

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

**CRA No.S-242-SB of 2017
Date of decision:19.05.2018**

Sikander Singh @ Rinku

---Appellant.

Versus

State of Punjab

---Respondent.

CORAM: HON'BLE Mr. JUSTICE AVNEESH JHINGAN

Present:- Ms. Shweta Nahata, Legal Aid Counsel,
for the appellant.

Mr. Sidakmeet Sandhu, Assistant A. G. Punjab.

AVNEESH JHINGAN J. (Oral)

The appellant has faced trial in FIR No.252 dated 27.11.2014 registered at Police Station City Kotkapura under Section 21/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

Learned Judge, Special Court, Faridkot vide judgment dated 11.11.2016 convicted the appellant for commission of offence under Section 21/61/85 of the Act and vide order of even date, he was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of rupees one lakh and in case of default of payment of fine to undergo rigorous imprisonment for one year.

Brief facts of the case are that, on 27.11.2014, ASI Balwant Singh, ASI Angrej Singh and other police officials were patrolling in a private vehicle. Near Cardboard Factory Sikhawala Road, Kotkapura they saw a person coming on foot. On seeing the police party, he became perplexed and turned towards Cardboard Factory. He was apprehended by

police officials. On enquiry he disclosed his name as Sikander Singh @ Rinku son of Baljinder Singh, resident of old city Street No.3, Dr. Dalip Singh Street Kotkapura. He was having a plastic bag in his right hand. Before conducting the search, IO introduced himself and made him aware about his legal right to get himself searched in presence of Gazetted officer or Magistrate. He signed the consent memo which was attested by ASI Angrej Singh and Head Constable Karamjit Singh. As he posed confidence in IO, the search was conducted. On search from the plastic bag 490 gms of intoxicating powder wrapped in a polythene envelope was recovered. Two samples of 5gms each were separated and remaining 480 grams of powder was converted into separate bulk parcel. All the three parcels were sealed and seal bearing impression 'BS' was put. Seal after use, was handed over to ASI Angrej Singh. All the parcels alongwith form No. M-29 were taken into possession by the IO. Recovery memo was prepared which was attested by ASI Angrej Singh and Head Constable Karamjit Singh. The intoxicating powder was containing Alprazolam. A ruqa was sent to the Police Station through Constable Rajwinder Singh. On the basis of ruqa a formal FIR was recorded. Accused was arrested and site plan of the place of recovery was prepared. Statement of witnesses were recorded. On the next date, case property alongwith the accused was produced before the Judicial Magistrate Ist Class, Faridkot, and inventory was got attested. After receipt of report of the Chemical Examiner, challan was presented in the Court. Compliance of Section 207 Cr. P. C. was made. The prosecution examined four witnesses and photographs were exhibited as P2 to P4.

Statement of the accused under Section 313 Cr. P.C., was recorded. He pleaded he was innocent. In defence, the accused examined

DW1 Hoshiar Singh only.

After appreciating the evidence and facts of the case, the trial Court vide impugned judgment and order, convicted and sentenced the appellant as stated above.

Aggrieved of the said judgment and order the present appeal has been filed.

The learned Legal Aid Counsel appearing on behalf of the appellant argued that the prosecution has failed to prove the case against the appellant beyond reasonable doubt, there was discrepancy in the statements of prosecution witnesses regarding the place of apprehension of the appellant. It was further argued that the checking was done during day time but no independent witness was associated.

Learned Counsel for the State argued that the prosecution had duly proved its case. The recovery was duly proved. The prosecution case was duly supported by the witnesses. The present was a case of chance recovery and non association of independent witnesses will not affect the case of the prosecution. He filed an affidavit of Shri Iqbal Singh Brar, Deputy Superintendent, Central Jail Faridkot stating that appellant has undergone actual sentence of three years two months and seventeen days. The same is taken on record

After hearing learned counsel for the parties and going through the record, the contention raised by the learned Counsel for the appellant cannot be accepted.

The prosecution had proved its case beyond reasonable doubt. ASI Balwant Singh, the Investigating Officer of the case deposed as PW2. He supported the case of the prosecution that on 27.11.2014 he alongwith

ASI Angrej Singh and other police officials was on patrolling duty and near Cardboard Factory, Sikhawala Road at about 3.15 p.m., the accused was apprehended when he became perplexed on seeing the police. On enquiry he disclosed his name and the address. From the plastic bag in his right hand, 490 grams of intoxicating powder was recovered. In compliance with Section 50 of the Act he was made aware of his right. But the accused instead signed the consent memo Ex. PA and reposed confidence in IO. On search, after recovery of the intoxicating powder, two samples of five gram each were separated. The samples and the bulk samples were sealed by putting seal bearing impression 'BS'. After use of the seal, it was handed over to ASI Angrej Singh. Ruqa Ex. PD was sent through Constable Rajwinder Singh and FIR was registered on the basis of the ruqa. The recovery memos and other memos were prepared and the same were attested by ASI Angrej Singh and Head Constable Karamjit Singh. Rough site plan of place of recovery was prepared and same was exhibited as PW2/A. On return to police station, accused, entire case property and form M29 alongwith personal search recovery were produced before SHO Amritpal Singh. He verified the facts, checked the case property and put a seal bearing impression 'APS'. He took all the case properties alongwith form No.M29 in his possession. The case properties were kept intact. The FSL report was exhibited as PW2/C. The said version was corroborated by recovery witness ASI Angrej Singh who deposed as PW1. Inspector Amritpal Singh gave statement as PW4. The said statements were in consonance with the prosecution's case. The statement of Inspector Amritpal Singh also proved that the parcels of the intoxicating powder and the accused, were produced before JMIC, Faridkot alongwith inventory. The

compliance of Section 52 of the Act was proved. It was deposed that on return to police Station, the case property was deposited with MHC and one sample of intoxicating powder was kept in his custody. There was compliance of Section 57 of Act, report was sent to DSP Kotkapura. It was deposed that the samples with duly intact seals of 'BS' and 'APS' were handed over to Constable Gurpreet Singh who deposited the same in the office of FSL. Constable Gurpreet Singh made statement as PW3 regarding depositing of sample-parcels in the office of FSL, Mohali for analysis in intact condition. From the said evidence, the case of the prosecution stands duly proved.

