

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

CRA-D No. 921-DB of 2018 (O&M)

Reserved on : 17.9.2019

Date of decision : 23.9.2019

Pardeep

.... Appellant

versus

State of Haryana

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma, Acting Chief Justice
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Naresh Jain, Advocate, for the appellant.

Mr. G. S. Wasu, Additional Advocate General, Haryana.

Rajiv Sharma, Acting Chief Justice.

1. This appeal is instituted against the judgment dated 20.8.2018 and order dated 21.8.2018 rendered by learned Judge, Special Court (Narcotic Drugs & Psychotropic Substances Act, 1985), Hisar in NDPS Act Case No. 20 of 2017, whereby accused Pardeep was charged with and tried for the offence punishable under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'). He was convicted and sentenced thereunder to undergo rigorous imprisonment for a period of 12 years and to pay fine of ₹ 1,00,000/- and in default of payment of fine, to further undergo simple imprisonment for two years.

2. The case of the prosecution in a nutshell is that on 2.9.2017 ASI Zora Singh along with EASI Darbara Singh and EHC Ranjeet was on patrolling duty. They noticed a Tavera car bearing registration no. PB-11BK-9065 coming from Hansi side. ASI Zora Singh signaled to stop that vehicle. He ascertained the antecedents of the driver of the vehicle. The

driver disclosed his name as Pardeep. The accused was issued notice under Section 50 of the NDPS Act and he was told that his vehicle could be searched by some gazetted officer. He reposed faith in ASI Zora Singh. Thereafter, they searched the vehicle and found a plastic bag lying behind the driver seat. It contained Codeine Phosphate O Trip Rolidine, Hydrochloride syrup 100 ML, 90 in number and Winpas Codeine Phosphate Triprocidine, Hydrochloride, Syrup Win Cerex 100 ML 70 in number. The accused could not produce any license or bill for carrying these drugs. Two bottles from each type of bottles were taken out and samples were drawn from each bottle. Remaining bottles were put in the bag. The samples as well as the bag were converted into separate sealed parcels. The site plan was prepared. The investigation was completed and the challan was put up after the completion of all the codal formalities.

3. The prosecution examined as many as seven witnesses in support of its case. The statement of the accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. According to him, he was falsely implicated in the case. He was convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 EASI Harlal led his evidence by filing affidavit, Ex.P2. According to him, on 7.9.2017 ASI Karambir Singh had taken out two parcels containing small containers of 100/100 ML duly sealed with impression JS, MS, AK along with sample seal. He deposited the parcels with the FSL, Madhuban.

7. PW2 ASI Karambir led his evidence by filing affidavit, Ex.P3. According to him, on 2.9.2017, he was posted as Moharar Malkhana in Police Station Sadar, Hisar. ASI Surender Kumar had deposited with him two bags containing small plastic bottles and two sample parcels of small plastic bottles duly sealed with seal impression JD along with sample seal. On 3.9.2017, he had taken out two bags containing small plastic bottles and two samples containing in two small plastic bottles duly sealed with seal impression JS, MS along with sample seal in perfect condition from the Malkhana. These were handed over to ASI Surender Kumar. He produced the case property before the Magistrate. On 7.9.2017, he also sent the samples through EASI Harlal for depositing the same with FSL, Madhuban. PW1 EASI Harlal deposited the same with FSL, Madhuban and handed over the receipt to him on the same day.

8. PW3 Krishan Kumar, Drug Control Officer has given his opinion, Ex.P5, that codeine phosphate came at Sr. No. 28 of the list of the NDPS Act.

9. PW4 ASI Surender Kumar deposed that on 2.9.2017, he was posted as IO at Police Station Sadar, Hisar. He reached the spot. IO Zora Singh was already present there along with accused and the case property. He handed over the accused and case property to him along with the witnesses EASI Darbara Singh, EHC Subhash and EHC Ranjeet Singh. He

carried out further investigation and arrested the accused. Meanwhile, SHO Mahender Singh reached the spot. He produced the case property and deposited the same with the Malkhana. On 3.9.2017, the accused made a disclosure statement, Ex.P7. The case property was taken out from Malkhana to be produced before the Magistrate. Inventory was prepared. Thereafter, the case property was returned to Malkhana. In his cross-examination, he deposed that he received the information at about 8.30 p.m. No public witness was present at that time. The case property was sealed with the seal of JS.

10. PW5 SI Mahender Singh deposed that he was posted as SHO Police Station Sadar, Hisar. He reached at the spot. The case property was sealed with the seal of JS. He affixed his seal MS on the case property and parcel.

