

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

CRA-S-2696-SB-2015 (O & M)
Date of Decision:06.04.2018

Satnam Singh @ Satti

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harvinder Singh Mann, Advocate for
Ms. Ravinder Kaur Manaise, Advocate
as Legal Aid Counsel
for the appellant.

Mr. Amit Mehta, Sr. DAG, Punjab.

ANIL KSHETARPAL, J.

Appellant has been convicted under Section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and (in short - “The NDPS Act”) sentenced to undergo rigorous imprisonment for a period of 10 years , to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of 2 years.

The facts as noticed by the Special Court are extracted as under:

“2 Briefly the prosecution case is that on 18.5.2011 SI Gurcharan Singh alongwith other police officials was on patrol duty and checking of suspected persons. When the police party reached ahead of 100 yards from Sadda Singh Wala, one pedestrian was seen coming from the opposite direction. He was having plastic bag in his right hand. On seeing the police vehicle he got perturbed and turned towards left side field. SI Gurcharan Singh got stopped the vehicle and apprehended him. On enquiry, he disclosed his name Satnam Singh alias Satti. Attempt was

made to join independent witness, but none was available. SI Gurcharan Singh disclosed his identity to the accused and stated to him that he suspect some intoxicating substance in the plastic bag he was having in his right and search is to be conducted. I.O also apprised him that he has legal right of search before Gazetted Officer or Magistrate or he can be taken along with bag before any of them. He reposed confidence in the I.O. His consent statement was recorded. SI Gurcharan Singh made the search of plastic bag 74 vials of lomotil were recovered, each vial containing 100 tablets, total 7400 tablets were recovered. One vial was separated as sample, parcel was prepared. Bulk parcel of remaining 73 vials was prepared. Both the parcels were sealed by the I.O with his seal bearing impression G.S. Sample seal was separately prepared. Seal after use handed over to HC Darshan Singh. As the accused was possessing 7400 intoxicating tablets without any permit or licence, ruqa was sent for registration of case. Spot inspection was conducted, rough site plan was prepared. Statement of the witnesses were recorded. On return to the police station, case property produced before ASI Piara Singh. Case property produced in the Court. Sample was sent to the chemical examiner. On receipt of the report of Chemical Examiner and completion of investigation, accused was challaned under Section 22-61-85 of the Narcotic Drugs and Psychotropic Substances Act. ”

On completion of investigation, challan was presented and charge under Section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 was framed. The appellant pleaded not guilty and claimed trial.

Prosecution in order to bring home its case examined Baljit Singh as PW-1, Head Constable - Darshan Singh, PW-2, ASI Piara Singh, PW-3, SI Gurcharan Singh, PW-4. Statement of the accused as required under Section 313 Cr.P.C. was recorded and the incriminating evidence was put to him.

Learned trial Court after appreciating the evidence available on the file, found that prosecution has proved beyond reasonable doubt, the offence committed by the accused as he was found in conscious possession of 7400 tablets of Iomotil containing Diphenoxylate. Against the aforesaid judgment this appeal has been filed.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the record of the case. Learned counsel for the appellant has submitted that independent witness was not joined, although, as per the case of the prosecution independent witnesses were available. He has submitted that prosecution has alleged that attempts were made to join independent witnesses but their names have not been disclosed. He has further submitted that although it is the case of the prosecution that memos of recovery search and consent were prepared before sending the information to the police station for registration of the FIR. However, all these memos contain FIR number, therefore, there is a strong doubt on the correctness of the case as set up by the prosecution. He has further pointed out that there are material contradictions in the evidence of Darshan Singh (PW-2) and SI Gurcharan Singh (PW-4). He has submitted that Darshan Singh (PW-2) has stated that colour of the bag was 'ghashmela', whereas PW-4 i.e.

