

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-303-DB of 2010(O&M)

Date of Decision : 01.05.2017

Harinder Singh @ Bhura

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. K.S.Dhaliwal, Advocate
for the appellant.

Mr. S.S.Pannu, DAG, Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 05.02.2010 passed by the learned Judge, Special Court, Karnal, vide which accused-appellant Harinder Singh @ Bhura has been held guilty and convicted for the offence punishable under Section 15 (c) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and the order of sentence dated 08.02.2010, vide which he has been sentenced to undergo rigorous imprisonment for a period of fourteen years and to pay a fine of ₹ 1,50,000/- and in default thereof, he was further ordered to undergo rigorous imprisonment for a period of two years.

2. The brief facts giving rise to this prosecution are that on 12.09.2007, PW-5-ASI Satpal along with other police employees reached

near village Nidana Gamdi from the side of village Kudak through main

Kacha path in connection with patrolling and crime checking. When, the police party covered about 5/6 acres in the southern side on that path, the accused-appellant was noticed putting a jute bag on the *Kacha* path after lifting from the paddy field. On seeing the police jeep, he set down at once in the paddy field. He was apprehended on the basis of suspicion. Two more gunny bags were found in his possession which were kept in the paddy field. ASI Satpal introduced himself and inform the accused-appellant that he suspected some narcotic substance in those bags and gave him the option for the search of the said bags in the presence of any Magistrate or Gazetted Officer and served the notice Ex.P-1 under Section 50 of the NDPS Act. Accused-appellant gave reply to the said notice which is Ex.P-2 that he does not want to get the search conducted by any higher officer. He reposed faith in the Investigating Officer. Thereafter, ASI Satpal carried out the search of all the three bags which were found containing poppy-husk. He separated two samples of 100 gms each from each bag. On weighing the remaining poppy-husk was found 39 kg 800 gms each in two bags and 34 kg 800 gms in one bag. The sample parcels and the gunny bags containing the remainder poppy-husk were sealed by the Investigating Officer with his seal bearing impression 'SP' and were taken into possession vide memo Ex.P-3. The Investigating Officer also prepared the site plan of place of recovery Ex.P-7 and sent the written information Ex.P-6 to the Police Station on the basis of which the formal FIR Ex.P-5 was registered.

3. On return to the Police Station, ASI Satpal produced the accused, witnesses and the case property before PW-6-Inspector Ram Kumar, SHO, Police Station Taraori. He verified the facts of the case and

affixed his seal bearing impression 'RK' on the sample parcels and gunny

bags containing the remainder poppy-husk. He directed the Investigating Officer to deposit the case property in the Malkhana of the Police Station.

4. The Investigating Officer prepared the inventory of the case property Ex.P-10. He also submitted his report under Section 52-A of the NDPS Act and produced the case property before the learned Judicial Magistrate Ist Class, Karnal on 13.09.2007. The learned Judicial Magistrate Ist Class, Karnal certified the inventory vide order dated 13.09.2007. The sample parcels were sent to the Forensic Science Laboratory, (for short-'F.S.L.'), Madhuban (Haryana) for examination, which were found to be of Poppy Straw ('Choorapost') vide report Ex.P-14 and on completion of the investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented in the Court.

5. After compliance of the provisions of Section 207 Cr.P.C, the accused-appellant was charge sheeted by the learned Judge, Special Court, Karnal for the offence punishable under Section 15 of the NDPS Act vide order dated 11.12.2007 to which he pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined as many as seven witnesses besides placing on file the documents.

7. When examined under Section 313 Cr.P.C, the accused-appellant pleaded that he is innocent. The witnesses had deposed falsely against him and a false case has been registered against him. The accused did not lead any evidence in his defence.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned Judge, Special Court, Karnal held guilty and convicted the accused-appellant for the offence punishable under Section 15 (c) of the NDPS Act and he was sentenced as

mentioned in the upper part of the judgment.

9. Aggrieved with the aforesaid judgment of conviction dated 05.02.2010 and the order of sentence dated 08.02.2010, the present appeal has been preferred.

10. We have heard Mr. K.S.Dhaliwal, Advocate, learned counsel for appellant, Mr. S.S.Pannu, learned Deputy Advocate General, for the State of Haryana and have carefully perused the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that the entire case of the prosecution is based on the testimonies of the official witnesses. The place of occurrence was situated near *Abadi*, but even then no independent witness has been associated. Thus, the testimonies of the official witnesses are not reliable. He further contended that the accused cannot be stated to be in conscious possession of the two bags which were lying in the paddy field. As per statement of PW-3- ASI Nand Kishore, the witness of recovery, Kala Singh son of Satpal was in cultivating possession of the said paddy field. The said bags were visible from outside. The accused-appellant had no connection with the alleged place of recovery. Said Kala Singh who was in possession of the said fields has not been associated in the investigation of the case. Thus, he contended that the conscious possession of the appellant over the two bags lying in the paddy field is not established.

12. On the other hand, learned State counsel contended that it was a chance recovery. There was no time with the Investigating Officer to associate the independent witness. So, there is no reason to disbelieve the statements of the official witnesses. He further contended that the conscious possession of the accused-appellant over all the three bags is established. He has dragged one bag from the paddy field to the *Kacha*

path and on seeing the police party he sat down in the paddy field just near the remaining two bags, which shows that he was in conscious possession of the entire contraband.

