

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

CRA S-4320-SB of 2016 (O&M).

Date of Decision: 17.03.2018.

Daler Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Ms. Anju Sharma, Advocate,
for the appellant.

Ms. Seena Mand, DAG Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment of conviction dated 30.09.2016 and order of sentence dated 03.10.2016 passed by Judge, Special Court, Patiala vide which the accused/appellant has been convicted under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and sentenced to undergo RI for 10 years and to pay fine of Rs.1 lakh with default stipulation.

The brief facts of the case as noticed in paragraph No.2 of the impugned judgment passed by the trial Court are as under:-

“The allegations in brief as levelled against the present accused Daler Singh are that on dated 02.09.2013 ASI Bhupinder Singh along with the other police party was present at the turning of village Shadipur in the revenue limits of Bhunerheri,

connection with patrolling duty and search of bad elements, where Rinku son of Sunder Lal resident of village Bhunerheri met ASI Bhupinder Singh and when he was talking with aforesaid Rinku, ASI Bhupinder Singh received a secret information that Daler Singh son of Tehal Singh resident of village Rasoolpur Joran, is indulging in selling the intoxicant tablets to the villagers and at that time he is coming from village Shadipur towards village Bhunerheri on foot along with the intoxicant tablets and if he is arrested, the intoxicant tablets in large quantity can be recovered from him. Considering the aforesaid information reliable, ASI Bhupinder Singh laid a nakkabandi and in the meantime at about 4.20 pm, a person was seen coming from the side of village Shadipur, who on seeing the police party became perplexed and tried to turn towards Ruries on his left hand side. It has been further alleged that on suspicion, ASI Bhupinder Singh apprehended the said person and on enquiry, he disclosed his name as Daler Singh son of Tehal Singh resident of village Rasoolpur Joran. It has been further alleged that thereafter, ASI Bhupinder Singh after disclosing his identity to the accused told that he has a doubt that

the accused may be carrying some narcotic substance, in his possession, and he is to be searched for that and before that, the accused has a right to get himself searched, either in the presence of some Gazetted Officer or a Magistrate, who can be called at the spot. The accused reposed confidence upon ASI Bhupinder Singh and thereafter, ASI Bhupinder Singh conducted the search and intoxicating tablets having inscription of MIADATIL wrapped in a polythene paper were recovered from the right pocket of the trousers worn by the accused. Thereafter, ASI Bhupinder Singh had separated two samples of 10 tablets each and put the same into plastic boxes. On counting, the remaining tablets were found to be 980 tablets and he had put the same into a plastic container and converted all the aforesaid plastic containers into parcels and had affixed his seal bearing impression BS on the said parcels. Specimen seals were prepared and ASI Bhupinder Singh handed over his seal to Rinku, the independent witness and the incriminating articles were taken into possession, vide a recovery memo. It has been further alleged that the formal FIR was registered on the basis of the ruqa sent through HC Dilbag Singh. Rough site plan depicting the place of

recovery was prepared. Report u/S 57 of NDPS Act was prepared. It has been further alleged that the accused along with the entire case property was produced before ASI Surinderpaljit Singh, the officiating SHO of the Police Station. Statements of the witnesses were recorded. The sample was sent to the office of the Chemical Examiner. As per the report of the Chemical Examiner, the contents of the sample were found to be Diphenoxylate Hydrochloride. After completion of investigation, the challan against the accused was presented in the Court.”

Copies of challan along with other documents were supplied to the accused, free of costs.

Charge under Section 22 of NDPS Act was framed against the accused. The accused did not plead guilty and claimed trial.

In support of its case, the prosecution has examined PW-1 HC Rachhpal Singh, PW-2 C. Satnam Singh, PW-3 SI Surinderpaljit Singh, PW-4 HC Swaran Singh, PW-5 SI Bhupinder Singh and thereafter closed the evidence.

The statement of the accused was recorded under Section 313 Cr.P.C, wherein all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which he denied and pleaded false implication.

No evidence in defence was led by the accused.

After appraisal of the evidence, the learned trial court convicted and sentenced the accused as narrated in paragraph No.1 of the judgment.

Feeling dissatisfied, the present appeal has been filed by the accused/appellant.

Learned counsel for the appellant refers to the statement of PW-5, SI Bhupinder Singh, Investigating Officer, to contend that it has been admitted by the witness that the FSCL form (Exhibit P-2) was partially filled at the spot; the case property was not produced before the SHO; it is further contended that as per the FIR, recovery of tablets having inscription MIADATIL was effected from the appellant whereas, as per the FSL report, on opening, the parcel was found to contain ten loose tablets of white colour.

On the other hand, the learned State counsel contends that there is sufficient evidence on record to convict the accused/appellant. She supports the judgment and order passed by the trial court.

Heard.

It is to be noticed that the Form No.29 was partially prepared on the spot as has been admitted by PW-5 SI Bhupinder Singh, Investigating Officer of the case. In **Ram Lubhaya vs. State of Punjab 2014(1) RCR (Criminal) 697** this Court while relying upon the judgment rendered in **Bhola Singh vs. State of Punjab 2005(2)**

RCR (Criminal) 520 held as under:-

“It has been observed that “CFSL Form” should be prepared at the spot and deposited in Malkhana. Where the seal remained with the police after use and the CFSL form was neither prepared on the spot nor deposited in the Malkhana, such circumstance would be fatal to the prosecution case. Filling of such form at the spot is a very valuable safeguard to ensure that the seal sample is not tampered with till its analysis by the FSL. In the present case, from the statements of PW-4 ASI Kulwant Singh and PW-5 SI Dharam Pal, it reveals that CFSL form was not attached with the case property, which also creates a dent in the prosecution case.

Not only that, as per the version recorded in the FIR, the intoxicating tablets having inscription of “MIADATIL” wrapped in a polythene paper were recovered from the right pocket of the trousers worn by the accused whereas, as per the FSL report, Ex.PW-5/D, the tablets were loose, therefore, the prosecution has failed to prove that the tablets which were recovered from the accused/appellant and the tablets which were sent to the FSL were the same.

Taking into consideration the fact that Form No.29 was partially filled at the spot and that the recovered substance and the examined substance did not match, this Court is of the opinion that a

doubt has been created in the story put forth by the prosecution, the benefit of which goes to the accused/appellant.

In view of above, the appeal is accepted. The impugned judgment and order passed by the trial Court are hereby set aside. The accused/appellant is acquitted of the charges framed against him. He be released forthwith, if not required in any other case.

17.03.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No