

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CRA No.S-4335-SB of 2017

Date of decision:22.3.2018

Jasvir Singh

... Appellant

versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Kamalpreet Bawa, Advocate,
for the appellant
Mr.J.S.Walia, Sr.DAG, Punjab
...

AMOL RATTAN SINGH, J. (Oral)

By this appeal, the appellant challenges his conviction by the learned Judge, Special Court, Moga, for the commission of an offence punishable under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to be as the Act), as also the order of sentence imposing a punishment of 1 years' rigorous imprisonment upon him, in addition to a fine of Rs.8,000/- having been imposed, in default of which he is to further undergo rigorous imprisonment for 6 months.

2. As per the case of the prosecution, ASI Sukhjinder Singh, along with HC Baljinder Singh and some other police officials, was present at Bughipura Chowk falling under the jurisdiction of Police Station Mehna, District Moga, on patrolling duty, where the ASI is stated to have received secret information that the appellant, Jasvir Singh son of Naib Singh, resident of village Talwandi Bhai, is in the habit of selling opium, which he was doing at that point also, at the Bus Stand, Link Road, Mehna.

The ASI is stated to have reduced into writing the information

received, after which he along with his party reached the bus stand, where one clean shaven person was seen to be standing (as per the prosecution version), who on seeing the police party 'got perplexed' and was apprehended. On enquiry, he is stated to have disclosed his name as Jasvir Singh (the present appellant).

3. He is stated to have been told that there was suspicion that he was carrying intoxicant material with him and that had a legal right to get himself searched in the presence of a gazetted officer or a Magistrate but the appellant is stated to have reposed confidence in the Investigating Officer and signed a consent memo for being searched by him.

At about 6.30 pm, one Bhupinder Singh son of Ram Singh, resident of Village Mehna, was stated to have been joined in the investigation as an independent witness, after which the search of the accused was conducted, leading to the recovery of opium wrapped in a polythene paper, kept in the right pocket of his pant, from which 250 grams of opium is stated to have been recovered by the police.

10 grams of opium is shown to have been separated by way of a sample, with 2 parcels prepared (of the sample and the remaining 240 grams), which was then sealed with the seal of the ASI, bearing the impression 'SS'.

The seal is stated to have been handed over to HC Baljinder Singh, with the entire case property taken in possession vide a recovery memo. A currency note of Rs.100/- and a mobile phone, a purse and a driving licence were also stated to have been recovered, all of which were taken into possession vide separate recovery memos.

A *ruqa* is then stated to have been sent by the ASI through HC

Gurnam Singh to Police Station Mehna, on the basis of which an FIR was registered by ASI Vakeel Singh and the entire case property, including the sample, were taken into possession. A site plan is also stated to have been prepared.

4. Statements of the witnesses were also stated to be recorded on the spot, after which a special report is stated to have been sent in terms of Section 57 of the Act, to the DSP, Dharamkot; (Ex.P-9 before the trial Court).

The accused and the case property along with the 'CFSL form' were produced before the learned Duty Magistrate, Moga, with the learned Magistrate stated to have sealed the case property as also the sample taken in the Court, with the seal bearing the impression 'PM', with a direction to deposit it in the police *malkhana*. The appellant then is stated to have been sent to police custody.

The report of the Chemical Examiner was presented before the learned trial Court as Ex.P-13, upon the matter having been committed to that Court. The photographs of the inventory were also exhibited before the trial Court as Exs.PW3/A to PW3/C.

5. The prosecution examined 5 witnesses, including the Investigating Officer (ASI Sukhjinder Singh) as PW4, Constable Shivjant Singh as PW2, with whom the case property was deposited by ASI Vakeel Singh, ASI Vakeel Singh (PW3), HC Baljinder Singh (PW1) and HC Surinder Singh (PW5), the said witnesses having testified as per the prosecution version already narrated herein above.

6. The appellant made a statement in terms of Section 313 Cr.P.C., denying each allegation against him and stating that the case had been planted

upon him on account of a dispute with the owner of the truck that he was driving, i.e. one Brij Lal, on account of which dispute the said Brij Lal had falsely implicated him in the case.

