

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

CRA-S-488-SB-2012 (O&M)

Date of decision : 23.01.2018

Vicky

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Gaurav Saini, Legal Aid Counsel
for the appellant.

Mr. Ayush Sarna, AAG, Punjab.

ANIL KSHETARPAL, J.

The accused is in appeal against the judgment of conviction and order of sentence passed by the Additional District Judge, Shaheed Bhagat Singh Nagar and FIR No.260 dated 24.09.2009 under Section 20 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act of 1985'). The appellant has been sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹1,00,000/- or in default of payment of fine, further undergo rigorous imprisonment for a period of 2 years.

The case setup by the prosecution is that Sub Inspector Lakhvir Singh alongwith Sub Inspector Parminder Singh and other police

officials had laid a *naka* at Bus Stand Khata Kalan. The accused came down from a transport bus coming from the side of Banga City. He was carrying a bag around his neck. On seeing the Police, he became perplexed and started moving towards the metalled road on the left side. Sub Inspector Lakhvir Singh apprehended him with the help of other police official. On being asked, he disclosed his name as Vicky son of Sodhi Ram, resident of Village Dhaingri, Police Station Adampur, District Jalandhar. During this time, one Mohinder Singh son of Gurmit Ram also came on the spot and joined the police party. Sub Inspector Lakhvir Singh disclosed his identity with rank and post to Vicky, the accused-appellant and Lakhvir Singh disclosed to the accused-appellant that it is suspected that he is carrying some contraband in the bag and his search is to be conducted. The appellant was apprised of his right to get the search conducted in the presence of a Gazetted Official or a Magistrate. Vicky opted for search in the presence of the Gazetted Official. A dissent memo was recorded, which was signed by the appellant. Thereafter, the Deputy Superintendent of Police, Satinder Pal Singh was requested to come to the spot on telephone. On arrival of the Deputy Superintendent of Police, Satinder Pal Singh, who also disclosed his identity and post, Vicky reposed confidence in the Deputy Superintendent of Police and his consent memo was recorded. On search of the bag which was being carried by Vicky, *charas* was recovered. Two samples of 10 gms each were taken out and remaining narcotic on weighing came out to be 2 kg and 980 gms. The parcels of the samples as

well as remaining narcotics were prepared which were sealed by the Investigating Officer, Lakhvir Singh, Sub Inspector with his seal LS and thereafter by Deputy Superintendent of Police with his seal SPS. A specimen seal impression was prepared separately. Form No.29 was filled up and Investigating Officer gave his seal after use to SI Parminder Singh and Deputy Superintendent of Police kept his seal with him. The case property was taken into possession vide a separate recovery memo. The accused could not produce any licence or permit to keep 3 kg of *charas* in his possession. The information was sent to the Police Station for registration of First Information Report, which was registered. Rough site plan of the place of recovery was also prepared. The police party alongwith accused came to the Police Station and presented the accused alongwith duly sealed samples and remaining narcotics alongwith all documents before the Station House Officer, Sarwan Singh. Next day i.e. on 25.09.2009, the accused and the case property alongwith other documents were produced in the Court.

On receipt of report of the Chemical Examiner and the completion of the investigation, the challan was presented in the Court.

The prosecution examined as many as 6 witnesses namely PW1 Head Constable Jarnail Singh who stated that Sub Inspector Lakhvir Singh had deposited the case property with him at Police Station Banga. Sub Inspector Lakhvir Singh was examined as PW2 who duly proved the dissent statement Ex.PA, Consent Statement Ex.PB, Specimen Seal Impression Ex.PC and Ex.PC/1, Form No.29 Ex.PD, Recovery Memo

Ex.PE, Ruqa Ex.PF, FIR Ex.PF/1, Endorsement on the Ruqa Ex.PF/2, Rough Site Plan Ex.PG, Arrest memo Ex.PH, Recovery Memo Ex.PJ, Seal Impression of Sarwan Singh SHO, Ex.PC/2, Entrustment memo Ex.PK, Report of Chemical Examiner Ex.PL, Sample Ex.P1, Case Property Ex.P2 and one another sample Ex.P3.

The Deputy Superintendent of Police, Satinder Pal Singh was examined as PW3 who deposed that on 24.09.2009, he was posted as Deputy Superintendent of Police (Detective) at SBS Nagar. He also proved the aforesaid documents produced by Lakhvir Singh except the Dissent Statement Ex.PA. Head Constable Balwinder Singh was examined as PW4, who stated that he was posted at Police Station, Banga on 30.09.2009 and he took the sample from Head Constable, Jarnail Singh for delivering in the Office of Chemical Examiner. Sub Inspector Parminder Singh was examined as PW5, who also corroborated the version of the Investigating Officer, Sub Inspector Lakhvir Singh. Sub Inspector Surjit Singh was examined as PW6 who deposed that on 24.09.2009, he was posted at Police Station Sadar Banga as Additional Station House Officer and Sub Inspector Lakhvir Singh and Parminder Singh produced before me Vicky, the accused-appellant alongwith two samples of *charas* 10 gms each duly sealed with seal LS/SPS alongwith specimen seals impressions and Form No.29 and case property weighing 2 kg and 980 gms.

The statement of the accused under Section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing against

the appellant were put to him but he denied the allegations levelled against him. In defence, the appellant did not produce any evidence and closed his evidence.

After appreciation of the evidence available on the file, the learned trial Court found that the prosecution has successfully proved the case against the accused-appellant. The Court found that the accused is guilty under Section 20 of the Act of 1985 having found in conscious possession of 3 kg of *charas* without any licence or permit.

This appeal has come up for final hearing before this Court. The arguments of the learned counsel for the parties have been heard in detail and record has been examined.

Learned counsel for the appellant has submitted that although Mohinder Singh was joined as an independent witness, however, he has not been examined by the prosecution on the ground that he has won over. He submitted that in view thereof, the case against the appellant has not been proved. He has further pointed out that there is contradiction in the evidence of the prosecution as PW2, Sub Inspector Lakhvir Singh has stated that for weighing the contraband and the samples, he was having a weighing scale in the I.O. Kit and this scale (*Takri*) was used for weighing the case property. He has pointed out that whereas PW6 Surjit Singh has stated that Investigating Officer was having a computer balance with him and the contraband and the samples were weighed with the aforesaid computer balance.

Learned counsel for the appellant has further argued that

although it is the case of the prosecution that the appellant-accused was apprehended, the moment he alighted/deboarded from the Bus, however on personal search, no bus ticket was found. He has further submitted that there is further contradiction inasmuch as Sub Inspector Lakhvir Singh has stated that Mohinder Singh came on a moped whereas Parminder Singh in his statement has stated that Mohinder Singh, the independent witness came on foot.

Learned counsel for the appellant has further submitted that there is further contradiction inasmuch as Deputy Superintendent of Police who appeared as PW3 states that *charas* narcotic was in the form of Pattiaya (plain strips) whereas Sub Inspector Parminder Singh PW5 has stated that contraband was in solid form (*Dalla*). He has further submitted that samples were sent for chemical examination after a period of six days i.e. on 30.09.2009 and in between the prosecution has all the time available to tamper with the samples.

Learned counsel for the appellant has further submitted that the report as envisaged under Section 57 of the Act of 1985 was not prepared which is mandatory.

On the other hand, learned counsel for the State of Punjab has supported the judgment passed by the learned Additional Sessions Judge and contended that the prosecution in this case has proved the case against the appellant and there is no error in appreciation of the evidence by the learned Additional Sessions Judge.

This Court with the help of the learned counsel for the parties

have gone through the record. As regards the first argument of the learned counsel is that the independent witness, Mohinder Singh has not been examined by the prosecution, it is the case of the prosecution that Mohinder Singh had been won over and, therefore, he was not examined. No doubt, in absence of the independent witness, the Court is duty bound to scrutinize the evidence more carefully. However, mere non-examination of the independent witness cannot be made a ground to return a finding that the prosecution has failed to prove its case against the accused.

