

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

Crl. Appeal-S No. 2011-SB of 2003(O&M)

Date of Decision: February 18 , 2015.

Sukhjinder Singh

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Mandeep Kaur, Advocate for
Mr. Divjyot S. Sandhu, Advocate
for the appellant.

Mr. P.S.Grewal, DAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant – Sukhjinder Singh has been convicted and sentenced by learned Judge, Special Court, Kapurthala to undergo rigorous imprisonment for two years, besides, pay a fine of ₹25,000/- for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act') vide impugned judgment and order dated 16.10.2003.

Brief facts of the case are that, FIR No.32 dated 28.02.2000

(Ex.PF/1) was registered under Section 15 of the NDPS Act against the appellant

as he was found in illegal possession of 10 Kg. poppyhusk. As per the prosecution version, ASI Iqbal Singh (PW3) was present near the turn of village Mohablipur on 28.02.2000 in connection with patrolling. One Mohar Singh son of Jarnail Singh joined the police party. When they crossed the railway line, a person coming from the side of village Mohablipur was signalled to stop. He immediately tried to turn around and flee but he was apprehended at the spot. He disclosed his name as Sukhjinder Singh @ Shinda son of Neja Singh i.e., the present appellant. He was apprised of his right to be searched before a Magistrate or gazetted officer as it was suspected that the gunny bag kept by him in between his feet on the scooter, contained some narcotics. He preferred to be searched before a gazetted officer. Consent memo (Ex.PA) was prepared. A wireless message to the police station for sending a gazetted officer at the spot was sent. After some time, DSP Ravcharan Singh (PW2), Sub Division, Sultanpur Lodhi alongwith his gunman reached at the spot in his Govt. Gypsy. After disclosing his identity to the appellant, apprised the appellant of his right to be searched before a Magistrate or gazetted officer. Appellant – Sukhjinder Singh reposed faith in him for conducting his search and a separate consent memo (Ex.PB) was prepared by DSP Ravcharan Singh (PW2). A gunny bag lying in between his feet was recovered. From this bag, 10 Kg. poppyhusk was recovered. 250 grams of poppyhusk was separated as sample from the recovered gunny bag and a separate parcel with cloth was prepared. Remaining poppy husk was weighed which was found to be 9.750 grams. Sample as well as the remaining poppyhusk was sealed with impression RS alongwith sample impressions of the seal and the seal after use was retained by DSP Ravcharan Singh (PW2). Case property was taken in possession vide separate memo

Ex.PC. Ruqa (Ex.PF) was sent to the police station for registration of the case through C.1343 Harnek Singh and formal FIR was recorded by SHO Surjit Singh. Scooter alongwith Registration Certificate was taken in possession vide memo Ex.PD. Rough Site (Ex.PG) plan was prepared. Accused was formally arrested. Case property was deposited with the MHC on return to the police station. It was produced in the court of Sub Divisional Judicial Magistrate, Sultanpur Lodhi on 29.02.2000 and then deposited back by ASI Iqbal Singh. Duly sealed sample was handed over to Constable Surinder Pal for depositing it with the Chemical Examiner, Jalandhar. Receipt thereof was submitted by him. As per the Chemical Examiner's report, Ex.PH, poppyhusk was indicated.

On completion of investigation, report under Section 173 Cr.P.C. was presented. Documents were supplied to the appellant as per Section 207 Cr.P.C. Appellant was charged for the offence punishable under Section 15 of the NDPS Act.

Prosecution examined as many as five witnesses to prove its case.

Appellant while recording his statement under Section 313 Cr.P.C. pleaded innocence and contended that he has been falsely implicated as he had filed a complaint against ASI Iqbal Singh. Three witnesses were examined by him in defence.

Learned trial court after going through the facts of the case and evidence on record convicted the appellant for the offence punishable under Section 15 of the NDPS and sentenced him as above.

Appellant has preferred this appeal impugning his conviction and sentence by the learned trial court.

Learned counsel for the appellant submits that the prosecution case

is extremely suspect as the only independent witness Mohar Singh has not been examined. Admittedly, he was present alongwith the police party but there is no reasonable explanation as to why he has not been examined by the prosecution. This casts doubt on the prosecution version.

It is further submitted that the incident in question is alleged to have occurred on 28.02.2000 whereas, the sample has been deposited with the laboratory on 14.03.2000 for forensic examination. There is no explanation for this delay in depositing the sample. Furthermore, mandatory provisions of Section 50 of the NDPS Act have not been followed.

In this view of the matter, it is vehemently urged that the appellant deserves to be acquitted of the charge against him. Prosecution has miserably failed to prove the charge against him that he was found to be in conscious possession of 10 Kg. poppyhusk.

