

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

**Criminal Appeal No.S-325-SB of 2017 (O&M)
Date of Decision: June 02, 2017**

Jaswinder Singh

.....APPELLANT(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. Jashanpreet Singh, AAG Punjab.

SURINDER GUPTA, J.

This is appeal filed by Jaswinder Singh against the judgment dated 19.01.2017 passed by Judge, Special Court, Sangrur, convicting the appellant for the offence punishable under Section 18(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 and awarding sentence to undergo rigorous imprisonment for three years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo simple imprisonment for six months.

Case of the prosecution, in brief, is that on 22.12.2012, ASI Avtar Singh of CIA Staff, Bahadur Singh Wala along with his police party was going on patrolling and checking of suspected persons from village Changal to village Badrukhan. At about 3.30 p.m., when the police party reached at the bridge of drain within the revenue limits of village

Badrukhan, they observed the appellant carry a polythene bag in his right hand. On witnessing the police party, he became perplexed and turned back but was apprehended on the basis of suspicion. ASI Avtar Singh apprised him of his suspicion that bag carried by the appellant was containing some contraband and made him aware of his legal right to get his search conducted before a Gazetted Officer or a Magistrate. The appellant reposed confidence in ASI Avtar Singh and consent memo Ex.PA was prepared, which was signed by the appellant and other witnesses. On search, the bag was found containing 1Kg of opium wrapped in a glazed paper, out of which, 2 samples of 20 gms each were separated. Parcels of samples and remaining opium were prepared and sealed with seal of ASI Avtar Singh bearing impression 'AS'. Sample seal Ex.P1 was prepared separately and along with samples of contraband and remaining opium, was taken into possession vide recovery memo Ex.PB. Ruqa Ex.PC was sent to the police station, whereupon formal FIR Ex.PC/1 was registered at Police Station Longowal. On personal search of the appellant, currency notes of ₹150/- were recovered from his pocket, which were taken into possession vide memo of personal search Ex.PD. Arrest memo of appellant Ex.PE was prepared at the spot. Rough site plan of the place of recovery Ex.PF with correct marginal notes was prepared. On returning to the police station, appellant and the case property were produced before Inspector Subeg Singh, SHO Police Station Longowal, who checked the case property, verified the facts and then put his seal bearing impression 'SS' on all the parcels and sample seal chit. He also attested samples seals. Under his direction, case property was deposited in malkhana with MHC Rajwant

Kumar with seal intact.

On the next day i.e. 23.12.2012, case property was produced before Chief Judicial Magistrate, Sangrur with application Ex.PG upon which Chief Judicial Magistrate passed order Ex.PG/1. He also attested sample seal sheet and the seals on the parcels of samples and remaining case property vide order Ex.PH. Sample was later on sent to the chemical examiner and vide report Ex.PJ, it was found to be that of opium. After completion of investigation, challan against the appellant was prepared and presented before the Court.

On finding a prima facie case for the offence punishable under Section 18 NDPS Act, appellant was charge-sheeted accordingly to which he pleaded not guilty and claimed trial.

In support of his case, prosecution examined PW1-ASI Avtar Singh, Investigating Officer; PW2-Head Constable Rajwant Kumar; PW3 -Constable Jatinder Sharma; PW4-Inspector Subeg Singh and PW5-Head Constable Jagtar Singh. Thereafter, the evidence of prosecution was closed.

On conclusion of prosecution evidence, all the incriminating evidence appearing against the appellant was put to him while recording his statement under Section 313 Code of Criminal Procedure, to which he pleaded his innocence. He pleaded in his defence that a false case of recovery of opium was foisted upon him at the instance of Gurmit Pandit, whose brother Pawan Kumar is in police, as he has failed to pay an amount of ₹60,000/- taken by him from Gurmit Pandit.

To substantiate his defence, the appellant examined Head Constable Manjit Singh as DW1, Mukhtiar Singh as DW2, Sukhwinder

Singh as DW3, Bhola Singh as DW4, Chamkor Singh Sarpanch as DW5, Gurmeet Kaur wife of appellant as DW6, Head Constable Manjeet Singh as DW7, Head Constable Kuldeep Singh as DW8 and Lakhwinder Singh as DW9.

After considering the evidence on record and hearing the arguments of learned public prosecutor and learned defence counsel, trial court convicted and sentenced the appellant as mentioned in opening para of this judgement.

I have heard learned counsel for the appellant, learned State counsel and perused the paper book and record of the trial court with their active assistance.

Learned counsel for the appellant has argued that in this case, all the memos were prepared on computer and it is not possible that the police was having computer and printer at the spot where the recovery was affected. Even the rough site plan was prepared on a printed proforma which shows that it was not prepared at the spot. Had it been prepared at the spot, printed proforma would not have been used. PW1 Investigating Officer has nowhere stated in his examination-in-chief that they were having computer, printer etc. at the spot. The prosecution version finds no independent corroboration despite the fact that the recovery was effected on a public passage having lot of traffic. Appellant has come up with a specific defence plea that he used to purchase buffalo from Gurmit Pandit and due to his dispute with Gurmit Pandit over payment of ₹60,000/-, he has been falsely implicated in this case. Appellant examined a number of witnesses in support of his contention but their testimony has not been given any

weight by learned trial Court. Immediately after the registration of the FIR, an application (Ex.DW7/B) was moved of Senior Superintendent of Police, Sangrur for cancellation of the FIR due to his false implication but the police did not take any action on it.