11. PW6 ASI Darbara Singh deposed that on 2.9.2017 he along with EHC Subhash and EHC Ranjeet remained associated with Zora Singh. IO stopped the vehicle. IO opened the plastic bag and found containing some medicines. IO contacted the Drug Inspector. The Drug Inspector informed the IO that these medicines were covered under the NDPS Act. 70 bottles of ESKUF and 90 bottles of wincerex were found in the plastic bag. IO had taken two bottles of each type of medicines as sample and converted them into sealed parcel with the seal of JS. Bulk of remaining quantity was converted into separate parcel. According to him, the bag containing medicines was found in the dickey of the vehicle and was visible.

12. PW7 ASI Zora Singh deposed that on 2.9.2017 he along with EASI Darbara Singh and EHC Ranjeet was on patrolling duty. The suspected vehicle was stopped. The driver disclosed his name as Pardeep.

Notice under Section 50 of the NDPS Act was served upon him. The vehicle was searched. He found that the vehicle was carrying some contraband behind the driver seat. He recovered 160 vials of medicines cough syrup. It was of two types i.e. 90 vials of one type of medicine and 70 vials of other type of medicine. He made inquiries from PW3 Krishan Kumar, Drug Inspector. Drug Inspector informed him that these medicines were covered under the NDPS Act. The case property and the vehicle were taken into possession vide recovery memo, Ex.P13. In his cross-examination, he deposed that they were on routine patrolling duty. He remained at the spot for about three hours. He along with his staff had searched the vehicle. Second IO Surender Kumar had reached the spot at 9.00 p.m.

13. FSL Report is Ex.P1. According to FSL report, Codeine and Triprolidine were detected in the sample 1 and 2.

14. The prosecution case precisely is that the appellant was driving the Tavera vehicle. He was stopped. The police suspected that some contraband was being carried in the vehicle. The vehicle was searched. The contraband was recovered. The search, seizure and sealing were completed at the spot. Though notice under Section 50 of the NDPS Act was served upon the appellant but it was not required, since the contraband was recovered from the vehicle and not from the person of the appellant. Initially the Investigating Officer was not sure whether the contraband was covered under the NDPS Act. He made inquiries from PW3 Krishan Kumar. He told that medicines recovered from the appellant were covered under the NDPS Act. The case property was initially deposited with the Malkhana. Thereafter, it was produced before the Magistrate and put back in the Malkhana.

15. PW2 ASI Karambir deposed that ASI Surender Kumar had deposited with him two bags containing small plastic bottles and two sample parcels of small plastic bottles duly sealed with seal impression JD along with sample seal. On 3.9.2017, he had taken out the same and handed over to PW4 ASI Surender Kumar. He produced the case property before the Magistrate. On 7.9.2017, he also sent the samples through PW1 EASI Harlal for depositing the same with FSL, Madhuban, who deposited the same with FSL, Madhuban and thereafter handed over the receipt to him on the same day.

16. According to PW1 EASI Harlal on 7.9.2017 ASI Karambir Singh had taken out two parcels containing small containers of 100/100 ML duly sealed with impression JS, MS, AK along with sample seal. He deposited the parcels with the FSL, Madhuban.

17. Learned counsel for the appellant has vehemently argued that PW6 ASI Darbara Singh deposed that bag containing medicines was found in the dickey of the vehicle, whereas PW7 ASI Zora Singh has deposed that he found the contraband behind the driver's seat. The contraband was recovered on 2.9.2017 and the statements were recorded on 5.6.2018 in the Court. These minor discrepancies can occur as the statements were recorded after a gap of about one year. The minor discrepancies cannot effect the case of the prosecution.

18. Learned counsel for the appellant further argued that no independent witness was joined but the fact of the matter is that statements of the official witnesses inspire confidence. There was no occasion for the police to falsely implicate the appellant.

19. Learned counsel for the appellant further submitted that the seal of the sample bottles were broken, however, fact of the matter is that as per FSL report, Ex.P1, two sealed parcels in connection with FIR No. 881 dated 2.9.2017 were received on 7.9.2017. These sealed cloth parcels were intact and tallied with the specimen seal as per the forwarding authority letter. Delay of five days in sending the sample, has no effect on the merits of the case. The samples reached the FSL, Madhuban, duly sealed and not tampered with. It has come in the statement of PW2 ASI Karambir that on 3.9.2017 he had taken out the case property duly sealed in perfect condition from the Malkhana. These were handed over to ASI Surender Kumar. He produced the case property before the Magistrate. On 7.9.2017, he also sent the samples through EASI Harlal for depositing the same with FSL, Madhuban. PW1 EASI Harlal deposited the same with FSL, Madhuban. The Magistrate has also seen the case property when the same was produced before him.

20. The prosecution has proved the case against the appellant beyond reasonable doubt. There is no merit in the appeal. Accordingly, the same is dismissed.

(Rajiv Sharma)
Acting Chief Justice

23.9.2019
vs

(Harinder Singh Sidhu)
Judge

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