

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

309

CRA-S-2968-SB of 2012
Date of Decision: 24.02.2018

Toni

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. J.S. Mehndiratta, Advocate
for the appellant.

Ms. Simranjeet Kaur, Asstt. AG, Punjab.

ANIL KSHETARPAL, J.

Appellant is in the appeal against the judgment of conviction and order of sentence dated 05.03.2012 passed under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, sentencing him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of three months.

Case set up by the prosecution is that the Assistant Sub-Inspector Om Parkash was heading a Police party on 16.04.2011 patrolling on link road of village Shahpur from village Cheema. When the Police party reached in the revenue limits of Shahpur Kalan, it was noticed that a person is sitting in the left side of the bridge of the canal minor who on seeing the Police party became perplexed and stood up. On suspicion, the said person was apprehended and on inquiry, disclosed his name as Toni

Singh, appellant son of Kala Singh. ASI Om Parkash disclosed his identity to the appellant. The appellant was informed by ASI Om Parkash that he is having suspicion that the appellant is in possession of some contraband. The appellant was apprised of his legal right to be searched before any Magistrate or a Gazetted Officer who can be called at the spot or the appellant can be produced before them but the appellant reposed faith in ASI Om Parkash and his consent statement was recorded which was thumb marked by the appellant and attested by Head Constable Mohinderjit Singh and Head Constable Jagtar Singh. On search of the cloth bag, 90 strips of alprazolam, each strip containing 10 tablets, total 900 tablets were recovered from the same. Two strips of 10 tablets each were taken as sample and put into two plastic containers and converted the same into sample parcels. Remaining 88 strips were put into a separate plastic container and the same was also converted into a parcel. All the three parcels were sealed by the Investigating Officer, ASI Om Parkash with his seal impression "OP". ASI Om Parkash also prepared a sample slip impression separately and the seal after use was handed over to Head Constable Mohinderjit Singh.

All the three parcels were taken into possession and a recovery memo which was duly attested by the witnesses was prepared. Information was sent through Kulwant Singh on the basis whereof First Information Report was registered by MHC Baljinderpal. Investigating Officer also conducted personal search of the appellant and currency note of Rs.200/- were recovered and taken into possession by preparing a personal search memo. Appellant was arrested and an arrest memo was also prepared. Investigating Officer also prepared a rough site plan of the place of

recovery with correct marginal notes and he also prepared a special report and recorded statements of the witnesses.

On arrival at Police Station, Investigating Officer produced the entire case property, appellant and the witnesses before Sub-Inspector-cum-Station House Officer, Sukhbir Singh who verified the case property and the facts of the case from the appellant and the witnesses and thereafter he put his seal bearing impression "SS" on all the parcels as also on the sample seal slip and attested all the parcels and specimen seal slip. He directed the Investigating Officer to deposit the case property with MHC Baljinderpal. The appellant along with the case property was produced before the learned Sub-Divisional Judicial Magistrate, Moonak on the same day who also signed the case property and passed an order to deposit the same in the Judicial Malkhana, Sangrur but since there was no space in the Judicial Malkhana, Sangrur, therefore, as per the subsequent order of learned Chief Judicial Magistrate, Sangrur, Investigating Officer deposited the case property in Police Malkhana. On receipt of report of the chemical examiner and completion of the investigation, challan was presented against the appellant.

Prosecution in order to prove its case got examined HC Mohinderjit Singh as PW-1, HC Makhan Khan as PW-2, Sub-Inspector Sukhbir Singh as PW-3, MHC Baljinderpal as PW-4 and ASI Om Parkash, Investigating Officer as PW-5. On the other hand, statement of the appellant was recorded under Section 313 Cr.P.C. but he denied the allegations of the prosecution and claimed that he was innocent having been falsely implicated in this case. However, the appellant did not lead any evidence in his defence.

Learned trial Court after appreciating the evidence available on the file convicted the appellant and passed the order of sentence as referred above.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgment passed by the trial Court as well as record of the case.

Learned counsel for the appellant has pointed out that form 29 which is required to be sent to the Central Forensic Science Laboratory was admittedly not prepared at the spot. Learned counsel has referred to the statement of PW-1, Head Constable Mohinderjit Singh in this regard. He submits that it was necessary for the prosecution to fill up the form 29 and in absence thereto, the appellant is entitled to be acquitted. He has further submitted that in the present case, sample was not drawn up as per Section 52-A of the NDPS Act. He submits that once the sample has not been drawn up as per Section 52-A of the NDPS Act, the conviction of the appellant cannot be sustained.

He has further submitted that the seal was retained by the Police official and it was not deposited with the Police Malkhana. He has further submitted that the case property remained in possession of the Police and as such, there was every opportunity with the prosecution to temper with the samples and the case property. He has further submitted that no effort was made to join any independent witness, although, the place from where the appellant was apprehended was a thorough fare.

Learned counsel for the appellant has further submitted that the Station House Officer has made a statement that he used his seal six times whereas as per the report of the Forensic Science Laboratory, one seal per

packet was found by the Forensic Science Laboratory. On the basis of these submissions, learned counsel for the appellant has vehemently contended that the judgment passed by the learned trial Court cannot be sustained.

