

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3710-SB-2017 (O&M)
Reserved on November 20,2017
Pronounced on:4th December, 2017

Veer Singh ..Appellant

versus

State of Punjab ..Respondent

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Ms. Sarika Gupta, Advocate, for the appellant.

RAMENDRA JAIN, J.

1. Through this instant appeal, the appellant has challenged the impugned judgment dated 14.9.2017 of the Judge, Special Court, Hoshiarpur, convicting under section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short” the Act”) and sentencing him to undergo rigorous imprisonment for a period of three years and pay a fine of Rs.5000/-. In default thereof, undergo further rigorous imprisonment for a period of one month.

2. Succinctly, the facts of the prosecution case are that on 21.3.2015, when ASI Kuldip Singh along with his team was present at Pensara Choe on petrol duty, a lancer Car bearing no. PB-08-AK-0694 was seen coming from the side of Pensara. Upon a signal, the driver stopped the same, but tried to run away from the spot. On suspicion, he was apprehended. On being asked, he disclosed his identity as Veer Singh son of Gurmail Singh, resident of village Possi, Police Station Mahilpur.

Thereafter, ASI Kuldip Singh disclosed his identity and asked him to get his search as also his vehicle conducted. He was made aware of his legal right to get his personal search and car conducted from any gazetted officer or a magistrate, but he reposed confidence in him. A memo of consent was prepared. During search, intoxicant powder wrapped in a polythene envelop was recovered from the right lower pocket of the appellant. Out of which, two samples of 5 grams each were separated. On weighment, remainder of the intoxicant came out to be 100 grams. The same was converted into a separate parcel. Samples and parcel were sealed with seal bearing impression "KS". The abovesaid samples were taken into possession vide recovery memo. A ruqa was sent to the police station for registration of the case, whereupon, a formal FIR was recorded. The site plan of the place of recovery was prepared. The accused was arrested. Statements of the witnesses were recorded. Accused along with samples of case property was produced before the SHO/SI Dilbagh Singh, who affixed his seal "DS" after checking the parcel. After completion of necessary formalities, a final report under section 173 of the Code of Criminal Procedure was presented before the trial court.

3. In compliance of the provisions of Section 207 of the Code of Criminal Procedure, copies of challan and documents attached therewith were supplied to the accused. He was charge sheeted under section 22 of the NDPS Act, to which he did not plead guilty and claimed trial.

4. After closure of the evidence by the prosecution, statement of the appellant under section 313 of the Code of Criminal Procedure was recorded putting all incriminating evidence appearing on the record against him, to which he denied, pleaded his innocence and false implication in the

instant case.

5. The learned Judge, Special Court, on appraisal of evidence on the record and hearing both the sides at length, convicted and sentenced the appellant, as referred to above, in the opening paragraph of this judgment.

6. Learned counsel for the appellant has contended that no independent witness from the public was associated during investigation though the place, where the recovery is alleged to have effected from the possession of the appellant, was a thorough fare. The instructions contained in Standing Order No.1 of 1989 dated 13.6.1989 has not been complied with in letter and spirit, therefore, the whole recovery procedure is liable to be vitiated and the appellant deserves to be acquitted of the charge on this score only.

7. Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this court is of the considered opinion that the appeal, being without any merit, deserves to be dismissed for the reasons to follow:-

8. Dealing with the first argument of the learned counsel that the prosecution did not associate any independent witness from the public, though the recovery of contraband alleged to have been effected from the possession of the appellant, was a thorough fare, it would be mandatory to re-appraise the testimony of PW4 ASI Kuldip Singh, the Investigating Officer of this case and PW3 HC Sham Lal, a member of the police party, in whose presence, the alleged contraband was recovered from the possession of the appellant. ASI Kuldip Singh, while appearing in the witness box as PW4, has supported the entire case of the prosecution case while deposing

