

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

CRA-S-1342-SB-2013

Date of decision:26.07.2017

Prince Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr. Tek Chand Bansal, Advocate
for the appellant.

Ms. Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This appeal has been preferred against judgment dated 18.03.2013 passed by Judge, Special Court, Sri Muktsar Sahib vide which accused-Prince Kumar was convicted for offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹1,00,000/- and in default thereof, to further undergo rigorous imprisonment for two years.

The accused-convict – Prince Kumar, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of

his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly summed up, the prosecution story is that on 25.12.2010 a police party from CIA staff, Muktsar headed by ASI Jarnail Singh was travelling in government vehicle make Bolero having registration No. PB-30-E-2060 in connection with patrolling and search of suspects. The vehicle carrying the police party was going from city side towards village Barkandi, when such vehicle was about 2 acres short of Punsup Gas Agency then a young man carrying a polythene bag with some contents in his right hand was spotted coming from opposite side. On seeing the police party he became nervous and sat down in the vacant plot on his left hand side on the pretext of urinating. He was apprehended by the police party on the basis of suspicion, on being enquired he disclosed his name as Prince Kumar son of Surinder Kumar resident of Akal Academy Sri Muktsar Sahib. ASI Jarnail Singh (hereinafter referred to as Investigating Officer/IO) told Prince Kumar that he suspected that he (Prince Kumar) was carrying some contraband in the polythene bag in his hand and he (the Investigating Officer) wanted to search the said polythene bag. The Investigating Officer informed Prince Kumar that he had a legal right to get his polythene bag searched in the presence of some Magistrate or Gazetted Officer, however, Prince Kumar stated that he had faith in the Investigating Officer who could carry out the search. The Investigating Officer prepared a consent memo, which was signed by Prince Kumar in Punjabi and attested by witnesses. According to the prosecution story the Investigating Officer tried to associate some person

from public but was unable to do so. Then he searched the polythene bag, which the accused was carrying in his right hand and it was found to contain 52 packets of Microlit tablets, each packet was found to contain 100 tablets, in that way total being 5200 tablets. The Investigating Officer took out one packet containing 100 tablets as a sample and put that into a plastic container converting it into a parcel. The remaining 51 packets comprising 5100 tablets were placed in a separate plastic container, which was also converted into parcel. Both the parcels were sealed with the seal bearing inscription "SI" and the seal after use was handed over to HC Bachittar Singh. The sealed parcels along with the specimen seal impression were taken into possession vide seizure memo attested by the witnesses. Then *Jamatalashi* of accused-Prince Kumar was conducted, which resulted in recovery of currency note of ₹40/- from the front pocket of his shirt, which he was wearing, a memo in that regard was prepared signed by Prince Kumar and attested by witnesses. Since from the recovery accused appeared to have committed an offence punishable under Section 22 of the NDPS Act, the Investigating Officer sent ruqa Ex.P1 to the police station through PHG Satpal Singh on the basis of which formal FIR Ex.P2 was recorded at Police Station City Muktsar. The Investigating Officer prepared rough site plan of place of recovery as Ex.PW3/A. Accused was formally arrested in this case, grounds of arrest was furnished to him and a memo in that regard was prepared. Intimation regarding his arrest was given to Surinder Kumar, son of Chiman Lal. Statements of witnesses were recorded. The Investigating Officer produced the accused along with case property

before ASI Sham Lal, Officiating SHO Police Station City Muktsar, who verified the facts from the accused as well as from the Investigating Officer and thereafter, he puts his seal impression "SL" on sample and bulk parcels and also attested sample seal chit with seal having impression "SL". On the next day ASI Sham Lal produced accused along with case property before the Illaqa Magistrate and obtained order from the Court and on return to the police station deposited the case property with MHC Balbir Singh. Detailed report under Section 57 of the NDPS Act was sent to Sh. Gurdeep Singh, DSP. During the course of investigation the sample parcels were sent to office of Chemical Examiner through HC Balwant Singh and report from the office of Chemical Examiner was received.

After completion of investigation and other formalities, challan against accused-Prince Kumar, who was arrested at the spot was prepared and filed in the Court of Judge, Special Court, Sri Muktsar Sahib.

On presentation of challan in the Court of Judge, Special Court, Sri Muktsar Sahib, he supplied copies of documents relied upon in the challan to the accused Prince Kumar free of cost as provided under Section 207 Cr.P.C.

Learned Judge, Special Court, Sri Muktsar Sahib finding that charge for offence under Section 22 of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as five witnesses i.e. SI Sham Lal, PW-1; HC Bachittar Singh, PW-2, ASI Jarnail Singh PW-3; ASI Balbir Singh, PW-4; and HC Balwant Singh, PW-5. With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case; that nothing was recovered from him; that he was picked from his house and then this case was planted.

