

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

CRA-S-1902-SB-2004

Date of decision:-24.5.2018

Rameshwar alias Behra

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rampal Verma, Advocate
for the appellant.

Mr.Sulinder Kumar, AAG, Haryana.

H.S. MADAAN, J.

This appeal is directed against the judgment dated 28.8.2004 passed by Special Judge, Sonapat vide which accused Rameshwar @ Behra was convicted for an offence under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*the Act*') and vide order dated 3.9.2004, he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default thereof, to further undergo imprisonment for one year.

The accused-convict – Rameshwar @ Behra, who is appellant before this Court prays that the appeal be accepted, the

impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that on 7.11.2003, SI Yashpal Singh from Police Station Ganaur had received a secret information through a telephonic message that Rameshwar alias Behra son of Dei Chand, resident of village Agwanpur was engaged in drug trafficking and was coming from Ganaur side and he could be apprehended along with the charas; that the said police officer reduced the secret information into writing, thereafter he along with other police officials went towards the disclosed place, laying a picket at village Agwanpur minor; that in the meanwhile accused was spotted coming from Ganaur side carrying a bag on his shoulder; that on seeing the police party, he turned back but he was apprehended on the basis of suspicion; that on being inquired by the Investigating Officer, the accused disclosed his name, parentage and residential address; that SI Yashpal Singh served a notice under Section 50 of the Act upon him informing the accused of his right to be searched before a gazetted officer or a Magistrate; the accused opted to be searched in presence of DSP; then SI Yashpal Singh flashed a V.T. Message to DSP, Ganaur, who came to the spot, SI Yashpal Singh produced the accused before him; that in presence of DSP, Ganaur, the bag being carried by the accused was searched by SI Yashpal Singh, which led to recovery of cardboard box on which New India Sweets was written in English language; that on being opened it was found to contain charas; the recovered charas was weighed and it came out to 1 kg; then SI Yashpal Singh drew two sample of 10 gms. each of

the recovered charas; the samples and the remainder were converted into sealed parcels and sealed with seal of SI Yashpal Singh having inscription 'YP'; that Om Parkash, DSP, Ganaur also affixed his seal on the samples having inscription 'OP'; that all the three parcels were taken into possession vide recovery memo attested by the witnesses; that accused was formally arrested; that ruqa was sent to the police station, on the basis of which formal FIR was registered; SI Yashpal Singh prepared rough site plan of the place of recovery; that SI Dayanand had arrived at the spot; SI Yashpal Singh handed over the accused along with three parcels to him; statements of witnesses were recorded; SI Dayanand produced the case property and accused along with witnesses before SHO Prem Singh at Police Station Ganaur, who affixed his seal having inscription 'PS' on the sealed parcels; then the case property was deposited with MHC; the sample parcel was sent to FSL and as per report received therefrom, the sample was found to be that of charas; that challan was prepared and filed in the Court.

On presentation of challan in the Court of Special Judge, Sonapat, copies of documents relied upon in the challan were supplied to the accused free of cost as provided under Section 207 Cr.P.C.

Learned Special Judge, Sonapat finding that charge for offence under Section 20(b) of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution

examined as many as eight witnesses, namely, SI Daya Nand as PW1, Head Constable Jagdish Parsad as PW2, DSP Om Parkash as PW3, Constable Jagdish Rai as PW4, Constable Rajesh Kumar as PW5, SHO/SI Prem Singh as PW6, Constable Azad as PW7 and SI Yashpal Singh as PW8.

With that the prosecution evidence stood closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

Accused did not lead any evidence in defence.

After hearing arguments, learned Special Judge, Sonapat convicted and sentenced the accused as mentioned supra, which left appellant – accused Rameshwar @ Behra aggrieved and he has filed the present appeal.

Learned counsel for the appellant has argued that no independent witness was joined with the police party despite easy availability, which cast a doubt over truthfulness of the prosecution story.

Whereas learned State counsel has contended that the official witnesses had no previous enmity with the accused, as such their depositions be treated at par with the independent witnesses.

After hearing learned counsel for the parties, I find that independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided in any statute that independent corroboration is a must and in absence thereof, the case of the prosecution is to be rejected.

outrightly.

The second contention raised by learned counsel for the appellant was that link evidence in this case is missing. Again this is without any force. PW1 SI Daya Nand stated that on receipt of ruqa, he had recorded formal FIR and had then gone to the spot, where SI Yashpal Singh produced accused and sealed parcels before him; that he took over the investigation in his hand from SI Yashpal Singh and recorded statements of witnesses, thereafter, produced sealed parcels, accused and the witnesses before SHO Prem Singh, who had verified the investigation and affixed his own seal bearing inscription 'PS' on all the three parcels, thereafter depositing the case property with MHC Police Station Ganaur and putting the accused in lock up. With seals of SI Yashpal Singh, SI Daya Nand, DSP Om Parkash and SHO Prem Singh being there and in view of deposition of SI Daya Nand and affidavits of formal witnesses PW2 HC Jagdish Parsad and PW5 Constable Rajesh Kumar, it comes out that no tampering of seals had taken place at any stage till the sample parcel had reached FSL. Therefore, the argument of learned counsel for the appellant is devoid of any merit.

Learned counsel for the appellant has further contended that the recovery of contraband said to have been effected from accused amounted to non-commercial quantity but the trial Court without considering the mitigating circumstances put forward on behalf of the appellant at the time of considering the quantum of sentence imposed maximum punishment of 10 years, which is uncalled for.

Learned State counsel has countered that contention stating

that recovery effected in this case is 1 kg of charas, which amounts to commercial quantity and the minimum punishment provided has been awarded to the appellant.

After hearing the rival contentions, I find that during the trial it was proved that the recovered charas was 1 kg in weight amounting to commercial quantity. A perusal of the impugned judgment goes to show that the circumstances put forward on behalf of the appellant and considering his age, antecedents and gravity of the offence, the sentence had been awarded to the appellant. Though learned counsel for the appellant has argued that the investigation in this case was tainted and partial but I find little merit in this contention since the Investigating Officer is not shown to have axe to grind with the accused prompted by which might have involved the accused in this case wrongly while letting off the real culprit.

As far as the citations referred to by learned counsel for the appellant i.e. *Fateh Singh Versus State of Haryana, 2006(2) R.C.R.(Criminal) 762* and *Ratto Versus State of H.P., 2004(1) R.C.R.(Criminal) 501*, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

The impugned judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas the appeal is found to be

without any merit and the same is dismissed accordingly.

Rameshwar alias Behra appellant – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Sonapat is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

Intimation be sent to the quarter concerned.

24.5.2018

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No