

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1225-SB of 2017 (O&M)

Date of Decision: 02.06.2017

Sukhwinder Singh

....Appellant

VERSUS

State of Punjab

....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.S. Sekhon, Advocate
for the appellant.

Mr. Jashanpreet Singh, AAG, Punjab.

SURINDER GUPTA, J.(Oral)

This is appeal against judgment dated 18.03.2017 passed by Judge, Special Court, Sangrur whereby appellant was convicted for offence punishable under Section 15 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (later referred to as 'NDPS Act') and sentenced to undergo rigorous imprisonment for one year and to pay fine of ₹10,000/-. In default of payment of fine, he was sentenced to further undergo rigorous imprisonment for two months.

2. The case of prosecution, in brief, is that on 30.08.2013, ASI Kuldeep Singh alongwith his police party spotted the appellant coming on foot on pavement of canal from the side of village Kheri Khurd, carrying a plastic bag on his head. On seeing the police party, he felt perplexed and tried to turn towards his backside and was apprehended on the basis of suspicion. After disclosing his identity, ASI Kuldeep Singh apprised the appellant about his suspicion that plastic bag carried by the appellant contains some contraband and about his right to get his search conducted before some

and his consent memo as Ex. P-7 was recorded. On search the plastic bag was found containing poppy-husk out of which two samples of 250 gms. each were taken and sealed at the spot with the seal of ASI Kuldeep Singh bearing impression 'KS' and remaining 19 kgs. 500 gms. poppy-husk including the weight of plastic bag was also sealed with same seal. Sample seal chits Ex. P-8 to Ex. P-10 and Form no. 29 were prepared at the spot. Seal after use was handed over to ASI Malkiat Singh, who was also member of police party. All the parcels were taken into possession vide recovery memo Ex. P-12 and *ruqa* (Ex. P-13) was sent to Police Station Sherpur through constable Sukhchain Singh, whereupon formal FIR Ex. P-14 was recorded.

3. Memo stating grounds of arrest of appellant and intimation of his arrest (Ex. P-15) was prepared, which was thumb marked by the appellant and signed by his wife Simran Kaur. Rough site plan of the place of recovery (Ex. P-17) was prepared and special report (Ex. P-18) was sent to Deputy Superintendent of Police, Dhuri on which he made his endorsement (Ex. P-19).

4. On return to police station, case property alongwith accused was produced before Inspector Harvinder Pal Singh, SHO, Police Station Sherpur, who verified facts of the case and made enquiry from the accused and witnesses and then affixed his seal bearing impression 'HPS' on the sample parcels and remaining case property, which was deposited with MHC.

5. On 31.08.2013, the case property was taken from *malkhana* and produced before Sub Divisional Judicial Magistrate, Dhuri with application (Ex. P-20) alongwith inventory (Ex. P-21). Learned Magistrate took representative sample of 250 gms. from the bulk parcel and resealed the same with his own seal bearing impression 'SB' and prepared his sample seal chit

application (Ex. P-1) was moved before Chief Judicial Magistrate, Dhuri on which learned CJM passed order (Ex. P-2). He also moved application (Ex. P-3) for obtaining sample parcel for sending the same to Chemical Examiner, Kharar, which was allowed (Ex. P-4).

6. The sample was sent to FSL and vide report (Ex. P-24), it was containing '*chura* poppy heads' and after completion of investigation challan was presented against the appellant.

7. Vide order dated 01.04.2014, charge for offence punishable under Section 15 NDPS Act was framed against the appellant, to which he pleaded not guilty and claimed trial. In support of his case, prosecution examined HC Jasbir Singh as PW-1, Jaiwardhan Sharma, Malkhana Nazir, CJM Court, Sangrur as PW-2, ASI Kuldeep Singh as PW-3, ASI Malkiat Singh as PW-4, Inspector Harvinder Pal Singh as PW-5 and C. Sukhchain Singh as PW-6.

8. On completion of prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein he denied all the allegations levelled against him and pleaded his false implication. Appellant examined his wife Simran Kaur as DW-1. She has stated that her husband was taken away by the police on 29.08.2013 and when she made enquiry from the police on 30.08.2013, she was apprised that a case has been registered against her husband.

9. Learned trial Court concluded that prosecution has been able to prove the offence punishable under Section 15 (b) NPDS Act against the appellant and convicted and sentenced him for the same.

10. I have heard learned counsel for the appellant, learned State counsel and have perused the trial Court record with their active assistance.

false implication and this is apparent from the fact that on all the memos prepared by the police name of the accused find mentioned at the top. No independent witness was joined despite the fact that recovery was effected on a public way and residential colony 'Suncity' was situated nearby and village Sherpur was 1 km. from the place of recovery. While referring to memo Ex. P-11, learned counsel for the appellant has argued that it was prepared at the spot but there is recital in this memo that sample and bag were sealed with seal bearing impressions 'KS' and 'HPS'. If this Form no. 29 was filled in at the spot, the seal 'HPS' would not have been affixed at the spot on it. This seal ('HPS') was affixed on case property by SHO after reaching the police station and this shows falsity of the prosecution case. PW-3 ASI Kuldeep Singh has stated that PW-4 ASI Malkiat Singh had recorded his own statement on his dictation while ASI Malkiat Singh has stated that his statement was recorded by ASI Kuldeep Singh. He has also stated that all the memos i.e. consent memo, recovery memo, site plan, personal search memo and other memos were attested by wife of the appellant, namely, Simran Kaur, who after signing all the memos left the place of recovery and recovery memo (Ex. P-12) was got signed by the appellant while recovery memo (Ex. P-12) nowhere bears his signatures. PW-5 Inspector Harvinder Pal Singh has stated that liquor was recovered from the accused but he does not know about the brand of liquor recovered from him and has stated that it was illicit liquor. This version as given by Inspector Harvinder Pal Singh makes out altogether a different case, which is not in conversant with the prosecution version. The above discrepancy in prosecution case shows that it was a planted case and learned trial Court has failed to take note of these facts while recording conviction of the appellant, which are evident on record.

been duly supported by the prosecution witnesses. Minor discrepancies occur with the passage of time, which are not fatal to the case of prosecution. Non-joining of independent witness is not material as independent witness usually avoids to join the police party. Wife of the appellant had come to the spot and signed memo of intimation about his arrest. It appears that ASI Malkiat Singh by mistake has stated that she signed all the memos prepared at the spot. Case of prosecution is duly proved and trial Court has rightly convicted the appellant.

13. On giving a careful thought to submissions of learned counsel for the appellant and learned State counsel, I find certain facts which create suspicion about the prosecution case. First and foremost is filling up of Form no. 29 at the spot. This form is Ex. P-11. ASI Kuldeep Singh has stated that after sealing the case property with his seal 'KS' sample seal chits Ex. P-8 to Ex. P-10 were prepared and Form no. 29 (Ex. P-11) was filled at the spot. PW-5 Inspector Harvinder Pal Singh has stated that when the case property was produced before him in the police station, he verified facts from the witnesses and made enquiry from the appellant. After checking sample, he put his seal bearing impression 'HPS' on the samples and attested the sample seal. From the above evidence, it is apparent that when Form no. 29 was prepared at the spot and it was not bearing the seal of PW-5 Inspector Harvinder Pal Singh. This seal was affixed on Form no. 29 at later stage, when police party reached the police station and case property alongwith accused was produced before PW-5 Inspector Harvinder Pal Singh. Against column of details of recovered articles and description of weight, it is mentioned in portion mark 'C' to 'C1' of Form no. 29 as follows:-

“One parcel sample of poppy-husk, weighing 250 gms., bearing seal with letters 'KS'/'HPS'”