Learned counsel for the State, on the contrary, submits that the prosecution has proved its case beyond reasonable doubt on the basis of clear and cogent evidence available on record. Recovery was effected while observing the mandatory provisions of the NDPS Act. Non-examination of the independent witnesses cannot be a ground to set aside the appellant's conviction. Furthermore, there is nothing on record to show that the sample in question had been tampered with in any manner. It remained intact from the date of its deposit with MHC, Police Station Sultanpur Lodhi till its deposit by C.1574 Surinder Pal (PW6) with the laboratory for its forensic examination. As per report FSL (Ex.PH), it is poppyhusk which was recovered from the conscious possession of the appellant.

I have heard learned counsel for the parties and gone through the record.

Non-examination of the independent witness, Mohar Singh cannot be of any aid to the appellant. Testimony of the official witnesses cannot be discarded merely on the ground that the independent witness has not been examined even though present.

A perusal of the record reveals that this is a case of chance recovery. The police officials were on patrol duty and on suspicion, the appellant was estopped. A gunny bag kept between his feet on scooter was found containing 10 Kg. poppyhusk. He was apprised of his right to be searched before a gazetted officer or a magistrate. Evidence on record is clear on this issue. The question of violation of Section 50 of the NDPS Act does not arise in this situation because, admittedly, the recovery has been effected from the scooter driven by the appellant. It is not on a personal search of the appellant that the recovery was effected. Contraband has not been recovered from the person of the accused appellant but from his scooter. Section 50 of the NDPS Act is not applicable in the facts of this case.

The appellant was apprehended on the spot with the said contraband on the scooter driven by him. He was unable to explain his possession of the same neither was he authorised to carry it. He is proved to be in conscious possession of the contraband.

Link evidence in this case is complete. The sample in question remained in the possession of the MHC, Police Station Sultanpur Lodhi after being deposited by ASI Iqbal Singh on 28.02.2000. As per the affidavit of

C.1574 Surinder Pal, he delivered the said sample with the seal intact on 14.03.2000 at the office of the Chemical Examiner. The seal was found intact as per Chemical Examiner's report, Ex.PH. ASI Sakattar Singh (PW4) has deposed that he was posted as MHC at police station Sultanpur Lodhi on 28.02.2000. The case property was duly sealed with seal RS and the seal RS alongwith the impressions were handed over to him. The case property was handed to ASI Iqbal Singh on 29.02.2000 for production in the court of learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi. It was delivered back to him on the same day, intact in a sealed condition. The sample was handed over to C.1574 Surinder Pal on 14.03.2000 for being deposited in the office of Chemical Examiner, Jalandhar. As long as the sample and case property remained in his custody, it was not tampered with and neither was anybody else allowed to tamper with it. Ex.PH reveals that the sample was indeed deposited with the seal intact.

Learned counsel for the appellant is unable to point out any prejudice which may have been caused to the appellant by the delay in deposit of the sample with the Chemical Examiner. In the absence of such prejudice, mere delay by itself is not sufficient to vitiate the trial.

From the facts and circumstances and evidence on record, prosecution has been able to prove its case beyond reasonable doubt against the appellant.

At this stage, learned counsel for the appellant prays that the sentence of two years imposed upon the appellant is not commensurate with the gravity of sentence. She prays for reduction of the sentence imposed upon the

appellant.

Learned counsel for the State while referring to affidavit dated 17.02.2015 of Paramjit Singh Sandhu, PPS, Superintendent Central Jail, Jalandhar at Kapurthala filed in Court today, submits that there are two other cases under the NDPS Act registered subsequently against the appellant. He has been convicted in both the cases and is, in fact, undergoing sentence of ten years on his conviction in FIR No.177 dated 10.10.2005, under Section 15 of the NDPS Act, registered at police station Sultanpur Lodhi.

Keeping in view the fact that the appellant has indulged in this activity after the present case also, he is not entitled to any relief by way of reduction of sentence. There is no mitigating or extenuating circumstance which would justify the reduction. Prayer is rejected.

In the alternative, learned counsel for the appellant submits that the sentence in this case may be directed to run concurrently with the sentence imposed upon him in FIR No.177 dated 10.10.2005 in which he is in custody at this point of time.

Keeping in view the facts and circumstances of the case, prayer for directing the sentence to run concurrently with the subsequent sentence imposed upon the appellant is rejected.

Consequently, this appeal is dismissed and the conviction and sentence imposed upon the appellant vide the impugned judgment and order dated 16.10.2003 passed by learned Judge, Special Court, Kapurthala is upheld.

(LISA GILL)
JUDGE

February 18, 2015.
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