

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

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CRA-S-3855-SB-2016 (O & M)

Date of Decision:10.02.2018

Kuljinder Singh @ Jeenu

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gagandeep Singh Chhina, Advocate
for the appellant.

Ms. Monika Jalota, DAG, Punjab.

ANIL KSHETARPAL, J.(Oral)

Appellant is in the appeal against the judgment of conviction and order of sentence passed by the learned Special Court, Jalandhar in FIR No.172 dated 29.08.2013 under Section 22/61/85 of the NDPS Act registered at Police Station Division No.5, Jalandhar sentencing him to undergo rigorous imprisonment for 10 years and pay a fine of Rs.1,00,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year.

The case of the prosecution is that on 29.08.2013, ASI Malkiat Singh along with other police officials were going from Babrik Chowk to Babu Jagjiwan Ram Chowk in connection with patrolling duty and checking of bad elements on their private vehicles. When they reached just ahead of Children Park near turn of Janak Nagar, Basti Sheikh, a person carrying a bulky polythene carry bag in his right hand was seen coming on foot from the side of Janak Nagar. On seeing the police party, accused on the pretext

his vehicle and apprehended the said person with the help of other police officials on the basis of suspicion. On being asked, the accused introduced himself as Kuljinder Kumar @ Jeenu son of Harmesh Kumar, resident of House No.108, Mohalla Janak Nagar, Basti Sheikh, Jalandhar. ASI Malkiat Singh tried to join an independent witness before conducting a search of polythene bag, carried by the accused. But no one came forward to join the police party. ASI Malkiat Singh in the presence of other police officials carried out the search of his polythene bag and intoxicant powder was recovered. Two samples of 5 grams each were drawn out of the recovered intoxicant powder. Remaining intoxicant powder on weighment came to be 102 grams. Both the above said sample parcels and remaining bulk of intoxicant powder were sealed in three different parcels by putting the same into small plastic containers. ASI Malkiat Singh put his seal bearing impression 'MS'. Form M-29 was prepared at the spot. Seal after use was handed over to Head Constable Balwinder Singh and thereafter other formalities were completed.

Learned trial Court has convicted the appellant under Section 22 (c) of Narcotic Drugs and Psychotropic Substance Act, 1985 and sentenced him as noted above.

Prosecution has examined Rajinder Kumar, Inspector as PW-1; Head Constable Balwinder Singh as PW-2; Assistant Sub Inspector Malkiat Singh as PW-3 (Investigating Officer); Pawan Kumar, Head Constable as PW-4 and Hardev Singh as PW-5.

Learned counsel for the appellant has pointed out that ASI Malkiat Singh (Investigating Officer) when appeared as PW-3 has stated as under:-

“It is correct that the bulk and sample parcel produced today in the Court do not bear any Madd number on them. I am in service of police for the last 35 years. It is correct that whenever a case property is deposited with the MHC, he allots a Madd number to it, and the same is scribed on the said case property and then it is deposited in the malkhana. It is correct that on the particulars of FIR mentioned on the parcels produced today in the Court, there is cutting on the FIR number on both the parcels.”

Learned counsel has also pointed out that further statement of ASI Malkiat Singh, creates a doubt about the genuineness of the case. He has pointed out that plastic containers which were used by the police officials for preparing sample parcels and bulk parcels had been purchased by the Investigating Officer before hand. He has drawn the attention of the Court to the statement, which is extracted as under:-

“Plastic containers were also already with me, which I had purchased from M/s Jain Plastic situated at Basti Sheikh, Jalandhar.”

He has further submitted that there is a contradiction in the evidence of Balwinder Singh (PW-2) and ASI Malkiat Singh (PW-3) with regard to writing which was carried out by the police officials at the place of occurrence. Balwinder Singh while appearing as PW-2 has stated that entire writing work was carried out at the spot after arranging chairs and tables from the neighbouring house, whereas ASI Malkiat Singh (PW-3) when appeared in evidence stated that he carried out the writing work while

sitting on a platform constructed outside the park.

After examining the evidence as noticed above, it is clear that prosecution has failed to prove the case beyond reasonable doubt. A reading of the statement which has been extracted above clearly establishes that sample parcels and bulk parcels produced in the Court did not bear any madd number on them. It is admitted by ASI Malkiat Singh that whenever case property is deposited with MHC, he allots a madd number to it and the case property and parcels are deposited after writing madd numbers on the same so as to avoid any chance of mixing. Still further, even the parcels, which were produced in the Court, were having cuttings on FIR number written on the parcels.

Further, police officials, who were on patrolling, had gone on their private vehicles i.e. 2 two-wheelers. It is not understandable why Investigating Officer in advance had purchased the plastic containers, which were to be used for preparing samples. From the statement of ASI Malkiat Singh, it is clear that he had purchased the plastic containers in advance and was carrying these containers while going for patrolling duty early in the morning because the incident is alleged to have occurred at 4:00 AM. The accused was apprehended at 4:05 AM.

Further as noticed above that there is a contradiction with regard to the location and manner in where entire writing work was done. Balwinder Singh (PW-2) states that it was carried out at the spot after arranging chairs and tables from the neighbouring house whereas ASI Malkiat Singh (PW-3) Investigating Officer has stated that the writing work was carried out while sitting on a platform outside the park. There is no mention of table and chairs having been arranged from the neighbourhood.

In view of the aforesaid, this court finds that the evidence led by the prosecution does not inspire confidence. Hence, appellant-convict is entitled to benefit of doubt.

The appeal is allowed. The judgment passed by the learned trial Court is set aside. If any fine has been already deposited the same shall be refunded to the appellant.

10.02.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No