The accused did not lead any evidence in defence.

The following point arose in this case for determination:

“Whether on 25.12.2010, at about 6:00 p.m., in the area of City Muktsar, the accused was found in possession of 52 pouches, containing 5200 tablets of Microlit in his possession, without any permit, or, license and, whether, he can be convicted for the offence, for which, he has been challaned and charged?”

After hearing arguments, learned Judge, Special Court, Sri Muktsar Sahib convicted and sentenced the accused Prince Kumar as mentioned above, which left appellant – accused Prince Kumar aggrieved and has filed the present appeal.

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Punjab,

besides going through the record and find that there is no merit in the appeal.

The first ground of attack of learned counsel for the appellant-accused was that there was violation of Section 50 of the Act since the Investigating Officer failed to apprise the accused of his legal right of being searched either in the presence of some Gazetted Officer or Magistrate and a consent memo has been wrongly prepared. Whereas learned State counsel has countered the argued contending that it is not so because when accused was apprehended, the Investigating Officer had informed him that it was legal right of the accused to be searched either in presence of some Gazetted Officer or Magistrate. However, accused had reposed confidence and faith in the Investigating Officer and given his consent to be searched by the Investigating Officer himself, therefore, the Investigating Officer had prepared a consent memo which was signed by accused-Prince Kumar and attested by HC Bachittar Singh and HC Gurbaj Singh. PW-3 ASI Jarnail Singh has categorically deposed in that regard proving consent memo Ex.PH. HC Bachittar Singh PW-2, HC Gurbaj Singh supported the prosecution story in that regard. Therefore, proper compliance of Section 50 was there and argument in that regard submitted by learned counsel for the appellant does not hold good. After hearing the rival contentions I find the explanation rendered by State counsel to be cogent convincing and based upon factual position borne out from the record, therefore, I do not find that there was no non-compliance of Section 50 of the Act.

As regards the next contention rendered by learned counsel

for the appellant that there was violation of Section 42(2) of the NDPS Act inasmuch as the information in writing under Sub-Section(1) was supposed to be sent within 72 hours to the immediate superior officer, however, it was not so done. Again this argument has been effectively countered by the State counsel who argued that it was a chance recovery and not based upon any prior secret information. Therefore, Section 42 of the Act did not find application in the present case.

I have given a careful thought to such contention and I find that in view of the fact that it happened to be a chance recovery, therefore, the compliance of Section 42(1) of the Act was not necessary in view of the ratio of authority **Sukhwinder Singh @ Sukha vs. State of Punjab 2009(1) RCR (Criminal) 325.**

The next argument put forward by learned counsel for the appellant happened to be that no independent witness was joined with the police party though as per prosecution story recovery had been effected from a public place, therefore, prosecution story becomes doubtful. Again I am not impressed by this argument. The recovery had been effected on 25.12.2010 in the evening hours when the weather is very cold and sun sets early, mostly people preferred to go home before the sun set as such, there is little possibility of many people being present at the spot at the time of recovery, however as is a matter of common knowledge people hesitate to join the investigation being conducted by police, to avoid hassles of going to the Court for attending hearings. Further people are apprehensive of inviting wrath of anti-social elements while becoming witness against them. However, the depositions of

official witnesses are to be taken to be at par with the private individuals, if there is nothing to show that the official witnesses had any previous enmity with accused. In this case, no such enmity is either alleged or proved, therefore, statements of the official witnesses deserved to be relied upon without independent corroboration. Furthermore *independent corroboration is a rule of prudence and not requirement of law*. It is nowhere provided that independent corroboration is necessary in every case and in absence of independent corroboration the prosecution story should be disbelieved. Here I find that the depositions of official witnesses deserve creditability and are bound to be relied upon.

One more argument advanced by learned counsel for the appellant was that link evidence in this case is missing as affidavits of ASI Balbir Singh PW-4 and HC Balwant Singh PW-5 are not properly verified. Therefore, they cannot be read in evidence resulting in link evidence missing, as such, benefit of doubt should be given to the accused and he should be acquitted of the charge framed against him. Again this argument by learned counsel for the appellant is without any force. ASI Balbir Singh had got his statement recorded as PW-4 whereas HC Balwant Singh has appeared as PW-5. They had got their statements recorded on oath and were subjected to cross-examination. Therefore, defect, if any in the verification part got removed in the process, as such, it cannot be said that the link evidence is missing or that accused ought to get benefit of the same by default.

The judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct

interpretation of law. There is no illegality or ambiguity in the judgment, as such, the same is upheld.

The appeal is found to be without merit, hence it stands dismissed.

Necessary direction in that regard be issued to the quarter concerned.

26.07.2017

Gaurav Sorot

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes

Whether reportable : No