

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-37847-2019 in/and
CRA-D-1056-DB-2018 (O&M)
Date of Decision : 2.12.2019

Aurangzeb

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Raj Kumar Gupta, Advocate
for the appellant.

Mr. Sandeep Vermani, Addl. A.G, Punjab.

AJAY TEWARI, J. (Oral)
CRM-37847-2019

This is an application for permission to lead additional evidence by way of affidavit of Gurmeet Singh PPS Deputy Commissioner of Police (Investigation), Jalandhar on behalf of respondent-State.

Counsel for the appellant states that he has no objection if the application is allowed.

In these circumstances, the application is allowed and document Annexure R-1/T along with transcription is taken on record.

Main case

1. This appeal has been filed against the judgment of conviction and order of sentence dated 6.9.2018 passed by the Judge, Special Court,

Jalandhar, whereby the appellant was convicted under Section 22 (c) of NDPS Act, 1985 (for short 'the Act') and sentenced to undergo 12 years of rigorous imprisonment with a fine of Rs. 1,00,000/- and, in default thereof to further undergo RI for one year, in case FIR No. 69 dated 20.04.2017 registered under Section 22 of NDPS Act at P.S. Division No.1, Jalandhar.

2. As per the case set up by the prosecution, on 20.4.2017 the Investigating Officer was on routine patrolling duty along with three other subordinates on two private motorcycles. They started from Police Station, Division No.-1 Jalandhar at 10:00 am and at about 11:00 am, when they reached near Canara Bank, Industrial area, a secret information was received by the Investigating Officer to the effect that the appellant was selling intoxicating injections without any licence or permit and even on that date he had arrived at Jalandhar for supplying intoxicating injection and has been wanting for customers near Kali Mata Mandir, Mini Sabji Mandi area. If a raid is conducted, he could be apprehended with a large quantity of injections. Immediately, the ruqa was sent to the Police Station and the police party proceeded to the Mini Sabji Mandi area where they saw the appellant. On a search, 300 injections of Buprenorphine IP, Omegesic 2 ml and 300 injections of Pheniramine maleate IP, Avil 10 ml were recovered from a black bag which he was carrying.

3. The appellant was sent up for trial and in the course of the trial, as many as 5 prosecution witnesses were examined. The accused-appellant was examined under Section 313 Cr.P.C. in the course of which he took the plea of being falsely implicated in the offence alleged and made a statement that he is innocent. Three defence witnesses were examined. Thereafter at the conclusion of the trial the learned trial Court

impugned judgment and order convicting and sentencing the appellant as mentioned above.

4. We have gone through the record and considered the judgment and order under challenge and the evidence of the prosecution witnesses apart from hearing the learned counsel for the appellant and learned Additional Advocate General, Punjab. The important witnesses being PW-4 ASI Rakesh Kumar (Investigating Officer) and DW-1 Sh. Imran Ali (Area Councillor), their testimony would require a close scrutiny.

5. PW-4 ASI Rakesh Kumar deposed that on 20.4.2017 he along with police party were on routine patrolling duty on private vehicles. They were near Canara Bank, Industrial Area, Jalandhar when they received a information that one person was indulging in the smuggling of intoxicant injections without any permit or licence. Informer also informed him that the said person had already come to Jalandhar with heavy quantity of intoxicant injections and was present near Kali Mata Mandir, Mini Sabji Mandi Jalandhar. If a raid is conducted, they could apprehend the accused with heavy quantity of intoxicant injections. Then PW-4 scribed ruqa and sent HC Sarfdin to the police station. Accordingly, they raided the said place and saw one person standing near Mini Sabji Mandi having one black coloured bag on his shoulder. On suspicion, that person was apprehended by PW-4. During the enquiry, the accused person disclosed his name as Aurangzeb-accused. Then PW-4 disclosed his identity to him and told him about the secret information and apprised him about his legal right to be searched before any gazetted officer or Magistrate but accused person reposed confidence upon him. Before conducting the search of the bag, PW-4 along with other police officials tried to join public witness but

none was available. On searching the said black coloured bag, 300 injections of Buprenorphine IP, Omegesic 2 ml and 300 injections of Pheniramine maleate IP, Avil 10 ml were recovered. On asking, the accused failed to produce any licence or permit for retaining the incriminating articles.

