

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S No. 1646-SB of 2003 (O&M)
Date of decision: - 07.09.2015

Bansi Lal @ Bani

...Appellant

Versus

U.T. Administration, Chandigarh

..Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Ritesh Parsad, Advocate
for Mr. Vikram Singh, Advocate
for the appellant.

Ms. Ashima Mor, Asstt. Public Prosecutor
for U.T., Chandigarh.

SHEKHER DHAWAN

Present appeal against judgment dated 01.09.2003 passed by learned Special Court, Chandigarh, thereby convicting appellant Bansi Lal alias Bani in FIR No.206 dated 28.10.2000, under Section 20 of the NDPS Act, registered at Police Station Manimajra, U.T., Chandigarh.

2. Relevant facts of the case that on 28.10.2000, appellant was found to be in possession of 800 grams 'Charas'. The search was conducted after giving notice. Sample of 50 grams was taken and remainder was sealed separately. Seal was handed over to Mohinder Singh after its use. Sample parcel, case property and witnesses were produced before SHO on the same

day, who affixed his seal 'NR' on the sample parcel and the case property

and the same were deposited with MMHC Police Station, Manimajra. On receipt of report from CFSL and completion of necessary investigation, the challan was presented in the Court. During the trial of the case, charge under Section 20 of the NDPS was framed against appellant, for which he pleaded not guilty.

3. Prosecution examined Ashok Kumar Dalela, Jr. Scientific Officer as PW-1, Constable, Yash Pal as PW-2, Inspector, Nanha Ram as PW-3, SI, Chander Singh as PW-4, HC, Rajinder Parshad as PW5, ASI, Tarsem Singh as PW-6, Mohinder Singh as PW7, Surinder Kumar ASI as PW8, HC, Harpal Singh as PW-9 and DSP, S.C. Abrol as PW10. Accused were examined under Section 313 Cr.P.C. Learned trial Judge after considering the material and evidence available on file and considering the prosecution version and defence evidence, held appellant guilty and convicted and sentenced him thereunder. Being aggrieved of passing of such judgment of conviction and order of sentence, the appellant filed appeal before this Court.

4. Learned counsel for the appellant urged that the allegations against appellant are recovery of 800 grams 'Charas' There was only one independent witness Mohinder Singh (PW7) to the allege recovery and the remaining two witnesses HC Surinder Singh (PW-8) and HC Harpal Singh (PW9) are official witnesses. The first point urged at the time of arguments was that notice (Ex.PF) was not giving in writing. More so, sample was sent to laboratory for examination after 15 days and sample seal was given to investigating officer. There is every likelihood of tempering of seal of the case property and sample as well. More so, as per testimony of PWs,

Mohinder Singh, was a stock witness of the case, who used to appear in other cases of police and learned trial Judge has completely all these legal infirmities and recorded judgment of conviction and order of sentence, which are liable to be set aside.

5. Learned State counsel fairly conceded that samples were sent to chemical examiner after some delay. But that was because of non-availability of adequate staff. There is no evidence that sample were actually tempered with because samples were received in CFSL in intact condition, as per report of FSL itself. More so, delay does not effect the merits of the case in any way. Otherwise the testimony of prosecution witnesses was consistent that recovery of 800 grams 'Charas' was effected from the possession of accused. Mohinder Singh PW7, is not the stock witness of the case but a chance witness. If he is a witness in another case as well that does not make out a case for disbelieving his testimony. Otherwise, the prosecution case is fully proved and learned trial Judge has rightly held the accused guilty and the appeal against conviction is without any merit and same be dismissed.

6. Having considered the submissions made by learned counsel for the parties and perusing the record, this Court is of the considered view that learned trial Judge had appreciated material and evidence available on file to come to the conclusion that recovery of 800 grams 'Charas' was effected from the possession of accused. Surinder Singh ASI, who appeared as PW-8 unfolded the entire prosecution case that on the basis of secret information, having received on 28.10.2000, 'nakabandi' was done and accused was apprehended. Thereafter, notice under Section 50 of NDPS Act

was served upon accused. Search of accused was in the presence of DSP, S.C. Abrol, who reached at the spot. Notice (Ex.PG) was also served upon accused by DSP, S.C. Abrol. After receiving reply of the accused Ex.PG/1, search was conducted, 800 grams 'Charas' was recovered from the possession of accused. Same was kept in polythene bag. Sample of 50 grams was taken. Sample parcel and remaining case property were sealed with seal 'SS' and were taken into police custody, vide memo Ex.PH. Seal was handed over to PW7 Mohinder Singh . Thereafter remaining proceedings were completed. PW7 Mohinder Singh has also supported the prosecution version. As per report (Ex.PA), the contraband recovered from the possession of accused was 'Charas' and sample was received intact condition. Meaning thereby, the possibility of tempering with a case property was completely ruled out as per testimony of PW-1 Ashok Kumar Dalela and PW2 Constable Yash Pal, who had prepared the scaled site plan. PW3 deposed that after verification of facts, he affixed his seal 'NR' on both the parcels and deposited the same with MMHC Police Station, Manimajra.

7. To the contrary, the defence version is plea of denial. Learned trial Judge has rightly relied upon the testimony of witnesses examined before the Court and there is no evidence to set aside the judgment of conviction dated 01.09.2003. The appeal against judgment of conviction dated 01.09.2003 stands dismissed.

8. As regards to appeal against order of sentence, learned trial Judge has also taken reasonable view and ordered to undergo five years RI

and to pay fine of ₹20,000/-. The said order does not call for any interference and appeal against order of sentence also without any merit.

9. Resultantly, the appeal stands dismissed.

September 07, 2015

naresh.k

(SHEKHER DHAWAN)

Judge