

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1305-SB of 2016 (O&M)
Date of decision:25.06.2018

Cheema Ram

...Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Kanica Sachdeva, Advocate for the appellant.

Mr. Charanpreet Singh, AAG, Punjab.

ANIL KSHETARPAL, J.

Appellant-accused has been convicted under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'Act of 1985') and sentenced to undergo rigorous imprisonment for a period of 4 years and to pay a fine of Rs.20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 6 months.

The facts as noticed by the learned trial Judge are extracted as under: -

"2. Succinctly stated, the case of the prosecution is that on SI Gurnam Singh, Addl. SHO, Police Station Shatrana alongwith some other police officials was going from the side of Village Shatrana towards village Rasoli in connection with patrolling and checking of suspicious persons. The police party was on private vehicle. When the police party reached near the cremation ground of Shatrana, accused was seen coming from the opposite side. On seeing the police party, he got perplexed and had tried to hide himself behind the wall of the cremation ground on his right side. SI Gurnam Singh had got stopped his vehicle. On the basis of suspicion, SI Gurnam Singh with the help of

other police officials had nabbed him. After enquiring about his name, parentage and address, SI Gurnam Singh introduced himself to the accused. He had specifically told him about his name, designation and place of posting. He further told him that he was having a suspicion that there is some intoxicating substance in his possession and he wanted to conduct his personal search. SI Gurnam Singh had apprised the accused of his legal right to get his search conducted in the presence of a Magistrate or a Gazetted Officer and in case he desires, either of them can be called to the spot. However, the accused reposed confidence in SI Gurnam Singh and gave the consent of his personal search by him. His consent statement was recorded separately in this regard on which he appended his signatures. On search of accused, Smack wrapped in a polythene paper was recovered from the right pocket of his trousers. SI Gurnam Singh separated two samples of 1 grams each and put the same into two separate plastic boxes. On weighment, the remaining Smack was found to be 128 grams. He put the samples into two plastic boxes and the remaining Smack wrapped in the same polythene paper was put into a plastic box. All the boxes were converted into parcels and the same were sealed by SI Gurnam Singh with his seal bearing impressions 'GS'. He had prepared the specimen seal chits separately and seal after use was handed over to ASI Labh Singh. He took the case property and specimen seal chits into possession vide separate memo. SI Gurnam Singh sent ruqa to the police station, on the basis of said ruqa FIR No.106 dated 11.5.2014 was registered at Police Station Patran. Thereafter, SI Gurnam Singh had prepared the rough site plan of the place of recovery and also recorded the statements of the witnesses under Section 161 Cr.P.C. He had arrested the accused and prepared necessary memos in this regard. On return to the police station, the Investigating Officer had produced the accused, the case property and the witnesses before ASI Mewa Singh, the then officiating SHO of the police station on that day. After verifying the facts and circumstances of the case, ASI Mewa Singh affixed his seal bearing impression "MS" on the case property. On the direction of ASI Mewa Singh, the Investigating Officer had deposited the case property with MHC Surjan Singh. On the next day, SI Gurnam Singh had withdrawn the case property from the Malkhana and had produced the case property as well as the accused before the Court of Ms. Shampy Choudhary, the then JMJC, Samana. The learned Magistrate opened the sealed bulk parcel and took out one representative sample of 1 gram. The learned Magistrate got sealed the said representative sample as well as bulk parcel containing 127 grams Smack with her seal bearing impression SC. The learned Magistrate had put his initials on the parcels of the case property and the sample seal chit. The learned Magistrate ordered that the case property except one sample parcel be deposited in the judicial Malkhana. The accused was remanded to custody. The case property except one sample parcel was got deposited in the Judicial Malkhana. As per the

report of Forensic Science Laboratory, the contents of the sample were found to be Smack. On conclusion of the investigation, challan against the accused was presented before the court”.

In order to prove its case, prosecution has examined MHC Surjan Singh as PW1 and PW3, Gurnam Singh, a retired Sub Inspector as PW2, Constable Gagandeep Singh as PW4, Assistant Sub Inspector Labh Singh as PW5 and Assistant Sub Inspector Mewa Singh as PW6. Statement of the accused under Section 313 of the Criminal Procedure Code was recorded.

On appreciation of evidence, the learned trial Court as noticed above has returned a finding that prosecution has proved its case beyond any reasonable doubt and, therefore, convicted the appellant.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgment passed by the trial Court and the record.

