

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

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**CRA-S-222-SB-2007 (O&M)
Date of Decision: 24.03.2018**

MEWA SINGH

....Appellant.

Versus

STATE OF HARYANA

...Respondent.

CORAM:- HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Gaurav Sharma, Advocate
for the appellant.

Mr. D.R. Singla, DAG, Haryana.

ANUPINDER SINGH GREWAL, J. (Oral)

This appeal is directed against the judgment dated 14.10.2006 whereby the appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'the NDPS Act') and order of sentence dated 25.10.2006, whereby he was sentenced to undergo rigorous imprisonment for 03 years and to pay a fine of Rs.15,000/-, in default whereof he was to further undergo simple imprisonment for 6 months. It has arisen from FIR No.80 dated 09.05.2004 registered at Police Station Sadar Dabwali, District Sirsa, on the statement of ASI Mahender Singh.

2. The case of the prosecution is that, ASI Mahender Singh, Dharam Pal and Constable Lekh Raj were patrolling on the road towards canal bridge, in the area of village Phullo. They saw a person coming from the side of village Phullo having a plastic

bag on his head. On seeing the police party, he turned back and started walking at a brisk pace. On the asking of the police officials, he disclosed his name as Mewa Singh son of Mit Singh, caste Ram Dasia Sikh, resident of Herhikey, Police Station Sherpur, District Sangrur (Punjab). Upon suspicion, the ASI overpowered him with the help of the police officials. As he was suspected of carrying narcotic substance in the bag, the ASI served notice Ex.PW5/A on him under Section 50 of the NDPS Act that he suspected some narcotic substance in the bag and any Gazetted Officer or Magistrate could be called at the spot for the search of the bag or he could be taken to them. The accused as per his reply Ex.PW-5/B declined the offer and reposed faith in the ASI. The contents of the bag in possession of the accused were searched and were found to contain poppy straw. Two samples of 100 grams each were taken and the residue after weighing was found to be 13 kg 800 grams. Samples and the residue of poppy straw were separately converted into parcels and were sealed with seal 'MS' by the ASI. Specimen seal impressions of seal 'MS' were retained. Seal after use was handed over to EHC Dharampal. Case property including the specimen seal impressions were taken into possession vide recovery memo Ex.PW4/C which was attested by EHC Dharampal and Constable Lekh Raj PWs. Ruqa Ex. PW2/A was sent to police station Sadar, Dabwali through constable Lekh Raj for registration of the case, on the basis of which formal FIR Ex.PW2/B was registered by SI/SHO Rajbir Singh. The ASI prepared rough site

plan Ex.PW4/D with correct marginal notes, recorded statements of witnesses and arrested Mewa Singh as per memo of arrest Ex.PW4/E. After completion of investigation on the spot, the police party reached the police station and the ASI produced the accused, witnesses, case property, specimen seal impressions and report Ex.PW2/C before SI/SHO Rajbir Singh in the police station. The SHO verified the facts of the case from the accused and witnesses and on his direction, the ASI deposited the case property with MHC and lodged the accused in police lockup. The report Ex.PW4/C under Section 57 of NDPS Act along with endorsement Ex.PW4/D was sent to DSP, Dabwali, which was seen by Kuldeep Singh, the then DSP, Dabwali, as per his initials at point Ex.PW2/E.

3. After receipt of the report Ex.PX from FSL, Madhuban, whereby the samples were found containing poppy straw, the accused was sent to face trial.

4. The police after completing investigation submitted the report under Section 173 Cr.P.C. The accused was charge-sheeted vide order dated 16.11.2004, to which the appellant did not plead guilty and claimed trial.

5. The statement of the accused was recorded under Section 313 Cr.P.C. wherein he denied all the allegations against him.

6. The prosecution examined PW-1 Head Constable Ram Kumar who deposed with regard to the seal sample deposited with him by ASI Mahender Singh on 09.05.2004, which was further

handed over by him to constable Dharmbir Singh on 12.05.2004 for onwards transmission to FSL, Madhuban. During that period the seals on the samples remained intact. Similarly, PW3 Head Constable Dharmbir Singh has tendered into evidence his affidavit Ex.PW3/A in support of the fact that sample seal handed over to him by MHC on 12.05.2004 was deposited by him with FSL, Madhuban on 13.05.2004 and during that period the seals of the samples were not tampered with.

