

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

CRA-S-361-SB-2017 (O&M)

Date of decision : 17.02.2018

Bikkar Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Aditya Dassaur, Advocate with
Ms. Kiran Verma, Advocate for the appellant.

Mr. Sandeep Kumar, DAG, Punjab

ANIL KSHETARPAL, J.

The appellant-Bikkar Singh has filed this criminal appeal against the judgment of conviction and order of sentence passed by the Special Court, Mansa in FIR No.13 dated 04.02.2014 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act, 1985”) sentencing the appellant rigorous imprisonment for a period of 10 years and to pay a fine of ₹1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

The case setup by the prosecution as noticed by the learned Special Court, is extracted as under:-

“2. The brief facts of the case of the prosecution are that on 04.02.2014, SI Gursewak Singh, alongwith fellow police officials, riding on a Government vehicle, in connection with

patrolling duty and when the police party reached near Village Heerewala, Gardawar Singh son of Kishori Lal, independent witness, met the police party who was joined. Thereafter, police party reached about two kilometers ahead from Village Heerewala, when one person was seen coming from the opposite direction while carrying a plastic bag in his hand who on seeing the police party tried to turn towards his left hand side and during this process, the plastic carry bag fell on the ground. SI Gursewak Singh apprehended him and on interrogation, he disclosed his name as Bikkar Singh. On checking of the plastic carry bag, 17 strips of Alprax (total 1020 tablets), 12 strips of tarmaset tablets (total 120 tablets) and two vials of lomotil containing 200 tablets were recovered. 10 tablets of Alprax, 10 tablets of tarmaset and 10 tablets of lomotil were separated as samples and converted into separate sample parcels. Bulk parcel of remaining 1310 tablets was prepared separately. All the four parcels were sealed by the SI Gursewak Singh with his seal bearing impression GS. Sample seal Ex.P1 was prepared separately, seal after use was handed over to HC Ujjagar Singh. The entire case property was taken into possession vide recovery memo Ex.PB, which was attested by witnesses. Ruqa Ex.PD was dispatched through C. Naranjan Singh for formal registration of the FIR. On its basis FIR Ex.PD was registered. Accused was arrested vide memo Ex.PE, personal search memo Ex.PF was prepared. Rough site plan was prepared. On return to the police station, case property was kept by the Investigating Officer as regular SHO was out of station. Special report was sent to the concerned DSP.”

On the next day, the appellant alongwith the case property was produced before the learned Magistrate and on his orders, bulk parcel was

deposited in the Judicial *Malkhana*, whereas the sample parcels were kept in the custody of Investigating Officer for forwarding the same to the Forensic Science Laboratory. It is further the case of the prosecution that Constable Manoj Kumar was deputed to take the sample to the Forensic Science Laboratory, Mohali alongwith the docket forwarded from the Senior Superintendent of Police. The sample parcel was deposited in the office of the Chemical Examiner on 12.02.2014 and receipt was handed over to the Investigating Officer on 13.02.2014. As per the report of the Chemical Examiner Ex.PX, the presence of psychotropic substance “Alprazolam” in tablets Alprax and psychotropic substance “Diphenoxylate” was found.

In order to prove its case, the prosecution has examined Constable Manoj Kumar as PW1 who had received the sample parcel containing 10 tablets of Alprax, 10 tablets of Tarmaset and 10 tablets of Lomotil from Investigating Officer on 11.02.2014 for delivering the same with the Forensic Science Laboratory, Mohali after getting the docket forwarded from Senior Superintendent of Police, Mansa. He deposited the sample with Forensic Science Laboratory on 12.02.2014 and handed over the receipt thereof to the Investigating Officer on 13.02.2014.

Gursewak Singh, Sub Inspector, Investigating Officer was examined as PW2, who has stated that he alongwith other police officials were on a patrolling duty and when the police party reached 2 km ahead of Village Heerewala, the appellant was seen coming alongwith plastic bag in his hand who was apprehended on suspicion and on checking the plastic carry bag, 17 strips of Alprax (total 1020 tablets), 12 strips of Tarmaset (total 120 tablets) and two vials of Lomotil containing 200 tablets were

recovered. He has further stated that 10 tablets of Alprax, 10 tablets of Tarmaset and 10 tablets of Lomotil were separated as samples and converted into separate parcels. Bulk parcel of remaining 1310 tablets was prepared separately and all the four parcels were sealed by him with his seal bearing impression GS. Sample seal Ex.P1 was prepared separately and seal after use was handed over to Head Constable Ujjagar Singh. He has further stated that the entire case property was taken into possession vide recovery memo Ex.PB which was attested by the witnesses. He also proved the consent memo Ex.PC, Ruqa as Ex.PD, FIR Ex.PE, Personal Search memo of accused as Ex.PF and rough site plan as Ex.PG. He further deposed that on return to the police station, he retained the case property in his custody as regular SHO was out of station. He further stated that Special Report Ex.PH was sent to the concerned Deputy Superintendent of Police. On the next day i.e. 05.02.2014, the appellant alongwith the case property was produced before the learned Magistrate who vide Inventory Memo Ex.PI and request Ex.PJ passed an order Ex.PK and Ex.PL and thereafter bulk parcel as ordered was deposited with the judicial *malkhana*.

