

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S- 210-SB of 2003 (O&M)

Date of decision : 22.2.2018

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Kuldip Singh

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Charanpreet Singh, Advocate for the appellant.

Mr. Rakeshinder Singh Sidhu, Assistant Advocate General,
Punjab.

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H. S. Madaan, J. (Oral)

Kuldeep Singh, Rachhpal Singh and Ranjit Singh, all of them being accused in FIR No. 53 dated 25.4.2000 for offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the NDPS Act'), registered with Police Station Sadar, Nawanshahr, were tried by Judge, Special Court, Nawanshahr and vide judgment dated 3.1.2003 convicted accused Kuldeep Singh under Section 15 of the NDPS Act, whereas acquitted remaining two accused Rachhpal Singh and Ranjit Singh, giving them benefit of doubt and vide order of the even date Kuldeep Singh was sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 1 lac, in default of payment of fine to undergo further

rigorous imprisonment for one year.

Briefly stated, the prosecution story is that on 25.4.2000, the Police Party from Police Station Sadar, Nawanshahr, headed by Inspector Baldev Singh was present at Barnala Gate, Nawanshahr, whereas Inspector Baldev Singh received a secret information that accused Kuldeep Singh, Rachhpal Singh and Ranjit Singh were present in their Haveli at village Bhagora, at that time and were concealing poppy husk. Accordingly, the Police Party joined Jai Pal and then DSP Halka was informed, asking him to reach the spot. A raid was conducted at the Haveli. Then Inspector Baldev Singh noticed from the boundary wall that accused Rachhpal Singh and Ranjit Singh were holding a gunny bag and were taking it aside, whereas accused Kuldeep Singh was sitting on another gunny bag. The Police Party entered the Haveli. Ranjit Singh and Rachhpal Singh ran away, whereas Kuldeep Singh was apprehended. The search was conducted as per rules, under the supervision of DSP Mr. R.K. Sharma. 34 gunny bags were lying in the Haveli of the accused, which were found to contain poppy husk. Sample of 250 grams each was taken out of those bags and the remaining bags were found to be containing 34 kgs 750 grams of poppy husk. The bags containing samples and gunny bags containing remaining poppy husk were converted into sealed parcels and were taken into possession. Necessary papers were prepared. Ruqa was sent to the Police Station, on the basis of which formal FIR had been registered.

The accused was arrested in this case and on reaching the

Police Station, he was put into lock up. The case property was deposited with MHC, during the course of which samples were sent to Chemical Examiner, Amritsar. Accused Rachhpal Singh and Ranjit Singh were also arrested later on during investigation of the case. On receipt of report from the Chemical Examiner, that sample parcels were found to be of poppy husk. All the three accused were challaned.

On presentation of challan, after making compliance of provisions of Section 207 Cr.P.C., the accused were charge sheeted for the offence under Section 15 of the NDPS act, to which they pleaded not guilty and claimed trial.

During the course of prosecution evidence, the prosecution examined Rajinder Kumar Sharma, SI Sohan Singh, Registration Creek, Dilbagh Singh, MHC Surinder Kumar, Kirpal Singh, Inspector Baldev Singh, ASI Vinod Kumar, SI Surjit Kumar, R.K. Sharma, DSP Manmohan Singh, as PW-1 to PW-10, respectively.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations contending that they are innocent; that no recovery has been effected from them; that they have been residing separately in their respective houses. During the course of their defence evidence, they examined Inspector Sohan Singh, Senior Section Supervisor Sucha Ram, Draughtsman Baldev Singh Saini, Tara Singh Atwal as DW-1 to DW-4, respectively.

After hearing arguments, the trial Court convicted and

sentenced the accused – Kuldeep Singh as mentioned above, which left him aggrieved and he has filed the present appeal

I have heard learned counsel for the appellant and learned State counsel, besides going through the record.

Learned counsel for the appellant has argued that there is nothing to show the exclusive possession of contraband by the accused-appellant. There were other inmates of the house, as such accused was wrongly convicted. In support of his contention, he has referred to various judgments i.e.:-

1. Om Parkash @ Baba vs. State of Rajasthan 2009(4)

RCR (Criminal) 342;

2. Karnail Singh vs. State of Haryana 2009(5) RCR

(Criminal) 515;

3. Harjinder Singh vs. State of Punjab 2016 (1) RCR

(Criminal) 197;

4. Darshan Singh vs. State of Haryana, 2016 (1) RCR

(Criminal) 333; and

5. State of Punjab vs. Bant Singh 1998 (4) RCR

(Criminal) 49

However, this contention is devoid of any force. As per prosecution story at the time of apprehension, accused was found sitting on the gunny bag containing poppy husk. Though his co-accused had managed to run, but he was apprehended there at the spot. The Police Party did not find any other person nearby. The place of recovery is Haveli belonging to the accused. Therefore, the Court below rightly observed that the appellant was in conscious possession

of the contraband. Although learned counsel for the appellant has argued that several procedural lapses took place while effecting the recovery, thereby causing a dent in the prosecution story and by giving benefit of the same to the appellant, he should be acquitted of the charge framed against him. But learned State counsel has contended that no violation of any mandatory provision had taken place.

My attention has been drawn to paragraph 17 of the judgment where the trial Court has dealt with the non-compliance of Section 42 of the NDPS Act, in detail observing that it is merely an irregularity which does not vitiate the proceedings. The trial Court has observed that in the present case Section 42 of the Act stands complied with in as much as, the Investigating Officer received a secret information, he apprised DSP of the matter on wireless, which amounts to proper compliance.

As regards non-compliance of Section 50 of the NDPS Act, again that does not come out to be there and this aspect has been dealt with in detail in paragraph 18.

The contentions now put forward by learned counsel for the appellant had been raised before the trial Court and the trial Court by giving detailed reasoning, has met with such objections, ultimately finding that no violation of any mandatory provision of law had taken place, which might have vitiated search and seizure .

The judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct

interpretation of law and there is nothing to hold that such order suffers from any illegality or infirmity. I do not see any reason to interfere with the same, as regards the conviction or sentence. The appeal is found to be without any merit and is accordingly, dismissed.

The accused, who is stated to be on bail, as a result of order of suspension of sentence passed by this Court, is ordered to be taken into custody to undergo the remaining sentence. Chief Judicial Magistrate, concerned is directed to do the needful at the earliest.

22.2.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No