

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

242

CRM-A-454-MA-2016 (O&M)

Date of Decision: 29-10-2018

State of Haryana

..Petitioner

versus

Ranjeet

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Yashwinder Singh, DAG, Haryana.

Mr. Lajpat Sharma, Advocate for respondent.

RAMENDRA JAIN, J. (ORAL)

Through this application under Section 378(3), Code of Criminal Procedure, the State has prayed for grant of leave to file appeal against the judgment of acquittal dated 30.9.2015 of the trial court, whereby respondent was acquitted in case FIR No.98 dated 06.05.2015 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”) registered at Police Station, Siwani.

Briefly, on 06.05.2015, on the basis of secret information that respondent was indulged in illicit drug trade, a barrier was laid. After some time, a car was seen coming from Jhuppa side. On signal of the police to stop it, its driver tried to flee away, but was apprehended. On search of the hatch back of the car, poppy husk (chura-post) weighing 17 kg 200 gms was recovered for which respondent could not show any permit/licence. Two samples of 100 gms each were separated from the recovered poppy husk. The samples and residue were sealed with the seal “BS”, the information was sent to the police station for registration of the FIR. Consequently, the aforesaid FIR was registered.

After completion of the necessary formalities, the respondent was charge-sheeted accordingly under Section 15 of the Act.

The prosecution, in order to prove its case in all, examined 08 witnesses and tendered final report as Ex.P-8 in evidence.

Statement of the respondent under Section 313, Code of Criminal Procedure, was recorded putting entire incriminating evidence brought on record against him, to which he denied and pleaded his innocence and false implication.

On appraisal of evidence brought on record by the prosecution and hearing both the sides, the learned trial court acquitted the respondent vide judgment impugned herein.

Learned State counsel contended that learned trial court has illegally acquitted the respondent on the ground of sending the sample late to the FSL authorities, ignoring the fact that the same were received by the FSL authorities with seals intact. Therefore, there was no question of tampering with the sample. The learned trial court also failed to appreciate that no independent witnesses could be joined on account of their refusal to become witnesses. Even otherwise, joining of independent witness is rule of caution under Section 100 (4), Code of Criminal Procedure, and not mandatory.

Ld. Counsel for the respondent contends that the respondent has rightly been acquitted by the trial Court after appreciation of evidence on the record.

Having given thoughtful consideration to the submissions made by learned counsel for the parties, the instant application seeking permission to file appeal, being without any merit, deserves to be dismissed for the

reasons to follow:-

ASI Balbir Singh as PW1, has admitted that the alleged recovery was effected at the bus stand of Jhuppa Kalan, where witnesses from public were easily available, but none of them was joined in the investigation. He testified that he made efforts to join witness from the public in the investigation, but none came forward. However, he admitted that he did not even serve any notice to them for not joining the investigation. It is abundantly clear from his statement that at the time of alleged recovery of contraband, large number of independent persons had gathered at the spot, but strangely enough, the Investigating Officer did not make any effort to join them in the investigation inasmuch, as he did not even serve any notice to them for not joining the investigation. He, even did not make endeavour to note down their names and addresses for the reasons best known to him in case, they had shown their inability to join investigation. In such circumstances, it can easily be inferred that PW1 ASI Balbir Singh, Investigating Officer, was quite reluctant in joining any independent witnesses from public to corroborate the testimony of official witnesses regarding the alleged recovery effected from the car.

Consequently, solely relying upon the statements of official witnesses, without being corroborated by any public witnesses, to the mind of this Court, makes the prosecution story highly doubtful.

The contention of the learned State counsel that joining of independent witnesses from public is not mandatory in view of section 100 (4), Cr.P.C., can not at all be countenanced, keeping in view the fact that the place from where alleged recovery of contraband was effected, was a public place and witnesses from that place were admittedly, available for joining in

the investigation. In such circumstances, it was bounden duty of the Investigating Officer to join independent witnesses to witness the recovery and search proceedings. That apart, secret information was not reduced into writing.

So far as the question of sending the sample to the FSL authorities late, though seal was intact, is concerned, it is evident from the record that on 6.5.2018 the alleged contraband was recovered; on 18.5.2015 samples were sent for analysis, thereby causing a delay of 12 days in sending the same to the FSL authorities. The said delay in sending the sample to the laboratory was not at all explained. During this delayed period, seals remained with the police official. In such circumstances, possibility of tampering with the samples cannot be ruled out, even if it was found intact.

All these circumstances, discussed above, go to show that the prosecution has miserably failed to prove its case beyond any shadow of reasonable doubt. Therefore, the findings recorded by the learned trial court on the basis of material available on the record, are not required to be interfered with.

I have carefully gone through the impugned judgment and find no illegality or perversity in the same. Rather the same is well reasoned based on appreciation of evidence.

In view of the foregoing reasons, the prayer made in instant application, seeking leave to appeal, is declined.

October 29,2018

Jyoti-IV

(RAMENDRA JAIN)

JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No