

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-5244-SB of 2014 (O&M)
Date of Decision:8.7.2015

Bala

....Appellant

Versus

State of U.T., Chandigarh

....Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. I.P. Atre, Advocate for the appellant.

Mr. A.S. Virk, Addl. Public Prosecutor for U.T.,
Chandigarh.

NAVITA SINGH, J.

1. This appeal has been filed against the judgment of conviction dated 2.12.2014 and order of sentence passed on 3.12.2014.

2. The case against the appellant was that S.I. Tarsem Singh on 22.11.2012, along with other police officials was on patrolling duty. He was present in Sector 38-A, Chandigarh behind the houses and was checking the passersby. At about 2.30 am, the appellant came to the road from a small passage near the houses with a polythene bag in her right hand. On suspicion, the bag was checked, which was found to contain 25 grams of smack. Two samples of five grams each were drawn out and both the samples as also the remaining contraband were separately sealed. FIR was got registered against the appellant and on completion of investigation, the charge sheet was prepared against her. Charge under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act for short) was framed. The appellant pleaded not guilty.

3. After taking the evidence of the prosecution and recording the statement of the appellant under Section 313 Cr.P.C., findings of conviction were returned against the appellant.

4. Counsel for the appellant argued that as per the statement of S.I. Usha Rani (PW1), the appellant was carrying polythene in her right hand whereas according to S.I. Tarsem Singh (PW2), the polythene was found in the fist of the appellant but it was visible. It would be seen that Tarsem Singh said that the accused was carrying polythene in her right hand. Even if at one place one of the witnesses stated that the polythene bag was in the fist of the appellant, it would still mean that it was in her right hand. Such an unimportant and minute discrepancy, if at all, is rather no discrepancy as such and can safely be ignored.

5. Counsel for the appellant then argued that no independent witness was joined. The appellant was found coming from the kacha passage near the houses and she suddenly appeared on the road and on suspicion, she was stopped and checked and there was no question for the Investigating Officer to have waited for any independent person so as to join him/her in the investigation. The Investigating Officer explained that he tried to join some persons, but they refused.

6. All the material aspects were corroborated by both the main witnesses i.e. S.I. Usha Rani and S.I. Tarsem Singh. No material contradictions appeared in their statement. Both the witnesses categorically stated that the appellant was carrying the polythene in her hand. She was stopped on suspicion and 25 grams of smack were found in her possession. Link evidence was also complete.

7. Lastly counsel for the appellant argued that notice under Section 50 of the Act was not served as was admitted by the Investigating

Officer in his cross examination. This aspect, according to the counsel, was fatal for the prosecution case. State counsel on the other side contended that the provision of Section 50 of the Act, would apply for searching any person under Sections 41, 42 and 43 of the Act. Section 41 has no application in the given circumstances. So far as the Section 42 of the Act is concerned, the same also relates to entry and search, which was not the case here. Here only Section 43 of the Act would apply as there was a seizure at a public place and it is only if the person sought to be searched for desires that he/she would be taken to the nearest Gazetted Officer.

8. In the present case, the police party was on patrolling duty and passersby were being checked as there had been many incidents of thefts during those days. It was in that connection that the Investigating Officer suspected that the appellant may be carrying some stolen article in the polythene and for such reason the search was conducted. The Investigating Officer had no apprehension at that time that the appellant was carrying some narcotic substance or other contraband. In the given facts and circumstances, therefore, non-compliance of Section 50 of the Act was not fatal.

9. Counsel for the appellant relied on the judgment of the Supreme Court as Ritesh Chakarvarti Vs. State of Madhya Pradesh 2006 (4) RCR (Criminal) regarding absence of independent witness at the time of recovery. However, it was held that recovery of contraband in the presence of independent person assumes importance but it was not held that if independent witness was not joined the person accused of possessing the contraband should be acquitted in all cases as a thumb rule.

10. Last but not the least, it requires to be pointed out that the appellant is a previous convict as she stood convicted on 5.7.2014 under

Section 21 of the Act for possessing four grams of smack. No lenient view is, therefore, called for.

11. In view of the above, the appeal is dismissed.

(NAVITA SINGH)
JUDGE

8.7.2015
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