that on 21.3.2015 he along with other police officials was present at Pensara Choe on patrol duty. They saw a Lancer car bearing no.PB-08-AK-0694 coming from Pensara side. He further testified that he gave a signal to the driver of the car to stop it. The driver stopped his car, tried to run away. He, with the assistance of the other members of the police party, apprehended him. On being further enquired, he disclosed his identity as Veer Singh son of Gurmail Singh, resident of village Possi, Police Station Mahilpur. Subsequently, he disclosed his identity that he was posted as ASI at Police Post Saila Khurd, Police Station Mahilpur. He also told him about his suspicion of having contraband article in his possession. He was made aware of his legal right that he could opt for his personal search and that of the car, before a gazetted officer or a magistrate, but he reposed faith in him. A consent memo Ex.PB was prepared. During his search, one polythene envelope containing intoxicant powder was recovered from the right pocket of the lower of the appellant. Two samples of 5 grams each were separated. On weighment, remainder came out to be 100 grams of intoxicant powder. After completion of necessary formalities, a final report under section 173 of the Code of Criminal Procedure was presented before the trial court. The testimony of this witness during his lengthy cross-examination remained unshattered. PW3 HC Sham Lal, one of the members of the police party, who apprehended the appellant, deposed on similar lines as that of PW4 ASI Kuldeep Singh. He was the signatory to the documents prepared during investigation by the Investigating Officer. He has fully corroborated the testimony of PW4 Kuldeep Singh in all material particulars. The joining of independent witnesses are not mandatory requirement of law rather is a rule of caution. The official witnesses examined by the prosecution have

corroborated the case of the prosecution in its entirety. It is well settled by now that testimony of the official witnesses are as good as of private witnesses. No motive or ill will has been attributed to the official witnesses examined by the prosecution, which could show that the appellant was falsely implicated in the present case. Rather, the testimony of official witnesses, being trustworthy, have rightly been relied upon by the court below. The contention of the learned counsel that the independent witness from public has not been associated during investigation is misconceived, inasmuch as the intoxicant powder was recovered from the possession of the appellant in presence of PW3 HC Sham Lal and PW4 ASI Kuldip Singh, the Investigating Officer. The testimony of police officials cannot at all be discarded merely, because of their official status, especially when their testimony withstood to the test of lengthy cross-examination conducted by the learned defence counsel. The findings recorded by the learned court below, in my considered opinion, do not call for interference.

9. In the case in hand, 110 grams of intoxicant powder was recovered from the possession of the appellant. Out of which, two samples of 05 grams each were separated. The remainder came out to be 100 grams of intoxicant powder, which was also converted into separate parcel. The alleged recovery in this case is 110 grams of Diacetylmorphine (Heroin). The contention of the learned counsel that as per Standing Order No.1/89 dated 13.6.1989, two samples were mandatory to be drawn from the recovered substance, failing which, whole recovery procedure shall be vitiated. For the facility of reference, it would be appropriate to refer to para 2.3 of the said Standing Order, which reads as follows:-

“2.3 Quantity to be drawn for the sampling.- The quantity to be

drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium ganja and charas (Hanish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the package/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.”

10. There is no quarrel with respect to parameter laid down in the afore-referred Standing Order issued by the Government of India Ministry of Finance Department of revenue, but at the same time, the nature of substance recovered from the possession of the appellant has to be taken into consideration. In the instant case, 110 grams of Diacetylmorphine (Heroin) was recovered from the possession of the appellant, out of which, two samples of 5 grams were separated, whereas the Standing Order refers to only opium, ganja and charas (hanish), where a quantity of 24 grams in each case is required for chemical test. The prosecution, in my considered opinion, has rightly followed the procedure laid down in the said Standing Order by separating two samples of five grams of contraband recovered. The contention of the learned counsel, in my considered opinion, being baseless, is outrightly rejected, inasmuch as the instant case is a case of Heroin, which does not fall under the categories of opium, ganja and charas (hanish) where quantity of 24 grams is required for chemical test.

11. In view of the foregoing reasons, this court does not find any illegality or perversity in the well reasoned judgment dated 14.9.2017 of the Judge, Special Court, Hoshiarpur. Consequently, the appeal filed by the

appellant fails and is dismissed.

4th December, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable: | Yes/No |