

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

CRA-S-2320-SB-2014 (O&M)

Date of decision : 17.02.2018

Satish

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

Mr. Saurabh Girdhar, AAG, Haryana.

ANIL KSHETARPAL, J.

The appellant-accused is in the appeal against the judgment of conviction and order of sentence passed by the Special Court, Sonapat in a case arising out of an FIR No.117 dated 20.04.2011 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act, 1985”) sentencing the appellant to undergo rigorous imprisonment for a period of 4 years and to pay a fine of ₹20,000/-, and in default of payment of fine, further undergo rigorous imprisonment for a period of three months.

As per the custody certificate produced by the State, appellant has already served his sentence as awarded by the Court and has also paid fine. He has been released on 21.03.2015. As per the custody certificate, appellant is also involved in another case under the NDPS Act, 1985 in FIR

No.182 of 2009 in Himachal Pradesh.

The case as setup by the prosecution has been noticed by the learned Special Court, Sonapat which is extracted as under:-

“2. Briefly stated, the case of the prosecution is that on 20.4.2011 SI Inder Singh alongwith other police officials was on patrolling duty near Government School, Panchi Jatan, then one young boy was seen coming from Village Udesipur and the said boy retracted suddenly on seeing the police party and tried to hide behind Kiker trees and on suspicion police party apprehended the young boy who disclosed his name as Satish son of Ram Diya. On suspicion of possessing narcotics, the accused was served with notice under Section 50 of the Act thereby informing the accused about his statutory right as to whether he wanted to be searched in the presence of a Gazetted Officer or Magistrate. That the accused desired to be searched before Gazetted Police Officer. Accordingly, Deputy Superintendent of Police Ganaur was informed and accordingly DSP, Ganaur reached at the spot and asked SI Inder Singh to make a search of the boy and on search one packet from right pocket of his pant was recovered in which 400 gm. charas was found. Thereafter, from the recovered charas, two samples weighing 10-10 gms each were separated and were converted into sealed parcels and the remainder was also sealed in a separate parcel and seal of 'ISK' was affixed on the residue parcel as well as sample parcels. The seal after its use was handed over to Constable Sandeep Kumar and the sample parcels and remainder parcel were taken into police possession. Thereafter, tehrir was sent through Constable Sunil Kumar for registration of FIR and formal FIR was registered. Necessary investigations were made and statements of

witnesses recorded. Thereafter, accused alongwith case property and witnesses was presented before SHO, P.S. Ganaur and SHO, P.S. Ganaur affixed his seal 'YP' on each parcel of sample and remainder. Thereafter, accused alongwith case property was produced before learned Magistrate, photographs were taken and an application under Section 52-A of the Act was moved. On completion of investigation, final report under Section 173 Cr.P.C. was forwarded to the court to put the accused on trial. Copy of challan was duly supplied to the accused free of costs as envisaged under Section 207 Cr.P.C.”

The appellant was produced before the Judicial Magistrate on 21.04.2011 i.e. next day and on the orders of the Judicial Magistrate, bulk parcel was deposited in the judicial *malkhana*. As per the report of the Forensic Science Laboratory Ex.PX, the sample was identified as *charas*. The seals were found intact and tallied with the sample seal as per the Forwarding Authority's letter.

In order to prove its case, prosecution has examined Constable Jasbir Singh as PW1, Constable Mukesh Kumar as PW2, Constable Sat Narain as PW3, Head Constable Kuldeep Singh as PW4, Assistant Sub Inspector Prem Singh as PW5, Tula Ram, Deputy Superintendent of Police as PW6, Constable Sunil as PW7, Brij Mohan, Criminal Ahlmad as PW8, Sub Inspector Inder Singh as PW9 and Yashpal Singh, Deputy Superintendent of Police as PW10 (then SHO of the Police Station).

After analyzing the evidence produced by the prosecution, learned Court recorded a finding that the prosecution has been successful in proving its case and, therefore, convicted the appellant under Section 20 of

the NDPS Act, 1985.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgment under appeal and the record.

Learned counsel for the appellant has vehemently argued that there is a major contradiction in the evidence of PW6 Tula Ram, Deputy Superintendent of Police and evidence of Inder Singh, Investigating Officer who has been examined as PW9. He submits that Tula Ram, Deputy Superintendent of Police when examined as PW6 has stated that he received information at about 01:45 PM and he reached at the spot at about 02:30 PM. He has further stated that he stayed there for about an hour.

Learned counsel pointed out that on the other hand, Investigating Officer, Inder Singh who has been examined as PW9 has stated that the police party started from Police Station at 12:30 PM on a motorcycle and reached at the place of occurrence on 02:20 PM. He has further stated that the Deputy Superintendent of Police arrived at 03:15 PM.

It may be noticed that the statement of the Deputy Superintendent of Police, PW6 was recorded after a period of almost two years i.e. on 16.02.2013. Minor variation is bound to occur. Similarly, PW9 Investigating Officer Inder Singh was examined on 31.05.2013, therefore, contradiction as pointed out by the learned counsel for the appellant does not create a dent in the correctness of the case setup by the prosecution.

Learned counsel for the appellant has further argued that there is contradiction in the statement of SHO, Yashpal Singh, who later on became Deputy Superintendent of Police, examined as PW10 and the

Investigating Officer. He pointed out that Yashpal Singh has stated that the accused and the case property were produced before him at about 07:00/07:30 PM in his office at Police Station Ganaur, whereas as per the Investigating Officer, the police party alongwith the accused reached at the Police Station at 05:40 PM.

In the considered opinion of this Court, once the evidence is being recorded after a period of two years, minor variations are bound to occur. The difference in the statement of the Investigating Officer and the SHO is natural. The appellant cannot derive any benefit out of the aforesaid variation.

Learned counsel for the appellant has further argued that SHO who has been examined as PW6 has stated that six seals of ISK were put on each parcels whereas as per the FSL report Ex.PX, only one seal was found. The relevant extract of the report of the Chemical Examiner with respect to the seals is as under:-

“One sealed cloth parcel. The seals were intact and tallied with the specimen seal as per Forwarding Authority's letter.

Description of article contained in parcel.

<i>Parcel No.</i>	<i>No. & Seal Impression</i>	<i>Description of article/sample</i>
1	6-ISK 1-YP	Sample marked here as - N-262/11 Physical appearance = Greenish brown solid substances Weight of sample received = 10g

”

A reading of the aforesaid report as reproduced above shows that report of the Forensic Science Laboratory specifically notices that six seals of seal impression ISK were found. ISK is a seal of Investigating

Officer. Whereas one seal of the then SHO Yashpal Singh was found. Once, the seals were found intact, which officer had affixed how many seals would not be sufficient to hold that the prosecution has failed to prove its case.

In view of the aforesaid discussion, this Court does not find any error in the judgment passed by the Special Court, Sonapat.

Appeal is dismissed, upholding the judgment of conviction and order of sentence.

17.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No