

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

CRA-S-204-SB of 2017 (O&M)

Date of decision: 21.04.2017

Surinder Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Satnam Singh Gill, Advocate
for the appellant.

Mr. Naveen Kaushik, Addl. A.G., Haryana
for the State.

Jitendra Chauhan, J.

The present appeal is directed against judgment of conviction and order of sentence dated 11.01.2017, passed by Special Judge, Ambala, whereby the appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'Act') and sentencing him to undergo rigorous imprisonment for eight months and to pay a fine of Rs.15,000/- and in default of payment thereof, to undergo further simple imprisonment for three months.

2. The case of the prosecution as per para No.2 of the judgment of the trial Court is as under:-

"Brief facts of the prosecution case as per challan under 173 of Criminal Procedure Code are that on 11.06.2015, when SI Sukhwinder Singh alongwith EHC Gian Singh, EHC Nasib Singh, EHC Karam Pal were present at Hussaini Chungi, Raipur Rani

road, Naraingarh in connection with patrolling and checking of crime. At the same time, a secret informer informed SI Sukhwinder Singh that Surinder Singh s/o Joginder Singh r/o Village Gondal, District Karnal , now resident of Near Sai Mandir, Naraingarh who is a truck driver is indulged in selling and consuming poppy husk. On the day of occurrence, he is coming from the bus stand Naraingarh towards his house with Poppy husk and if Naka is laid at the road of Sector 4, HUDA Colony, he can be apprehended with Poppy Husk. On this information, SI Sukhwinder Singh informed the ACP, Naraingarh regarding the information and thereafter, SI Sukhwinder Singh disclosed about the secret information to the police officials accompanied him and prepared raiding party. SI Sukhwinder Singh tried to join the independent witness from the locality, but none was ready. Thereafter, SI Sukhwinder Singh prepared notice under Section 42 of the NDPS Act. Nakabandi was laid. After some time, a person was seen coming from the Saini Chungi who was having a bag of cloth in his hand, who upon seeing the police party turned back and started walking briskly. On suspicion, police party apprehended him and enquired from him about his antecedents. He disclosed his name as Surinder Singh s/o Joginder Singh. Investigating Officer served him notice under section 50 of the NDPS Act to apprise him his right to search from any Magistrate or Gazetted Officer. Accused opted to be searched from any Gazetted Officer. Investigating Officer requested Shri Ramesh Kumar, ACP, Naraingarh through mobile phone to reach at the spot, who came at the spot at about 6 PM. Investigating Officer produced notice under Section 42 and 50 of the NDPS Act, who seen and signed the same. Investigating Officer also produced the accused before him. ACP directed I.O. to conduct the search. During search of bag of accused, one polythene was recovered from the said bag, containing poppy husk. The recovered poppy husk was weighed on electronic weighing machine, which came to 1 Kg 200 gram. Investigating Officer separated two samples of 100 gram each and converted them into parcel. The residue was put in the same polythene and

converted into parcel. Both the sample parcels and residue parcel were sealed with three seals of "SS". ACP also put his seal impression "RK" on all the parcels. Investigating Officer prepared the sample seal sheet. All the parcels alongwith sample seal were taken into possession vide seizure memo which was attested by ACP and was also signed by accused and witnesses. On these allegations, offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 was found to have been committed by the accused. Ruqa was sent to Police Station for registration of FIR. Investigations were taken up. Accused was arrested. After completion of investigations, challan against the accused for commission of offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was prepared and submitted in the court for trial."

3. On presentation of challan, the trial Court finding prima facie evidence against accused-appellant, framed charge for the offence punishable under Section 15 of the Act to which he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined the following witnesses:-

PW-1, EHC Gian Singh; PW-2 ACP Ramesh Kumar; PW-3 ASI Jai Gopal; PW-4 SI Suresh Pal; PW-5 SI Sukhwinder Singh; PW-6 EASI Ram Karan and PW-7 ASI Roop Singh.

5. The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. However, he did not lead any evidence in his defence.

6. After hearing the Public Prosecutor for the State, the counsel for the accused, and after going through the evidence on record, the trial

Court convicted and sentenced the accused/appellant, as stated hereinbefore.

7. Feeling aggrieved, against the judgment of conviction passed by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 23.01.2017.

