

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

**CRA-D-654-DBA-2002 (O&M)
Date of decision : 04.10.2019**

State of Punjab

...Appellant

Versus

Kishan Chand

...Respondent

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE H.S. MADAAN**

Present: Mr. Hitten Nehra, Addl.A.G., Punjab.

Mr. D.S. Pheruman, Advocate,
for the respondent.

JITENDRA CHAUHAN, J.

The State of Punjab has preferred this appeal assailing the judgment dated 03.12.2001, passed by learned Special Judge, Gurdaspur, thereby, acquitting the accused-respondent of the charges framed against him in FIR No.45 dated 03.03.2001, registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'), at P.S. Sadar, Pathankot.

Brief facts of the present case as noticed in the judgment passed by the trial Court are as under:-

“Prosecution story, in brief, is that on 3-3-2001, police-party headed by SI Piara Singh was present near Sarna Chowk in connection with special naka and general patrolling. There, SI received secret information to the effect that one native of Himachal Pradesh is sitting under the shade of safaida tree near the bridge of Kotli canal and is trafficking in a contraband substance and and if the raid is conducted, he can be apprehended. Considering the information to be authentic, the police party set out for the stated place where the accused was apprehended. Some contraband substance was suspected in his possession. He was asked as to whether he wanted to be searched before a Magistrate or a Gazetted Officer, but the accused opted for the Gazetted Officer, consequent whereupon a wireless message was flashed and DSP Jaswant Singh Cheema, on receipt of wireless came at the spot. Said DSP also introduced himself to the accused and asked as to whether he wanted to be searched before him he being a Gazetted Officer of the police Department or some other Gazetted Officer or before the Magistrate. But the accused reposed confidence in the DSP. Consent memo Ex.PA of the accused was drawn. The search of the accused, which was carried out as per rules, led to the recovery of one kilogram of charas wrapped in a glazed paper, which the accused was carrying in a bag. 10 grams was taken as sample and the sample as well as the residue were converted into parcels and sealed with the seal bearing letter “JS” and “PS” and were taken into possession vide recovery memo, Ex.PB, duly attested by the witnesses. Ruqa, Ex.PC, incorporating the factum of recovery was drawn

and sent to the police-station, on the basis whereof formal FIR, Ex.PC/1 was recorded. Investigator then prepared the rough site plan, Ex.PD, which correct marginal notes, recorded the statements of the witnesses and on return to the police-station, deposited the case property with the MHC with seals intact. On receipt of the report of the Chemical Examiner, Ex.PE and on completion of the investigation, the accused was challaned under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, to face judicial trial.”

The accused was charge-sheeted with the offences under Section 20 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined SI Piara Singh as PW-1, ASI Surinderpal Singh as PW-2, MHC Kashmir Singh as PW-3, C. Rachhpal Singh as PW-4, C. Darshan Singh as PW-5 and DSP Jaswant Singh Cheema as PW-6.

When examined under Section 313 Cr.P.C., the accused-respondent was confronted with the incriminating material appearing against him to which he denied and claimed trial. He pleaded false implication but did not lead any evidence in defence.

After hearing learned counsel for the accused-respondent and learned Public Prosecutor, learned trial Court vide the impugned judgment acquitted the appellant from the charge framed against him.

Hence, the instant appeal by the State of Punjab.

Learned Stated counsel contends that non-joining of any independent witness cannot be made the sole ground to brush aside the entire prosecution case, particularly, when all the prosecution witnesses have fully supported its case. Further contends that the provisions of Section 42 of the NDPS Act are not attracted as there was no identifiable conveyance, building or place to be searched. The report of the chemical examiner clearly depicts that the seals on the sample were intact, therefore, the delay of ten days in sending the sample for chemical examination is inconsequential. Cites *State of Orissa Vs. Kanduri Sahoo (SC), 2004(1) R.C.R. (Criminal) 196*; *Sajan Abraham Vs. State of Kerala (SC), 2001(3) R.C.R. (Criminal) 808*; and *Akmal Ahmad Vs. State of Delhi (SC), 1999(2) R.C.R. (Criminal) 265*.

On the other hand, learned Senior counsel representing the accused-respondent that the prosecution has failed to prove its case against the accused-respondent. The findings of acquittal returned by learned trial Court are based on correct appreciation of the evidence placed on record. Even if two views are possible, the view favouring the accused shall prevail.

Heard learned counsel for the parties and carefully perused the record with their able assistance.

This Court is in agreement with the assertions raised by learned State counsel with regard to delay in sending the samples for chemical examination. It is settled law that delay itself is not fatal to the prosecution case if the articles were lying in proper and safe custody. In this case, there is nothing on record to show that the seals were not intact or that there was

tampering with the parcels.

However, as regards the non-joining of independent witness is concerned, it has come in the evidence of PW-1, SI Piara Singh that shops were located near the place of recovery as also Village Kotli is situated at a distance of about half-a-kilometer. The prosecution has tried to justify the non-joining of independent witness on the ground that efforts were made to join some witnesses but nobody was willing. However, the details of the persons who refused to join the police party despite being requested and the proceedings which were carried out against them upon such refusal, have not been explained, therefore, submission of learned State counsel doesn't merit acceptance.

It is further to be noted that case of the prosecution is that a secret information was received by the police party against the accused and acting thereupon, the accused was allegedly apprehended from the spot. However, it has been specifically stated by SI Piara Singh while testifying as PW-1 that neither the secret information was reduced into writing, nor the same was sent to any superior officer which is a clear violation of the provisions of Section 42 of the NDPS Act which is a mandatory provision. Therefore, an adverse inference has rightly been drawn against the prosecution by learned trial Court. The case law cited by learned State counsel on these points is distinguishable on facts of the present case.

In view of the above discussion, we feel that the prosecution has failed to prove its case against the accused-respondent beyond a shadow of reasonable doubt. The findings returned by learned trial Court are based on

correct appreciation evidence placed before it. Hence, this Court is not inclined to interfere in the well-reasoned judgment of acquittal recorded by learned trial Court, which is, hereby, affirmed. As a result, the instant appeal fails and is thus, dismissed.

Dismissed.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAN)
JUDGE

04.10.2019
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No