

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

CRA-D No.264-DB of 2011

Date of decision:11.1.2016

Manoj Kumar

....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Sandeep Arora, Advocate for the appellant.

Ms. Manjari Nehru Kaul, Additional A.G. Punjab.

HEMANT GUPTA, J.

The present appeal is directed against an order passed by learned Judge, Special Court, Jalandhar on 05.02.2011 convicting the appellant for an offence under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced him to undergo rigorous imprisonment for 12 years and to pay a fine of Rs.1 lakh and in default of payment of fine to further undergo rigorous imprisonment for 2 years.

The prosecution case was set in motion on the basis of ruqa Ex.P1 sent by Sub Inspector (for short 'SI') Satpal Singh, Police Station Maqsudan on 29.01.2009 to Station House Officer (for short 'SHO'), Police Station Maqsudan. The ruqa is that secret information was received that one Manoj Kumar @ Monu son of Satish Kumar resident of Mohalla Gajji Gulla near Workshop Chowk, Jalandhar and Pawan Kumar son of Kanwar William resident of New Shastri Nagar,

Jalandhar are coming in Indica Car No.PB10-BA-6905 from Bidhipur crossing and that if checked huge quantity of *charas* can be recovered. On the basis of said information, the police party stopped the vehicle i.e. Indica Car No.PB10-BA-6905 when it arrived at the check barrier at 6.45 AM. The vehicle was stopped in which two clean shaven persons were sitting. One of them was driving the vehicle whereas the other person was sitting parallel to the driver seat. On seeing the police party, the persons sitting in the car tried to run. Manoj Kumar, the present appellant, attempted to run with the material wrapped in a plastic coated paper. Pawan Kumar was driving the car. Both the accused were over-powered. The person who had parcel with him, disclosed his name as Manoj Kumar @ Monu son of Satish Kumar, whereas the other person disclosed his name as Pawan Kumar son of Kanwar William. An option was given to the accused as to whether they would like themselves to be searched through Gazetted Officer but the consent was given by the accused that they have no objection if they are searched by SI. On search, heavy envelope kept in the hands of Manoj Kumar was found to be containing *charas*. A sample of 100gm was taken and put in a small glazed envelope whereas the remaining *charas* weighing 5kg 900gm was sealed in a separate parcel. The seal was handed over to Head Constable Dilbagh Singh. Thus, the accused was found to have committed offence under Section 20 of Act. There is a mention in the FIR that attempt was made to join independent witnesses from the public but none joined.

After completion of necessary formalities including the report (Ex.PZ) of the Forensic Science Laboratory that the sample was identified as *charas*, report under Section 173 of the Cr.P.C. was

finalized and the appellant was made to stand trial for an offence punishable under Section 20 of the Act.

To prove the guilt against the appellant, the prosecution has examined SI Satpal Singh as PW-2; HC Dilbagh Singh as PW-3 who was part of the police party along with SI Satpal Singh; Surinder Kumar, Inspector/SHO of the Police Station Division No.3, Jalandhar as PW-6; PW-5 Vijay Kumar who brought the record of the ownership of Indica Car No.PB10-BA-6905 as owned by Manoj Kumar, the present appellant. The prosecution also examined other witnesses of formal nature to complete the chain of circumstances.

The incriminating evidence appearing against the accused was put to the accused in their statements recorded under Section 313 Cr.P.C. Both the accused have taken a stand that they have been falsely implicated. However, the learned trial Court granted benefit of doubt to accused Pawan Kumar and convicted the present appellant Manoj Kumar for an offence under Section 20 of the Act and sentenced him to undergo rigorous imprisonment as mentioned in the preceding paragraph.

Before this Court, learned counsel for the appellant has vehemently argued that no independent witness has been joined at the time of recovery of the contraband and that there is violation of provision of Section 51 of the Act as no Gazetted Officer was joined in the process of personal search. Thus, in the absence of independent witnesses and on account of the violations of the statutory provisions, the appellant is entitled to benefit of doubt.

We do not find any merit in any of the arguments. In respect of joining of the independent witness, suffice it to mention that the recovery was made at 6.45 AM i.e. in the morning of an acute winter month of January, 2008. At that time finding of independent witness would be a challenge. It has been recorded in the FIR itself that witnesses from the public were not available. Therefore, mere fact that independent witnesses were not associated in the process of recovery will not be sufficient to vitiate the prosecution case. In the case of only the police witnesses, the test is to examine their testimony with more care and caution. There is no adverse circumstance to throw a doubt on the testimony of the witnesses i.e. PW-2 Satpal Singh, PW-3 HC Dilbagh Singh and PW-6 Inspector/SHO Surinder Kumar.

The other argument that there is violation of Section 51 of the Act as the personal search was not conducted by the Gazetted Officer cannot be accepted. The appellant was given option vide Ex.PA to opt for search by the Gazetted Officer. However, he has conveyed confidence in SI Satpal Singh. Once, the appellant has consented for a personal search by SI Satpal Singh, the appellant cannot be permitted to say that the personal search by the Gazetted Officer has not been carried out. Such an argument is not tenable in law.

In view thereof, we find that conviction of the appellant for an offence under Section 20 of the Act does not call for any interference in the present appeal. Before parting, learned counsel for the appellant raised an argument that sentence of the appellant be

reduced to 10 years in view of the fact that the appellant is not involved in any other case.

We find that though the recovery is of 6 kg of *charas* but keeping in view the fact that there is no previous history of the appellant of being indulgent in narcotics, we find that the sentence of 10 years would be adequate sentence.

Consequently, we allow the present appeal to the extent of sentence so as to undergo 10 years of rigorous imprisonment and to pay a fine of Rs.1 lakh. In case of default of payment of fine, the appellant shall undergo imprisonment for another period of 2 years.

With the said observations and modification in the sentence, the present appeal is dismissed.

(HEMANT GUPTA)
JUDGE

JANUARY 11, 2016
‘D. Gulati’

(SNEH PRASHAR)
JUDGE