

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

**CRA-S-53-SB of 2016
Date of Decision:26.06.2018**

Ved Parkash @ Vedu

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagdish Rai, Advocate
for the appellant.

Mr. Kirat Singh Sidhu, DAG, Punjab.

ANIL KSHETARPAL, J.

At the outset it must be noticed that the appellant has already completed his sentence and hence released. Fine has already been deposited. However, learned counsel for the appellant insisted for the judgment on merits.

Appellant was tried and convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act 1985 (hereinafter referred to as Act of 1985) and sentence to undergo a rigorous imprisonment for a period of one year and also a fine of Rs.2000/-, in default of payment of fine further undergo imprisonment for a period of one month.

Facts of the case as noticed by the learned trial Court are as under:

That, on 27.03.2013, SI Sukhminder Singh, along with his police companions, in connection with patrolling duty, while on private vehicle, was proceeding from I.T.I. Chowk, Budhlada to Football Chowk, Budhlada. When the police party had reached a little ahead of paddy-yard, near the canal bridge, then, on the Eastern side of canal path, one person was spotted coming, while carrying something loaded in plastic bag, in his right hand. On seeing the police party, the said person, at once, tried to turn back. On suspicion, SI Sukhminder Singh with the help of

his companions, had intercepted the said person, who, on inquiry, disclosed his name as “ **Ved Parkash alias Vedu**” and he also disclosed his other particulars. SI Sukhminder Singh stated to Ved Parkash that he suspects him, to be carrying some narcotic substance in his possession and he intends to get the search conducted. He also apprised Ved Parkash, of his right to get the search conducted in the presence of Gazetted Officer or Magistrate. However, Ved Parkash reposed confidence in SI Sukhminder Singh and intended to get his search conducted from him, upon which, consent memo was prepared.

Thereafter, SI Sukhminder Singh had made an attempt to associate some independent witness, but one was available. Then, SI Sukhminder Singh conducted search of the plastic bag and the same led to the recovery of opium, wrapped in polythene paper. 10 grams of opium was separated as sample and the residue opium, weighed to be 490 grams. Separate parcels of the sample and the residue opium were prepared, which were sealed with the seal bearing impression 'SS'. Sample seal was separately prepared. Seal after use, was handed over to HC Baljit Singh. Then, all the aforesaid articles were taken into possession vide separate memo. Ruqa was sent to the police station, on the basis whereof, case was registered against Ved Parkash. Various other proceedings were conducted at the spot.

On return to the police station, the accused was detained in lockup and case property was retained by the Investigating Officer himself.

During the course of investigation, sample parcel was sent to the office of the Chemical Examiner and the latter, vide its report, opined the sample to be “opium”.

On completion of the investigation, accused Ved Parkash was sent up to face trial for the commission of offence under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 by the police of Police

Station, City Budhlada.

In order to bring home the guilt of the appellant, prosecution examined Constable Amarjit Singh as PW-1 who carried the sample to the office of the Chemical Examiner. Sukhminder Singh, Sub-Inspector (Retd.), Investigating Officer in the present case has been examined as PW-2, whereas Head Constable Baljit Singh who accompanied the Investigating Officer on the day of recovery has been examined as PW-3. Appellant was examined under Section 313 of Criminal Procedure Code and all incriminating evidence collective with the prosecution was put to the appellant. Appellant did not lead any evidence in defence.

This Court has heard leaned counsel for the parties at length and with their able assistance gone through the judgment passed by the trial Court and the record.

Learned counsel for the appellant has submitted that Section 50 of the Act of 1985 has not been complied with, therefore, the prosecution has failed to prove its case. He submitted that although the Investigating Officer has stated that offer qua search from Gazetted Officer or a Magistrate was given to the appellant-Ved Parkash, however, he submitted that there is no provision in the Act for giving such offer. He submitted that it is mandatory for the Investigating Officer to take such person who is apprehended of possessing narcotic to the nearest Gazetted Officer or a Magistrate. He further submitted that in the present case the Investigating Officer was complainant and therefore he could not be permitted to carry out the investigation. He has further submitted that there no non-compliance of Section 52 of the Act of 1985 as on reaching the police station the Investigating Officer did not deposit the alleged narcotics with the Officer Incharge of the police station.

On the other hand learned counsel for the State has supported the judgment passed by learned trial Court and has submitted that no interference is required in the judgment of the trial Court.

With respect to the first argument of the learned counsel for the appellant it will be noticed that Section 50 of the Act 1985 use the words 'if such person so requires'. Even Sub-Section(2) of Section 50 use the words 'if such requisition is made'. On careful examination of Section 50 of the Act of 1985 it is clear that if the accused so requires then it is mandatory for the prosecution to take such person without unnecessary delay to the nearest Gazetted Officer or to the nearest Magistrate. However, if the accused does not so requires, it is not obligatory on the Police Official who has apprehended the accused to take the accused to the nearest Gazetted Officer or to the nearest Magistrate. Section 50 of the Act of 1985 is extracted as under:

conditions under which search of persons shall be conducted:-

- (1) when any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.
- (2) if such requisition is made, the office may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-Section (1).
- (3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.
- (4) No female shall be searched by anyone excepting a female.
- (5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drugs or psychotropic substance, or

controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

The language of the statute is clear and need no further deliberations.

Next argument of the learned counsel for the appellant is also to be noticed and rejected as Police Official who apprehends the accused on suspicion cannot be debarred to investigate the case. Learned counsel for the appellant could not point out any statutory provision either in the Act of 1985 or in the Criminal Procedure Code debarring a Police Official who has apprehended the accused to perform the functions of Investigating Officer. In absence of any statutory bar this Court does not find any substance in the argument of the learned counsel for the appellant.

Last submission of the learned counsel for the appellant is also without any substance as the Investigating Officer when examined in the Court as PW-2 has submitted that Sub-Inspector Gurdarshan Singh was regular Station House Officer at that time. However, since he was not present in the police station at the relevant time, property was not produced before the officiating SHO on return to the police station as he was junior to him. On careful examination of Section 52 of the Act of 1985 it is provided that in normal circumstances officer arresting a person and article seized shall be forwarded without unnecessary delay to the officer in-charge of the nearest police station or the officer empowered under Section 53 of the Act of 1985. However, in view of the peculiar facts of the present case such omission on the part of the prosecution cannot prove fatal to the case of the prosecution.

In view of the aforesaid, this Court does not find any ground to interfere with the judgment of conviction or order of sentence.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

26th June 2018

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No