6. Second important witness is DW-1 Sh. Imaran Ali (Area Councillor) who in his deposition had deposed that on the intervening night of 19/20.4.2017 police party from Punjab accompanied by some police officials from PS Mandi, Saharanpur came to the house of Aurangzeb and forcibly took him away with them. At that time DW-1 along with other respectable of the area went to PS Mandi to enquire about the arrest of Aurnagzeb but the police officials of PS Mandi told him that as the case relates to Punjab and as such they do not have jurisdiction upon the same. During the night, the house of Aurngzeb was also searched by the police party but nothing incriminating was recovered.

7. The main argument of the learned counsel for the appellant is that it has come on record (and admitted by the prosecution witnesses) that on the previous night the same police party had gone to Saharanpur in search of the appellant in another case. They had made their arrival entry in the DDR at P.S. Mandi Saharanpur, in connection with this fact at 2:45 am. As per him, when the police party raided the house of the appellant, they took him into custody, brought him to Jalandhar and thus planted this fake case on him. To bolster this argument he has relied upon the following facts:-

i) No entry was made at the PS-Mandi Saharanpur recording the fact that the police party from Jalandhar was returning back after being unsuccessful in their attempt to arrest the appellant.

ii.) The sheer improbability of the police party having travelled, apparently on a wild goose chase through out the night and then coming back and going on routine patrolling duty as if they have spent a comfortable night in bed.

iii.) The fact that in the information which was sent to the Superior Officer, the Investigating officer did not even deem it fit to mention that the secret information which had been received was in respect of the appellant who they were trying to arrest and for which purpose they had gone to Saharanpur on the previous night.

iv.) DW-1 who was the Area Councillor of Saharanpur had deposed in categoric terms that on that night in question, the police had actually apprehended the appellant and had taken him with them to Punjab. DW-1 had placed on record affidavits of various other residents of the area which are marked as Mark 'A' to 'L'.

v.) No independent witness was joined even though arrest and recovery was made from a busy area in the middle of the day.

8. On the basis of the conjoint effect of these circumstances, it is the case of the learned counsel for the appellant that whole recovery is suspected.

9. Learned Additional Advocate General has argued that the alleged recovery was extremely heavy being 300 injections of Buprenorphine IP, Omegesic 2 ml and 300 injections of Pheniramine maleate IP, Avil 10 ml. Moreover, he referred to various judgments wherein it has been held that absence of public witness is not fatal to the case of the prosecution. Learned Additional Advocate General accepted that though it is uncommon for the police party to have travelled through

out the night and then gone on routine patrolling duty but it cannot be said

to be impossible.

10. We have heard the learned counsel for the parties and have gone through the entire evidence and we are of the considered opinion that the appeal should be allowed, for the reasons hereinafter mentioned. We find that PW-4 states in his cross-examination that after searching the house of the appellant they again went back to Police Station, Kotwali Mandi and made an entry regarding search of the house of the appellant but do not prove it on record. There is no explanation as to why the entry of departure, if made, has not been proved on the record. Further, it would be more reasonable that when the secret information regarding the appellant was received and a report was being sent to the higher authorities, it would definitely have been mentioned that the secret information was with respect to the person for whose search, the police had specifically gone to Saharanpur during the previous night. No doubt, the argument of the learned Additional Advocate General has to be accepted that the absence of the public witness is not always a fatal to the case of the prosecution but we also cannot lose sight of the fact that in a hard law like the Narcotic Drugs & Psychotropic Substance Act, the task of the Court is extremely onerous to ensure that a more stringent requirement of burden of proof is satisfied than in conventional criminal cases. The unexplained gaps which have been pointed out by the learned counsel for the appellant create a reasonable doubt about the whole occurrence and manner of recovery.

11. Consequently, the appeal is allowed and impugned judgment of conviction and order of sentence dated 6.9.2018 is set aside. Since, the appellant is in jail, he is ordered to be released forthwith, if not required in

any other case.

12. Since the main case has been decided, the pending CRM, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

2.12.2019
anuradha

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