

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

CRA-S-1611-SB-2018 (O&M)

Reserved on: 06.06.2018

Pronounced on : 03.07.2018

Krishan Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Munish Gulati, Advocate, for
Mr.Kamal Narula, Advocate for the applicant/appellant.

Mr.I.P.S.Doabia, Addl.A.G., Punjab.

G.S. Sandhawalia, J.

The present appeal, under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, the 'Act'), has been filed against the judgment dated 06.04.2018, passed by the Special Court, Fazilka, wherein the appellant has been convicted for a period of 6 months and to pay a fine of Rs.10,000/- and in default, to further undergo rigorous imprisonment for a period of 2 months, under Section 22 of the Act. The conviction is on account of the recovery of 50 gms of Alprazolam powder from the possession of the accused, after the Special Court found that there was no discrepancy, as such, in the prosecution witnesses, to grant the benefit of acquittal.

The FIR in question was lodged by Kulwant Singh, ASI on 25.03.2016 at 1 pm, which was also received by the Judicial Magistrate 1st

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Class, Jalalabad at 3.20 pm, through PHG-Surjit Singh, on the same day. The recovery was in the area of Village Mohkam Arayan, on patrolling being done by the police party on the road situated on the canal. The appellant, seeing the police party, went towards the fields and had been apprehended, at that point of time. On account of suspicion, he had been searched, after being informed about his legal right to get a search conducted in the presence of a Magistrate or a Gazetted officer. Resultantly, 50 gms of powder was recovered from the right pocket pant, which was separated into 2 samples of 10 gms each, to serve as sample and additional sample and the remaining 30 gms was converted into bulk parcel. The same was sealed with seal 'KS' and the form No.M 29 was also prepared along with the seal 'KS'. Ruka was sent, thereafter, to the Police Station for the registration of the FIR and resultantly, FIR No.37 dated 25.03.2016, under Section 22, 61 & 85 of the Act was lodged by Gurjeet Singh, SI.

Resultantly, an application was moved before the Magistrate to deposit the case property, i.e. one parcel containing intoxicant powder weighing 10 gms and one parcel containing intoxicant powder weighing 30 gms with the seal bearing 'KS/GS' at the Judicial Malkhana, which was allowed on 26.03.2016 and the accused was produced in custody. The Magistrate noticed that form No.29 was also produced and the same was seen and the inventory report was correct and resultantly, sent the accused to judicial custody, pending investigation.

On 28.03.2016, ASI Gurjeet Singh had handed over the parcel of the intoxicating material sealed as KS/GS and form No.29, to

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Constable Rakesh Singh, PW1, who deposited the sample with the Chemical Examiner, Kharar and handed-over to ASI-Gurjeet Singh proper receipt, on return back and he did not allow anybody to tamper the same. In his deposition, he had clarified that the weighing machine was in the car of the IO, which was a computerized scale and the recovery was made at 13.30 pm and they had handed over the intoxicant to Surinder Singh, HC and the writing had been done by the IO. He also deposed about how the recovery had been effected and the Form 29 had been prepared on the spot (Ext.P-2) in which the seal 'KS' had been fixed and the same after use, had been handed over to Constable Surjit Singh. The entire case property was taken into custody vide memo Ext.P-4 and thereafter, site-plan was prepared (Ext.P-8) with correct marginal notes and the accused was arrested and the grounds of his arrest are Ext.P-9 and intimation memo (Ext.P-10) had been prepared in this regard.

PW2, Head Constable Surinder Singh also deposed on the same lines that they had started from the Police Station at 11 am. They had entered a rapat in rojnamcha before leaving the Police Station for the purpose of recovery of intoxicant material from suspicious persons and for the purpose of patrolling. He stated that no public witness had joined the police party at the alleged place of recovery and the police party was in uniform and thus, the accused had tried to slip away but could not flee. He also deposed that the weighing had been done with a computerized scale.

