

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2954-SB of 2016 (O&M)

Date of decision: 26.06.2018

Gobind Sharma

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S. Dhillon, Advocate
for the appellant.

Mr. Hittan Nehra, Addl. AG, Punjab.

ANIL KSHETARPAL, J.

This appeal has been filed against the judgment of conviction under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and order of sentence to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.50,000/-. In default of payment of fine, further undergo rigorous imprisonment for six months.

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

“In brief, the case of the prosecution is that on 24.8.2014 SI Surinder Singh was posted as SI at PS GRP, Bathinda. On that day he along with other police officials was on patrol duty and checking of suspected persons and smugglers and was present at platform No.6 Northern side. It was about 2.00 PM, one person was noticed going ahead of the police party. Suddenly he saw on his back and noticed the police party, he tried to slip away, but he was apprehended on the basis of suspicion by the

Investigating Officer with the help of police party. He was having one canvas bag of white colour with strips in his right hand. Investigating Officer enquired about the whereabouts of accused, who told his name as Gobind Sharma. Investigating Officer introduced himself to the accused and gave him an option that he has suspicion of some contraband in his possession and search of bag carried by him is to be conducted. Investigating Officer further informed the accused about his legal right to get his search conducted in the presence of a gazetted officer or a Magistrate but the accused reposed faith in the Investigating Officer. His consent memo was prepared, which was attested by HC Gurmit Singh and HC Karnail Singh and thumb marked by the accused. On search of the bag with the accused, 10 vials of Rexcof of Cipla company each of 100 Ml were recovered. Investigating Officer separated one vial of Rexcof as sample and prepared a sample parcel. Remaining 9 vials of Rexcof were also converted into parcel. Investigating Officer sealed both the parcels with his seal bearing impression 'SS'. Sample seal was prepared separately. Seal after use was handed over to HC Gurmit Singh. Form No.29 was filed in by the investigating officer at the spot. Both the parcels of the case property along with sample seal slip and form No.29 were taken into police possession vide recovery memo, which was witnessed by the witnesses. Personal search of the accused was conducted. Ruqa was sent to the police station through HC Karnail Singh and on its basis, formal FIR was registered by Inspector Bant Singh. Rough site plan was prepared by the investigating officer. Accused was arrested vide arrest memo and information of arrest memo was also prepared. Special Report was sent to DSP GRP Sh. Hardeep Singh. Statements of the witnesses were recorded. As per the case of the prosecution after completion of spot investigation, on return to the police station, investigating officer produced the accused, along with entire case property, sample seal and personal search before officiating SHO SI Sukhdev Singh, who verified the facts from the investigating officer and the accused. Thereafter he checked and compared

the seals and also affixed his own seal bearing impressions 'SS' on both the parcels vide entrustment memo. After completion of investigation, challan was prepared by the SI Harjinder Singh. On receipt of report from Chemical Examiner and after completion of other necessary formalities, the instant challan was presented against the accused in the Court."

The prosecution in order to prove its case examined PW-1 SI Surinder Singh, PW-2 HC Gurmeet Singh, PW-3 HC Jasvir Singh and PW-4 SI Sukhdev Singh. PW-1, Surinder Singh is the Investigating Officer whereas PW-2, HC Gurmeet Singh accompanied him. In fact, they were four persons in the police party. However, the remaining two were not examined. PW-3, Jasvir Singh is the official who took the sample parcel to the Forensic Science Laboratory whereas PW-4, SI Sukhdev Singh is the person before whom the Investigating Officer produced the accused-appellant at Police Station GRP, Bathinda. It is the case of the prosecution that Bant Singh was Station House Officer (SHO) but since he was not present, therefore, Sukhdev Singh, PW-4 was working as officiating SHO at Police Station GRP, Bathinda. Total recovery from the accused-appellant is 10 small bottles of rexcof of Cipla company each having quantity of 100 ml. The learned trial Court convicted the appellant and sentenced as noticed above. That is this appeal has been filed through legal aid.

In the present case, the learned trial Court has overlooked the material illegalities and contradictions in the case put forth by the prosecution. The accused-Gobind Sharma is an illiterate, working as a labourer. He is alleged to have been apprehended with 10 bottles of rexcof made by Cipla company at platform No.6 of the Railway Station by the police party. It is admitted by Surinder Singh, the Investigating Officer while appearing as PW-1 in witness-box that the signatures of the accused

on the bulk parcel prepare were not obtained. It is also admitted that the seal on the bulk parcel is broken. No batch number, serial number, manufacturing or other particulars of the case property were mentioned. Still further, in examination-in-chief, Surinder Singh states that he filled form No.29 Ex.P-3 partially at the spot whereas in cross-examination, he stated that the entire form No.29 from point A to B was filled by me at that spot. He further states that no independent witness was joined by the police. He has further stated that the seal was given to the members of the police party who returned the seal to him on the next date. There are other material contradictions as in-chief, he states that he sent Special Report Ex.P-11 from the spot to Deputy Superintendent of Police, GRP, Sub-Division, Ferozepur. However, in cross-examination, he states that he had not sent the Special Report in the present case. Even HC Gurmeet Singh who was member of the police party and examined by the prosecution has stated that no intimation was sent to the superior or Gazetted Officer from the spot. He admitted that Bant Singh was the regular SHO on that day. However, the case property or the accused was produced before SI Sukhdev Singh. Gurmeet Singh also admits that no independent witness was joined by the police party, although, he states that efforts were made but persons present there refused to join.

On careful examination of the statement of PW-4, SI Sukhdev Singh who is stated to be officiating SHO of Police Station also makes an interesting reading. He admits that the case property was kept by him in Almirah in Malkhana. He admits that he did not deposit the case property with the regular SHO. He admits that there is no rapat regarding my working as officiating SHO. He admits that no second sample of the

intoxicant recovered was drawn. He admitted that Inspector Bant Singh was posted as SHO but he cannot tell the exact time when the regular SHO left the Police Station and he cannot tell the exact time when the regular SHO returned in the Police Station. Still further, on careful examination of form No.29, it is apparent that Sukhdev Singh is not telling the correct facts. As per Investigating Officer, Surinder Singh and HC Gurmeet Singh, they reached the Police Station at about 6.00 PM on 24.08.2014. However, Sukhdev Singh who has signed on form No.29 as Station House Officer bears the date i.e. 25.08.2014. No explanation has been given as to why Sukhdev Singh signed form No.29 on 25.08.2014 although he admits that the Investigating Officer produced the accused and the case property along with form No.29 on 24.08.2014 at 6.00 PM. All these facts when analyzed cumulatively, it is apparent that the prosecution has failed to prove its case beyond reasonable doubt. The facts as noticed above bring forth many unanswered questions in the case put forth by the prosecution. In these circumstances, the appellant is entitled to the benefit of doubt.

Keeping in view the aforesaid facts, the judgment under challenge is set aside. The bail bonds submitted by the appellant shall stand discharged.

Appeal is allowed.

(ANIL KSHETARPAL)
JUDGE

26.06.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No