

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1694-SB of 2004 (O&M)
Date of Decision: March 04, 2016

Krishan Kumar

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.C.Rajput, Advocate
for the appellant.

Mr.D.R.Singla, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 27.01.2004 and order of sentence dated 29.01.2004 passed by learned Special Judge, Sonapat, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹1 lac and in default of payment of fine, to further undergo rigorous imprisonment for a period of three years under Section 20(b) of the NDPS Act.

The brief facts of the prosecution case are that on 03.10.2002, SI Dharampal along with other police officials saw the accused coming from the side of railway crossing holding a bag in his hand. On seeing the police party, he retraced his steps and started

walking briskly. On suspicion, he was apprehended. SI Dharampal made enquires from the accused and on enquiry, accused told that he is habitual of smoking charas and was having charas in his possession. Notice was served apprising of his legal right to get the search conducted in the presence of any Gazetted Officer or Magistrate and the accused desired to get the search conducted from a Gazetted Officer of police. Sh.Arun Nehra, DSP, was informed, who reached at the spot. On search as per law, charas was recovered from inside the bag of the accused, which on weighment came to 1 kg. 200 grams. A sample of 200 grams was separated and converted into sealed parcel and remaining charas was converted into bulk parcel. The sample parcels and bulk parcels were sealed with seal impression 'RS' and 'RK'. 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. Rough site plan was prepared. On return to the police station, the case property along with the accused was produced before Inspector Darshan Lal, who after verifying the investigation, affixed his seal bearing impression 'DLM' on the sealed parcels. 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 20 (b) of the NDPS Act, to which

he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Bhagwan Sarup, who deposed regarding the recording of formal FIR Ex.PA/1 after receiving ruqa Ex.PA. He also deposed regarding delivery of Special Report to the senior Police Officer and Illaqa Magistrate. PW-2 ASI Ranjeet Singh, who was with the police party, deposed regarding recovery from the accused and supported the prosecution version. PW-3 SI Dharampal, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-4 Head Constable Randhir Singh and PW-5 Constable Ram Virender, are the formal witnesses, who tendered into evidence their affidavits Ex.PG and Ex.PH respectively. PW-6 DSP Arun Nehra mainly deposed regarding the recovery from the accused. PW-7 Inspector/SHO Darshan Lal mainly deposed regarding verification of the recovery in the present case.

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.

No witness was examined in defence.

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 no independent witness was joined by the police party and testimonies of police officials cannot be relied upon. He further

argued that compliance of Section 50 of the NDPS Act has not been made as per law and accused-appellant has been falsely implicated.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. The PWs have consistently deposed regarding the prosecution version. He further argued that there is no question of compliance of Section 50 of the NDPS Act as it will not apply in the present case. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

From the record, 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 of the police officials against the accused has been alleged and proved. Even in the statement under Section 313 Cr.P.C., accused-appellant has not alleged any motive or enmity for his false implication. The recovery from the accused is sudden and by chance. The search has been made in presence of Gazetted Officer. There is nothing to show as to why a Gazetted Officer would depose falsely against the accused without any motive or enmity. Furthermore, recovery from the accused is heavy and falls under commercial quantity. Such a heavy recovery cannot be falsely planted upon the accused. The recovery has been effected from the bag carried by the

accused and not from his personal search. Therefore, Section 50 of the NDPS Act will not apply. Otherwise also, even the Investigating Officer of this case has given the offer to get the search conducted from a Gazetted Officer or a Magistrate and as per the consent of the accused, Gazetted Officer was called on the spot and search was conducted in his presence and 1kg. 200 grams of charas has been recovered.

Further, no material contradictions or improvements in the statements of the PWs have been pointed out at the time of arguments. There is nothing in their cross-examinations, which may make their statements unreliable. There is also nothing on the record from where it can be held that accused-appellant is innocent or has been falsely implicated in this case. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is also complete. The PWs have consistently deposed regarding the prosecution version.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt against the accused-appellant. Therefore, the judgment of conviction 27.01.2004 and order of sentence dated 29.01.2004 passed by learned Special Judge, Sonapat are correct, as per law and do not require any interference from this Court.

Resultantly, finding no merit in the present appeal, the same is dismissed.

As appellant Krishan Kumar 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.

March 04, 2016
Vgulati

(INDERJIT SINGH)
JUDGE