

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-175-SB of 2016 (O&M)

Date of decision : 16.5.2018

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Sukhdeep Singh @ Goldi

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Bikramjeet Arora, Advocate for the appellant.

Mr. Ramandeep Sandhu, Senior Deputy Advocate General,
Punjab.

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H. S. Madaan, J.

This appeal is directed against judgment dated 5.12.2015 passed by Judge, Special Court Tarn Taran, vide which he had convicted accused – Sukhdeep Singh @ Goldi, for an offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as 'the NDPS Act'), and sentenced him to undergo rigorous imprisonment for a period of 1-1/2 years, besides paying fine of Rs.15,000/-, in default of payment of fine to undergo further simple imprisonment for three months.

Briefly stated, the allegations as per the prosecution story are

that on 6.9.2012, a Police Party from Police Station Sadar, Tarn Taran, being led by ASI Vipan Kumar (hereinafter referred to as 'the Investigating Officer/IO') was travelling in a private vehicle and was on official duty in connection with patrolling and checking of bad elements. When the vehicle carrying Police Party had reached the area of Roore Aasal side, then accused was spotted coming on foot from village Roore Aasal carrying a polythene bag in his right hand. On seeing the Police Party he got nervous and immediately threw the polythene bag being carried by him in his right hand towards the left side in the paddy fields and sat down on the road side on the pretext of urinating. He was apprehended on the basis of suspicion. The Investigating Officer tried to join independent witnesses with the Police Party but none was ready. At the asking of the Investigating Officer the accused picked up the polythene bag, which he had thrown away earlier, from the ground and produced it before the Investigating Officer. On being checked it was found to contain intoxicant powder which on being weighed came out to be 250 grams. Sample therefrom was drawn as per law. Then the polythene bag containing the residue intoxicant powder and the sample drawn were converted into parcels, sealed with the seal of the Investigating Officer having impression 'VK'. Then the same were taken into possession vide recovery memo. The accused was arrested in this case as per law after completing necessary formalities. Ruqa was sent to the Police Station, on the basis of which formal FIR was registered. The Investigating Officer recorded the statements of the witnesses, prepared site plan of the place of recovery. On return to the Police

Station, the Investigating Officer produced the accused alongwith the case property before SHO Nirmal Singh who verified the investigation, put his own seal on the sample parcel and parcel containing residue intoxicant powder. The accused alongwith the case property were produced before the Illaqa Magistrate, who passed the order on the request application of the Police. On return to the Police Station, the case property was produced before Nirmal Singh, SHO, to enable him to get its custody. During the course of investigation, sample parcel was sent to the office of Chemical Examiner and report therefrom was received in affirmative.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of the challan in the Court copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C. and then finding that offence under Section 22 of NDPS Act was disclosed against the accused, he was charge sheeted accordingly, to which he pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

During the course of evidence of the prosecution, the prosecution examined as many as 4 PWs. PW-1 happened to be ASI Vipan Kumar, who had apprehended the accused and effected recovery from him, besides carrying out the necessary investigation. He testified in that regard. PW-2 SHO Nirmal Singh before whom ASI Vipan Kumar had produced the accused alongwith case property and who had verified the investigation putting his seal on the sample

parcel and residue parcel, then directing ASI Vipin Kumar to move application before the Illaqa Magistrate alongwith producing the accused and case property there and to whom ASI Vipin Kumar had entrusted the case property after producing it in the Court, testified in that regard. PW-3 HC Sarabjit Singh happened to be a formal witness who had carried the sample to the office of Chemical Examiner. He had deposed that so long as the parcel remained in his custody, neither he tampered with the same nor he allowed anybody to do so. PW-4 HC Harjinder Singh, who was the other witness of the recovery supported the prosecution case on material points. After tendering report of Chemical Examiner Exhibit PM, which showed that sample contain salt dextropropoxyphene, learned public prosecutor closed the prosecution evidence.

After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him but he denied the same stating that he was innocent and has been falsely involved in this case. The accused did not lead any evidence in defence, despite availing several opportunities.

After hearing the arguments, the Judge, Special Court Tarn Taran, convicted and sentenced the accused as mentioned above, which left him aggrieved and as such he has filed the present appeal.

I have heard learned counsel for the appellant, learned State counsel, besides going through the record.

The first and foremost argument advanced by learned counsel for the appellant was that the officer who had apprehended

the accused, has investigated the matter rendering the entire investigation vitiated, therefore, the accused is entitled to be acquitted on that ground. In support of that contention he has referred to authority by the Apex Court, **State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu vs. Rajangam 2010 (15) SCC 369**, wherein it was observed the officer who arrested the accused should not have proceeded with the investigation of the case, therefore, acquittal of the accused by the Court below was held to be proper.

