

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

CRA-S-3087-SB of 2014

Date of Decision: 10.01.2018

JOGINDER SINGH

....Appellant

Versus

STATE OF HARYANA

....Respondent

CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. G.S. Sidhu, Advocate
for the appellant.

Mr. A.P.S. Gill, AAG, Punjab.

ARVIND SINGH SANGWAN, J.(Oral)

The challenge in this appeal is to the judgment dated 03.03.2014 passed by Additional Sessions Judge, Sirsa vide which the appellant-Joginder Singh alongwith the co-accused Buta Singh was convicted for offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and was sentenced to undergo imprisonment of 28 days (already undergone) alongwith a fine of Rs.3,000/-.

It is a matter of record that co-accused Buta Singh has not preferred any appeal challenging the impugned judgment. Learned counsel for the petitioner submitted that no proper procedure under Section 50 of the Act was followed and no independent witness was joined by the police.

As per the version given in the First Information Report, PW1- SI Indraj Singh, on suspicion apprehended accused namely, Joginder Singh (appellant) and co-accused Buta Singh. They were served with a notice Ex. PA to appellant-Joginder Singh and Ex. PB to co-accused Buta

Singh apprising them on their right to be searched before a Magistrate or a Gazetted Officer. Both the accused filed their reply Ex. PA/1 and Ex. PB/1, while reposing faith upon PW1, that he can take the search. The notice and reply were duly signed by PW2- HC Mahender Singh and Constable Sanjay Kumar. Thereafter, the search of the Bolero vehicle was conducted and one polythene containing opium was recovered. PW-1 separated two samples of 10 gms each and converted the same into parcels and the residue parcel was also sealed, which on measurement were found 30 gms. The sealed (IS) was handed over to PW-2 and vide recovery memo Ex.PC attested by the aforesaid witness the same was taken into possession by the police. Thereafter, PW-1 SI Indraj Singh prepared a *ruka*(written information) Ex.PD and send the same to the police station through Constable-Sanjay Kumar for registration of the First Information Report and thereafter, First Information Report Ex. PE was registered by Inspector-Hira Singh. PW-1. After completing the investigation and preparing the rough site plan Ex.PF, he formally arrested the accused person and took the case property as well as the vehicle in possession and thereafter they were produced before Inspector/SHO Hira Singh Police Station Kallanwalai for verification. PW5-Hira Singh-Inspector, checked the parcel of the samples and case property and reported that the seals were found to be intact and he affixed his own seal 'HS' on each parcel and gave his specimen seal impression. On the next day i.e. on 11.12.2011, PW1 took the case property and the accused person and produced them before the Sub Divisional Judicial Magistrate/Illaqa Magistrate Dabwali who attested the inventory of the case property and passed a detailed order Ex. PI. PW 6 EHC Ajit Singh, Government Photographer, took the photographs of the case property during the process of inventory and thereafter, PW1 deposited the

case property as per rule. On 25.01.2012, PW3-HC Rajender Singh took the samples sealed parcel and handed over to the Director FSL, Madhuban for analysis and thereafter report Ex.PX was received from Assistant Director, FSL, Madhuban reporting that the contents of the samples contained opium.

On completion of the investigation, the challan was presented and charges were framed against the appellant as well as against the co-accused under Section 18 of the NDPS Act.

The prosecution in support of his case produced PW1 SI Indraj Singh, PW2 HC Mahender Singh and PW5 Inspector Hira Singh, the Investigating Officer, recovery witness as well as SHO respectively and deposed on the line of conducting the entire investigation, verification and recovery of the case property. Similarly, PW3 and PW4 two Head Constables tendered their affidavits regarding deposition of the sample/residue in the *malkhana* and handing over the same to FSL. PW6 E/ASI Ajit Singh deposed regarding the photography done by him while preparing the inventory before the Magistrate.

The Trial Court, after recording the statement of the accused person under Section 313 of the Cr.P.C. and then vide impugned judgment held them guilty of offence punishable under Section 18 of the Act and awarded the sentence as noticed above.

After hearing the learned counsel for the appellant, I find no merit in the appeal. The co-accused Buta Singh has not challenged the judgement of conviction and order of sentence and only the appellant has challenged the same. Secondly with regard to the violation of the mandatory provisions of Section 50 of the Act, it is apparent on record that the Investigating Officer has followed the proper procedure as he has given

a due notice informing the appellant about his right to be searched before a Gazetted officer or a Magistrate and thereafter, when the recovery was effected and accused persons were arrested, then they were produced before the Investigating Officer and later on the same was verified by Sub Divisional Judicial Magistrate, Dabwali. So far as, non-examination of an independent witness is concerned, it is well settled principle of law that in the absence of any allegation of malafide of the official, mere non-examination of the independent witness does not vitiate the trial.

A perusal of impugned order of sentence show that after holding the appellant guilty under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the trial Court has already shown much leniency by awarding sentence of only 28 days (already undergone by the appellant) and a fine of only Rs. 3000/-. Even on this account, no interference in the impugned judgment is made out.

In view of the above findings, I find no merit in the present appeal and the same is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

January 10, 2018
rashmi

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no