8. The learned counsel for the appellant has submitted that the accused has been falsely implicated in the instant case. Although there was secret information with the police, the same was neither reduced into writing nor was sent to the immediate superior officer and, therefore, there has been a total non-compliance of Section 42 of the Act, entitling the appellant to acquittal.

9. Learned counsel has further submitted that as per the prosecution story, the alleged recovery was effected when the police party laid naka near road of Sector 4, HUDA Colony but no independent witness joined at the time of effecting recovery, so there is a serious non compliance of Section 100 of the Code of Criminal Procedure. He further states that CFSL form was not filled on the spot and there is delay in sending the sample to the chemical examiner. The learned counsel states that the sample was not withdrawn in the presence of Magistrate at the time of producing the case property before the Magistrate.

10. The evidence led by the prosecution without the testimony of independent witness, solely rests on the official witness, who are, of course interested in the conviction of the appellant to get rewarded.

11. Lastly, the learned counsel for the appellant has contended that since the quantity is non commercial and the appellant/accused has

already undergone about 03 months, out of substantive sentence of 08 months imposed upon him, therefore, he may be acquitted of the charges leveled against him.

12. On the other hand, the learned State counsel, has refuted the contentions and urged that the prosecution had established its case beyond a shadow of reasonable doubt. He contended that proper procedure had been followed in the present case. Although, all the witnesses were officials but they have supported the case of the prosecution. There was no previous enmity of any of the official witnesses against the accused before registration of the present FIR. He further argued that when the secret information was received, ruqa was sent to the police station, the Gazetted officer i.e. PW-2, ACP Ramesh Kumar was immediately called on mobile, therefore, strict compliance of the Act had been made. He refers to the testimony of PW-5, SI Sukhwinder Singh where he had specifically stated that he tried to join independent witness from the locality but none was ready and thereafter, he prepared notice under Section 42 of the Act, therefore, the learned counsel has contended that the police had made its best efforts to join the independent witness. The appellant/accused was found in possession of the contraband and had been rightly convicted by the trial Court.

13. Heard the arguments of learned counsel for the parties.

14. In the present case, on 11.06.2015, the appellant/accused was apprehended on the basis of secret information received by SI Sukhwinder Singh when he along with other police officials were present at Hussaini Chungi, Raipur Rani Road, Naraingarh in connection with

patrolling duty, however, the secret information was not reduced into writing and the copies of the same were not sent to the higher officer. PW-5, SI Sukhwinder Singh admitted in his cross examination admitted that notice under Section 42 of the Act was not sent to any higher police officer or SHO immediately after receiving the secret information which amounts to non compliance of Section 42 (a) of NDPS Act. Reliance can be placed upon **Rajender Singh** Vs. **State of Haryana**, 2011(3) RCR (Criminal) 856, wherein it has been held as under:-

“4. A reading of the above said provision pre-supposes that if an authorized officer has reason to believe from personal knowledge or information received by him that some person is dealing in a narcotic drug or a psychotropic substance, he should ordinarily take down the information in writing except in cases of urgency which are set out in the Section itself. Section 42(2), however, which calls for interpretation in the matter before us, is however categorical that the information if taken down in writing shall be sent to the superior officer forthwith.”

15. The recovery was allegedly effected from a busy public place. The Act makes a provision for joining of an independent witness. In this context, there are two situations; first the police made an effort to join a public witness but due to the unwillingness of people present on the spot, the witness could not be joined and secondly, where the police did not make any effort to join a public witness. The instant case falls in the latter category. Though, there is no evidence on record to suggest any *mala fide* on the part of the police, coupled with the fact that Section 42 (a) of the Act was also not complied with, the projected case of the prosecution has become doubtful. It is true that the testimonies of police officials cannot be brushed aside being interested witnesses but while considering its probative value, the Court must also be cautious against

false implication.

16. Otherwise also, there were material discrepancies in the statements of shadow witnesses of the prosecution which also create a doubt in the prosecution story. Thus, the prosecution has failed to prove its case beyond a reasonable shadow of doubt.

17. In view of the foregoing discussion, the instant appeal is allowed. The judgment of conviction and order of sentence dated 11.01.2017, passed by Special Judge, Ambala are set aside. The appellant is acquitted of the charge levelled against him by giving him the benefit of doubt. The appellant is stated to be in custody. He be set at liberty forthwith, if not required in any other case.

21.04.2017

(JITENDRA CHAUHAN)
JUDGE

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No