

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

Criminal Appeal No.S-484-SB of 2004 (O&M)

Date of decision : 31st August, 2018

Jeet Singh

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. D.N.Ganeriwala, Advocate with
Mr. Sukhveer Singh Killianwali, Advocate
for the appellant.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.(Oral)

The appellant has preferred the instant appeal against the judgment of conviction and order of sentence dated 12.02.2004, passed by the learned Addl. Sessions Judge, vide which he has been convicted and sentenced to undergo rigorous imprisonment for a period of 08 years and to pay a fine of Rs.80,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 02 years under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, (in short 'the Act').

Briefly stated, it is a case of the prosecution that on 19.04.2002, Sub Inspector Mahender Pal (PW4), investigating officer, accompanied by Head Constable Ram Mehar and Constable Kuldeep Singh had intercepted the petitioner-accused (hereinafter referred to as 'the accused'), who was carrying a bag. The investigating officer suspected some contraband therein. Therefore, he offered the accused to get the bag searched before him or Gazetted Officer or a Magistrate. However, the accused declined the offer and reposed confidence upon the investigating officer. On search, 40 kg poppy husk was recovered. Two samples

weighing 100 grams each were separated from the said poppy husk and converted into parcels. The bulk was separately converted into parcel. Statements of witnesses were recorded. Ruqa was sent to the police station on the basis of which FIR was registered. On completion of investigation, challan was presented.

In order to prove its case, the prosecution examined PW1 Constable Nihal Singh, PW2 Head Constable Kuldeep Singh, PW3 ASI Ram Mehar and PW4 Mohinder Pal.

After closure of the prosecution evidence, the accused was examined under Section 313 Cr. P. C. in order to afford him an opportunity to explain the incriminating circumstances appearing against him in the prosecution evidence but he took the plea of innocence and false implication. In defence, the accused examined DW1 Head Constable Chhajju Ram, DW2 Head Constable Ram Kumar, DW3 Satpal; DW4 Nazir Singh, DW5 Gurmail Singh, DW6 Kirpal Singh and DW7 Charanjeet Singh

The trial court, after appreciation of evidence, convicted and sentenced the appellant-accused, as stated above.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the appellant submitted that the presence of police party at the spot is doubtful; that there are material discrepancies in the prosecution evidence; that link evidence is missing; that there is no compliance of Sections 50 and 52 of the Act and that the independent witness fully demolished the case of the prosecution. He has also contended that the trial court failed to appreciate the evidence in the right

perspective.

On the other hand, learned State counsel has endorsed the findings of the learned trial court and urged for dismissal of the appeal.

I have given my thoughtful consideration to the rival contentions.

Under the Narcotic Drugs And Psychotropic Substances Act, not only the very possession of the narcotics, drugs and psychotropic substances has been made an offence but severe punishment without exception has also been provided. The Act also provides for presumption of guilt emerging from possession of Narcotics Drugs and Psychotropic Substances. In case of commercial quantity of the narcotics, drugs and psychotropic substances, the minimum sentence of 10 years rigorous imprisonment besides minimum fine of Rs. one lac has been provided. The Hon'ble Supreme Court in Noor Aga v. State of Punjab, 2008(4) R.A.J. 381 : 2008(3) RCR (CrI.) 633 has held that under the Narcotic Drugs And Psychotropic Substances Act the extent of burden to prove the foundational facts on the prosecution, i.e., proof beyond all reasonable conduct is more onerous. A heightened scrutiny test would be necessary to be invoked. It is so because whereas, on one hand, the court must strive towards giving effect to the parliamentary object and intent in the light of the international conventions, but on the other hand, it is also necessary to uphold the individual human rights and dignity as provided for under the UN Declaration of Human Rights but insisting upon scrupulous compliance of the provisions of the Act for the purpose of upholding the democratic values, it is necessary for giving effect to the concept of wider civilisation.

It is further observed that while deciding such cases, the Courts must

always remind itself that it is a well settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof. Therefore, a higher degree of assurance would be necessary to convict an accused under the Narcotic Drugs And Psychotropic Substances Act.

21. Thus, under the Narcotic Drugs And Psychotropic Substances Act, it is the fundamental duty of the prosecution to prove beyond a shadow of reasonable doubt that the investigation conducted in the case is absolutely flawless specifically with regard to the link evidence which is of most significant aspect. It is incumbent upon the prosecution to prove that from the stage of effecting the recovery till the sample reach the Chemical Examiner, there was no chance of tampering with it. Once the presumption is stumbling, on this vital aspect the benefit is to be extended to the accused.

It is alleged that public witness Kirpal Singh was present at the time of recovery but he has been given up by the prosecution but he appeared as DW6 in defence. He has categorically stated that neither the accused was arrested nor any recovery was effected from him in his presence. He was cross-examined at length by the prosecution and his evidence inspires confidence. He has stated that infact he had come to police station where his signatures were obtained by the investigating officer. This Court is of the opinion that there is no reason to disbelieve his evidence. He has completely demolished the case of the prosecution.

In this case, the case property was never produced before the Station House Officer of the concerned police station and there is complete violation of Sections 52 and 55 of the Act.

Form No.29 (EX.PE) was sent to police station but there is a cutting with regard to total weight of the bulk.

In this case, link evidence is also missing. In the roznamcha, brought by Head Constable, Chhaju Ram (DW1), names of witnesses Head Constable Ram Mehar and independent witness Kirpal Singh are not mentioned. Contrary to it in form No.29, it is stated that all of them came to police station. If they were present at the spot, their names must be mentioned in the roznamcha.

DW1 Head Constable Chhajju Ram also testified that on 19.04.2002, the case property and sample parcels were deposited in the malkhana, but no specimen seal was deposited and it is not mentioned in the store room register if the specimen seal was sent to forensic science laboratory. This document has been maintained by the police authorities in the police station. It falsifies the version of prosecution that specimen seal was either deposited in the malkhana or sent to chemical examiner. PW2 Head Constable Kuldeep Singh had given a different version with regard to sample seal. He has stated that on 19.04.2002 he received ruqa but specimen seal was not handed over to him. Infact he made an improvement in his affidavit Ex.PC but when he was confronted with his police statement Ex.DB, it reveals that the sample seal was not deposited with him. He further stated that he handed over the specimen seal impression alongwith sample parcels to constable Nihal Singh but this fact is also found to be an improvement and not a part of original statement Ex.DB.

There is one more material discrepancy with regard to weight of the recovered contraband. PW3 ASI Ram Mehar has stated that sample was allegedly weighed with the help of spring balance. He did not said

whether spring balance was put on his shoulder with the help of a lathi but contrary to it investigating officer has stated that the spring balance was put in a lathi and one lathi was put on the shoulder of Ram Mehar and another was on the shoulder of EHC Dharamvir.

After going through the evidence on record, it transpires that the case is based fully upon the discrepancies and trial court failed to appreciate the evidence available on record. As such, the instant appeal is accepted and the impugned judgment of conviction and order of sentence are set aside. The appellant is acquitted of the charges as framed against him. The fine deposited by him be refunded to him against proper receipt.

31st August, 2018
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No