

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Appeal No.S-1037-SB of 2004

.....

Date of decision:10.2.2016

Vinay Kumar

...Appellant

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Rajesh Lamba, Advocate for the appellant.

Mr. Sidakmeet Singh Sandhu, Assistant Advocate General,
Punjab for the respondent-State.

.....

Inderjit Singh, J.

This criminal appeal has been filed by Vinay Kumar-appellant challenging the impugned judgment of conviction and order of sentence dated 22.3.2004 passed by learned Judge, Special Court, Patiala, whereby he has been held guilty and convicted for the offence under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). He has been sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo rigorous imprisonment for two months for the offence under Section 18(c) of the Act.

The brief facts of the prosecution case are that on 27.3.2002

Jassa Singh, Inspector while posted as Station House Officer of Police Station Sadar, Patiala, along with Ajmer Singh, Sub Inspector and other police officials was present at Bhakra canal bridge in the area of Village Passiana in connection with patrolling and search of bad elements, where he received a secret information that Vinay Kumar accused brings opium from Rajasthan for sale thereof in the area of Police Station Sadar, Patiala. On the basis of secret information 'Ruqa' was sent to the Police Station and FIR was registered. Ajmer Kumar public witness was joined. After some time, accused came from the side of Village Kakrala carrying a satchel in his right hand, who on seeing the police party turned back, but on suspicion he was apprehended. Offer was given to the accused whether he wants to get his search from the a Gazetted Officer or Magistrate, but he opted for search in the presence of some Gazetted Officer. Then his search was conducted as per law and opium was recovered wrapped in a glazed paper. Two samples of 10 Grams each were separated and put in two tin boxes and the remaining opium weighing 1 Kgs. 230 grams was put in other tin box. All the three parcels were separately sealed by Jassa Singh, Inspector with his seal bearing impression 'JS' and and with the seal of Rachhpal Singh, DSP, bearing impression 'RS'. Jassa Singh, Inspector handed over his seal to Ajmer Kumar, public witness after use while DSP retained his own seal with him. All the three parcels of the opium and satchel were taken into possession vide recovery memo. Rough site plan was prepared. The accused was arrested. The statements of the witnesses were recorded. On return to the Police Station, the case property was deposited with Sudh

Singh, MHC in an intact condition, which on the next day was produced before the Illaqa Magistrate by Ajmer Singh, Sub Inspector. After completion of necessary investigation, challan was presented in the Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused-appellant framed charge for the offence under Sections 18(c) of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 HC Faquir Chand, PW-2 SI Ajmer Singh, PW-3 DSP Rachhpal Singh, PW-4 HC Sudh Singh, PW-5 Inspector Jassa Singh and closed its evidence after tendering report Ex.PK. of the Forensic Science Laboratory.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent. He also stated that he has been falsely implicated. Accused gave his own version that he had been coming to Punjab to earn his livelihood and an altercation took place with the Police while boarding the bus and ultimately present false case was planted upon him. The accused did not lead any evidence in defence.

After going through the evidence on record, the learned trial Court vide its impugned judgment and order convicted and sentenced the accused-appellant for the offence as mentioned above. Aggrieved against the impugned judgment, the present appeal has been filed.

At the time of arguments, learned counsel for the appellant

argued that independent witness Ajmer Kumar is a stock witness of the Investigating Officer and this fact has been duly proved from the statement of the Investigating Officer. He also argued that the version of the accused/appellant that he has been falsely implicated has been supported from this fact and creates a reasonable doubt in the prosecution case.

On the other hand, learned Assistant Advocate General, Punjab, appearing for the respondent-State argued that the prosecution has duly proved its case by leading cogent evidence and the mandatory provisions of the Act have been complied with. The link evidence is complete. The PWs have consistently deposed against the accused. He argued that there is merit in the appeal which should be dismissed.

After hearing learned counsel for the appellant as well as learned Assistant Advocate General, Punjab appearing for the respondent-State and going through the record, I find that as per the prosecution version the police officials have the secret information against the appellant and on the basis of secret information a 'Ruqa' was sent and formal FIR was registered and a 'Naka' was held at Bhakra canal bridge. As per the statement of PW-5 Inspector Jassa Singh, SHO, at that place Ajmer Kumar public witness had come to the spot and was joined in the police party. In the cross-examination PW-5 also admitted that he also cited Ajmer Kumar as independent witness in the recovery in case FIR No.206 dated 23.6.2001 registered for the offence under Section 18 of the Act at Police Station Lalru being Investigating Officer of the said case. He further admitted that Ajmer Kumar PW of this case had also been shown as an independent PW in case

FIR No.102 dated 5.6.1999 registered for the offence under Section 18 of the Act at Police Station Dera Bassi being investigated by him. He denied that Ajmer Kumar was also cited as independent witness in FIR No.68 dated 11.2.2002 registered for the offence under Section 18 of the Act at Police Station Sadar, Patiala or in case FIR No.43 dated 10.5.2002 registered for the offence under Section 18 of the Act at Police Station Julkan. He also stated that he did not know whether Ajmer Kumar PW of this case was independent witness or not in case FIR No.68 dated 11.2.2002 or FIR No.43 dated 10.5.2002 respectively. This cross-examination of the Investigating Officer shows that Ajmer Kumar PW is a stock witness and he had already appeared when PW-5 Inspector Jassa Singh was the Investigating Officer and posted at Police Station Lalru in the year 2001. This Ajmer Kumar PW was also joined as independent witness in FIR No.102 at Police Station Dera Bassi when PW-5 Inspector Jassa Singh was posted there and was Investigating Officer of that case. The present case relates to Police Station Sadar, Patiala and the same witness had been shown as joined in the present case. The Investigating Officer of this case in cross-examination also stated that he did not remember whether Ajmer Kumar PW was shown as an independent witness in FIR No.68 dated 11.2.2002 and FIR No.43 dated 10.5.2002. All these facts show that this PW Ajmer Kumar is a stock witness and the fact that the stock witness is stated to have joined in the proceedings creates a reasonable doubt in the prosecution version itself. Otherwise also, this independent witness had been joined in a case in Police Station Lalru, then in a case at Police Station Dera Bassi and now in the

case at Police Station Sadar, Patiala, at three different places, which means that wherever this Investigating Officer was posted and investigated the cases, this stock witness was stated to have joined the proceedings.

In my view, this fact alone creates a doubt regarding the prosecution case and, in no way, it can be held that the prosecution has proved the case beyond a reasonable doubt. A reasonable doubt exists in the prosecution version and the benefit of doubt is always to be given to the accused. Therefore, by giving the benefit of doubt to the accused-appellant, he is entitled to acquittal. Hence, by giving benefit of doubt to the accused-appellant, he is acquitted of the charge as framed against him.

Resultantly, this criminal appeal is allowed, the impugned judgment of conviction and order of sentence passed by the learned Judge, Special Court, Patiala, is set aside and the appellant is acquitted of the charge as framed against him. The sentence of imprisonment of the appellant was suspended and he was released on bail by this Court. As he is on bail, therefore, his bail bonds and surety bonds shall stand discharged.

February 10, 2016.

(Inderjit Singh)
Judge

hsp