Next argument of the learned counsel for the appellant is that there are material contradictions in the statement of the witnesses produced by the prosecution. First contradiction pointed out by the learned counsel for the appellant is that it is stated by Lakhvir Singh, PW2, Investigating Officer that he was having weighing scale in his investigating kit with the help of which, narcotic was weighed and actual quantity was found out. Whereas learned counsel for the appellant has pointed out that PW6, Surjit Singh, another Sub Inspector has stated that Lakhvir Singh was having a computer balance with him.

In the considered opinion of this Court, the argument of the learned counsel for the appellant cannot be accepted particularly when the Deputy Superintendent of Police, Satinder Pal Singh who has been examined as PW3 has also stated that I.O. has arranged weighing material and weighing scale was balance scale. Weight of 1 kg, 2 kg, 200 gm, 50 gm, 10 gm, 5 gm, were used. The contradiction as pointed out by the

learned counsel for the appellant does not create a dent on the case of the prosecution.

Next argument pointed out by the learned counsel for the appellant is that there is contradiction in the statement of Sub Inspector Lakhvir Singh, PW2 and statement of Parminder Singh, PW5 about the mode of transport used by independent witness, Mohinder Singh. He has pointed out that Lakhvir Singh has made a statement that independent witness arrived at moped whereas Parminder Singh, PW5 states that independent witness came on the foot. This Court has considered the contradiction as pointed out by the learned counsel. No doubt, there is some contradiction in the statement of two witnesses, however, the examination of the witnesses takes place in the Court after a long time. In this case, Parminder Singh was examined after a period of 2 years i.e. in the month of September, 2011. In view of the lapse of time, incident and the deposition, like contradiction cannot be taken as reason for accepting the appeal.

Learned counsel for the appellant has further pointed out that there is another contradiction between the statement of Parminder Singh, Sub Inspector who appeared as PW5 as he has stated that contraband was in a solid form (*Dalla*), whereas the Deputy Superintendent of Police who has been examined as PW3 states that the contraband was in the form of Pattiaya.

In the considered opinion of this Court, there is not much difference. Parminder Singh makes a statement that contraband was in a

solid form. Deputy Superintendent of Police does not say that the contraband was not in a solid form. He only stated that the contraband was in the form of Pattiaya i.e. in the form of strips. The strips are also in a solid form.

Next argument of the learned counsel for the appellant is that the sample remained in the custody of the police for a period of six days. No doubt, the sample was forwarded to the Chemical Examiner on 30.09.2009, however, the learned counsel has overlooked the fact that on 24.09.2009, the appellant-accused was apprehended at 3:30 PM. By the time, the prosecution could complete its proceeding at the spot, it was late in the evening. The accused was produced before the Station House Officer on the same day. Next day i.e. on 25.09.2009, the accused alongwith contraband samples and other documents were produced before the Court. It is further proved on the file that the case property alongwith the other documents were deposited with Moharir, Head Constable Jarnail Singh by S.I. Lakhvir Singh. It is not the case of the appellant that the samples, seals were tampered with or not properly placed or the contraband or the sample could be tinkered with. In absence of such material or assertion, the delay of 4 days in forwarding the samples for chemical examination cannot be treated as fatal to the case of the prosecution.

Last submission of the learned counsel for the appellant is that the report as envisaged under Section 57 of the Act of 1985 has not been prepared and as such the appellant cannot be convicted.

This Court has considered the submission. Section 57 provides that whenever any person makes any arrest or seizure under this Act, he shall within 48 hours next after arrest or seizure make a full report of all the particulars of such arrest or seizure to his immediate senior official. In the present case, it is not in dispute that Sub Inspector Lakhvir Singh had produced the accused alongwith contraband and all other documents including the samples prepared which were duly sealed before its immediate superior i.e. Station House Officer on the same day.

In the considered opinion of this Court, such production of the accused alongwith contraband samples and other documents is sufficient to comply with the requirement of Section 57 of the Act of 1985.

Taking into consideration the aforesaid facts, this Court is of the opinion that there is no scope for interference in the well-reasoned judgment passed by the learned Additional Sessions Judge, Shaheed Bhagat Singh Nagar. Hence, the appeal is ordered to be dismissed.

23.01.2018*Pawan***(ANIL KSHETARPAL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**