

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

CRA S-2648-SB of 2016 (O&M)

Date of decision: 24.10.2016.

Parveen Kumar alias Raju

... Appellant

Versus

State of Haryana

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. S.S. Gill, Advocate,
for the appellant.

Mr. Naveen Kaushik, Addl. AG, Haryana.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 15.07.2016, passed by Additional Sessions Judge-cum-Special Judge, Kurukshetra, vide which the accused-appellant was convicted under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and sentenced to undergo RI for five years and to pay fine of Rs.50,000/- with default stipulation.

Briefly stated the case of the prosecution as noticed in the judgment passed by the trial Court is as under:-

“In brief the case of the prosecution is that on 5.1.2013, Inspector Sanjeev Kumar alongwith EASI Rmesh Kumar, EHC Jaspal and Constable Pardeep Kumar were present at the Bachgaon canal bridge for

patrol and detecting crime duty in the Government vehicle bearing registration No. HR-65-3354 which was being driven by constable Karambir and in the meantime, a young boy was seen coming from the side of village Bachgaon Gamri on motor-cycle, who on seeing the police party tried to turn his motor-cycle bearing registration No. HR-07L-3819. He was apprehended and on interrogation, he disclosed his name as Parveen Kumar alias Raju resident of village Bachgaon. On having suspicion of illegal weapons, personal search of accused Parveen Kumar was conducted but he suddenly tried to throw a white polythene after taking out the same from the right side pocket of his pant and on checking the said polythene, smack (Heroin) was found in it. Out of recovered smack, two samples of 2 gms each were taken and after weighing the said residue, it was found to be 11 gms with polythene. The samples, case property along with motor-cycle were taken into possession vide recovery memo Ex.P8 and converted into sealed parcels with two seals of "SK". After using the seal, the same was handed over to EASI Balwant Singh. Ruqqa was sent to the police station,

and on the basis of the same, a formal FIR was registered. During investigation, statements of witnesses were recorded. Rough site plan Ex.P28 of the place of recovery was prepared. Accused Parveen Kumar was arrested. The report under section 55 of the NDPS Act was prepared. The case property was sealed with the seal of 'SK' and was deposited in the malkhana. During the investigation, the accused Parveen Kumar made disclosure statement Ex.P10 that on 5.1.2013, the recovered 15 gms smack was handed over to him by Sahab Singh alias Sahabi and Satnam alias Satta for sale and on selling packet of 5 gms smack, he would get commission of 200/-. On 16.2.2013 accused Satnam Singh appeared before the police and he was formally arrested and then joined in the investigation. Finding sufficient evidence against him, case under section 29 of the NDPS Act was registered. After completion of the investigation, all the case property was deposited in the Police Station, Sadar Thanesar and on 6.1.2013, the case property was taken out and the accused was produced before the Magistrate and the Magistrate prepared the inventory of the recovered contraband. The samples

had already been sent to FSL, Madhuban and compliance of provisions of section 57 of the NDPS Act was made by preparing the report. On completion of necessary formalities of investigation, challan was prepared and presented in the Court for trial. ”

On presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused, free of costs.

Charges under Sections 21 and 29 of the NDPS Act were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, HC Surinder Kumar, PW-2, Constable Ram Kumar, PW-3 Prem Dass, PW-4 ASI Subhash, PW-5, SI Surender Singh, PW-6, SI Balwant Singh, PW-7, HC Isham Singh, PW-8, Inspector Narender Kumar, PW-9 Satnam Singh, PW-10 Mehar Singh, PW-11 Dr. Kavita Kamboj, JMIC, Kurukshetra; PW-12, Inspector Sanjeev Kumar and closed its evidence.

The statement of accused was recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

No evidence in defence was led by the accused.

After appraisal of the evidence, the trial Court, vide impugned judgment and order dated 15.07.2016, convicted and sentenced accused Parveen Kumar alias Raju, as narrated above. However, accused Satnam Singh alias Satta was acquitted of the charge framed against him.

Feeling aggrieved against the judgment and order dated 15.07.2016, passed by the trial Court, the accused, Parveen Kumar alias Raju, has filed the instant appeal.

It is submitted that the prosecution has failed to prove its case against the accused. There is inconsistency in the statement of PW-11 and the FSL report. As per PW-11, Dr. Kavita Kamboj, the weight of the sample was 2 gms each and as per the report of FSL the weight of the sample was 1.57 gms. It is further urged that Ex.P-1, the affidavit furnished by PW-1 HC Surinder Kumar, has not been signed by the witness, similarly, affidavit furnished by PW-2, Constable Ram Mehar, has also not been signed. The non-signing of the affidavits renders their testimony otiose. In the absence of any evidence to the effect that the sample was deposited in the Malkhana and the same was sent to FSL, Madhuban in intact position, the case property cannot be said to be free from tampering. It is further submitted that the seal after use was not handed over to any witness, rather, the seal remained with the I.O. upto 07.01.2013 whereas, the recovery is alleged to have been effected on 05.01.2013. No independent witness was joined during

recovery proceedings. PW-6 has deposed that they reached SYL canal at about 6.00 pm and after about ten minutes, the accused was seen coming whereas, PW-12 has deposed that they reached at the spot at 5.00 pm and after ten to fifteen minutes the motor cycle was noticed by them. The complaint, Ex.P-27 bears time 5.15 pm which means that all the proceedings were conducted before the police party reached the spot.

On the other hand, the learned State counsel contends that the prosecution has successfully established its case against all the accused. The Court below has rightly convicted the accused/appellant and sentenced him to undergo imprisonment for five years. The judgment and the order are well reasoned and do not call for any interference.

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

The recovery of 15 gms smack (Heroin) is stated to have been effected from the accused/appellant on 05.01.2013. It is further the case of the prosecution that the accused made disclosure statement that the recovered smack was handed over to him by Sahab Singh @ Sahabi and Satnam alias Satta for sale. Thereupon, Satnam Singh was also arraigned as an accused in the case. However, after dwelling upon the matter, the trial Court acquitted Satnam Singh of the charge under Section 29 of the NDPS Act. As regards the appellant,

perusal of the file reveals that the affidavit Ex.P-1 and PW-2 furnished by PW-1 HC Surinder Kumar and PW-2 Constable Ram Mehar respectively have not been signed by the witnesses. Hence, the same cannot be considered as evidence in the eyes of law. In the absence of any evidence to the effect that the case property was deposited in intact position, the link in the prosecution case stands broken particularly when there is evidence on record that the seal after use was not handed over to another person. It remained with the IO for two days. That apart, PW-6, SI Balwant Singh has deposed that they reached SYL canal at about 6.00 pm and after about ten minutes, the accused was seen coming from the opposite side whereas, PW-12, Inspector Sanjeev Kumar has deposed that they reached at the spot at 5.00 pm. Thus, this Court is constrained to hold that the entire recovery proceedings stand vitiated as the possibility of tampering with the case property cannot be ruled out. The greater is the punishment attached with the offence, the greater is the circumspection. Consequently, the present appeal is allowed, the impugned judgment and order passed by the trial Court are set aside. The accused is acquitted of the charge framed against him. He is stated to be in custody. He be released forthwith, if not required in any other case.

24.10.2016.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No