

389

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA S-2907-SB of 2009

Date of decision : 12.05.2017

Intpal Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Daldeep Singh, Advocate,
for the appellant.

Ms. Harsimrat Rai, DAG, Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 02.12.2009 passed by Judge, Special Court, Barnala, vide which the appellant was convicted under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and sentenced to undergo RI for 01 year and to pay fine of Rs.1000/- with default stipulation.

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

“The facts of the prosecution case are that on 26.06.2008, ASI Baljit Singh along with fellow police officials were patrolling and ownership was found in it. The search of Intpal Singh accused was conducted and a plastic box was recovered from the pocket of his pants. It was found to be containing opium. Two samples weighing 10 grams each were separated and the remaining opium weighed 180 grams. Separate parcels of both the samples and bulk were prepared. The search of the bag being carried by accused Jagga Singh also led

to the recovery of opium. Two samples weighing 10 grams each were separated and the remaining opium weighed 530 grams. Separate parcels of both the samples and the bulk were prepared. All the four sample parcels and the two bulk parcels were sealed with the seal bearing impression 'BS'. The specimen seal was prepared and the seal after use was handed over to Balraj Singh. The incriminating articles were taken into possession vide separate recovery memo."

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

Charge under Section 18 of the NDPS Act was framed against the accused to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined seven witnesses and thereafter 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 02.12.2009, convicted and sentenced the accused as narrated above.

Feeling aggrieved against the judgment and order dated 02.12.2009, passed by the trial Court, the accused has filed the instant appeal.

It is contended that there is violation of Section 50 of

NDPS Act as the opium was recovered from the pocket of the pant of the appellant. The personal search was not conducted in the presence of a Gazetted officer or Magistrate. In this regard, reliance has been placed on **Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2011 (1) SCC 609**. It is further contended that though, an independent witness was joined, however, the same was not examined by the prosecution for the reasons best known to it. Reliance in this regard has been placed on **“Darshan Singh Vs. State of Punjab, 2013 (2) R.C.R.(Criminal) 45.**

It is further contended that sample was sent to CFSL after gap of 11 days. Form No.29 was not prepared on the spot and the documents i.e. recovery memo, memo of arrest bear the FIR number. It demonstrate that the FIR was registered prior in time and all the documentary work was done in the Police Station subsequently.

On the other hand, the learned State counsel supports the judgement and order passed by the trial Court and states that the accused has been rightly convicted.

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

It is to be noticed that the Form No.29 was not prepared on the spot as has been admitted by PW-6 ASI Baljit Singh and PW-3 Kulwant Singh. Both the witnesses are material witnesses. Further the personal search of the accused was conducted by the Investigating Officer himself and the presence of a Gazetted Officer or a Magistrate was not secured on the spot as is clear from the statement of PW-6 ASI Baljit Singh.

Both these safeguards are very much essential and go to the root of the matter. The higher is the punishment, the greater is the scrutiny. The safeguards are not just rituals to be observed for the heck of it.

Considering the fact that the personal search of the accused was not conducted in the presence of the Gazetted Officer or a Magistrate and Form No.29 was not prepared on the spot, the documents of the case i.e. Recovery memo Exhibit-PD, PE and arrest memo Exhibit-PF bear the FIR Number which shows that all these documents were not prepared on the spot. The mention of FIR number on these documents go to show that first the FIR was registered and the documentation was completed thereafter. It creates a reasonable doubt in the mind of the Court, the benefit of which goes to the accused.

In **Ram Lubhaya vs. State of Punjab 2014(1) RCR (Criminal) 697** this Court while relying upon the judgment rendered in **Bhola Singh vs. State of Punjab 2005(2) RCR (Criminal) 520** held as under:-

“It has been observed that “CFSL Form should be prepared at the spot and deposited in Malkhana. Where the seal remained with the police after use and the CFSL form was neither prepared on the spot nor deposited in the Malkhana, such circumstance would be fatal to the prosecution case. Filling of such form at the spot is a very valuable safeguard to ensure that the seal sample is not tampered with till its analysis by the FSL. In the present

case, from the statements of PW-4 ASI Kulwant Singh and PW-5 SI Dharam Pal, it reveals that CFSL form was not attached with the case property, which also creates a dent in the prosecution case.

As a result, the present appeal is allowed and the impugned judgment and order passed by the trial Court are set aside. Appellant, namely, Intapal Singh is acquitted of the charge under Section 18 of the NDPS Act. His bail bonds and surety bonds stands discharged.

The appeal is allowed.

May 12, 2017

SN

(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No