In support of his aforesaid statement, the appellant also examined 3 witnesses in his defence (they being DW1 Charanjit Singh, DW2 Paramjit Singh and DW3 Constable Rajinder Singh).

DW1 and DW2 also testified in terms of the statement made by the appellant under Section 313 Cr.P.C., to the effect that the appellant had a dispute with Brij Lal, *Munim* of a truck union, and that actually he had been implicated in the case on account of that, with the appellant having been arrested from his house in the presence of these witnesses as also in the presence of his family members and that nothing incriminating was recovered from him.

These witnesses also deposed that they in fact told the police officials with regard to the dispute and that they would get a compromise effected between the parties, after which they took the accused to the police station and subsequently came to know that he had been falsely implicated in the case in question.

As regards DW3, though his testimony has not been discussed in the judgment of the learned trial Court, a perusal thereof from the record summoned by this Court, shows that he simply testified with regard to having brought the *roznamcha* (Daily Diary Report) dated 12.4.2014, pertaining to registration of FIR no.33 on that date, as regards the offence made out against the appellant.

In cross-examination, this witness stated that he otherwise knew

nothing about the case.

7. Eventually, on considering the aforesaid evidence, the learned trial Court disbelieved the defence witnesses (DW1 and DW2), on the ground that no complaint was made to any higher authority with regard to false implication of the appellant.

Consequently, on the basis of the prosecution evidence, the appellant was held guilty of the charge framed against him as already noticed in the opening para of this judgment and sentenced accordingly.

8. Before this Court, learned counsel for the appellant first submits that PW1 HC Baljinder Singh stated in his cross-examination that he did not know as to what was recovered from the appellant.

He further points to the fact that in his cross-examination the same witness also stated that did not remember the colour or engine and chassis number of the vehicle, or even as to whom the vehicle belonged, in which they were going for patrolling. He also did not remember its registration number.

He also points out that this would be rather strange in view of the fact that PW4 ASI Sukhjinder Singh, who is stated to have made the recovery from the appellant, stated in his cross-examination that the car used was his own private car, also giving the number of that car, though which he had duly entered in the DDR.

Learned counsel for the appellant further submits that it would be strange that HC Baljinder Singh even did not know that the car belonged to ASI Sukhjinder Singh, his immediate senior colleague in the same police station.

He further submits that as a matter of fact, the number of the vehicle is not given even in the DDR (Ex.DW3/A).

He next submits that the defence witnesses also having testified in terms of the statement made by the appellant under Section 313 Cr.P.C., the learned trial Court erred in not believing their testimonies simply because no application had been made to the higher authority.

9. Learned State counsel on the other hand submits that PW1, HC Baljinder Singh, in his examination-in-chief very clearly stated that opium was recovered from the right pocket of the pant (of the accused), which was wrapped in a glazed paper, from which the Investigating Officer had separated a 10 gram sample and put it into a plastic box which was sealed, with a 'parcel prepared', the remaining opium being 240 grams on weighment.

Hence, he submits that his statement in cross-examination, to the effect that he did not know what was recovered from the appellant at the time when his '*jamatalashi*' was conducted, has actually no meaning.

As regards not having knowledge of the vehicle on which the police party travelled, learned State counsel points to that part of the cross-examination of the said witness, that a private vehicle was already parked in the police station in which they got in and travelled, though he did not remember the registration number and mark of the vehicle, which he submits is not surprising, as nobody would generally remember the registration number of the vehicle, if it is not his own vehicle.

He reiterates that as noticed by the learned trial Court, no application to any higher authority, with regard to false implication, was made either by the appellant or any any of his family members etc.