7. PW 2 Rajbir Singh Sub Inspector stated that he was SHO at Police Station Sadar Dabwali on 09.05.2004. On that day ASI Mahender Singh, the Investigating Officer of this case, had produced before him accused Mewa Singh, witnesses, case property and report Ex.PW2/C under Section 57 of the NDPS Act. He had verified facts of this case from accused as well as witnesses and had affixed his seal bearing impressions of 'RS' on each parcel of the case property. Specimen seal impressions of the seal were prepared and he had retained his seal. On his direction the case property was deposited by the Investigating Officer with the MHC and the accused was lodged in police lockup. He had made endorsement Ex.PW/D on report Ex.PW2/C and thereafter the report was sent to DSP, Dabwali Shri Kuldeep Singh who had put his initials at point Ex.PW2/E. He has further deposed that on 09.05.2004 he had recorded formal FIR Ex.PW2/B on receipt of ruqa Ex.PW2/A.

8. PW-4 ASI Mahender Singh was the Investigating Officer in this case. He has supported the factum of recovery of 14 kgs of poppy straw from the possession of accused Mewa Singh in a plastic bag. He has deposed on the formalities completed on the spot, including serving a notice under Section 50 of the NDPS Act, taking sample of poppy straw from the plastic bag, weight of the residue poppy straw etc. The factum of recovery of poppy straw from the plastic bag possessed by the accused has also been supported by PW-5 EHC Dharam Pal who was with the police party at that time. PWs ASI Jaipal and Constable Lekh Raj were given up by the prosecution.

9. In the statement recorded under Section 313 Cr.P.C., the accused has pleaded that nothing was recovered out of his possession and that he was falsely implicated in this case. The accused has examined HC Rameshwar Dass as DW-1, who has proved Ex.DA, the copy of the entry No.14 made in Daily Diary Register dated 09.05.2004, showing that there was no specific entry regarding the verification conducted by SHO.

10. The trial Court, after appraisal of the evidence, found the accused guilty of an offence punishable under Section 15 of the NDPS Act and sentenced him to undergo rigorous imprisonment for 03 years and to pay a fine of Rs.15,000/-, in default thereof he was to further undergo simple imprisonment for 6 months.

11. Learned counsel for the appellant contended that there was no compliance of Section 50 of the NDPS Act when the search was conducted on the person of the appellant. The offer, which was made by ASI, was not a proper offer as his thumb impressions were not there on his reply to the notice given in terms of Section 50 of the NDPS Act.

12. Learned counsel has further submitted that in the alternative, if the conviction of the appellant is maintained then he deserves leniency in the sentence as he has undergone a period of 10 months out of the total sentence of 03 years. Learned counsel for the appellant further contends that there was no independent witness to the recovery. Only 14 kg of poppy husk was recovered from him. At the time of the occurrence, the appellant was 55 years of age and now he is 69 years of age. He is facing criminal proceedings since 2004. Learned counsel for the appellant has relied upon the judgments in the cases of **Baldev Singh Versus State of Punjab** reported as **2010 (2) RCR (Criminal) 31** and **Bhan Singh Versus State of Punjab** reported as **2013 (26) RCR (Criminal) 550**.

13. Per contra, learned State counsel contends that as the contraband was recovered from the bag and recovery was not effected from the person of the accused, Section 50 of the NDPS Act would not be applicable. He further contends that in any event, the notice under Section 50 of the NDPS Act is on the same page

as the reply and the thumb impressions of the accused are admittedly there on the notice, which is positioned in the first half of the page.

14. I have heard learned counsel for the parties.

15. The appellant had been nabbed while the police party was patrolling. The contraband had been recovered; samples were duly sealed and sent for chemical examination. The statements of the police official witnesses inspire confidence and there are no material contradictions therein. The link evidence is also there.

16. It is well settled that the testimony of official witnesses, if otherwise trustworthy and truthful, is enough to sustain the conviction. It is not mandatory to have an independent witness especially when the contraband has been recovered by the police officials from the place near canal road which is at some distance from the town. The contraband was recovered from the bag which was being carried by the appellant and not from his person. Therefore, Section 50 of the NDPS Act would not be attracted in the case at hand as has been held by the Supreme Court in the case of **“State of H.P. Vs. Pawan Kumar”** reported as **AIR 2005 SC 226**.

17. However, there appears to be merit in the contention of the learned counsel for the appellant that the sentence of the appellant be reduced to the period already undergone. The appellant has faced protracted criminal proceedings for over 14 years. Recovery of only 14 kg of poppy husk has been effected from

him which is way below the threshold of 50 kg as commercial quantity. He is about 70 years old.

18. Consequently, while maintaining the conviction and fine of the appellant, the sentence is reduced to the period already undergone by the appellant.

19. With the modification, the appeal stands disposed of.

24.03.2018

SwarnjitS

**(ANUPINDER SINGH GREWAL)
JUDGE**

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO