

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2149-SB of 2014 (O&M)

Date of decision: 06.04.2018

Mohinder Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. V.M. Handa, Advocate
for the appellant.

Mr. A.A. Pathak, Addl. AG, Punjab.

ANIL KSHETARPAL, J.

Appellant-convict is in the appeal against the judgment passed by the learned Special Judge, Ferozepur convicting the appellant under Section 22 of Narcotic Drugs and Psychotropic Substance Act, 1985 and sentencing him to undergo rigorous imprisonment of ten years with fine of Rs.1,00,000/-. In default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

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

“In brief, the case of the prosecution is that on 9.2.2011 ASI Rajinder Singh (Investigating Officer in short IO) along with his co-officials in connection with patrolling duty was going from village Mirze Ke to village Kailash on a government vehicle and when they reached near canal bridge, they apprehended the accused Mohinder Singh on suspicion as he tried to slip away at the sight of police party.

On inquiry accused disclosed his name Mohinder Singh (present accused). ASI Rajinder Singh introduced himself to him and asked that he has suspect some intoxicant substance in his possession. Therefore, his search was required to be conducted by him. Said ASI Rajinder Singh also appraised the accused about his legal right that he could opt for his search in presence of Gazetted Officer or Magistrate or from him. He reposed confidence in the Investigating Officer. Accordingly, his consent memo was prepared. However, efforts to join an independent witness remained unsuccessful. Ultimately, personal search of accused led to recovery 26 packets of Microlit tablets each packets containing 100 tablets that totaling 2600 Microlit tablets from the plastic bag.

One packet of Microlit tablets was separated to serve as sample and remaining 25 packets of Mircolit tablets i.e. 2500 Microlit tablets were put into the same plastic bag. The sample parcel and that of bulk quantity were prepared and sealed with seal bearing impressions RS. Accordingly, CFSL Form by putting impression of that seal was also prepared. Seal was entrusted to ASI Gurbachan Singh. From the personal search of accused nothing was recovered. A ruqa was sent to the police station which led to the registration of case. A site plan pertaining to the place of recovery was also prepared. Intimation memo was also prepared. On completing all the formalities on the spot and on return to the police station he handed over the accused and entire case property duly sealed bearing impression RS alongwith CFSL form to SI Jaswinderpal Singh who interrogated the accused and verified the facts of the case and checked the case property and found it to be in intact condition.”

Prosecution in order to prove their case examined ASI Rajinder Singh as PW-1, Sub-Inspector Jaswinderpal Singh as PW-2, ASI Gurbachan Singh as PW-3, and HC Angrej Singh as PW4. Accused was examined under Section 313 Cr.P.C. and he pleaded innocence and false

implications, however, he did not examine any witness in defence evidence.

Learned trial Court found the appellant to be guilty of having committed offence under Section 22 of the NDPS Act.

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 the appellant is nearly 80 years old and there is no other case against the appellant. He has also submitted that no eye-witness was joined and the evidence of the prosecution is contradictory. He has further submitted that the police official who had recovered the narcotics is also the Investigating Officer which is not permitted. He has further submitted that sampling procedure adopted by the police officials was not proper as sample was taken from one packet. He has also pointed out certain contradictions in the oral evidence of the prosecution. He has further submitted that the thumb impression of the accused was not taken on the sample or bulk parcel. He has further submitted that form No.29, the form required to be sent to the Forensic Science Laboratory was not filled at the spot.

On the other hand, learned counsel for the State while drawing attention of the Court to the statement of PW-1 has stated that efforts were made to join the independent witness, however, no one was willing to join. He has further submitted that the Officer who gets the drugs recovered is the Investigating Officer and the appellant cannot derive any benefit therefrom. He has further pointed out that the accused along with the recovered drugs and the documents was produced before the concerned Judicial Magistrate on the next day i.e. 10.02.2011 and the bulk parcel was

deposited as ordered by the Judicial Magistrate with the Judicial Malkhana. He has further pointed out that a reading of the report from Forensic Science Laboratory, it is clear that seals on the sample parcel were found intact and matched with the sample seals sent along with the seal.

