

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1054-SB of 2004
Date of Decision: February 15, 2016

Gurbhej Singh alias Bheja

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Sushma Verma, Advocate
for the appellant.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 03.05.2004 passed by learned Judge, Special Court, Patiala, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 15 of the NDPS Act.

The brief facts of the prosecution case are that on 29.11.2000 SI Manjit Singh SHO along with police party was present on the bridge of Bhakra Canal, where he noticed a mare on which the accused was riding, coming from the side of village Kalbanu. There

were khurjies (bags) hanging on both the sides of the mare. In the meantime, Mohinder Ram came there and he was joined in the police party. On suspicion, accused was apprehended. An offer was given to the accused for his search. Then Ashwani Kumar, DSP Circle Samana reached at the spot and he also apprised the accused that his search could be conducted in the presence of a Magistrate but accused reposed confidence in the DSP. On search, as per rules, the bags were found containing poppy husk. Two samples of 250 grams from each bag were separated and the remaining poppy husk, on weighment, came to 19 kgs. 500 grams. The sample parcels and bulk parcels were prepared and sealed with the seal bearing impression 'MS'. Case property was taken into police possession. Ruqa was sent to the police station, on the basis of which FIR was registered. Accused was arrested. Statements of witnesses were recorded. After necessary investigation, the challan was presented against the accused-appellant.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Karan Singh, who mainly deposed regarding producing of the case property before the Illaqa Magistrate. PW-2 Constable Balbir Singh, is the formal witness, who tendered into evidence his affidavit Ex.PB.

PW-3 Inspector Manjit Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-4 ASI Nirmal Singh, is the recovery witness, who was with the police party. He also deposed regarding the recovery from the accused. PW-5 ASI Udham Singh, is also formal witness, who tendered into evidence his affidavit Ex.PM.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent. He further pleaded that police officials used to pressurize him to bring liquor for them but he being a religious man, refused to oblige them for about 4-5 times and keeping in mind this grudge, he has been falsely implicated in this case. No recovery of poppy husk was ever effected from him nor he deals in narcotics.

In defence, accused examined DW-1 Baz Singh, who mainly deposed that accused was taken from the house by the police and at that time Joginder Singh Lambardar was present. He further deposed that nothing has been recovered from the accused.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued that in the present case, the independent witness has not been examined and there are only testimonies of police officials, which cannot be believed. She further argued that accused-appellant

has been falsely implicated in this case and the defence version has been duly proved by DW-1 Baz Singh. She next argued that link evidence is not complete in this case.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is no material contradictions or material improvements in the statements of the PWs. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, both the appeals should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel, I find that it is settled law that the testimony of police official is as good as of any other witness unless some enmity or motive of the police official to falsely implicate the accused is alleged and proved. In the present case, no such enmity or motive of the police officials has been proved by bringing cogent evidence by the accused. The mere statement under Section 313 Cr.P.C. that police used to ask the accused for bringing liquor and he refused 4-5 times, is not supported and corroborated by any evidence. Even, DW-1 Baz Singh has not deposed anything regarding this version. Therefore, no enmity or motive has been proved by the accused by bringing cogent evidence. No material discrepancies have been pointed by learned counsel for the appellant in the statements of the PWs, which may go to the root of the case. The PWs have consistently deposed regarding the recovery from the accused. The

recovery has been effected in the presence of Gazetted Officer and the statements of PWs cannot be disbelieved.

From the perusal of the cross-examination of the PWs also, I find that there is nothing to disbelieve their statements. The mere fact that independent witness has not been examined, does not create doubt in the prosecution version. The link evidence is complete. The formal witnesses have tendered into evidence their affidavits and there is nothing in the cross-examination of these PWs from which it can be held that the samples were tampered with at any stage.

As regarding defence version, I find that DW-1 Baz Singh has deposed that the accused was taken from the house and nothing has been recovered but this witness has not got his statement recorded before the police nor he reported the matter to the Gram Panchayat nor any resolution was passed by the Gram Panchayat regarding the false implication of the accused. No complaint or representation has been filed to the higher authorities regarding the false implication of the accused. Therefore, the statement of DW-1 Baz Singh cannot be believed as being not supported by any documentary evidence.

All the mandatory provisions of the NDPS Act have been complied with. The prosecution has duly proved its case beyond reasonable doubt by leading cogent evidence. Therefore, the judgment of conviction dated 03.05.2004 passed by learned Judge, Special Court, Patiala is correct, as per law and does not require any

interference from this Court.

Learned counsel for the appellant, prayed for lenient view and reduction of the sentence of the appellant. He contended that appellant is facing the criminal proceedings for the last more than 15 years and he was young man of 27 years at the time of occurrence.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is stated to be a poor person and only bread earner of the family and further the fact that the appellant is suffering from long protracted criminal proceedings for the last more than 15 years, the sentence imposed upon the appellant is reduced and he is directed to undergo rigorous imprisonment for a period of ten months instead of one year under Section 15 of the NDPS Act. However, the sentence of fine and default sentence shall remain the same.

With the above-said modification in the sentence, present appeal is dismissed.

As appellant Gurbhej Singh alias Bheja is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

February 15, 2016
Vgulati

(INDERJIT SINGH)
JUDGE