The reliance of the counsel for the appellant is on the statement and cross examination of PW1. The relevant portion of the same is quoted below:-

On that day I was accompanied with the police party headed by ASI Balwant Singh along with other police officials and we were on private vehicle in connection with suspected persons and when we reached near Cardboard Factory Sikhawal Road, at about 3.15 pm accused present today in the Court was seen coming from the front side on foot and on seeing the police party he became perplexed and turned his left side towards Cardboard Factory.....

X X X by Sh. S. K. Arora, Accused was apprehended at about 3.15 PM on Beer Sikha Wala Road. The road leads to Beer Sikjha Wala and Sikha Wala are different roads. It is correct that on Beer Sikha Wala Road, Jyoti Model School falls. The distance between Cardboard Factory and Jyoti Model School is about half kms.....

It is correct that in my statement under Section 161 of Cr. P.C. Ex. D1 Beer Sikha wala Road is not mentioned. The Cardboard factory was on the right

hand.....

Similar reliance is placed on the statement of PW2 ASI Balwant Singh wherein it was mentioned that accused was apprehended near Cardboard Factory Sikhwala Road but in his cross-examination it was mentioned that he was apprehended at Beer Sikha Wala Road, Near Cardboard Factory. To fortify the contentions, reliance is placed upon the statement of DW1 Hoshiar Singh wherein he has stated that from Prem Nagar Basti two roads lead one towards Sikhawala and another towards Beer Sikhawala road. Further it was stated that there is no Cardboard Factory on Sikhawala road. The contention raised is not well founded. Minor discrepancy in the deposition of the witnesses are bound to be there. The accused was apprehended on 27.11.2014 and when, the statements were recorded in February, 2016, almost after 15 months, some minor variation was bound to come. Issue has crept up only because of there being two roads with almost similar name. One important aspect cannot be lost sight of, there is no variation or discrepancy that the accused was apprehended near Cardboard Factory. This has been deposed consistently. The rough site plan was prepared, in the site plan, the road, the Cardboard Factory and the place of apprehension has been duly depicted. The site plan has not been rebutted. Even otherwise statement of DW1 Hoshiar Singh in no manner put a dent on the case of the prosecution. The said witness in his cross-examination admitted that he was neither draftsman nor authorised person to prepare the site plan. No authorised plan of any authority of the area was produced. In such circumstances, no doubt can be casted upon the fact that the accused was apprehended near Cardboard Factory and recovery of intoxicating powder was made from him.

The contention of the learned Counsel for the appellant that there was no independent witness, therefore, the prosecution failed to prove its case is not well founded.

There is no infirmity pointed out in the statements of the official witnesses. No animosity has been alleged much less proved against the police officials or the witnesses. The police personnel were discharging their duties in due course. In such cases, the independent witnesses hardly come forward. No doubt, it is desirable that there should be independent witnesses but merely their absence will not mean that the statements of the police officials, which otherwise are found reliable, would be ignored. Moreover, no prejudice has been caused to the appellant as there was due compliance of Sections 52, 55 and 57 of the Act. Reliance is placed upon decision of the Supreme Court in **Major Singh Versus State of Punjab, 2010 (9) SCC 608**, wherein it was held as under :-

“16. Pandit Katara had further submitted that no independent witness of search and seizure had been examined and on this ground alone the search and seizure is rendered illegal. He submits that rigours of Section 100 of the Code of Criminal Procedure are applicable and there being no independent witness, the case of the prosecution deserves to be rejected. We do not find any substance in the submission of Mr. Katara. The case of the prosecution cannot be rejected only on the ground that independent witnesses have not been examined, in case on appraisal of the evidence on record the court finds the case of prosecution to be trustworthy. It has come in the evidence of the prosecution witnesses that an attempt was made to join person from public at the time of search but none was available. In the face of it mere absence of independent witness at the time of search and seizure will not render the

case of the prosecution unreliable.”

Further, in **Ram Swaroop Versus State (Govt. NCT) of Delhi,**

2013 (14) SCC 235, the Supreme Court observed as follows :-

*“7. To appreciate the first limb of submission, we have carefully scrutinized the evidence brought on record and perused the judgment of the High Court and that of the trial Court. It is noticeable that the evidence of PW-7, namely, Ritesh Kumar, has been supported by Balwant Singh, PW-5, as well as other witnesses. It has come in the evidence of Ritesh Kumar that he had asked the passerby to be witnesses but none of them agreed and left without disclosing their names and addresses. On a careful perusal of their version we do not notice anything by which their evidence can be treated to be untrustworthy. On the contrary it is absolutely unimpeachable. We may note here with profit there is no absolute rule that police officers cannot be cited as witnesses and their depositions should be treated with suspect. In this context we may refer with profit to the dictum in **State of U.P. v. Anil Singh, 1990 (3) R.C.R (Criminal) 585 : 1988 Supp SCC 686,** wherein this Court took note of the fact that generally the public at large are reluctant to come forward to depose before the court and, therefore, the prosecution case cannot be doubted for non-examining the independent witnesses.”*

In the light of the discussion and observations made herein above, I do not find any merit in the instant appeal which is accordingly dismissed and the conviction and sentence of the appellant is affirmed.

19.05.2018
Riya Grover

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No