

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

CRA-D-783-DB of 2017 (O&M)

Reserved on : 08.04.2019

Date of decision : 11.04.2019

Manjit Singh alias Laddu

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Rajinder Mathur, Advocate,
for the appellant.

Mr. S.P.S. Tinna, Addl. A.G., Punjab.

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RAJIV SHARMA, J.

1. This appeal is directed against judgment dated 25.05.2016 and order dated 30.05.2016, rendered by learned Judge, Special Court, Tarn Taran, in Sessions Case No. 171 of 2013 dated 02.01.2013, whereby appellant Manjit Singh alias Laddu, who was charged with and tried for the offence punishable under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act' for brevity), was convicted and sentenced thereunder to undergo rigorous imprisonment for 12 years and to pay a fine of ₹ 1,00,000/-, and in default of payment thereof, to further undergo rigorous imprisonment for one year.

2. The case of the prosecution, in a nutshell, is that ASI Harsa Singh (PW.3) along with other police officials was present at Bus Stand, Dehra Sahib, on 13.06.2012. They came to know that accused Manjit Singh alias Laddu indulged in selling heroin, intoxicating powder and tablets. ASI Harsa Singh conducted raid along with other police officials. When the police party reached the grave-yard of village Lohar, the police party saw one clean shaved person. He tried to run away. He threw the polythene bag carried by him. He was apprehended on suspicion by ASI. He disclosed his identity. ASI Harsa Singh told the accused that he had suspicion that he was carrying some intoxicant substance in the polythene bag thrown by him on the ground. Search of the polythene bag was to be conducted by ASI, or any Magistrate, or any Gazetted Officer. Accused reposed faith in ASI. Consent memo was prepared. Polythene bag was checked. It contained intoxicant powder. From the recovered intoxicant powder, 50 grams was separated as sample. It was put into a plastic container. A parcel was prepared. The remaining bulk quantity i.e. 950 grams of intoxicant powder was put into different plastic container. Form M-29 was filled on the spot. The accused along with case property was produced before the SHO. He kept the case property in double lock up in Malkhana. Case property and the accused were produced before the Magistrate. The sample along with Form M-29 was sent through HC Gurcharan Singh for chemical examination. Challan was put up on receipt of Chemical Examiner's report.

3. The prosecution examined a number of witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. The defence taken by the accused was

that he was falsely implicated.

4. The accused was convicted and sentenced, as noticed above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case against his client. Learned counsel appearing on behalf of the State has supported the judgment and order of the learned Court below.

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

7. PW.1 HC Balwinder Singh testified that the Investigating Officer conducted raid with their help near the cremation ground. Accused tried to run away. He threw the polythene bag on the ground. He was nabbed. He was apprised of his legal right. He reposed faith in the Investigating Officer. Polythene bag was checked. It contained intoxicant powder. 50 grams of intoxicant powder was separated and put into plastic container. Remaining bulk, weighing 950 grams, was kept in another plastic container. The Investigating Officer put his seal HS.

8. PW.2 HC Gurcharan Singh deposed that SHO Hardip Singh handed over one sealed parcel having seal impressions HS and HS with seals intact to him. He deposited the same in the office of Chemical Examiner at Kharar.

9. PW.3 ASI Harsa Singh testified the manner in which the accused was apprehended. All the codal formalities were completed. Accused along with the case property was produced before SHO. SHO sealed the case property with his seal HS. Form M 29 was completed. Case

property was put in safe custody. On 13.06.2012, SHO handed over accused and the sealed parcel of the case property to him along with relevant record for producing in the court of Ilqa Magistrate. He produced accused along with the case property in the court of Ilqa Magistrate. In his cross-examination, he admitted that there was no mentioning in the offer of personal search about the legal right and Gazetted Officer.

10. PW.4 Inspector Hardeep Singh deposed that the case property was produced before him. He handed over the sample parcel of 50 grams intoxicant powder bearing seal impressions HS and HS with sample seal and Form M-29 to HC Gurcharan Singh to deposit in the office of Chemical Examiner at Kharar. The challan was put up after receipt of the Chemical Examiner report Ex.PW.4/D.

11. The site plan is Ex.PW.3/E and the consent memo is Ex.P1. According to the Chemical Examiner report Ex.PW.4/D, the sample contained dextropropoxyphene.

12. Learned counsel appearing on behalf of the appellant vehemently argued that Section 50 of the NDPS Act has not been complied with.

13. The fact of the matter is that the appellant threw the polythene bag after seeing the police. He was nabbed. Section 50 of the NDPS Act was to be complied with only if personal search of the accused was to be carried out. The contraband was recovered from the bag, which was thrown by the appellant, after seeing the police. Thus, the police was not required to comply with Section 50 of the NDPS Act. All the codal formalities were completed on the spot. Sample was correctly taken and sealed. It was sent to

the office of Chemical Examiner. According to the Chemical Examiner report Ex.PW.4/D, the sample contained dextropropoxyphene. The case property remained in safe custody till it was produced before the Chemical Examiner. Section 42 of the NDPS will also not be attracted in this case, since the contraband has been recovered from a public place, i.e. cremation ground. The statements of the official witnesses inspire confidence.

14. Accordingly, the prosecution has proved its case against the appellant beyond reasonable doubt. There is no reason for us to interfere with the well reasoned judgment and order of the learned trial court. The appeal is, accordingly, dismissed.

(RAJIV SHARMA)
JUDGE

April 11, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No