

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

**CRA-S-2691-SB-2016 (O&M)  
Date of decision : 18.08.2018**

**Jagga Singh**

**...Appellant**

**Versus**

**State of Punjab**

**...Respondent**

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Mr. Gautam Bhardwaj, Advocate  
for the appellant.

Ms. Ambika Bedi, AAG, Punjab.

**JITENDRA CHAUHAN, J.**

The present appeal is directed against the judgment and order dated 20.10.2015 passed by Judge, Special Court, Mansa vide which the appellant was convicted under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and sentenced to undergo rigorous imprisonment for ten years with fine of ₹100,000/- with default stipulation.

The brief facts of the present case as noticed in the judgment passed by Lower Appellate Court are as under:-

“On 18.07.2013, SI Jai Singh SHO of P.S.Jhunir along with other police party was going towards villages Danewala, Ghurkani. The said police party was going towards, Fatehpur head via bank of canal falling between

village Danewala and Ghukani. When the said police party reached 1 k.m. Ahead from village Ghurkani towards Fatehpur head, then one person was seen while sitting in the road side pits. That person was having one plastic bag in his hand and he was searching something in the same. On seeing the police party, said person got perplexed. Then SI, Jain singh had apprehended him on the basis of suspicion and asked his name and address, who disclosed the same as Jagga Singh son of Makhan Singh resident of Danewala. In the plastic bag, intoxicated capsules and tablets were lying visible. Then, one strip of zolomac 0.5 tablets, one packet of diatil tablets containing 100 tablets and one strip of spasmocip capsules containing 8 capsules were separated as samples and parcel of the same was prepared. On counting, 99 strips of zolomac 0.5 tablets each strip containing 10 tablets total 990 tablets, 29 strips of carisole tablets each strip containing 10 tablets total 290 tablets, 14 packets of diatil tablets, each packet containing 100 tablets total 1400 tablets and 19 strips of spasmocip capsules each strip containing 8 capsules, total 152 capsules were recovered and separate parcel of the same was prepared. Both these parcels were sealed by SI Jain Singh with his seal bearing impression "JS". Sample of seal was prepared separately and Form No.29 was filled up. Seal was entrusted to HC Joginder Singh after its use. Then, above said parcels of case property, samples thereof, sample of seal and Form No.29 were taken into police possession vide separate recovery memo. Then, ruqa was drafted for registration of FIR

under the NDPS Act and the same was sent to police Station Jhunir where the present case was registered. Accused Jagga Singh was arrested and the investigation was initiated, during which rough site plan of the place of recovery was prepared with correct marginal notes and statements of witnesses were recorded. Inventory memo was prepared. Accused Jagga Singh along with case property was produced before learned Magistrate Sardulgarh for initiating proceedings under Section 52-A of NDPS Act and then accused was put in lock-up and case property was deposited.”

The accused was charged with offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution has examined C-Jagtar Singh as PW-1, HC Joginder Singh-recovery witness as PW-2 and SI Jai Singh-Investigating Officer as PW-3.

Thereafter, statement of the accused under Section 313 Cr.P.C was recorded in which entire incriminating circumstances appearing in the prosecution evidence were put to the accused to which accused denied and implied false implication.

After appraisal of the evidence, learned trial Court convicted the accused-appellant under Section 22 of the NDPS Act and sentenced to undergo imprisonment as narrated above.

Feeling aggrieved against the judgement and conviction and the

order of sentence passed by the learned trial Court, the instant appeal has been filed by the accused/appellant.

Contents that there is contradiction in the statement of Constable Jagtar Singh, PW-1, with regard to the sending of samples to the FSL. There is no investigation with regard to the origin of the contraband. Further, the story put forth by the prosecution is highly improbable to the extent that the appellant was sitting on roadside holding the polythene bag containing contraband. Despite the fact that the alleged recovery was effected from a public place, no independent witness was joined. Earlier also, the petitioner was falsely implicated in a case registered under Sections 457 and 380 IPC, wherein, he has earned acquittal.

On the other hand, the learned State counsel opposes the instant appeal on the ground that inconsistency, if any, in the statement of PW-1, Jagtar Singh, with regard to sending the samples to the FSL is clerical in nature. As noticed in the FSL report, the seals remained intact. Further submits that the non-joining of any independent witness does not brush aside the entire prosecution case. The provisions of Sections 52, 55 and 57 of the NDPS Act have been complied with. Therefore, she prays for dismissal of the appeal.

I have heard learned counsel for the parties and carefully gone through the record of the case.

As per the prosecution story, the appellant was seen while sitting on the road-side pits. He was seen searching the plastic bag carried by him in

his hand. On seeing the police party, he got perplexed. On examination in the given context, the story put forth by the prosecution does not appeal to logic as there is nothing on record to suggest as to why the accused would position himself in the manner that he is exposed to public while holding narcotic drugs.

Further, in the instant case, link evidence is missing. It has come in the testimony of ASI Jai Singh, Investigating Officer, that no investigation with regard to the origin of the contraband was carried out by him on the ground that the name of the supplier could not come on record. Thus, the prosecution has failed to prove the connection of the appellant with the contraband allegedly recovered.

It has also come on record that earlier also, the petitioner had been implicated in a false case bearing FIR No.40 of 2012 registered under Sections 457 and 380 IPC, at P.S. Jhunir, wherein, he stands acquitted by the competent Court. No challenge was laid to the judgment of acquittal.

There is no denial of the fact that with the passage of time, minor discrepancies are bound to occur in the statements of the witnesses, however, considering the surrounding circumstances that four out of seven cited prosecution witnesses were not even examined by the prosecution, the discrepancy with regard to the date of sending the sample for chemical examination in the statement of PW-1 cannot be ignored.

In view of the above discussion, this Court feels that the prosecution has not been able to prove its case against the accused-appellant

beyond a shadow of reasonable doubt and benefit thereof, ought to be extended to the appellant.

Consequently, the instant appeal is allowed; the impugned judgment and order passed by the trial Court are set aside; and the appellant is acquitted of the charges framed against him. The appellant is stated to be on bail. His bail bonds shall stand discharged.

(JITENDRA CHAUHAN)  
JUDGE

18.08.2018  
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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |