

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1369-SB of 2003
Date of Decision: February 17, 2016

Gian Chand

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Sidhu, Advocate
for the appellant.

Mr.Himmat Singh, 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 and order of sentence dated 04.07.2003 passed by learned Addl. Sessions Judge, Sirsa, whereby he 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 two years under Section 15 of the NDPS Act.

In the present case, challan was presented against present appellant Gian Chand and co-accused Jalaur Singh, Parkash Chand and Sukhdev Singh alias Sukha. Learned trial Court, convicted Gian Chand, Jalaur Singh and Parkash Chand and Sukhdev

Singh alias Sukha was acquitted. The appeals filed by co-accused Jalaur Singh and Parkash Chand have already been abated as they both have died.

The brief facts of the prosecution case are that on 27.10.1997, ASI Sube Singh along with other police officials was present near Gurudwara of village Maujgarh. He received a secret information that accused Gian Chand, Sukhdev Singh alias Sukha Singh and Parkash Chand have brought poppy straw from Rajasthan to the house of Jalaur Singh. Thereupon, ASI Sube Singh formed a raiding party. Raid was conducted at the house of Jalaur Singh and accused Jalaur Singh, Gian Chand and Parkash were seen sitting on the heap of bags and accused Sukha Singh was seen standing near the said bags. On seeing the police party, accused Sukha Singh fled away. Remaining accused were apprehended by the police. An offer was made to them to get the search conducted in the presence of any Gazetted Officer or Magistrate and the accused desired to get the search conducted before some Magistrate. SDM was called, who reached on the spot. Then the search was conducted as per rules and poppy straw was found in six bags. Each bag found to contain 41 kgs. of poppy straw. Two samples of 100 grams each were separated from each bag. The sample parcels and bulk parcels were prepared and case property was taken into police possession. Ruqa was sent to the police station, on the basis of which FIR was registered. Accused were arrested. Statements of witnesses were recorded. After receiving the report of FSL and after necessary investigation, the

challan was presented against the accused-appellant and co-accused.

On presentation of challan against accused-appellant and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant and co-accused were charge-sheeted under Section 15 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Sarwan Kumar, who mainly deposed regarding arresting of accused Sukhdev Singh @ Sukha and recording the statement of Krishan Kumar, MHC. PW-2 Constable Jagdish Chander mainly deposed regarding the fact that SI Janardhan had recovered the jeep No.HYE-829, which was lying parked near the house of Jalaur Singh. PW-3 Constable Mahender Pal, is a formal witness, who tendered into evidence his affidavit Ex.PB. PW-4 Head Constable Krishan Lal, is also a formal witness, who tendered into evidence his affidavit Ex.PD. Report of the FSL was tendered into evidence as Ex.PC. PW-5 Head Constable Suraj Bhan, is the recovery witness, who was with the police party. He deposed as per prosecution version. PW-6 SI Janardhan mainly deposed regarding preparing of rough site plan. He also deposed that he prepared report under Section 57 of the NDPS Act. PW-7 J.D.Naharwal, Managing Director, Sugar Mill stated that he was called at the spot and deposed that recovery was effected in his presence. PW-8 SI Sube Singh, is the Investigating Officer, who deposed regarding investigation conducted by him 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.

In defence, accused examined DW-1 Head Constable Sher Singh, DW-2 Head Constable Sri Niwas and DW-3 Constable Harminder Singh.

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 house of Jalaur Singh was raided on the basis of the secret information but no attempt was made to join independent witness nor the compliance under Section 100(4) Cr.P.C. was made. Even in the chief-examination, the Investigating Officer stated that two persons Baldev Singh, Member Panchayat and Lali Singh, Ex-Sarpanch were called on the spot but they refused to become witness. No action was taken against them. He next argued that in the present case, when there is no independent witnesses, then the prosecution version cannot be relied upon. He further argued that as the FIR was registered on the basis of secret information and house of Jalaur Singh was raided, therefore, compliance under Section 42 of the NDPS Act was necessary but no such report either before raiding the house or after the recovery has been sent to the senior officer. The compliance of provisions of Section 42 of the NDPS Act is mandatory

and these provisions have not been complied with which creates reasonable doubt in the prosecution version. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and appellant Gian Chand should be acquitted.

On the other hand, learned State counsel argued that report under Section 42 of the NDPS Act could not be sent before raiding the house because there was every apprehension that accused may abscond. He further argued that such a huge recovery cannot be planted upon the accused falsely. He next argued that independent witnesses were called on the spot but they refused to join the investigation. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel, I find that raid is conducted at the house of Jalaur Singh accused on the basis of the secret information. Therefore, compliance of Section 42 of the NDPS Act was necessary. The provisions of Section 42 of the NDPS Act are mandatory in nature and the Investigating Officer has not complied with these provisions. Even if it is taken that there was apprehension to the Investigating Officer that if any delay is caused due to writing of the information and then sending it to higher officer and accused may escape, even then, he could send the report to senior officer after the recovery but he has not complied with provisions of Section 42 of the NDPS Act. The mandatory provisions of Section 42 of the NDPS Act have not been

complied with, therefore, only on this ground, the appellant is entitled to acquittal.

Furthermore, the house of Jalaur Singh was raided by the police party but no attempt was made to join two persons from the locality nearby the house of Jalaur Singh. Therefore, the compliance of provisions of Section 100(4) Cr.P.C. was also not made. This fact also creates doubt in the prosecution version. Moreover, no action was taken against the independent witnesses, who were called on the spot and refused to join the police party and no further attempt was made for joining any other independent witness.

In view of the above discussion, I find that a reasonable doubt exists in the prosecution version and prosecution has failed to prove its case beyond reasonable doubt. The benefit of doubt is always to go to the accused. Therefore, the accused-appellant is acquitted of the charge framed against him. The judgment of conviction and order of sentence dated 04.07.2003 passed by learned Addl. Sessions Judge, Sirsa, are not as per law and the same are set aside.

Resultantly, finding merit in the appeal, the same is allowed.

Since appellant Gian Chand is on bail, his bail/surety bonds stand discharged.

February 17, 2016
Vgulati

(INDERJIT SINGH)
JUDGE