

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

319

CRA-S-1172-SB-2005(O&M)
Date of decision : 16.11.2016

Piaro

..... Appellant

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr.B.S.Kathuria, Advocate
for the appellant.

Mr. Ashish Sanghi, DAG, Punjab.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the conviction of the appellant and sentence of 10 years under Section 15 of the NDPS Act in FIR No. 302 dated 04.09.1998 registered at P.S. Sadar, Jalandhar.

As per the allegations, on 04.09.1998 Inspector Nirmal Singh was present in Nangal Sharma Chowk, G.T., Road, Jalandhar and received a secret information that the appellant was indulged in the business of selling poppy husk in her house. Immediately Inspector Nirmal Singh sent ruqa Ex.PC to the police station and FIR was recorded and sent wireless message to DSP (R) Rajinder Singh to reach at the spot. When they reached at the spot the appellant fled away and on search 38 kg poppy husk was found in 05 bags from her house. All the samples

were sealed with seal of DSP and that seal of IO and the same were taken into possession vide recovery memo Ex.PD attested by SI Gurwinder Singh and Kishore Singh. The appellant was arrested in this case on 27.11.1998 by SI Gurwinder Singh. On completion of investigation and on receipt of the report of chemical examiner challan against the appellant was presented in the Court. Charge was framed under Section 15, 61, 85 of the NDPS Act.

In the course of the trial as many as 05 prosecution witnesses were examined. The accused-appellant was examined under Section 313 Cr.P.C. In the course of which she took the plea of being falsely implicated in the offence alleged and made a statement that she is innocent. Thereafter, at the conclusion of the trial, the trial court on consideration of the evidence and materials on record, passed the impugned judgment and order which has been assailed in the present appeal.

The important witnesses being PW1 to PW5, their testimony would require a close scrutiny.

PW1 Constable Ranjit Singh had deposited the sample in the office of Chemical Examiner and PW2 MHC Prithipal Singh was the MHC. They had fully corroborated the version of the prosecution.

PW3 Sub Inspector Gurvinder Singh was the witness to the recovery and he arrested the accused on 27.09.1998 and PW5 Inspector Nirmal Singh is the investigating officer and they both had corroborated the version of the prosecution, as fully detained in para no.2 of the judgment. They had deposed in one voice that on 04.09.1998, Inspector Nirmal Singh while present at Mangal Shama Chowk along with other police officials received secret information that Piaro wife of Surinder Singh resident of Fauzi Wali ali, Rama Mandi was indulged in the business of selling poppy husk in her house and if raid was conducted she can be apprehended and recovery could be effected. On receiving secret information, he sent ruqa Ex.PC to the police station on the basis of which formal FIR Ex. PC/4 was recorded by ASI Naginder Singh whose signatures he identified. Then he sent wireless message to DSP Rajinder Singh to reach at the spot in the house of accused in Rama Mandi. Thereafter he raided the house of accused, and while on the way PW Kishore Singh was joined in the police party. When he reached at the house of accused Piaro, the door of her house was open. When they entered into the house of accused, on seeing police party she fled away. He and Gurinder Singh other police official identified accused Piaro who was earlier known to them, but the accused managed to slip away. In the

meantime DSP Rajinder Singh also reached at the spot. After that he alongwith DSP and other officials searched the house of accused and got recovered 05 bags of poppy husk from the corner of a room covered with tarpaulin. One sample of 250 gm each from each bag of poppy husk was separated and the remaining on weighment came to be 37 kg 750 gm in each bag 5 samples and 5 bags of poppy husk were sealed with the seal bearing impression RS of DSP and with his seal bearing impression NS. He handed over seal after use PW SI Gurvinder Singh and DSP retained his seal with him. Rough site plan Ex.PG was prepared. Accused was arrested in this case by SI Gurvinder Singh. They further proved on record arrest memo. Ex.PE, memo, regarding information of the arrest of the accused Ex.PF.

PW4 DSP Rajinder Singh also deposed on the same lines and corroborated the version of the investigating officer PW5 on all the material points.

Learned counsel for the appellant has argued that admittedly the provision of Section 42 of the NDPS Act was not adhered to.

Learned DAG has argued that Nirmal Singh sent ruqa to the police station and wireless message was sent to DSP Rajinder Singh and therefore the requirement of Section 42 of NDPS Act is satisfied.

Learned counsel for the appellant has relied upon the judgement of the Supreme Court titled as “**Darshan Singh vs. State of Haryana 2016(1) RCR(Criminal)333**” wherein the Supreme Court held as follows:

“The solitary question that arises for our consideration in the instant appeal, is whether the registration of the first information report, narrating the factual position as has already been described at the beginning of this order, as also, the communication of the first information report to the Superintendent of Police, Panipat would constitute an effective compliance of the provisions contained in Section 42 of NDPS Act.

In the above view of the matter, it is not possible for us to accept the submission of the learned counsel for the respondent-State, that the registration of the first information report at the hands of the Station House Officer, Police Station Shahar, Panipat and its communication to the Superintendent of Police, Panipat would constitute sufficient compliance of the mandate of Section 42 of the NDPS Act.”

Learned DAG has relied upon the judgment of Supreme Court titled as “**Karnail Singh vs. State of Haryana 2009 (5)**”

R.C.R(Criminal)515”.

Learned counsel for the appellant has argued that judgment of Karnail Singh was considered by the Supreme Court in the judgment of of Darshan Singh (supra). Apart from that learned counsel for the appellant has argued that the Investigating Officer has accepted that other members of the family of the appellant were also living in that house. Moreover, the prosecution led no evidence to prove that the said house belongs to the appellant and the trial court wrongly held that the onus to prove that the house did not belong to the appellant was on her. As per the learned counsel for the appellant, it is on the prosecution to dispel any doubt and not for the appellant to prove her innocence.

Learned DAG has not been able to counter this argument.

In these circumstances, appeal stands allowed and conviction as well as sentence of the appellant is set aside.

November 16 , 2016
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No