and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 22 of the NDPS Act.

The brief facts of the case are that on 04.03.2010, ASI Harbhajan Singh along with other police officials was present at Sheranwala Gate, Amritsar. One woman was seen coming from Chowk Phuwara side having covered her face and a polythene bag in her hands. On seeing the police party, she got perplexed, retraced

her steps and threw said polythene bag on one side of the road. She was apprehended on suspicion. Bag was picked up and on checking, it was found to be containing 120 injections of Alwin 10 ml and 300 injections of Boprenorphine I.P. 2 ml. She could not produce the licence or bill regarding purchase of said injections. Witness from the public was tried to be joined but none agreed. Personal search of the accused was got done through Lady Constable Pinder Kaur and ₹70/- was recovered. Out of the recovered injections, five injections of each type were taken out as sample and separate sealed parcels of remaining injections were prepared. The parcels were sealed by SI Harbhajan Singh with his seal 'HS'. Sample seal was prepared. Ruqa was sent to the police station, on the basis of which, formal FIR was registered. Accuses was arrested. Statements of witnesses were recorded. Due to new demarcation of areas of police stations, the file of this case was transferred in Police Station E-Division, Amritsar. Thereafter, ASI Gurbachan Singh did further investigation. After receiving report of chemical examiner and after necessary investigation, the challan was presented against the accused-appellant.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to her under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 22 of the NDPS Act, to which she pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head

Constable Gurnam Singh, who was with the police party and recovery witness. He deposed as per prosecution version. This PW was not cross-examined by the accused. PW-2 SI Harbhajan Singh is the Investigating Officer, who mainly deposed regarding the investigation conducted by him in the present case. PW-3 DSP Suba Singh, who was posted as SHO at Police Station B Division deposed that Investigation Officer produced before him one of five injections of Alwin 10 ml each and one of five injections of Buprenorphine 2 ml each and two bulk parcels along with form M-29 and sample seal. After checking the intactness of the seal, he sealed all the parcels with his seal impression 'SS' and affixed one seal on form M-29 Ex.PW2/H and sample seal was prepared separately and kept his seal after use with him. He further deposed that Ex.PW2/D is memo of handing over, which was signed by Investigating Officer. He kept all the parcels along with sample seals and form M-29 in double lock of malkhana after taking another key from concerned MHC. He next deposed that Investigating Officer also produced the accused before him, who was kept behind the bars. On 05.03.2010, all the parcels duly sealed with seal impression 'HS' and 'SS' along with sample seal and form M-29, after taking the same out of the double lock of malkhana along with application Ex.PW2/F for authentication from the Illaqa Magistrate were handed over to Investigating Officer. After producing the same before Illaqa Magistrate, Investigating Officer deposited the bulk parcels in judicial malkhana as per the order of Illaqa Magistrate on the same day and on return to the police station,

Investigating Officer handed over both the sample parcels to him along with form M-29 and sample seals were again kept in double lock of malkhana by him after taking another key from the concerned MHC. He further deposed that on 11.03.2010, he handed over both the sample parcels duly sealed with seal impressions 'SS' and 'HS' along with form M-29 and sample seal to Constable Pritpal Singh after getting issued the docket from Commissioner of Police, Amritsar vide road no.81/21 for depositing in the office of FSL, Chandigarh and he handed over the receipt to him after depositing the same. Neither he nor anyone else tampered with the case property until it remained in his custody. PW-4 Head Constable Pritpal Singh, is formal witness, who tendered into evidence his affidavit Ex.PW4/A.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and she denied the correctness of the evidence and pleaded herself as innocent. She further deposed that she is running a chemist shop under the name and style of Sandhu Medical Store and having legal and valid drugs licence duly issued by the Licencing Authority, Punjab, Chandigarh.

In defence, accused-appellant examined DW-1 Kamlesh Kumari, Dealing Clerk, Drug Branch, office of Civil Surgeon, Gurdaspur, who brought the summoned record and proved the licence of Sandhu Medical Store, Dhoriwal, District Gurdaspur and deposed that it was valid upto 31.12.2006 and then renewed two times upto 31.12.2011 as per record. It is also stated that Gurmeet Kaur is the sole proprietor of the said store and said licence is issued under the

signatures of State Drug Controlling and Licencing Authority, Punjab, Chandigarh.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued that first of all, the recovery has been effected from a crowded place in Amritsar City but no independent witness has been examined. The mere statement of the Investigating Officer that no independent witness agreed to join, is not sufficient to explain as to why the independent witness was not joined. No name or address of anybody, who was asked to join and refused, has been mentioned. He next argued that the accused has examined in defence DW-1 Kamlesh Kumari, who has proved the valid drug licence in the name of present appellant, who is the sole owner of the Sandhu Medical Store, therefore, he contended that this fact should have been verified by the Investigating Officer during the investigation but challan was presented that she could not produce the licence. He further argued that as the appellant is running a chemist shop, she is not to carry the licence with her. The licence as per the rules, is to be kept in the shop in view of the customers. Learned counsel for the appellant also contended that there are material discrepancies in the statements of the witnesses. The samples were handed over to Head Constable Pritpal Singh on 11.03.2010 or 15.03.2010, the witnesses have made material improvement regarding this fact, which create reasonable doubt in the prosecution version as to when the samples were

entrusted to him. The Station House Officer as well as Constable Pritpal Singh were confronted with their statements where the date is mentioned as 15.03.2010 instead of 11.03.2010 and this fact also creates doubt. He next argued that report under Section 57 of the NDPS Act was not sent. There is no compliance of Section 52A of the NDPS Act as no sample was separated by the Court. Learned counsel for the appellant further contended that there is no mention that all the injections were of the same batch as only five samples were sent. He next argued that presence of Lady Constable Pinder Kaur is also doubtful as she has not signed on any of the document i.e. recovery memo etc. and her statement was neither in the report under Section 173 Cr.P.C. nor it was found in the police file. So, it vitiates all the proceedings and create reasonable doubt. Learned counsel for the appellant further contended that even if the bill of the medicines/injections is not produced, then it will be violation of the Drug and Cosmetics Act and will be treated as that the record is not maintained and at the most, licence can be cancelled but in no way, it can be stated that offence under NDPS Act has been committed. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that prosecution has duly proved its case by examining the PWs. There are no material contradictions or improvements in the statements of the witnesses as neither the bills nor the licence has been produced

at the time of recovery of intoxicant injections and therefore, the appellant has been rightly convicted and sentenced. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

From the record, first of all, I find that no independent witness has been examined by the Investigating Officer nor name of any person has been mentioned in the record, who had refused to join the investigation. Sheranwala Gate, Amritsar is a crowded area and even the Investigating Officer has admitted that place of recovery is a thoroughfare. When so many independent witnesses were available at the place of recovery, which is in the City itself, then non-joining of such witness, creates doubt in the prosecution version. Though, it is settled law that independent witness is not necessary and the police official cannot be disbelieved unless enmity or motive is shown but the facts and circumstances of the case are also to be taken note of. The recovery has been effected from a crowded area and no honest attempt was made by the Investigating Officer to join independent witness. In the present case, though the recovery was effected from the bag, which is stated to be thrown by the accused, Section 50 of the NDPS Act will not apply but even then, no attempt was made to get the recovery effected in the presence of some senior officer by calling him on the spot. Further, I find that no statement of Lady Constable Pinder Kaur has been recorded under Section 161 Cr.P.C.

The Investigating Officer has stated in cross-examination that he has got recorded the statement of Lady Constable Pinder Kaur but this statement was even not available in the police file, which creates doubt regarding the presence of Lady Constable Pinder Kaur on the spot. Next I find that her signatures were not obtained even on the arrest and intimation memo. The recovery memo was also not attested by her. She has also not been examined in the present case by the prosecution. Therefore, reasonable doubt exists regarding present of Lady Constable on the spot regarding carrying out of personal search of the accused-appellant by her. The Investigating Officer has stated in the cross-examination that he has not sent the report to the Senior Officer. There is another fact unexplained that whether the form M-29 has been handed over along with the case property to the SHO. The Investigating Officer stated that this fact was got recorded in the statement of SHO dated 15.03.2010 Ex.D3. When the Investigating Officer was confronted with the statement then it was not found so recorded. There is also discrepancy as to when the statement of SHO was recorded. The Investigating Officer further in cross-examination has stated that he got recorded the statement of SHO under Section 161 Cr.P.C. only once. When the Investigating Officer was shown the statement, then he stated that he also got recorded the statement of the SHO second time but he did not remember the date. The Investigating Officer stated that he also recorded in the ruqa that form M-29 was filled on the spot but when confronted, it was not found so recorded. He specifically admitted

that he has not informed the Senior Officer regarding the search and seizure within 48 hours. The Investigating Officer stated that earlier he prepared the recovery memo and thereafter, he got recorded the ruqa. When he prepared the recovery memo, the copy of FIR was not received from the police station. The attention of the witness was drawn on the recovery memo Ex.P1 at point 'A' where the FIR number is mentioned. So, this fact also creates doubt in the prosecution version as to whether the proceedings were conducted by the Investigating Officer on the spot or the documents were prepared later on.

Further, I find that the Investigating Officer has admitted that he has not drawn any sample the presence of the Illaqa Magistrate nor any photographs were clicked in the presence of Illaqa Magistrate and he has produced the case property and sample seals before the Illaqa Magistrate. The attention of the witness was drawn towards the order dated 05.03.2010 and the fact regarding the production of sample seal was found not recorded. The Investigating Officer stated in the cross-examination that SHO on 15.03.2010 handed over the case property to one Pritpal Singh No.184, who had deposited the case property in FSL, Chandigarh on 15.03.2010 and he has got recorded the statement of SHO Ex.D3 and statement of Constable Pritpal Singh. PW-3 DSP Suba Singh, who was posted as SHO, deposed in his chief-examination that on 11.03.2010, he handed over both the sample parcels duly sealed along with form M-29 and sample seal to Constable Pritpal Singh after getting issued the docket

from Commissioner of Police, Amritsar. In cross-examination, when the witness was confronted with the statement Ex.D3 where it was found that the sample parcels were handed over to Constable on 15.03.2010 and he has deposited the same on 15.03.2010 in the office of Chemical Examiner. This witness volunteered that sample was sent and deposited on 11.03.2010 and the date 15.03.2010 in Ex.D3 has been mentioned inadvertently. PW-4 Head Constable Pritpal Singh stated in cross-examination that his statement was recorded by the Investigating Officer on 15.03.2010. The samples were handed over to him by the SHO on 11.03.2010. He had got recorded that fact in his statement that sample was handed over to him on 11.03.2010. When the witness was confronted with his statement recorded by the Investigating Officer, it is mentioned that the parcels were handed over to him on 15.03.2010 and he has deposited the same on 15.03.2010. This is a material improvement in the statement of the witness which goes to the root of the case and creates reasonable doubt regarding link evidence.

Furthermore, as already discussed, accused-appellant is having valid drug licence and owner of Sandhu Medical Store/chemist shop. She is not supposed to carry the licence along with her. During the investigation, the Investigating Officer could have come to know that she is having valid drug licence for keeping those injections/medicines. If the injections are purchased and were taken to the chemist shop, the licence is not required to be taken along with her by the accused-appellant. This fact could have been investigated

by the Investigating Officer during the investigation. Even if it is proved that the present appellant is not maintaining the accounts properly or the bills are not taken while purchasing the medicines/injections etc. then it amounts to violation of Drugs and Cosmetics Act. She was carrying the bag in the crowded city and in no way, it can be held that she was going to deliver these injections to the customers in the village nor she was found in any secluded place etc.

In view of facts and circumstances of the present case, reasonable doubts exist in the prosecution version, specially when no independent witness has been joined and not recording of the statement of Lady Constable Pinder Kaur and the discrepancy regarding the fact that as to when the sample was sent and non compliance of Section 57 of the NDPS Act etc. Therefore, giving benefit of doubt to the accused-appellant, she is acquitted of the charge framed against her. The judgment of conviction and order of sentence dated 17.01.2014 passed by learned Judge, Special Court, Amritsar, is not as per law and the same is set aside.

Resultantly, finding merit in the present appeal, the same is accepted. Appellant Gurmeet Kaur, who is in custody, be released forthwith, if her custody is not required in connection with any other case.

December 02, 2015
Vgulati

(INDERJIT SINGH)
JUDGE