Learned counsel appearing for legal aid has submitted that no independent witness has been associated and, therefore, the case of the prosecution is on the weak footing. She has further drawn attention of the Court to the statement of Labh Singh who has stated that they reached at the spot at 2.15 PM whereas recovery was effected from the accused at 2.30 PM. She submitted that the time gap between recovery and reaching at the spot is very short. She has further submitted that Gurnam Singh, PW2, a retired Sub Inspector, who was Investigating Officer, has admitted that ‘madd’ number is not mentioned on the sample parcels and the bulk parcel. Hence she submitted the case property produced before the court at the time of evidence has not been linked with the appellant. She further submitted that

there is non-compliance of Section 55 of the Act of 1985 and hence the case of the prosecution is not proved.

On the other hand, learned State counsel has defended the judgment passed by the trial Court and has drawn attention of the Court to the fact that the appellant was also convicted in another case when 10 grams Narcotic was recovered and appellant was punished to undergo rigorous imprisonment for a period of one month which has already been completed.

As regards first argument of learned counsel for the appellant is sufficient to notice that in absence of any independent public witness, the court is required to examine the evidence led by the prosecution with more care and caution. However, non-examination of a public witness is not always fatal to the case of the prosecution. Hence, this Court now proceeds to examine and analyse the evidence led by the prosecution.

As regards contention of learned counsel for the appellant that Labh Singh while appearing as PW5 has stated that they reached at the spot at 2.15 PM, whereas recovery was effected from the appellant at 2.30 PM, the case of the prosecution is that Gurnam Singh was leading a police party and they were on patrol duty in a private vehicle. When the police party reached near Cremation Ground, Shutrana, the appellant was seen coming from the front side on foot and on seeing the police party, he got perplexed and tried to hide himself. On the basis of suspicion, he was apprehended and on enquiry he disclosed his name. Investigating Officer disclosed his identity and told the appellant that he suspects some contraband in the possession of the appellant. Appellant was apprised of his legal right to get the search conducted in the presence of a Magistrate or a Gazetted Officer who can be called at the spot but the appellant reposed faith in the Investigating Officer.

In such circumstances, it cannot be said that recovery could not be effected within period of 15 minutes.

Next submission of learned counsel is that 'madd' number has not been mentioned on the sample parcels and the bulk parcel. It is noted that 'madd' number is the number assigned by the Moharir Head Constable when parcels are kept in 'Malkhana' (store). However, on careful reading of the statement of Gurnam Singh examined as PW2, it is apparent that the 'madd' number was mentioned on the polythene envelope containing case property. Therefore, there was no dispute with regard to identity of the parcel which was stored in the 'Malkhana'.

Last argument of learned counsel for the appellant with regard to violation of Section 55 of the Act of 1985, it may be noticed that Gurnam Singh when examined in evidence has stated that Bhupinder Singh was regular SHO of the Police Station and Assistant Sub Inspector Mewa Singh was officiating SHO who was junior to him. Hence, Gurnam Singh, Investigating Officer deposited the case property with Moharir Head Constable and on the next day after taking the delivery from Moharir Head Constable case property was produced along with the accused before the court.

In such circumstances, this Court does not find any substance in the arguments of learned counsel for the appellant keeping in view the fact that Section 55 of the Act of 1985 provides that officer incharge of a Police Station shall take charge and keep in safe custody all the articles received. However, in the peculiar facts of the case, this Court does not find that there was any violation of Section 55 of the Act of 1985.

At the end, learned counsel for the appellant submitted that appellant has already undergone substantive part of his sentence. Appellant was found in possession of 130 grams of smack which is less than commercial quantity. As per custody certificate dated 17.03.2018, appellant has undergone total sentence including remissions for a period of 3 years and 13 days out of total period of 4 years. By now appellant must have undergone further period of approximately three and half months. As per Section 21 (b) of the Act of 1985, the court is entitled to direct that the accused should undergo rigorous imprisonment for a term which may extend to 10 years and with fine which may extend to Rs.1 lakh. However, no minimum sentence has been provided.

Keeping in view the fact that the appellant has already undergone substantive part of his sentence, therefore, the appeal is disposed of with direction that the appeal on merits is dismissed, however, the sentence awarded is reduced to "already undergone". Appellant shall be released forthwith unless required in some other case.

(ANIL KSHETARPAL)
JUDGE

25.06.2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No