

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

CRA-S-3361-SB-2016 (O&M)  
Date of decision : 26.05.2017

Maru Ram

...Applicant-Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Mr. K.P.S. Virk, Advocate  
for the applicant-appellant.

Mr. Neeraj Poswal, AAG, Haryana

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**JITENDRA CHAUHAN, J. (Oral)**

The present appeal has been preferred against the judgment of conviction dated 06.09.2016 and order of sentence dated 07.09.2016, passed by learned Special Judge, Kaithal (for short 'the trial Court'), whereby the appellant was convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the NDPS Act') and sentenced to undergo RI for 01 year and to pay fine of Rs.10,000/-, in default thereof, to further undergo RI for 2 months and was acquitted under Section 29 of the NDPS Act.

The facts of the case as noticed in the judgment passed by the trial Court are as under:-

*“The prosecution story in brief is that on*

*27.04.2014, ASI Ramesh Kumar along with ASI Mahender Singh, HC Sat Narain, EHC Dharam Singh, Constable Gyan Singh and Constable Rajesh was present at Udham Singh Chowk, Cheeka with regard to patrol and investigation duty. There a secret informer informed them that Narain Dass son of Khatu Ram and Maru Ram son of Narain Dass are engaged in the supply of contraband and on that day Narain Dass had sent Maru Ram to Yes Bank, Kaithal road Cheeka. If raid is conducted then they could be caught red handed. Finding the information reliable a raiding party was prepared and Naka was laid. At about 3.50 p.m. one boy was seen coming from Yes Bank side. He was apprehended by ASI Ramesh Kumar with the help of other police officials. A written notice was served upon him apprising him of his right under Section 50 of NDPS Act. His consent letter was taken and thereafter Tekan Raj, DSP was called at the spot. Independent witness did not join the investigation and thereafter on search of the accused one polythene of green colour was recovered from the right pocket of his pant. The polythene was found containing contraband i.e. opium. Two samples of 50 gram each were separated from the recovered opium and on weighing remainder was found to be 350 grams. Samples were separately put in polythenes and thereafter they were put in plastic boxes. Residue was also put in a separate plastic box. All the boxes were converted into separate parcels and were sealed with two seals*

*each of RK by ASI Ramesh Kumar and one seal each of TR of DSP. Two sample seals were prepared. ASI Ramesh Kumar, investigating officer handed over his seal after use to ASI Mohinder Singh and DSP kept his seal with himself. Recovered opium was taken into police possession with recovery memo which was signed by the accused and ASI Mohinder Singh and HC Sat Narain as witnesses. All the parcels, recovery memo and sample seal were attest by DSP. Rukka was sent through Constable Rajesh Kumar for registration of FIR. Rough site plan Ex.PP was prepared. Accused was arrested. Case property, accused and witnesses were produced before SI/SHO Balbir Singh of P.S. Cheeka, who affixed his one seal of SC on each parcel and sample seal. Case property was later on deposited with the MHC and accused was put in police lock up. On 24.04.2014, the accused along with the case property was produced in the Court where the case property was phtotgraphed. Police remand of the accused was taken and thereafter the case property was deposited in Malkhana. Narain Dass was searched but he was not found. Ultimately, challan against the present accused was filed in the Court.”*

It is pertinent to mention here that initially, there were two accused in the present case. Co-accused Narain Dass, died on 02.09.2014 and charge under Sections 18 and 29 of the Act was framed against appellant-accused Maru Ram alone to which he pleaded not

guilty and claimed trial.

In order to prove, its case, the prosecution examined PW1-DSP Tekan Raj, PW2-ASI Satpal, PW3-Sucha Singh, PW4-Constable Rajesh Kumar, PW5-HC Sat Narain, PW6-ASI Mahender Singh, PW7-HC Tarsem Singh, PW8-ASI Balwan Singh, PW9-EHC Ram Niwas, PW10-Constable Surender Singh, PW11-Inspector/SHO Om Parkash, PW12-SI Balbir Singh, PW13-Constable Vinod Kumar, PW14-ASI Ramesh Kumar and closed the evidence.

The statement of accused was recorded under Section 313 of Cr.P.C. and all incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied the same and pleaded false implications.

After appraisal of the evidence, the learned trial Court convicted and sentenced the accused as narrated at the outset of this judgment.

The learned counsel for the appellant contended that there are material discrepancies in the statements of the witnesses. The requirement of Section 50 of the NDPS Act has not been complied with. The documents on record clearly show that they have been prepared while sitting in the police station after registration of the FIR. Despite prior information, no independent witness was joined. The complainant himself conducted the investigation and the accused is entitled to be acquitted on this score only. He further argued that the

provisions of Section 52 of the NDPS Act have also been violated.

On the other hand, the learned State counsel, has vehemently argued that on the strength of the evidence led on record, the prosecution has been able to bring home guilt to the accused.

I have heard the learned counsel for the parties and carefully perused the entire record on file.

In the instant case, there has been gross violation of the principles of fair and impartial investigation. Admittedly, the complainant and the investigating officer is the same person, which makes the prosecution case doubtful. In ***Laltu Prasad Vs. State of West Bengal, 2017(2) R.C.R. (Criminal) 237 (Calcutta) (DB)***, it was held that the complainant himself acting as the investigating officer violating the principles of fair and impartial investigation is a practice, to say the least, should not be resorted to and it is a disturbing feature. To the same effect, is a Division Bench judgment of Hon'ble Himachal Pradesh High Court reported as ***State of Himachal Pradesh Vs. Atul Sharma and others, 2015 (6) R.C.R. (Criminal) 949***, wherein, it has been held that where the complainant himself conducts investigation, it causes miscarriage of justice to accused qua fair investigation.

