

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRA-2176-SB of 2004 (O&M)

Date of decision: 27.01.2016

Vikram @ Vicky

.....Appellant

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Ashok Giri, Advocate for
Mr.Dinesh Arora, Advocate for the appellant
Ms.Supriya Arora, Asstt. A.G. Haryana

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

The appellant has challenged the judgment and order dated 4/6.10.2004, passed by the learned Special Judge/Additional Sessions Judge, Rohtak, vide which, he was convicted under Section 20 Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and sentenced him to undergo Rigorous Imprisonment for ten years and imposed fine of Rs.one lac. In default thereof, to further undergo Rigorous Imprisonment for two years for allegedly keeping in possession 2 kgs. of Charas.

Facts of the case are that on 1.1.2004, Inspector Ashok Kumar received a secret information that accused Vikram alias Vicky and one Angad are dealing in the Charas and are going to sell the

Charas from the side of Sukhpura Chowk towards Jind Bypass. If the raid is conducted, they can be apprehended red handed. On this, Inspector Ashok Kumar recorded the report in daily diary register (Ex.PH) and proceeded to the spot. There one independent witness Davender met him and was joined in the raiding party. When they reached near Gian Dhawaj School, the secret informer pointed at two boys, who were carrying bags in their hands as Vicky and Angad. When the police party tried to apprehend them, one of the boys, namely, Angad threw the bag and ran away, whereas Vikram @ Vicky was apprehended at the spot. He was served with the notice (Ex.PA) under Section 50 of the NDPS Act. The accused submitted the reply (Ex.PB) and stated that he wants the search before the Gazetted officer. Accordingly, Shri Tika Ram, Deputy Superintendent of Police (DSP) was called at the spot. In the presence of DSP, search of the bag was conducted, on which 2 kg Charas was recovered. 200 grams charas was separated as sample. Remaining Charas was put in the paper bag and then in a bag made of pillow cover. A separate parcel of the sample was prepared and was sealed with the seal of the Inspector Ashok Kumar 'AK' and of DSP 'TR'. Both the parcels were taken into possession through recovery memo (Ex.PC) duly attested by the witnesses. From the search of the bag thrown by Angad 2 kgs. of charas was found, which was also taken into possession through a separate recovery memo.

On return to police station, the accused, witnesses and case property were produced before Suresh Kumar SHO, who

verified the factum of recovery and affixed seal 'SK' on the said parcels and directed the Inspector Ashok Kumar to deposit the case property with MHC. The same was accordingly done.

Accused was charge sheeted under Section 20 of the NDPS Act. In support of its case, the prosecution examined Davender recovery witness (PW1), Inspector Yad Ram (PW2), EHC Jagbir Singh (PW3), Constable Rajender Singh (PW4), MMHC Ram Kumar (PW5), Head Constable Surender Singh (PW6), SI Kamlesh Kumar (PW7), Inspector Suresh Kumar (PW8), Assistant Sub Inspector Nathu Ram (PW9), Inspector Ashok Kumar I.O. (PW10) and DSP Tika Ram (PW11).

When examined under Section 313 Cr.P.C. the accused denied the evidence as incorrect against him and pleaded false implication. The accused did not led any evidence in defence.

After hearing the prosecution and the learned defence counsel and going through the file, the learned Special Judge/Additional Sessions Judge, Rohtak convicted the appellant under Section 20 of NDPS Act and sentenced him to undergo Rigorous Imprisonment for ten years and imposed fine of Rs.one lac. In default thereof, to further undergo Rigorous Imprisonment for two years.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the appellant has argued that in this case, the proper option of search was not given. Accused was not apprised of his right of being searched before the gazetted officer or

a Magistrate. I am of the view that in the memo (Ex.PA) under Section 50 of the NDPS Act, accused was told that if he wants, the search can be conducted before gazetted officer or Magistrate and he can be called. Thus, the notice makes it evident that the accused was apprised of his right of search before gazetted officer or Magistrate. In any case, the provisions of the Section 50 of the NDPS Act are not attracted in the present case as the recovery is effected from the bag which was being carried by the accused and not from his personal search.

Learned counsel for the appellant has argued that in this case, Inspector Yad Ram (PW10) has admitted in cross-examination that in his statement it is not mentioned that the a separate sample seal was also prepared. However, from the Ruqa, it comes out that this fact is mentioned in the Ruqa that separate sample seal was prepared. Even in the report of the chemical laboratory, it is mentioned that it was received with the sample seal. Therefore, there is no force in the said argument.

Learned counsel for the appellant has further argued that in this case, PW1 Davender independent witness turned hostile and did not support the prosecution case. Therefore, there is no corroboration to the statement of the official witnesses. I am of the view that private person has no interest in the investigation by the police. Though, initially he joined the investigation, but it is common knowledge that the private persons do not willing come forward to depose in the Court against the smugglers or narcotics for fear of reprisal. Therefore, looking into the circumstances prevailing in our

society, the fact that independent witness Davender (PW1) turned hostile is not to be given undue importance.

Learned counsel for the appellant has further argued that Inspector Yad Ram has admitted that the other co-accused Angad was not apprehended and that later on, during inquiry, he was found innocent. The said inquiry report is not produced on file. Ex.D2 is only the statement of ASI Nathu Ram. Therefore, this Court is unable to find out as to on which ground Angad was found to be innocent.

In any case, the present accused was apprehended at the spot with contraband and there is no doubt about his identity and the recovery. No ill-will or enmity is alleged against the police. In the statement under Section 313 Cr.P.C. accused has simply denied as the evidence led against him as incorrect and pleaded that he has been falsely implicated in this case. However, he failed to explain as to why the police would register false FIR against him.

Learned counsel for the appellant has further argued that in this case, recovery was effected on 1.1.2003. However, the sample was received in the laboratory on 6.1.2003. I am of the view that delay of 5 days is not material, particularly when there is nothing on file to show that the sample was ever tampered with.

In this case, there was no requirement of compliance of Section 42 of the NDPS Act as it is not a case of house search. The accused was apprehended at the open space along with a bag, in which Charas was recovered.

In view of what has been discussed above, I do not find

any illegality or infirmity in the judgment under challenge.

Faced with these circumstances, learned counsel for the appellant has prayed for some leniency in the sentence. The recovery in this case was of commercial quantity which carries minimum sentence of ten years. However, keeping in view the facts, the Rigorous Imprisonment of two years in default of payment of fine, is reduced to one year.

With this modification, the appeal is dismissed.

27.01.2016

gk

(Kuldip Singh)
Judge