13. We have duly considered the aforesaid contentions.

14. As per the prosecution version, the police party was on routine patrolling and crime checking when the accused-appellant was noticed dragging out a gunny bag from the paddy field to the *Kacha* path and on seeing the police jeep, he sat down in the paddy field which raised the suspicion in the mind of the Investigating Officer. So, it was a chance recovery and the Investigating Officer had no opportunity or time to call for the independent witness to join the investigation. It is well settled by this time that the testimonies of the official witnesses also carries the same evidentiary value and their testimonies cannot be discarded merely on the ground of their official designation. The learned defence counsel has not been able to point out any material contradiction in the statements of the prosecution witnesses. He also has not been able to point out any animus or motive for the false implication of the appellant. The Hon'ble Supreme Court in case **Akmal Ahmed Vs. State of Delhi, 1999(2) RCR (Criminal) 265** has laid down that the evidence of search or seizure made by the police will not become vitiated solely for the reason that same was not supported by any independent witness. The same ratio of law has been laid down by the Hon'ble Apex Court in case **State of NCT of Delhi Vs. Sunil (2000) 1 Supreme Court cases 748, Rohtash Vs. State of Haryana, 2013(3) RCR (Criminal) 355, M.Prabhulal Vs. Assistant Director, Directorate of Revenue Intelligence, 2004(1) RCR (Criminal) 160 and Ravinderan @ John Vs. Superintendent of**

Customs, 2007 (3) RCR (Criminal) 80. Thus, the non-joining of independent witness is also no ground to discredit the prosecution version.

15. PW-3-ASI Nand Kishore and PW-5-ASI Satpal, the Investigating Officer of the case have consistently deposed that accused-appellant was dragging out a gunny bag from the paddy field to the *Kacha* path and on seeing the police jeep, he sat down inside the said field. On suspicion, he was apprehended. He disclosed his particulars. Two more gunny bags were also found lying inside the field. As per the site plan Ex.P-7, the accused was found sitting just at a distance of two steps from the other two gunny bags containing poppy-straw lying in the paddy field. Thus, from the aforesaid consistent evidence, it comes out that the accused had brought one bag out of the three bags lying in the paddy field to the *Kacha* path and on seeing the police party he sat down in the paddy field to conceal his presence and was found sitting just at a distance of two steps from the remaining two bags. The conduct of the accused is very material to determine the question of conscious possession. The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended. Moreover, once the possession of the contraband is established, the presumption under Sections 35 and 54 of the Act arises against the accused. The Hon'ble Supreme Court in case **Madan Lal Vs. State of Himachal Pradesh 2003(4) RCR (Criminal) 100**, has laid down that once the possession is established, the person who claims that it was not a conscious possession, has to establish it, because how he came to be in possession is within his special knowledge. It was further held that Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in

terms of Section 54 of the Act, where also presumption is available to be drawn from the possession of illicit article. Similar ratio of law has been laid down by Hon'ble Supreme Court in case **Gian Chand and others Vs. State of Haryana 2013 (3) RCR (Criminal) 916.**

16. In the instant case, the accused-appellant has pleaded simple false implication in his statement recorded under Section 313 Cr.P.C. He has not given any explanation as to how he came to be present in the fields where the three bags containing poppy-straw were lying and he has brought one bag out of those to the *Kacha* path. Thus, the conduct of the appellant establishes that he was fully aware about the nature and substance in those bags. So, there is no escape from the conclusion that appellant was in conscious possession of all the three gunny bags containing poppy-straw. In case **Megh Singh Vs. State of Punjab, 2003 (4) R.C.R. (Criminal) 319**, three persons were found sitting on the bags containing poppy husk. On seeing the police party, two of them fled away from the spot and appellant Megh Singh was apprehended at the spot. The Hon'ble Apex Court held him to be in conscious possession of the contraband. This authority is squarely applicable to the facts of the case.

17. Thus, keeping in view our afoersaid discussion, we do not find any infirmity in the conclusion arrived at by the learned Judge, Special Court, Karnal that the accused-appellant was found in conscious possession of all the three bags containing 115 kg of poppy-straw.

18. Faced with this situation, learned counsel for the appellant contended that the punishment awarded by the learned Judge, Special Court, Karnal is disproportionate to the act committed by the appellant. He contended that accused-appellant is in custody since the date of his apprehension. He had two small daughters and ailing parents. So, the

lenient view be taken in the matter of sentence.

19. We found substance in this plea of learned counsel for the appellant.

20. As per the custody certificate, accused-appellant has undergone the total sentence of eight years nine months and nineteen days including remission as on 24.01.2017. He is in custody since the date of his arrest. It cannot be disputed that the accused-appellant has two daughters and also had responsibilities towards his family. Thus, he deserves leniency in the matter of sentence.

21. Therefore, in view of our aforesaid discussion, the appeal of the appellant against conviction has no merits. The same is hereby dismissed. The conviction of the accused-appellant recorded by the learned Judge, Special Court, Karnal under Section 15 (c) of the NDPS Act is hereby maintained. However, the sentence is modified from imprisonment of 14 years and pay a fine of ₹ 1,50,000/- and in default thereof to undergo rigorous imprisonment for two years, to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹ 1,00,000/- for committing the offence under Section 15 (c) of the NDPS Act. The fine shall be recoverable in terms of Section 421 Cr.P.C.

(S.S.SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

May 01, 2017
s.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No