

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

**Criminal Appeal No.S-1204-SB of 2017 (O&M)
Date of Decision: July 03, 2017**

Iqlakh Mohammad

.....APPELLANT(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. J.S. Bains, Advocate
for the appellant (s).

Mr. Deepak Grewal, DAG Haryana.

SURINDER GUPTA, J.

The appellant was convicted for the offence punishable under Sections 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short-NDPS Act) and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹10,000/-.

Case of the prosecution, in brief, is that on 24.07.2016, the police party headed by ASI Roop Singh of CIA Staff, Naraingarh apprehended the appellant in the area of village Dera on Kala Amb-Naraingarh Road and recovered 4 kg of poppy-husk from the bag which appellant had thrown on seeing the police party while trying to flee from the spot. After completing the necessary formalities at the spot, ruqa Ex.P4 was sent to the police station, whereupon formal FIR Ex.P7 was recorded.

After completion of investigation, challan against the appellant was

presented in the Court.

On finding a prima facie case, the appellant was charge-sheeted for the offence punishable under Section 15 of NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined Kulwinder Singh, Addl. Ahlmad as PW1, ASI Roop Singh, Investigating Officer as PW2, Head Constable Vikas Kumar as PW3, ASI Chura Ram as PW4, Constable Randeep as PW5, SI Sukhwinder Singh as PW6, ASI Balwant Singh as PW7, SI Gurmukh Singh as PW8, ASI Krishan Kumar as PW9 and SI Rajiv Kumar as PW10. After tendering report of FSL (Ex.P9), prosecution closed its evidence.

All the incriminating evidence was put to the appellant while recording his statement under Section 313 Code of Criminal Procedure, wherein he controverted the allegations against him and pleaded his false implication. However, the appellant did not examine any witness in his defence.

While assailing the conviction of the appellant by the trial Court, learned counsel for the appellant has argued that learned trial Court failed to appreciate this fact that recovery was effected from the appellant on a public passage but no independent witness was joined. In the absence of independent witness, testimony of official witness cannot be given credence.

On perusal of the judgment of the trial Court, I find that the police before effecting the recovery from the bag thrown by the appellant, had requested passers-by to join the investigation but none of them agreed

and expressed their inability. It is otherwise a general phenomena people avoid joining the police party and to be a witness against their co-villager for a number of reasons including one concerning the safety and security of their family. The question which arise for consideration is as to whether the testimony of official witnesses examined by the prosecution should be discarded only on the ground that it did not find independent corroboration. Hon'ble Division Bench of this Court in the case of ***Ramesh Kumar Versus State of Punjab, 2013(4) RCR (Criminal) 320***, has observed that the testimony of official witnesses cannot be discarded until it is proved that they have any animus or hostility against the accused for his false implication. While discussing the question of non-joining of the independent witnesses, it was observed that they are averse to join the police and depose in favour of prosecution as they are afraid of the fact that joining the police and deposing in favour of the prosecution may expose them to serious consequences. Hon'ble Division Bench in para 21 of the judgment observed as follows:

“21. It was held by the Hon'ble Supreme Court of India in ***Ajmer Singh v. State of Haryana, 2012(2) RCR (Criminl) 132: 2010(2) Recent Apex Judgments (R.A.J.) 13: 2010(2) JT 175***; though in cases like the case in hand, independent evidence is required, but accused cannot be acquitted merely because no independent witness produced. Hence conviction was upheld inter alia on said ground. So, the contention raised by the learned counsel for the appellant to the effect that evidence of PW-5 (HC Sham Lal) and PW-7 (ASI Jai Kishan) cannot be relied upon for want of corroboration by the evidence of independent witness, is

repelled, in view of the judgment (supra).”

In the case of *Sumit Tomar versus State of Punjab, 2013(1) SCC 395*, Hon’ble Supreme Court on the point of non-examination of independence witness joined by the police, has observed as follows:

“In view of the above discussion, we hold that though it is desirable to examine independent witness, however, in the absence of any such witness, if the statements of police officers are reliable and when there is no animosity established against them by the accused, conviction based on their statement cannot be faulted with. On the other hand, the procedure adopted by the prosecution is acceptable and permissible, particularly, in respect of the offences under the Narcotic Drugs and Psychotropic Substances Act.”

In view of what has been discussed above, non-joining of independent witness is not a circumstances, which can be given weightage in the facts and circumstances of this case.

No other argument has been advanced by learned counsel for the appellant.

On perusal of the judgment of the trial Court, I find that it has dealt with evidence of prosecution and defence version of the accused and committed no error of law while reaching the conclusion that the recovery of 4 kg of poppy-husk recovered from the appellant is duly proved. I find no reason to interfere with the well-reasoned judgment of learned trial Court and affirm the conviction of the appellant for the offence punishable under Section 15 of NDPS Act.

Learned counsel for the appellant submits that appellant was a

young boy aged about 30 years at the time of occurrence having no adverse antecedents. He is not a previous convict and is sole bread earner of his family. The sentence awarded to him by the trial Court is on higher side and has requested for a lenient view.

On giving a careful thought to the submission of learned counsel for the appellant, I find that there is nothing on file to show that appellant is a previous convict. The recovery effected from him is on 4 kg of poppy-husk. Keeping in view age antecedents and the nature of recovery effected from the appellant, I am of the opinion that interest of justice shall be fully served if the substantive sentence awarded to the appellant is reduced from rigorous imprisonment for one year to rigorous imprisonment for six months.

As a sequel of my above discussion, this appeal is partly allowed. Maintaining the conviction of the appellant for the offence punishable under Section 15 NDPS Act, his substantive sentence is reduced from rigorous imprisonment for one year to rigorous imprisonment for six months. However, the sentence of fine awarded by the trial Court is maintained.

July 03, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No