

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

Criminal Appeal No.S-805-SB of 2003

Date of decision:- January 14, 2015

Bakha Singh

...Appellant

Vs.

State of Haryana

...Respondent

CORAM: HON'BLR MR. JUSTICE T.P.S. MANN

Present:-

Mr. K.P.S Virk, Advocate for
Mr. K.S. Dhaliwal, Advocate
for the appellant.

Mr. Randhir Singh, Additional Advocate General,
Haryana.

T.P.S. MANN, J.

The appellant was tried for committing the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as the "NDPS Act") on the allegations that on 10.09.2001 he was found in possession of 14 bags, each containing 20 kilograms of poppy husk. Vide judgment and order dated 06/07-02-2003 learned Additional Sessions Judge, Jind convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of ₹.1 lac and in default of payment of fine, to further undergo rigorous imprisonment for two years. The period during which he had remained in custody during investigation and trial was ordered to be

deducted from the sentence of imprisonment imposed upon him. Hence the present appeal by him in which he has prayed for acquitting him of the charge against him.

The case of the prosecution, in nutshell, is that on 10.09.2001 Sub Inspector Hans Raj, Station House Officer, Police Station, Safidon while in the company of ASI Ganga Ram, UGC Sumer Singh, UGC Partap Singh and Constable Raghbir Singh were present near the school in village Malikpur where he received a secret information that the appellant had brought poppy husk last night to his residential dera and if a raid was conducted immediately, several bags of poppy husk could be recovered. As the secret information received was reliable and trustworthy, SI Hans Raj reduced the same into writing and sent it to the Deputy Superintendent of Police, Safidon through UGC Partap Singh. SI Hans Raj and other police officials reached the residential dera of the appellant where he was found sitting on a cot under a neem tree. On interrogation, he suffered disclosure statement Ex.PD that he had kept concealed 14 bags of poppy husk in the Turiwala Kotha under wheat straw and excepting him none had the knowledge of the same. He could get the same recovered. The appellant was taken into police custody and as per his disclosure statement he got recovered 14 white plastic bags containing poppy husk. Each of the bags weighed 20 kilograms. From each bag, 100 grams was separated as samples. The sample parcels and the residue in the gunny bags were separately sealed and taken in police possession, vide recovery memo Ex.PG. Separate seal impressions were prepared. The seal

after use was handed over to ASI Ganga Ram. As the appellant had kept 280 kilograms of poppy husk in his possession without any permit or license, he was found to have committed an offence under Section 15 of the NDPS Act. Accordingly, ruqa Ex.PJ was prepared by SI Hans Raj and sent through Constable Raghbir Singh to Police Station, Safidon on the basis of which FIR No.383 dated 10.09.2001 (Ex.PJ/1) under Section 15 of the NDPS Act was recorded.

During the investigation of the case, SI Hans Raj prepared rough site plan Ex.PK of the place of occurrence; recorded the statements of prosecution witnesses; and formally arrested the appellant. On return to the Police Station, he handed over the case property to the MHC whereas the appellant was put behind the bars. The sample parcels and the seal impression were sent to the Director, Forensic Science Laboratory, Madhuban. After receipt of report Ex.PM from the Laboratory and completion of other legal formalities, final report under Section 173 Cr.P.C was prepared by SI Hans Raj and presented in the Court.

After copies of the final report were supplied to the appellant, the trial Court charged him for the aforementioned offence to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined five witnesses in all.

PW-1 EHC Ram Phal who was a formal witness, tendered in evidence his affidavit Ex.PA.

PW-2 HC Maheshwari Lal, who was also a formal witness, identified the signatures of Risal Singh, Deputy Superintendent of

Police, Safidon on the writing regarding secret information Ex.PB and also on the report Ex.PC under Section 57 of the NDPS Act.

PW-4 SI Hans Raj and PW-3 ASI Ganga Ram testified about receipt of secret information, reducing the secret information into writing and sending it to the Deputy Superintendent of Police, raiding the dera of the appellant, recording of the disclosure statement Ex.PD of the appellant and after serving notice Ex.PE on the appellant that he had a right to be searched in the presence of a Gazetted Officer or a Magistrate but vide reply Ex.PF/1 reposing confidence in SI Hans Raj and getting recovered 14 bags of poppy husk from the southern-western corner of Turiwala Kotha. They also deposed about each bag weighing 20 kilograms, taking of samples from each of the 14 bags, sealing of the sample parcels and the residue besides preparing seal impression and the seal being handed over to ASI Ganga Ram after its use. They further deposed that after the case property was taken into police possession vide recovery memo Ex.PG, ruqa Ex.PJ was prepared by SI Hans Raj and FIR Ex.PJ/1 on its basis was recorded at Police Station Safidon. Besides, PW-4 SI Hans Raj testified that he had prepared rough site plan Ex.PK and serving notice of arrest Ex.PH upon the appellant. He also testified about depositing the case property with the MHC and preparing report Ex.PC/1 under Section 57 of the NDPS Act and sending it to the Deputy Superintendent of Police, Safidon.

PW-5 EHC Satpal, a formal witness, tendered in evidence his affidavit Ex.PL.

The prosecution also relied upon report Ex.PM of the

Forensic Science Laboratory, Madhuban (Karnal) and after giving up remaining witnesses, learned Public Prosecutor closed the prosecution evidence.

When examined under Section 313 Cr.P.C the appellant denied the allegations of the prosecution and stated that he was falsely implicated and nothing was recovered from him.

In his defence, the appellant, however, led no evidence.

The trial Court after hearing learned counsel for the parties and on going through the evidence on record, accepted the prosecution case and convicted and sentenced the appellant, as mentioned above.

Learned counsel for the parties have been heard and the evidence minutely scanned with their able assistance.

Learned counsel for the appellant has submitted that though according to the prosecution SI Hans Raj had received a secret information pursuant to which he raided the residential dera of the appellant yet he did not join any independent witness during investigation of the case. Non-joining of an independent witness especially when the same was easily available, was fatal to the prosecution.

It is true that while raiding residential dera of the appellant and effecting recovery of the contraband, no independent witness was associated by SI Hans Raj. However, it has come on the record that an attempt was made to summon the persons from the nearby fields and some persons did come present but they refused to join investigation. Merely because he could not tell their names or had not

taken any action against them is not sufficient to reject the prosecution case outrightly. The defence could not bring on record any material which could indicate that SI Hans Raj and his fellow police officials were inimical towards the appellant or had reasons to falsely implicate him. The only suggestion put to PW 4-SI Hans Raj was that he had falsely challaned the appellant at the instance of the village Sarpanch who was inimical towards him. Ofcourse the said suggestion was specifically denied by PW 4-SI Hans Raj. At the same time no question was put to SI Hans Raj as to what was the reason for the village Sarpanch to get him falsely implicated. Even during his examination under Section 313 Cr.P.C, the appellant had stated about having been falsely implicated due to party faction in the village. The appellant had ample opportunity to examine his co-villagers to establish that there was party faction in the village or that the village Sarpanch was inimical towards him. Despite the same no evidence was examined by him in his defence. Under these circumstances, no benefit of non-joining of independent witness while effecting the recovery of the contraband from the appellant could be extended to him.

Learned counsel for the appellant has submitted that till the time the recovery of the contraband was effected, the appellant could not have been taken into custody and therefore, the disclosure statement made by him and, that too, in the presence of the police officials was not admissible under Section 27 of the Indian Evidence Act.

However, it has come on the record that while SI Hans Raj and his fellow officials was present near the school of village Malikpur, he had received a secret information about the appellant had brought poppy husk and kept it at his residential dera. The secret information so received was found to be reliable and trustworthy and accordingly, SI Hans Raj reduced the same into writing and sent it to the Deputy Superintendent of Police, Safidon through UGC Partap Singh. This was followed by SI Hans Raj and his fellow police officials reaching the residential dera of the appellant who was found sitting on a cot under a neem tree. On interrogation, the appellant had suffered disclosure statement that he had kept concealed 14 bags of poppy husk in the Turiwala Kotha under wheat straw and excepting him, none had the knowledge of the same. At that point of time there was sufficient material with SI Hans Raj to take the appellant into formal custody. This was followed by the appellant leading the police party to the designated place and getting the contraband recovered. As the disclosure statement made by the appellant led to the recovery of 14 bags of poppy husk and each weighing 20 kilograms, said statement becomes admissible under Section 27 of the Indian Evidence Act. Therefore, no benefit whatsoever on the said ground could be extended to the appellant.

Half-hearted attempt has been made by the defence in submitting about non-compliance of the provisions of Section 50 of the NDPS Act. However, as the recovery of the contraband was effected from the bags, which were lying concealed under the wheat straw and not from person of the appellant, the provisions of Section

50 of the NDPS Act are not attracted. Even otherwise PW-4 SI Hans Raj had given an offer to the appellant that if he so desired, he could get the recovery effected in the presence of a Gazetted Officer or a Magistrate. However, the appellant reposed confidence in SI Hans Raj. Accordingly, the recovery was effected and after preparing ruqa Ex.PJ it was sent through Constable Raghbir Singh to the Police Station, on the basis of which FIR Ex.PJ/1 was recorded. SI Hans Raj had also served notice of arrest Ex.PH upon the appellant. After returning to the Police Station, SI Hans Raj had deposited the case property with the MHC besides preparing report Ex.PC/1 under Section 57 of the NDPS Act and forwarding the same to the Deputy Superintendent of Police, Safidon. Under these circumstances, the argument advanced by the learned defence counsel does not carry any weight and therefore, liable to be rejected.

Finally, it has been submitted that though the recovery of the contraband was effected on 10.09.2001 yet the sample parcels and the seal impression were handed over by EHC-Ram Phal, who was MHC on the relevant date, to EHC-Satpal Singh for being deposited with the Forensic Science Laboratory only on 04.10.2001. According to the defence counsel, the delay in sending the parcels to the Laboratory was fatal and therefore, the appellant ought to be acquitted of the charge against him.

It has been mentioned in the report Ex.PM of the Forensic Science Laboratory that the parcels were received on 04.10.2001 and seals on the parcels were found intact and tallied with the specimen seals. After conducting requisite tests, it was opined that the samples

were that of poppy straw. Because of the delay of about four weeks in sending of the samples, the Scientists at the Forensic Science Laboratory felt no handicap in analyzing the same and opining on the basis of the requisite tests about the samples being that of poppy straw. The seals on the parcels were found intact and tallied with the specimen seal, therefore, it could not be said that there was any pilferage in the samples. Thus, no benefit of any such delay could be extended to the appellant.

In view of the above, no case is made out for any interference in the impugned judgment of conviction and sentence passed by the trial Court. The appeal is without any merit and, accordingly, dismissed.

January 14, 2015

vanita

**(T.P.S. MANN)
JUDGE**