

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

CRA-S No.292-SB of 2005 (O&M)

Decided on: 08.07.2019

Sampuran Singh @ Gladu

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Swati Batra, Advocate (Legal Aid Counsel)
and Mr. Jagjit Singh, Advocate for the appellant.

Mr. Jagmohan Ghumman, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction dated 21.01.2005 as well as the order of sentence vide which the appellant was convicted for an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and he was sentenced to undergo rigorous imprisonment for a period of 04 years and to pay a fine of Rs.25,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 05 months.

Brief facts of the case are that 02.04.2002 ASI Ajit Singh, Incharge Police Post Bhandal Bet along with HC Kashmir Singh and other police officials was going on scooters from village Bhandal bet towards village Harnia Wala Bhullar, etc. in connection with patrolling. When the police party reached near the T-point of village Harniawala, PWs Charanjit Singh @ Channa son of Puran Singh resident of village

Bhandal Bet and Sukhjit Singh @ Sukha son of Karnail Singh resident of village Sangojla met him and they after stopping their scooter were talking with ASI Ajit Singh. In the meantime, a scooter came from the side of village Khukhrain at a high speed. ASI gave a signal to stop but the scooterist became nervous and he entered in the wheat crop fields and then he ran away from the spot after leaving the scooter. He was identified by ASI Ajit Singh and HC Kashmir Singh. A gunny bag tied with a rope was lying on the scooter bearing registration No.PB10-P-7677. The ASI in the presence of the police officials and PWs Charanjit Singh and Sukhjit Singh checked it which was found to contain poppy husk. Two samples of 250 grams poppy husk was taken out from the bag and the remaining poppy husk was weighed which was found to contain 27 Kgs. 500 grams. All the samples and the remaining poppy husk were converted into parcels and were sealed with the seal of bearing impressions AS. Specimen impressions of the seal were also prepared and all these articles were taken into possession alongwith the scooter vide recovery memo which was attested by the witnesses. Ruqa was sent to the Police Station for registration of the case, on the basis of which a formal FIR was recorded. After the completion of the investigation, the accused was arrested. The sample was sent to the Assistant Chemical Examiner, Jalandhar who reported that the sample contain poppy head and on receiving the report, the challan under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was submitted before the trial Court.

On presentation of the challan, charge under Section 15 of the NDPS Act was framed against the accused on 05.12.2003, to which

he did not plead guilty and claimed trial.

The prosecution examined Constable Malkiat Singh as PW1, HC Kashmir Singh as PW2, ASI Ajit Singh as PW3, SI Charanjit Singh as PW4 and HC Joginder Singh as PW5 and closed the evidence.

After the conclusion of the evidence of prosecution, the statement of appellant/accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution produced against him, was put to him and the appellant/accused denied the allegation of prosecution and pleaded that he has been falsely implicated in the case. However, no defence evidence has been led by the appellant/accused.

The trial Court, after hearing learned counsel for the parties and after appreciating the evidence on record, convicted and sentenced the appellant/accused under Section 15 of the NDPS Act.

Feeling dissatisfied with the judgment of conviction as well as the order of sentence dated 21.01.2005, the accused/appellant has preferred the present appeal, which was admitted on 11.02.2005. Thereafter, the sentence of the appellant/accused was also suspended by this Court vide order dated 03.03.2005 noticing the fact that out of 04 years rigorous imprisonment, he has undergone 01 year, 04 months and 25 days of total sentence and the recovery from the appellant is 28 Kgs of poppy husk, which fall in the non-commercial quantity.

Counsel for the appellant has submitted that the prosecution has failed to prove its version as ASI Ajit Singh, Incharge Police Post, while appearing as PW3 has stated as under:-

“....I did not effect any recovery from the accused

prior to the present case nor I arrested the accused in any case earlier to this recovery. I do not know regarding the details of the family of the accused. There is no entry in the conviction slip that the accused is a previous convict. The R.C. of the scooter is not in the name of the accused. Volunteered, the affidavit is in the name of the brother-in-law of the accused. I did not collect any evidence to prove that the scooter was in the name of the brother-in-law of the accused. It is incorrect that I had deposed falsely today, qua the relationship of the accused with the owner of the scooter in order to strengthen the prosecution story. It is correct that the chit pasted on the gunny bag is in torn condition and is not properly decipherable. It is correct that ASI Ajit Singh, who arrested the accused on 09.10.2003 is still alive and at present, is posted in the police line, Kapurthala. It is correct that in the report U/s 173 Cr.P.C., it is not mentioned that the case property was produced before the Ld. Magistrate....”

Counsel for the appellant has further submitted that this witness i.e. PW3 has admitted that the gunny bag/case property produced in the Court did not have the chit pasted upon it and therefore, the property is not decipherable. It is further submitted that this witness has admitted that another ASI Ajit Singh (same name) who arrested the appellant is alive and is posted in Police Lines, Kapurthala, however, this witness is not examined. It is also submitted that though it is stated in the report under Section 173 Cr.P.C. that 02 independent witnesses namely Charanjeet Singh and Sukhdev Singh were associated in the investigation, however, they were not examined and were given up by the police without any explanation.