Learned State counsel has argued that neither of the submission raised by learned counsel for the appellant create any dent in the observation of learned trial Court convicting the petitioner. So far as preparing memos and other documents on computer is concerned, it is stated by Investigating Officer that Head Constable Gurtej Singh had typed all the documents on laptop. It is not difficult for the police to carry laptop and small printer with it as same are very useful in preparing the copies of memos. The prosecution case cannot be doubted on this score. The blank proforma for preparing rough site plan could easily be saved in the laptop and print can be taken as and when required. Non-examination of independent witness is not fatal to the prosecution case as prosecution witnesses have duly explained non-joining of independent witness. There is nothing on record to prove that the prosecution witnesses are either inimical to the appellant or had any dispute with him. The mere fact that one Pawan Kumar brother of Gurmit Pandit is in police, is no reason to infer interestedness of ASI Avtar Singh and other prosecution witnesses in the matter. There is no evidence on record to show that appellant had any dispute with said Gurmit Pandit. Even in the application Ex.DW7/B, there is no reference that the FIR in this case was registered at the behest of Pawan Kumar or Gurmit Pandit.

Firstly, I take the plea raised by learned counsel for the

appellant that ruqa and other memos prepared at the spot were typed on computer and ASI Avtar Singh, Investigating Officer had not stated in his examination-in-chief that they were having laptop with them.

This argument of learned counsel for the appellant has no merit as ASI Avtar Singh in his cross-examination has stated that Head Constable Gurtej Singh had typed the documents of this case on laptop. Head Constable Jagtar Singh has also stated that laptop was used for about 3.5 hours. This shows that police party was having laptop at the spot on which it prepared all the documents/memos and took print of the same at the spot. This create no doubt about the prosecution version in any manner.

Perusal of the rough site plan Ex.PF shows that it was prepared by hand on a printed proforma having some columns like police station, district, case title etc., which were also filled in by the Investigating Officer. In this age of information and technology, if a police party has used laptop and printer at the place of recovery, this should not be taken as a suspicious circumstance, as it is not a uncommon event. Present generation is well conversant with the use of laptop/computer and even the government is encouraging its use. If ASI Avtar Singh had also used laptop and printer at the spot, his act cannot be condemned by terming the same as suspicious act. If I take it otherwise, while considering the version of the appellant that he has been falsely implicated, in that case, nothing could prevent ASI Avtar Singh to prepare all the memos, ruqa in his hand or in the handwriting of any other member of the police party. This submission of learned counsel for the appellant has absolutely no basis and is discarded.

Learned counsel for the appellant has mainly stressed on the

defence version that he has been falsely involved on the asking of Gurmit Pandit and his brother Pawan. This argument of the learned counsel for the appellant is not supported by the documents produced by the appellant in his defence. An application was moved by Lakhwinder Singh, real brother of appellant on 27.12.2012 to Senior Superintendent of Police, Sangrur, copy of which has been placed on file as Ex.DW7/B. In this application, he has stated that instant FIR has been falsely registered against Jaswinder Singh, who is a person of good character and never indulged in any illegal activity. In this application, it is nowhere stated about any enmity of appellant with Gurmit Pandit or that brother of Gurmit Pandit had played any role in his false implication. Had it been so Lakhwinder Singh applicant who moved application Ex.DW7/B must have mentioned this fact in the application. Even in the inquiry conducted by DSP Sub Division Sunam, FIR was found to have been rightly registered vide report Ex.DW7/A. This also demolished the statements of witnesses examined by the appellant in his defence.

The other point raised by learned counsel for the appellant is pertaining to lack of independent corroboration to the prosecution version.

Here it is to be kept in mind that the police party headed by ASI Avtar Singh was not having secret information against appellant, who came across the police party all of a sudden near the drain bridge within the revenue limit of village Badrukhan. The appellant was apprehended on the basis of suspicion. In these circumstances, non-joining of independent witness is not material. This point was also raised before the trial court and the learned trial court keeping in view the facts of the case and law on the

point, has rightly rejected this contention of the appellant. There is no legal proposition that the evidence of official witnesses unless supported by independent witness is unworthy of acceptance. Though the appellant had raised a defence that he was having some dispute with Gurmit Pandit and his brother Pawan, who is a police official got him implicated in this case but this plea is already discussed as not proved. Consequently, there is nothing on record to show that the prosecution witnesses, who were police official were having enmity against the appellant or are interested in his false implication. Keeping in view the above facts, this plea raised by learned counsel for the appellant is also discarded.

On perusal of the trial court's record and judgement, I find that learned trial court has committed no error of law or fact while concluding that the prosecution has proved his case against petitioner beyond any shadow of doubt.

Learned counsel for the appellant has also requested for a lenient view regarding quantum of sentence submitting that the appellant is not a previous convict; is a young person of the age of 35 years having no adverse antecedents and is the only bread winner of his family. While appearing as PW1 ASI Avtar Singh has stated in his cross-examination that the appellant was not involved in any other criminal case. The recovery of 1 kg of opium was effected from the possession of appellant, which false in non-commercial quantity.

Keeping in view the age, antecedents and the nature of offence, I am of the considered opinion that a lenient view can be taken regarding quantum of sentence awarded to the appellant.

As a sequel of my above discussion, this appeal is partly accepted. Maintaining the conviction of the appellant for the offence punishable under Section 18(b) NDPS Act, his substantive sentence is reduced from rigorous imprisonment for three years to rigorous imprisonment for one year and six months. However, the sentence of fine awarded by the trial Court is maintained.

June 02, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***