Head Constable Ujjagar Singh was also examined as PW3 being member of police party headed by the Sub Inspector Gursewak Singh. He identified his signatures on Ex.PB, Ex.PC, Ex.PE and Ex.PF.

Learned trial Court after appreciating the evidence available on the file found the appellant to be guilty of the offence committed under Section 22 of the NDPS Act and sentenced him as noticed earlier.

Learned counsel for the appellant has submitted that the prosecution has not examined independent witness Gardwar Singh son of

Kishori Chand. He submits that non-examination of the independent witness itself is sufficient to give benefit of doubt to the appellant. He has further submitted that the samples were not taken from the other strips and, therefore, prosecution has failed to establish that other strips also contained the same psychotropic substances.

Learned counsel for the appellant has further submitted that the appellant was not in conscious possession of the narcotics as admittedly plastic carry bag was recovered from the ground. He has further submitted that there is a delay of 8 days in forwarding the samples to Forensic Science Laboratory and, therefore, benefit of doubt should be given to the appellant.

On the other hand, learned State Counsel has submitted that as per the report Ex.PX, seals on the sample parcels were found intact and, therefore, delay of 8 days cannot be taken as circumstance to give benefit of doubt to the appellant. He submitted that on 05.02.2014, the appellant was produced before the Judicial Magistrate who got deposited the bulk parcel in the judicial *malkhana* whereas sample parcels were handed over to the Investigating Officer for forwarding it to the Forensic Science Laboratory. He has submitted that the constable Manoj Kumar has been examined as PW1 to prove that sample parcels were safely delivered with the Chemical Examiner.

This Court has considered the submissions of the learned counsel for the parties and has carefully gone through the judgment passed by the Court below and the record.

No doubt, independent witness Gardwar Singh has not been examined by the prosecution, however, mere non-examination of Gardwar

Singh cannot be treated fatal to the case of the prosecution. In absence of the examination of the independent witness, the Court is required to scrutinize the evidence with more care and caution. Hence, this Court has carefully examined the evidence. However, does not find any fault in the case put forth by the prosecution.

Second argument of the learned counsel is that the tablets in the other strips have not been got analysed. He submits that out of 17 strips of Alprax, only one strip was taken out and sample was prepared. Similarly, he has submitted that from two vials of lomotil containing 200 tablets, only 10 tablets were taken out.

Learned Counsel has relied upon the Division Bench of this Court in *2010(3) RCR (Criminal) 94, State of Punjab Vs. Dharam Singh* to contend that the prosecution was required to take sample from each strip or vial. This Court has carefully read the judgment in the case of *State of Punjab Vs. Dharam Singh (Supra)*. The aforesaid case is with respect to the recovery of loose tablets of Diazepam. In the present case, 17 strips of Alprax and 2 vials of lomotil were recovered. Hence, the aforesaid judgment would have no application in the facts of the present case.

Next argument of the learned counsel is that the narcotic was not in conscious possession of the appellant and hence the judgment of sentence is erroneous. In this regard, it must be noticed that on seeing the police party, the appellant turned towards his left side and plastic bag fell on the ground. The appellant was immediately apprehended by the police party and on search of the plastic carry bag, the aforesaid contraband was recovered. The appellant did not offer any explanation either for his

presence at the spot or presence of the plastic bag at the spot. Merely because plastic bag had fallen from the hand of the appellant on the ground, cannot be made ground that the appellant was not in conscious possession of the same. The term “conscious possession” clearly means that the person is in requisite knowledge of the articles, he is carrying.

Next argument of the learned counsel is that there was a delay of 8 days in sending the sample and, therefore, the prosecution had enough opportunity to tamper with the seals and replace the recovered material.

This argument of the learned counsel for the appellant also cannot be accepted because a look at the report of the Forensic Science Laboratory, Mohali proves that three parcels marked 1 to 3 sealed with one each seal of 'GS', with seals intact, were received in the Forensic Science Laboratory. The appellant was apprehended on 04.02.2014. He was produced before the Judicial Magistrate on the next day i.e. 05.02.2014 and sample parcels were handed over to the Constable Manoj Kumar, who has been examined as PW1 on 11.02.2014, and samples were deposited with the Forensic Science Laboratory on 12.02.2014. Hence, a small delay cannot be used by the appellant to its benefit.

Learned counsel for the appellant has further submitted that in this case, the complainant is the Investigating Officer and, therefore, the prosecution has failed to establish the case against the appellant beyond reasonable doubt. Learned counsel has referred to the judgment passed by the Hon'ble Supreme Court in (2008) 8 SCC 557, *Hardip Singh Vs. State of Punjab*. A careful reading of the aforesaid judgment would show that Hon'ble Supreme Court has not laid down that the police official who on the

basis of the suspicion apprehends a person and gets an FIR registered, forfeits his right to investigate. In fact, such contention raised before Hon'ble Supreme Court on behalf of accused was turned down.

In view of the aforesaid discussion, this Court does not find any substance in the arguments of the learned counsel for the appellant. Finding no merit, the appeal is accordingly dismissed.

The appellant who is in custody shall serve the remaining sentence, in accordance with law.

17.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No