Investigating Officer has stated that bag was of white colour. He has further

pointed out that PW-2 has stated that the police party remained at the spot for 3 ½ hours, whereas PW-4 has stated that the police party remained at the spot for 5 hours. He has also pointed out that PW-2 has stated that other persons were also checked on that day but PW-4 says that police party did not check any other person. He has further submitted that the place of origin of the narcotic recovered has not been raided and therefore link evidence is missing. He has further submitted that there is non compliance of Section 50 of the NDPS Act, 1985.

On the other hand, learned counsel for the State of Punjab has submitted that it was the case of huge recovery of 7400 tablets of lomotil in the conscious possession of the appellant. He has pointed out that there is compliance of Sections 42 and 50 of the Act as the appellant had consented to the search by the Investigating Officer and a consent memo was also recorded. He has also pointed out that all the memos as referred to by the learned counsel for the appellant show that originally the space for FIR number was left blank with a simple line as a mark and FIR number was filled in after information in this regard was received from the police station. He has pointed out that drug content Diphenoxylate has been found to be 458.80 grams, whereas commercial quantity is 50 grams and above. He has further submitted that the appellant has never made any complaint to any official regarding false implication.

As far as argument of learned counsel with regard to non joining of public independent witnesses is concerned, it may be noticed that Investigating Officer has specifically stated that efforts were made to join the independent public witnesses, however, no one came forward. It is settled that non joining of independent witness cannot be treated fatal to the case of the prosecution. The evidence produced by the prosecution is to be examined with

more care and caution. It is well known fact that public witnesses usually are reluctant to join any such investigation. Hence, let us examine the evidence minutely.

As regards presence of the FIR number on the memos, which is the star argument of learned counsel for the appellant, let us examine the memos. First memo is Ex.PC, and it is apparent from examining the aforesaid memo that space for entering the FIR number was left blank and filled later on. Same is the position with regard to memo Ex.PD and Ex.PS. It is the case of the prosecution that accused was presented before the Illaqua Magistrate on the next day and learned Magistrate passed the orders Ex.PI and Ex.PJ. In these circumstances, this Court does not find any substance in the argument of learned counsel for the appellant.

Learned counsel as noticed above, has pointed out certain contradictions. With regard to the colour of bag, the meaning of the word 'ghashmela' is dirty. That means the bag was dirty. The other witness has only stated it was to be white. The witnesses have been examined after a period of more than 3 ½ years. Similarly, contradiction with regard to time spent at the spot and checking of other persons are not significant once the evidence is being recorded after a period of 3 ½ years to create a dent in the case set up by the prosecution.

Next argument of learned counsel is that place of origin of the substance recovered has not been raided to establish the link evidence. Recovery from the appellant is lomotil tablets, which were contained in 74 vials having 100 tablets each. The accused was found in possession of the tablets without any permit or licence. The sample was forwarded to the chemical examiner and as per report, Diphenoxylate was found.

Last submission of learned counsel is that there is non compliance

of Section 50 of the Act. On examination of the file, it is established that the Investigating Officer gave the appellant an option to get the search conducted either from Gazetted Officer or a Magistrate, however, he reposed his faith in the Investigating Officer. His consent memo was duly recorded which is Ex.PB and signed by the appellant.

In the considered opinion of this Court, the requirement of law is that before conducting search the accused has to be apprised of his rights to get the search conducted from a Gazetted Officer or nearest Magistrate. However, if the accused reposes faith in the apprehending Officer and does not opt for search from a Gazette Officer or a Magistrate, the apprehending Officer can proceed with the search.

This Court has also seen the report of chemical examiner, which is Ex.PX on the file. One parcel sealed with two seals; one each of 'GS' and 'PS' was received through Head Constable Baljit Singh on 24.05.2011. Seals on the parcel were found intact and matched with the sample seal impressions. On opening the parcel, 100 tablets of white colour were found. As per the report, each tablet contained Diphenoxylate Hydrochloride 2.4 mg.

In view of the aforesaid discussion, this Court does not find any good ground to interfere with the judgment of conviction and order of sentence passed by the learned trial Court.

Appeal is dismissed.

06.04.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No