On the other hand, learned State counsel has contended that there is nothing on the record to show that the officer who apprehended the accused and effected recovery from him had any previous enmity with the accused or had any reason to involve the accused in this case falsely. Therefore, the investigation conducted by him was un-biased, as such the appellant-accused is not entitled to get advantage for the said reason. In support of his that contention, he has referred to authority **S. Jeevanantham vs. State through Inspector of Police, TN 2004 (3) RCR (Criminal) 333** by the Apex Court, wherein in paragraph 3 it has been observed as under:-

“3. In the instant case, PW-8 conducted the search and recovered the contraband article and registered the case and the article seized from the appellant was narcotic drug and the counsel for the appellant could not point out any circumstances by which the investigation caused prejudice or was biased against the

appellant. PW-8 in his official capacity gave the information, registered the case as part of his official duty and later investigated the case and filed charge-sheet. He was not in any way personally interested in the case. We are unable to find any sort of bias in the process of investigation.”

After considering the rival contentions and going through the authorities referred to by learned counsel for the appellant and learned State counsel, I find that there is nothing on record to show that ASI Vipin Kumar, who had apprehended the accused and effected the recovery from him, had any motive to involve the accused in this case falsely. The investigation conducted had come out to be un-biased. Therefore, the appellant-accused cannot take advantage of this fact, in view of ratio of authority in S. Jeevanantham's case (Supra) by the Apex 'Court mentioned above.

The second argument advanced by the learned counsel for the appellant -convict was that there is violation of Section 50 of the NDPS Act, since no offer was given to the accused for his search before a Magistrate or Gazetted Officer and no consent of the accused in that regard was recorded. In support of that contention he has referred to judgment of this Court in case titled as Raju Juneja vs. State of Punjab in CRA-S-1147-SB-2012 decided on 23.9.2017 Law Finder Doc Id # 973057, by a Coordinate Bench of this Court. However, this contention lacks force, since Section 50 of the NDPS Act is applicable in case of personal search and not otherwise and as

per facts of the present case, on seeing the Police Party the accused had thrown away the polythene bag being carried by him and when he was apprehended, he was not having that polythene bag with him. He was made to pick up that polythene bag and on being searched it was found to contain intoxicant powder. Therefore, Section 50 of the NDPS Act is not applicable. In that regard, reference may be made to authority **State of Punjab vs. Baldev Singh 1999 (3) RCR (Criminal) 533**, by the Apex Court, wherein It has been observed that Section 50 of the NDPS Act will come into play only in case of search of a person as distinguished from search of any premises etc. and if the officer without any prior information as contemplated by Section 42 makes a search or causes arrest of a person during normal course of investigation into an offence or suspected offence and on completion of that search a contraband under Narcotic Drugs and Psychotropic Substances Act is also recovered, then the requirements are not attracted. Therefore, this contention of learned counsel for the appellant does not help him and authority pressed into service does not come to his rescue due to different facts and circumstances.

One more argument advanced by learned counsel for the appellant was that there is un-explained delay of 4 days in sending the samples to the chemical examiner. However, I do not find any force in that contention, as it comes out from the record that seals on the sample parcel as received in the office of chemical examiner were intact, ruling out possibility of any tampering with the sample. There is nothing on record to show that the intoxicant powder undergoes any chemical change or some change takes place in its condition or

composition with passage of time. Therefore, the delay if any in sending the sample does not affect the prosecution story adversely. The link evidence in this case is found to be complete.

As regards non joining of independent witnesses, it is mentioned in the ruqa itself that the investigating officer had tried to join the independent witnesses but none was ready. It is a matter of common knowledge that people generally tend to avoid joining investigation fearing that the accused may feel annoyed and nurse a grudge against them on that score and they may have to go to the Police Station in connection with the investigation and to the Court to get their statements recorded several times facing harassment and inconvenience. Therefore, non-joining of independent witnesses does not put a question mark over the credibility of the prosecution case. Further there is nothing on record to show that police officials had any axe to grind with the accused prompted by which they might have involved the accused in this case wrongly and deposed again him to secure his conviction.

A few discrepancies and contradictions pointed out by learned counsel for the appellant in the statements of recovery witnesses, with regard to the time when the accused was apprehended, time of recovery and on the points of distance etc., do not go to the root of the matter and such contradictions and variations do take place due to lapse of memory, as a result of passage of time and difference in power of observation and perception of various individuals. I find that the prosecution has proved its charge against the accused beyond a shadow of reasonable doubt and the trial Court

was justified in convicting and sentencing the accused. The sentence imposed is not found to be on higher side, keeping in view the fact that drug trafficking in this region is increasing rapidly, ruining the lives of the youth and drug addiction among youth has assumed an alarming proportion. The drug peddlers need to be dealt with sternly.

No interference is called for in the judgment passed by the Court below, as regards the conviction or sentence, the same is upheld.

The appeal is found to be without any merit and is dismissed, accordingly.

16.5.2018
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(H.S. Madaan)
Judge

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