PW4, ASI Kulwant Singh deposed in the same vein that the accused was seen at a distance of 10 karams and had not tried to flee

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away. He had been called out and came on his own and stopped. He stated that an offer was made of the right of search before a Gazetted Officer or a Magistrate.

Similar is the statement of ASI-Gurjeet Singh, who further deposed that the case property was produced along with the accused on the next day and the Court had passed the orders (Exts.P17 to P19). The detailed report (Ext.P20) had been sent to the higher police officials. He also deposed that he handed over the sample to Constable Rakesh Singh, who deposited the same in the office of the Chemical Examiner, Kharar, after getting forwarded the docket from SSP Office, Fazilka. He also deposed about the report of the Chemical Examiner (Ext.P11).

The report from the Chemical Examiner at Kharar, under Section 293 Cr.P.C., was prepared on 25.07.2016 (Ext.P-11) regarding 2 parcels with seals 'KS/GS', alleged to contain intoxicating material, which were found intact and tallied with specimen seals impression. On opening the parcel, it had been found to contain 10 gms greenish power with orange and white particles. The ingredient found was Alprazolam, which is mentioned at Sr.No.178 of the notification dated 19.10.2009, issued in exercise of the powers conferred by Clauses vii(a) and xxiii(a) of Section 2 of the Act. The quality of the ingredient in the parcel was 0.30%. On the basis of the same, challan was presented on 12.09.2016 and the appellant was charged on 17.09.2016 under Section 22 of the Act, for being in possession of 50 gms of intoxicating powder without having any valid licence or permit for keeping the same.

The accused, in his statement, made under Section 313

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Cr.P.C., only took the plea that he was innocent and falsely implicated in the case due to party faction in the village and no recovery was effected from him and that the police had obtained his signatures on blank papers and later on prepared forged documents. No evidence was led by the accused regarding this aspect.

It is, in such circumstances, the Special Court, as such, rejected the argument that the origin of the powder recovered was not investigated into and no independent witnesses had been examined and therefore, on the statement of police, the accused could not be held guilty.

The Trial Court has relied upon various judgments to hold that in the absence of any independent witness, it would cast a duty on the Court to adopt greater care which scrutinizing the evidence of the police officers and conviction can be recorded on that basis. The necessity to join independent witness was only a rule of caution and not a requirement of law, as such, and there was no such material discrepancies. Resultantly, in the absence of any valid defence held out, the marginal discrepancies in the prosecution witnesses have rightly been held to occur over a lapse of time. The factum remains that the FIR was registered on 25.03.2016 and the witnesses were examined almost a year later, in January, 2017 and the last of the witness was examined on 13.12.2017 and therefore, the Special Court was well justified in holding out that discrepancies, as such, over a period of time, were bound to occur.

After having gone through the record and keeping in view the fact that the FIR had been received by the Magistrate within a period

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of 2 ½ hours from the time the accused was taken into custody since the FIR was lodged at 1 pm and the report was received by the Magistrate at 3.20 pm, on the same day. Thereafter, the accused was produced the very next day before the Magistrate along with the intoxicating material, which was taken into custody, as noticed above. The same has been found to be containing the narcotic substance and the sample had also been sent expeditiously by the police authorities, after 2 days.

In such circumstances, this Court is of the opinion that the findings which have been recorded by the Special Court, as such, does not suffer from any infirmity, whereby the appellant has been sentenced for a period of 6 months for having in possession the incriminating material which is non-commercial in nature. However, keeping in view the fact that the appellant has already undergone 3 months 23 days of imprisonment and that he is 41 years of age and is not a habitual offender, as per the certificate of custody, this Court is of the opinion that the sentence, as such, can be modified, to the extent that it can be reduced to one already undergone.

Accordingly, the present appeal along with the applications, are disposed of, in the above-said terms, while upholding the conviction and reducing the period of conviction to the one undergone. The appellant be released immediately, if not required in any other case.

JULY 03, 2018

sailesh

Whether speaking/reasoned:

Whether Reportable:

**(G.S. SANDHAWALIA)
JUDGE**

Yes/No

Yes/No