14. ASI Kuldeep Singh has clarified that writing mark 'C' to 'C1' was written at the spot and all the particulars of Form no. 29 from 'C' to 'C1' were filled at the place of recovery and both the seals i.e. seal bearing impression 'KS' and seal bearing impression 'HPS' were affixed on Form no. 29 at 10.20 a.m. and thereafter, he handed over his seal to ASI Malkiat Singh. ASI Malkiat Singh, the recovery witness, has also stated that *“the Form no. 29 from point C to C-1 was filled at the spot. On the Form no. 29 both the seals impressions 'KS' and 'HPS' were given at the place of recovery. I do not remember when Form no. 29 was prepared at the spot.*

15. Admittedly, the case property was produced before Inspector Harvinder Pal Singh, SHO in the police station and seal bearing impression 'HPS' could not be affixed on Form no. 29 at the spot. This is a major and glaring discrepancy in the case of prosecution, which not only create doubt about the version of prosecution but also support the defence version as stated by wife of the appellant that the appellant was picked up from his house and implicated in this case.

16. In *ruqa* (Ex. P-13), it is mentioned that the attempts were made to join independent witness but all the persons, who were contacted, expressed their unwillingness and refused to join the police party. This *ruqa* was written by ASI Kuldeep Singh but while appearing as PW-3, he has nowhere stated that before conducting the search of appellant he joined any independent witness. To the contrary, he has stated that “no independent witness was tried to be joined in investigation, nor independent witness was even tried to be joined from 'Suncity' colony, which was shown in site plan (Ex. P-17).” Village Sherpur is about 1 km. from the place of recovery and no respectable person was called from village Sherpur. To similar effect is the

witness was tried to be joined in investigation from the place of recovery as well as from village Sherpur or from Suncity colony, which was shown in site plan (Ex. P-17)". Non-joining of independent witness may not be a glaring defect in prosecution case, but the discrepancy in *ruqa* explaining not joining of independent witness and statement of prosecution witness creates a dent in prosecution version about the manner in which recovery of contraband was effected.

17. ASI Malkiat Singh has stated that all the memos including consent memo, recovery memo, site plan, personal search memo and other memos were attested by wife of the appellant, namely, Simran Kaur. Admittedly, neither of the memos, except memo intimating arrest of appellant, is signed by Simran Kaur. ASI Kuldeep Singh has stated that some of the writing work was done by him and some by ASI Malkiat Singh. Even statement of ASI Malkiat Singh was recorded by ASI Malkiat Singh himself on his dictation. However, ASI Malkiat Singh has stated that his statement was recorded by ASI Kuldeep Singh at about 11.30 a.m. ASI Malkiat Singh has stated that recovery memo (Ex. P-12) was also signed by the appellant while recovery memo (Ex. P-12) does not bear signatures of the appellant.

18. From the above discussion, I find that the prosecution has tried to prove its case against the appellant by leading evidence, which is riddled with discrepancies and most major and glaring discrepancy is preparation of Form no. 29 at the spot. It cannot be by mistake that investigating officer and recovery witnesses could depose that Form no. 29 was filled up at the spot. Had it been filled up at the spot the recital at the spot 'C' to 'C1' (as discussed above) could not be made in that form. This form is bearing seal impressions 'KS' and 'HPS'. Either the form was not filled at the spot or all the seals on

discrepancy has cropped up. The charge for offence under Section 15 NDPS Act carries a deterrent type of punishment even for recovery of contraband below commercial quantity and it is expected from the prosecution to lead clear, cogent and convincing evidence to prove such charge. The discrepancy in statements of prosecution witnesses regarding Form no. 29 (Ex. P-11) was also pointed out to learned trial Court but it was not given serious consideration and was ignored with the observation that discrepancies do occur with the passage of time, without taking note of this fact that discrepancy with regard to filling up of Form no. 29 at the spot is not a discrepancy, which has resulted with the passage of time.

19. As a sequel of my above discussion, I am of the considered opinion that the prosecution has not been able to prove its case against the appellant beyond any shadow of doubt. This appeal has merit and the same is accepted and the appellant is ordered to be acquitted of the charge framed against him. Release warrants of the appellant, who is in custody, be issued immediately.

June 02, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No