As far as argument of learned counsel for the appellant that no independent witness has been joined, it is well settled that non-joining of the independent witness is not fatal to the prosecution always. The Court in absence of independent witness is to examine the evidence produced by the prosecution with extra care and caution. Hence, let us examine the evidence produced by the prosecution. In this case, 2600 Microlit tablets were recovered from the appellant. To prove the aforesaid case, the prosecution has examined official witnesses. Accused was produced before the Judicial Magistrate on the next day along with drugs recovered and the documents prepared. Order dated 10.02.2011 passed by the Judicial Magistrate proves that bulk parcel was ordered to be deposited with the Judicial Malkhana. Report of the Forensic Science Laboratory proves that the seals of the sample parcel were found intact and tallied with the specimen seal impression. On opening the parcel 100 tablets of Microlit were found. The tablet was containing Diphenoxylate hydrochloride. Hence, non-joining of independent witness cannot be solely a ground to acquit the appellant.

Next argument of learned counsel is that the Investigating Officer and the complainant is one person and therefore, no one can be judged on his own cause. In the considered opinion of this Court, this argument cannot be accepted as the Officer who recovered the drugs can be assigned the work of investigating the case properly. The ultimate

judgment has to be passed by a Judge. The prosecution is to collect the evidence and presented before the Court. Therefore, the argument that the complainant and the Investigating Officer cannot be one, does not stand close scrutiny.

Next argument of learned counsel is that sample procedure followed was wrong as the sample was drawn up from one packet and the sample was not drawn from remaining 25 packets of Microlit. In this regard, it will be noticed that Microlit is a tablet manufactured by a standard pharmaceutical company. The each packet is packed with hundred tablets which are uniform and contained same salt and ingredients. In case of drugs manufactured by a standard pharmaceutical company, prosecution is entitled to draw sample by drawing one packet only.

Next argument of learned counsel is that there is contradiction in the oral evidence inasmuch as the Investigating Officer has stated that after sealing the sample parcel and bulk parcel, he handed over the seal to ASI Gurbachan Singh which was returned after a period of four days whereas Gurbachan Singh when examined has stated that the seal was handed over to the Investigating Officer on the same day after reaching the police station. Learned counsel has further pointed out that there is variance in the statement of the witnesses with regard to the efforts to join independent witness. This Court has considered the argument, however, do not find any substance therein. The oral evidence was recorded after a period of more than one year. Certain variation are bound to occur. These are natural. The human memory is not perfect. Further, it depends upon presumption of each individual. Hence, this Court does not find any substance in the argument.

Learned counsel has further submitted that the thumb impression of the accused-appellant was not taken on the sample and bulk parcel as admitted by the prosecution witness. Learned counsel was requested to draw the attention of the Court to any rule or statutory provision providing for the same. However, learned counsel could not point out any.

Last argument of learned counsel for the appellant is with regard to non-filling of form No.29 meant for FSL. He has drawn the attention of the Court to the statement of Jaswinderpal Singh, PW-2 who has stated that he completed CFSL form Ex.P-2. Learned counsel has tried to argue that the CFSL form was hence not filled at the spot. This Court has gone through the evidence of Rajinder Singh who had put one impression of seal on CFSL form Ex.P-2. Still further, Gurbachan Singh when appeared in the evidence, has also supported the Investigating Officer. Jaswinderpal Singh has only stated that he completed the CFSL form. Filling up of the form and completion thereof are two separate things. Hence, this Court does not find substance in the argument.

Taking into consideration the evidence as discussed above and on evaluation of the arguments of learned counsel for the parties, this Court does not find any error in the judgment passed by the learned Special Court. Hence, the judgment of conviction and order of sentence are upheld.

Appeal is dismissed.

06.04.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No