Counsel for the appellant has also submitted that the

Investigating Officer has not prepared any inventory at the time of production of the case property before the Illaqa Magistrate and therefore, there is clear non-compliance of Section 52-A of the NDPS Act. It is further argued that the statement of this witness clearly show that even the compliance of Section 57 of the NDPS Act was not made as in the Ruqa, it is not mentioned that the report was sent to the superior officer within a period of 48 hours and further in the recovery memo Ex.PD, neither the SHO nor any witness has signed and therefore, the recovery from the appellant is highly doubtful. It is also submitted that as per the version in the FIR, the appellant was not arrested at the spot as it is the case of the prosecution that he ran away in the wheat crop fields and therefore, even the identity of the appellant is not properly proved.

Counsel for the appellant has further referred to the statement of PW3 where he has stated that he never conducted any recovery from the appellant prior to the present case and the appellant was never arrested in any case. This witness has further stated that he do not know the details of the family of the accused.

Counsel for the appellant has further submitted that the Registration Certificate of the scooter is also not in the name of the appellant/accused and no evidence was collected to find out the owner of the scooter. It is also submitted that this witness stated that scooter was owned by the brother-in-law of the appellant, however, no registration certificate or verification from the dealer was made, in this regard, to connect with the appellant.

Counsel for the appellant has also argued that in the

absence of any Gazetted Officer, in the investigation, the case of the prosecution is doubtful. It is further argued that since the appellant was not arrested at the spot, therefore, the prosecution has failed to prove the conscious possession of the alleged recovery from the appellant as 02 independent witnesses namely Charanjit Singh and Sukhdev Singh were never examined either to prove the identity of the appellant/accused or the conscious possession of the contraband recovered from the appellant.

It is lastly argued on behalf of the appellant that except the present case, the appellant is not involved in any other case and he has already undergone substantive sentence of 01 year 04 months and 25 days out of 04 years rigorous imprisonment awarded by the trial Court. Counsel for the appellant has also argued that even in the statement of the appellant recorded under Section 313 Cr.P.C., no specific suggestion was given that the appellant was in conscious possession of the poppy husk recovered and therefore the appellant is liable to be acquitted.

In reply, counsel for the State has, however, submitted that merely because the independent witnesses were not examined, do not make a dent in the prosecution version as all the official witnesses have supported the prosecution case. It is further stated that the appellant was arrested in the case on 09.10.2002 by ASI Ajit Singh of Police Station Dhilwan, who knew the appellant.

After hearing the learned counsel for the parties, I find merit in the present appeal for the following reasons:-

(a) ASI Ajit Singh of Incharge Police Post

Bhandal Bet (now posted at Police Line, Kapurthala) the official who arrested the appellant was not examined by the prosecution as admitted by PW3 – ASI Ajit Singh of Police Station Dhilwan.

(b) It has come in the statement of PW3 – ASI Ajit Singh that the chit pasted on the gunny bag is in torn condition and is not properly decipherable and therefore, the identity of the case property is not proved.

(c) As per the version of the prosecution, the driver of the scooter on seeing the police party ran away and thereafter, the appellant was arrested after a long delay and therefore, in the absence of the two independent witnesses namely Charanjit Singh and Sukhdev Singh, examined in the Court, the identity of the appellant, at the spot, is highly doubtful. More so, PW3 – ASI Ajit Singh has admitted in his cross-examination that he do not know regarding the details of the family of the appellant nor the appellant was ever arrested by him in any other case. PW2 – HC Kashmir Singh and PW3 – ASI Ajit Singh have failed to explain how they knew the appellant previously. It has also come in the statement of PW3 that no report under Section 57 of the NDPS Act was sent to the higher official within a period of 48 hours.

(d) Even the police has failed to conduct the investigation regarding the ownership of the scooter bearing registration No.PB10-P-7677, to connect the same with the appellant. Since the Registration Certificate of the scooter was not produced on record, the plea of prosecution that it belong to the brother-in-law of the appellant is not proved as even no such question was put to him in the statement recorded under Section 313 Cr.P.C.

(e) It is also admitted by PW3 – ASI Ajit Singh

that he has not prepared the inventory at the time of production of the case property before the Illaqa Magistrate and therefore, the provision of Section 52-A of the NDPS Act are not complied with.

(f) The recovery memo Ex.PD is neither signed by the SHO or by the independent witnesses, which again raises a suspicion about its authenticity.

In view of what has been discussed hereinabove, the present appeal is **allowed** and the judgment of conviction as well as the order of sentence dated 21.01.2005 awarded to the appellant is set-aside.

Bail/surety bonds of the appellant stands discharged.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

08.07.2019
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No