Besides this, there are certain documents which were allegedly prepared on the spot like recovery memo, Ex.PB; site plan, Ex.PP; arrest memo, Ex.PJ, notice under Section 52 of the NDPS Act, Ex.PK. All these documents bear the FIR number, meaning thereby,

either the FIR was registered prior to the alleged recovery of the contraband or the number has been inserted in the documents after its registration. In both these situations, it casts serious doubt on the veracity of the prosecution version as has been held in ***Didar Singh @ Dara Vs. State of Punjab, 2010(3) R.C.R. (Criminal) 337.***

It has come in the evidence of PW1, DSP Tekan Raj that the investigating team remained on the spot only for fifteen minutes. It is highly improbable to complete the investigation on the spot in just fifteen minutes. Further, there is material discrepancy in the statements of PW-5, HC Sat Narain, an alleged recovery witness and PW-14, ASI Ramesh Kumar, the investigating officer. The former deposed that before conducting raid, they had hidden themselves, whereas, the latter stated that they were visible on the road. There is also inconsistency in their statements with regard to the place of conducting of the proceedings at the spot. PW-5 has deposed in unambiguous terms that the entire proceedings were done while sitting in the police vehicle, per contra PW-14 has testified that the proceedings carried out while sitting on the bench. The Court is oblivious of the fact that minor discrepancies are bound to occur in the statements of the witnesses when recorded after long passage of time but where the contradictions and discrepancies are material and go to the root of the case, the same cannot be ignored and the accused is entitled to the benefit of doubt. In the present case, the discrepancies pointed out by learned counsel for

the appellant are indeed material and cast a serious doubt on the veracity of the prosecution case.

There is also force in the contention of learned counsel for the appellant that the representative samples were not taken in the presence of the Magistrate, as mandated by Section 52A of the NDPS Act, which reads as under:-

**"52-A. Disposal of seized narcotic drugs and psychotropic substances**

(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as the Government may from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section(1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks,

numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of -

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall as soon as may be allow the application.

(4) Notwithstanding anything anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every Court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence."

In the present case, the procedure for drawing the

representative samples of the contraband in front of Magistrate as laid down in Section 52-A(2)(c) of the Act has not been followed, which makes it obligatory upon the officer concerned that as soon as the contraband is seized, it has to be forwarded to officer-in-charge of the police station, who is duty bound to approach the Magistrate for grant of permission to draw the representative samples in his presence. Such samples were then required to be enlisted and the correctness of the list of the samples drawn were to be certified by the Magistrate. In other words, the drawing of the samples has to be in the presence and supervision of the Magistrate, which has not been followed in the present case. Reference in this regard can be made to ***Union of India Vs. Mohanlal and another, 2016(1) R.C.R. (Criminal) 858 (SC)***.

It is also important to note the defence version at this stage. The defence version is that the appellant has been falsely implicated for extreneous consideration and no contraband was ever recovered by him as projected by the prosecution. As a matter of fact, on the fateful day of 27.04.2014, at 12.00 noon, the police party raided his house where he along with his mother Billo Devi and grandfather, Khattu Ram, was present. The police party asked about the whereabouts of his father, Narain Dass (since expired). He and his mother stated that his father, who was suffering from various ailments, had gone for fetching medicines from Hisar. The police party further asked about the mobile number of Narain Dass. The same was given to the police party but the

mobile phone was found switched off. The police party further asked about the name and address of the doctor from whom his father Narain Dass was to fetch medicines. When they expressed their inability to furnish the details, the police party became annoyed and an altercation took place. He was then taken to the police station forcibly and was framed in this case. As a matter of fact, there was party faction in the village.

Though, no defence evidence has been led by the accused to prove the defence version, but in the light of the infirmities discussed above, the version put forth by the defence seems more probable. It is settled position of law that the accused is not required to prove his defence beyond reasonable doubt but is merely expected to put a dent in the prosecution case which has been successfully done by the appellant in the instant case.

As far as offence under Section 29 of the NDPS Act is concerned, learned trial Court has rightly acquitted the appellant insofar as no evidence of abetment and criminal conspiracy has been collected and adduced by the prosecution. The disclosure statement of the appellant is in fact purely a confessional statement made before the police officials and is hit by Section 25 of the Indian Evidence Act. It is inadmissible in evidence and has been correctly discarded by learned trial Court. Even otherwise, the State has rightly chosen not to file any appeal against acquittal by learned trial Court under Section 29 of the

NDPS Act.

The cumulative effect of the discussion made above leads to the irresistible conclusion that the prosecution has miserably failed to prove its case against the appellant beyond shadow of reasonable doubt. Accordingly, the present appeal succeeds; the impugned judgment of conviction and order of sentence dated 06/07.09.2016, passed by the learned trial Court are set aside and the appellant is acquitted of the charge framed against him. The appellant is stated to be on bail. His bail bonds shall stand discharged.

**26.05.2017**  
*atulsethi*

**(JITENDRA CHAUHAN)**  
**JUDGE**

Whether speaking/reasoned:                      Yes / No

Whether reportable:                                Yes / No