No doubt, Head Constable Mohinderjit Singh who has been examined as PW-1 has admitted that form No.29 meant for sending the samples to Forensic Science Laboratory was not filled up at the spot by the Investigating Officer. However, such circumstance cannot be individually taken as a ground for setting aside the judgment of conviction passed by the learned trial Court after discussing the evidence available on the file. In the present case, the report submitted by the Forensic Science Laboratory is Ex. P/M on the file. The Forensic Science Laboratory has specifically recorded that the seals were intact and tallied with the specimen seals impression. The sample parcel was sent through Head Constable Makhan Khan who has been examined as PW-2. In these circumstances, this Court does not find any force in the first submission of learned counsel for the appellant.

Next submission of learned counsel for the appellant is that the sample was not drawn up as per Section 52-A of the NDPS Act, 1985. Section 52-A deals with disposal of the seized narcotic drugs and psychotropic substances. Sub-Section (2) of Section 52-A deals with a situation when a narcotic drug or psychotropic substance or a controlled substance has been seized and forwarded to the office of the Incharge of the nearest Police Station. It provides that such Officer shall prepare an inventory of such narcotic drug and psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identity find particulars etc. and make an

application to any Magistrate for the purpose of certifying the correctness of the inventory so prepared and take such other steps. In the present case, in the opinion of the Court, Section 52-A of the Act would not stand attracted. In the present case, 90 strips of alprazolam were found in conscious possession of the appellant. Each strip was containing 10 tablets. Two strips of 10 tablet each were taken as samples and put into two different plastic containers. Seals were put by the Investigating Officer and thereafter by the Station House Officer. Both the seals were found intact and tallied with specimen seal impressions as per the report of the Forensic Science Laboratory.

Next argument of learned counsel for the appellant is that the seal was retained by the Police official. Learned counsel has referred the statement of Mohinderjit Singh wherein he stated that the seal of the Investigating Officer was returned after depositing the case property in the Malkhana. The Investigating Officer had put his seals on the three packets prepared as well as sample seals impression and all the three parcels were produced before the Station House Officer who also put his seals on all the three packets. It is not a case of the appellant before the trial Court that the seals have been tempered with.

This is a case of huge recovery. 900 tablets of alprazolam were recovered. Even if after deposit of the case property, the seal was returned to the Investigating Officer that itself cannot be treated as a fatal to the case of the prosecution. Sample parcel containing intoxicant was received by the Forensic Science Laboratory on 19.04.2011 i.e. within a period of three days of the recovery. The parcel containing sample contraband was forwarded by the office of the SP to Forensic Science Laboratory on

18.04.2011. Thus, the prosecution agency promptly acted in the matter.

Next submission of learned counsel for the appellant is that the case property remained in Police Malkhana giving opportunity to the prosecution agency to temper with the parcels. He submits that the case property should have been deposited in the Judicial Malkhana. Learned counsel for the appellant has overlooked the fact that initially when the appellant along with the case property and the parcels of the sample when produced before the Sub-Divisional Judicial Magistrate on 16.04.2011, the Court ordered to deposit the case property with Judicial Malkhana. However, subsequently on a report from the Judicial Malkhana expressing inability to keep the case property in Judicial Malkhana because of lack of space, the learned Chief Judicial Magistrate passed the order to keep the case property in safe custody of Police Malkhana. In these circumstances, deposit of the case property in Police Malkhana would not create a doubt in the case of the prosecution.

Learned counsel for the appellant has further submitted that as per the case of the prosecution, the contraband was put in plastic containers and seals were put thereon whereas the report of the Forensic Science Laboratory does not prove such fact. Forensic Science Laboratory has reported that one parcel sealed with two strips containing intoxicated material with seals intact was received. The report of the Forensic Science Laboratory cannot be read in a manner to arrive at a conclusion that there were no plastic containers.

Learned counsel for the appellant has further submitted that no independent witness was asserted, although, the appellant was apprehended from a thorough fare. Learned counsel has referred to the statement of

Mohinderjit Singh wherein he admits that Police party did not make any effort to associate with any independent witness. No doubt, independent witness was not associated. However, non-joining of independent witness cannot be treated as a circumstance to the case of the prosecution. The Court has to scrutinize the evidence more carefully. In the present case, the prosecution has successfully proved the case and the defence has failed to produce any evidence.

Learned counsel for the appellant has in last submitted that the special report reached the Special Magistrate at 2.15 PM on 16.04.2011. Although, the appellant was apprehended at about 6.00 AM. Learned counsel has overlooked the fact that the Police party remained at the spot for about five hours as stated by Mohinderjit Singh. In between, First Information Report was registered and information was received at the Police Station at 8.05 AM. It is further not in dispute that the appellant was presented before the Court along with the sample and the case property on the same day before the Court. Such being the position, in the considered opinion of this Court, the delay of few hours in sending the special report cannot be treated fatal to the case of the prosecution.

In view of what has been discussed above, this Court does not find any good ground to set aside the judgment of conviction and the order of sentence passed by the learned trial Court.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

24.02.2018
Dinesh Bansal

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No