10. Having considered the aforesaid arguments and also having perused the necessary part of the record, though I find that what the learned trial Court held as regards no application having been moved to higher authorities as regards false implication, would not be wholly unsustainable reasoning, however, with 2 witnesses having testified to the effect that the appellant was actually arrested from home, whether the application was not made on account of fear or otherwise, would be something which would create some doubt. What further does create a doubt on the manner of recovery and arrest, is the fact that HC Baljinder Singh stated in his cross-examination that he also did not know as to who the vehicle belonged to, in which they had travelled, which was standing in the police station, when it actually belonged to a person posted in the same police station, whom he was accompanying, and it would therefore be rather strange in my opinion, that he did not know that the vehicle belonged to his own senior colleague, of that very police station, he not even remembering its colour, as per his cross-examination.

Of course, him not remembering the registration number, the engine and the chassis numbers cannot be faulted, because no person travelling in a car other than his own can be expected to simply off hand remember the number of the vehicle that he was travelling in.

However, further, as pointed out by learned counsel for the appellant, it is seen from the copy of the DDR (*roznamcha*), Ex.DW3/A exhibited before the learned trial Court, that though PW4 ASI Sukhjinder Singh testified to the effect that he had entered the number of the vehicle in the *roznamcha*, factually that is incorrect, with no such number given at entry

no.14, pertaining to him and the police party going for patrolling at 4.00 pm, on the date in question; (though the date is not specifically given in the copy of the *Roznamcha* as which was exhibited before the trial Court). Thus, even he did not enter the number of the car, though it was stated to be his own vehicle.

That being so, in the opinion of this Court there are too many inconsistencies in the story of the prosecution, including the fact that the police official shown to be accompanying the police party, did not even know that the vehicle that he travelled in belonged to his own senior colleague, nor even its colour, though it was parked in the police station premises, as contended.

Further, the fact that the person to whom the private vehicle is stated to be belonging, i.e. ASI Sukhjinder Singh (PW4), also did not actually enter the number of the vehicle in the daily diary, though he testified before the trial Court that he had so entered it.

The person stated to have been joined as an 'independent witness', at the time of the alleged recovery of the contraband, i.e. Bhupinder Singh, was also not examined by the prosecution as a witness.

Still further, it appears strange to this court that a police party consisting of at least 3 to 4 police officials other than the ASI, despite having already apprehended the appellant-accused, could not produce him before the nearest gazetted officer of Magistrate and instead got 'a consent memo' signed by him, with no reason given as to why he could not actually so produced.

In this regard, the judgment of the Constitution Bench in **Vijaysinh Chandubha Jadeja v. State of Gujarat 2011 (1) SCC 609** needs

to be referred to, wherein eventually their Lordships held as follows:-

“29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50 (1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

30. As observed in *Presidential Poll, In re*¹⁴: (SCC p. 49, para 13)

“13. ... It is the duty of the courts to get at the real intention of the legislature by carefully attending [to] the whole scope of the provision to be construed. ‘The key to the opening of every law is the reason and spirit of the law, it is the *animus imponentis*, the intention of the law maker expressed in the law itself, taken as a whole.’

31. We are of the opinion that the concept of “substantial compliance” with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said section in *Joseph Fernandez*¹ and *Prabha Shankar Dubey*² is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in *Baldev Singh case*⁴. Needless to add that the question whether or not the

procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf.

32. We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well."

(Emphasis applied by this Court).

Hence, all the aforesaid circumstances seen together, with especially two defence witnesses also having testified to the effect that the appellant-accused was actually picked up from his home on account of a dispute arising between him and the leader of the Truck Union, Brij Lal, and though they tried to effect a compromise, the case was got registered against him, are too many factors which, in the opinion of this Court, do create a very grave doubt as to whether the petitioner was actually apprehended with the contraband or the small quantity of about 250 grams of opium was simply shown to be recovered from him.

In my opinion, in such circumstances, the trial Court relied too much on the fact that the defence witnesses had not approached any senior officer with regard to the appellant-accused having been falsely involved in the case.

In view of the above, the impugned judgment of the learned

Judge, Special Court, Moga, is hereby set aside and the appellant is acquitted of the charge framed against him under Section 18 of the Act, giving him the benefit of doubt.

He, consequently, be released from custody forthwith.

22.3.2018
pk/nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes