

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3260-SB of 2012 (O&M)
Date of decision:26.06.2018

Satnam Singh

...Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Raminder Partap Kaur, Advocate for the appellant.

Mr. Charanpreet Singh, AAG, Punjab.

ANIL KSHETARPAL, J.

This appeal has been filed against the judgment of conviction under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'Act of 1985') and order of sentence directing the appellant to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lakh. In default of payment of fine, the appellant shall further undergo rigorous imprisonment for a period of 6 months.

It may be noticed that the appellant was ordered to be released on bail subject to satisfaction of Chief Judicial Magistrate, Amritsar, vide order dated 27.02.2015, while noticing that the appellant had undergone 7 years and more than 10 months of actual sentence out of total sentence of 10 years and appellant is not involved in any other case under the Narcotic Drugs and Psychotropic Substances Act, 1985.

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

“The case of the prosecution, in brief, is that on 11.04.2007 Inspector/SHO Bikramjit Singh of Police Station Beas along with ASI Sukhwinder Singh, ASI Ranjit Singh and other police officials held a naka in the area of Baba Bakala on T-Point Pucca Road. There Inspector Bikramjit Singh received secret information that one truck bearing registration No. RJ-13-G-5367 being driven by a hindu driver and is coming from the side of Mehta towards Baba Bakala and it contained poppy husk. If search is conducted, huge quantity of poppy husk could be recovered. On the basis of such information, the police party headed by Inspector Bikramjit Singh started checking of vehicles. At about 7.00 pm on truck bearing registration No. RJ-13-G-5367 driven by Hindu gentleman came. On seeing the police party, he tried to give fast speed to the truck. However, the truck was stopped by the police party. On being quizzed, the driver of the truck disclosed his identity as Satnam Singh accused aforesaid. Thereafter, Inspector Bikramjit Singh told the accused that he has suspicion that accused has some narcotic substance lying in the truck and further apprised the accused about his legal right that as to whether the accused wanted his search and search of truck effected from Inspector Bikramjit Singh or any Magistrate or a Gazetted Officer. The accused opted to get the search conducted in the presence of a Gazetted Officer. The non-consent memo Ex.PB of accused was prepared, which was thumb marked by accused and attested by witnesses. Thereafter, Inspector Bikramjit Singh requested DSP Ram Singh through wireless questy, who came at the spot alongwith other officials. DSP Ram Singh gave his introduction to the accused that he is DSP Ram Singh of Baba Bakala and is a Gazetted Police Officer. He further told the accused that he had suspicion that some narcotic substance is in the truck for which search was to be effected. DSP further apprised the accused about his legal right as to whether he wanted to get the search effected in his presence or in the presence of any other Gazetted Officer or a Magistrate. The accused reposed confidence in DSP Ram Singh. His consent memo Ex.PC was prepared.

Thereafter, on the directions of DSP Ram Singh, Inspector Bikramjit Singh conducted search of the truck and that of Satnam Singh accused. From the cabin of roof of the truck, three bags of poppy husk underneath a wooden log were recovered. Out of recovery poppy husk, two samples of 250/250 grams each of poppy husk were taken out as samples from the first bag and put in a separate cloth bags and remaining on weighing was found to be 34 kg and put in the same bag. Thereafter, second bag was also opened and 250/250 grams each of poppy husk were taken out as samples from the second bag and put in a separate cloth bags and remaining on weighing was found to be 34 kg and put in the same bag. Thereafter, third bag was also opened and 250/250 grams each of poppy husk were taken out as samples from the second bag and put in a separate cloth bags and remaining on weighing was found to be 30 kg 500 grams and put in the same bag. All the six sample parcels and bulk of three

bags were sealed by Inspector Bikramjit Singh with his seal bearing impression 'BS' and by DSP Ram Singh with his seal bearing impression 'RS'. Sample impressions of the aforesaid seals were prepared separately. Form M-29 was prepared at the spot. Inspector Bikramjit Singh handed over his seal after use to ASI Sukhwinder Singh. DSP Ram Singh retained his seal with him after its use. The parcels of sample as well as bulk case property alongwith truck and the samples seals impression were taken into police possession vide recovery memo Ex.PD. The poppy husk recovered from the accused was identified vide memo Ex.PE. Sample seals memo is Ex.PF. Personal search of accused was conducted vide memo Ex.PG. Accused was arrested vide memo Ex.PH. Registration certificate of truck (mark P1), driving licence of accused (mark P2), permit (mark P3), pollution certificate (mark 4) were taken into possession vide memo Ex.P1. The Investigating Officer Inspector Bikramjit Singh sent the ruqa Ex.PJ to the police station on the basis of which FIR Ex.PJ/I was registered against the accused. The Investigating Officer prepared rough site plan Ex.PK of the place of recovery. The statements of the witnesses were recorded at the spot."

Prosecution in order to prove its case has examined Tirath Singh Head Constable as PW1, Sukhwinder Singh, Assistant Sub Inspector as PW2, Kewal Singh, Head Constable as PW3, Inspector Bikramjit Singh, Investigating Officer as PW4, Ram Singh, Deputy Superintendent of Police as PW5, Smt. Geeta, Lower Division Clerk, DTO Office, Ganga Nagar, Rajasthan as PW6 and Pawan Kumar, Steno, DTO Office, Amritsar as PW7. Accused was examined under Section 313 of the Criminal Procedure Code in which all incriminating evidence appearing against him was put to the accused to which he denied. Appellant claimed that he is innocent and claimed trial.

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 for the appellant has submitted that there is non-compliance of provisions of Section 42 of the Act of 1985 as secret

information which is alleged to have been received by Investigating Officer, was not reduced into writing and, therefore, appellant is entitled to the benefit of doubt. It was further submitted that there was delay of 14 days in forwarding the sample to the Forensic Science Laboratory. It was further submitted that no independent witness has been associated by the prosecution and therefore, also the prosecution has failed to prove its case beyond reasonable doubt. She has further submitted, while drawing attention of the court to Ex.PE, the recovery memo, that the prosecution concluded that the material recovered is poppy husk and Ex.PE was never put to the appellant when he appeared in the court while giving statement under Section 313 of the Criminal Procedure Code. She has further submitted that owner of the truck has not been examined although registered owner of the truck was Shavinder Singh.

On the other hand, learned counsel for the State has defended the judgment passed and has submitted that learned trial Court has already considered all aspects of the matter and, therefore, this Court should not interfere.

With regard to the first argument of learned counsel for the appellant, it may be noticed that Inspector Bikramjit Singh, Investigating Officer has stated that he received secret information and immediately on the receipt of the above information, Investigating Officer alongwith other police officials started checking the vehicles coming from town of Mehta. He has further stated that since urgent action was required to be taken on the part of the Investigating Officer, therefore, he could not take down the secret information in writing. He has deposed that he had started writing down the secret information, he may have missed one or two vehicles coming from

Mehta side, which would not have been a correct situation. Investigating Officer has stated that after apprehending the accused-appellant information was sent to the concerned Deputy Superintendent of Police.

It is settled that provisions of Section 42 of the Act of 1985 are directory and a small variation/violation would not result in acquittal of the appellant. This aspect has already been dealt with by the trial Court and, therefore, this Court does not find any reason to differ with the same.

Second argument of learned counsel for the appellant is also to be noticed and rejected as the report of the Chemical Laboratory Ex.PQ clearly shows that sample parcels were received with seals intact and all the seals matched with the specimen seals forwarded. Still further the delay of 14 days in forwarding the sample has been explained by the prosecution which is genuine and cannot be seen with suspicion.

Next argument of learned counsel for the appellant is that no independent witness has been associated by the prosecution and, therefore, appellant is entitled to the benefit of doubt. In this regard, law is well settled that absence of association of independent witness is not always fatal to the prosecution case and the courts are required to examine evidence with more care and caution. This Court has already examined the evidence with due care and caution.

Next argument of learned counsel for the appellant is with respect to Ex.PE, the recovery memo of the narcotic, which was not put to the appellant when he appeared in evidence while recording statement under Section 313 of the Criminal Procedure Code.

The argument of learned counsel for the appellant is factually incorrect as Ex.PE, the recovery memo, has been put to the appellant.

Learned counsel for the appellant wanted to take benefit of the fact that at one place on Ex.PE date has been mentioned as 09.04.2007 whereas the date of actual recovery is 11.04.2007. On careful examination of Ex.PE no doubt at one place the date has been mentioned as 09.04.2007, however, on the top, reference is to FIR No.77 dated 11.04.2007. Signatures of the Station House Officer also bear a date as 11.04.2007. Therefore, the date 09.04.2007 is an inadvertent mistake which cannot be taken benefit of by the appellant particularly when it is not the case of the defence that in fact he was apprehended on 09.04.2007 and not on 11.04.2007.

Last argument of learned counsel for the appellant is to the effect that registered owner of the truck has not been examined by the police while carrying out the investigation. In this respect, Investigating Officer Bikramjit Singh has stated that it had come during investigation that the registered owner of the truck was Shavinder Singh. However, he was not cited as witness or joined in the investigation. However, in the present case, such omission on the part of the prosecution would not improve the case of the appellant particularly when it is not the case of the defence that the narcotic allegedly recovered belonged to the owner of the truck or the appellant was not in conscious possession of the same.

In view of the discussion made above, this Court does not find any ground to interfere with the findings of the learned trial Court. Hence, the appeal is ordered to be dismissed.

(ANIL KSHETARPAL)
JUDGE

26.06.2018

Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No