

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-147-DBA-2003 (O&M)

Date of decision : 27.9.2019

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State of Punjab

.....Appellant

vs.

Mohinder Pal

.....Respondent

Coram: Hon'ble Mr. Justice Jitendra Chauhan
Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Ashok Kumar Singla, Senior Deputy Advocate General,
Punjab – for the appellant.

. Mr. Harsh Aggarwal, Advocate for the respondent.

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H. S. Madaan, J.

Briefly stated, facts of the case as per the prosecution story are that on 29.12.1998, a Police Party from Police Station Raikot, headed by SI Gurmail Singh, while being present on bridge of canal minor in the area of village Noorpur, to nab the drug peddlers on the basis of secret information received, had apprehended accused Mohinder Pal and on conducting a search, a plastic bag being carried by him in his hand, was found to contain 12 kgs of opium. Samples were drawn therefrom, which were converted into parcels. Bulk and sample parcels were duly sealed and taken into possession. The accused was arrested in this case. On return to the Police Station, the accused was put in the lock up and case property was deposited with the MHC. Sample parcels were sent to Forensic Science Laboratory Punjab, Chandigarh, and when report Exhibit PX was received that

the sample contained meconic acid and morphine to the extent of 3.75% which are active contents of the opium, challan was prepared against such accused and filed in the Court.

After completing necessary formalities of supplying copies of documents to the accused free of cost, under Section 207 Cr.P.C., finding a prima facie case charge for offence under Section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as 'the NDPS Act') was framed against the accused, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined Constable Vinod Kumar No. 759, Jagraon as PW-1, Constable Sukhdev Singh as PW-2, SI Gurmail Singh as PW-3, SI Jasbir Singh as PW-4, HC Kewal Singh as PW-5, Mr. Paramjit Singh Goraya, DSP Dakha as PW-6 and thereafter the prosecution evidence was closed.

After closure of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him, to which he pleaded innocence and false implication in this case. He took the plea that he was doing the business in partnership under the name and style of Dashmesh Cement & hardware Store in a shop at Hambera; that in those days a car make 'Contessa' had been snatched from its owner, which he saw to be in possession of S.I. Gurmail Singh, a Police Officer and he informed the police authorities in that regard; the car was recovered; SI Gurmail Singh

got annoyed with him and out of vengeance SI Gurmail Singh got him involved in this case falsely; that as a matter of fact no opium was recovered from him; that he was made to get down from a bus on 27.12.1998 by the police, when he was coming from Ludhiana to Hambera; that the police officials snatched cash amount of more than Rs.26,000/-, besides a gold ring from him. During his defence evidence, he examined Major Singh as DW-1 and HC Raj Kumar No. 88-I IRB, Patiala, as DW-2.

After hearing the arguments, learned Judge Special Court, Ludhiana, vide judgment dated 23.8.2002, acquitted the accused of the charge framed against him.

The State of Punjab felt aggrieved by such judgment and as such approached this Court seeking special leave to appeal, which was granted to it and the accused was summoned, who put in appearance through counsel.

We have heard learned counsel for the parties, besides going through the record.

The main reason which weighed on the mind of the trial Court, was that SI Gurmail Singh, the Investigating Officer, was holding an ORP rank of ASI on the date of recovery, therefore, he was not competent to conduct the raid and was not competent to investigate the case. Learned trial Court has observed that SI Gurmail Singh, while appearing as PW-3, in his cross examination has admitted that on the date of recovery, he was holding ORP Rank of ASI in his own rank and pay and vide order dated 8.4.1999 of SSP

Exhibit DA, he had been reverted to his substantive rank of C-II.

The accused in his defence evidence has examined DW-2, HC Raj Kumar No. 88-I, IRB, Patiala, who had brought service record of Gurmail Singh, in terms of which Gurmail Singh was given out of turn promotion to the rank of Sub Inspector of Police in his own rank and pay vide order dated 26.1.1994. Gurmail Singh had been promoted to the rank of officiating Head Constable by DIG Jalandhar Range, vide order dated 13.3.1992 and he was to get his regular promotion on the basis of seniority/merit. Gurmail Singh had been promoted on fortuitous basis to the rank of ASI by DIG Jalandhar Range, vide his order dated 1.6.1992. He had been reverted to the substantive rank of promotion list C-II in compliance with the directions of this court in CWP Nos. 13788, 13789 and 13790 of 1997. It has been noticed by the Court below that Section 42 and Section 67 of the NDPS Act, provide that the President of India was pleased to empower the officer of and above the rank of Assistant Sub Inspector of Police to exercise the powers and perform the duties specified in those Sections, within the area of their respective jurisdiction, making reference to judgments by this Court reported as *U.T. Chandigarh vs. Ram Achal @ Kalia 1998 (3) Recent Criminal Reports 147* and *Criminal Appeal No. 557-58 of 1986, titled as 'Karam Singh vs. State of Punjab'*, wherein it was observed that Head Constable is not entitled to arrest the appellant as he was not empowered under the Act and he could not conduct a search in violation of the relevant provisions contained in Chapter 5 of the Act.

A reference has been made to the Apex Court judgment reported as *Roy VD vs. State of Kerela, 2001 (1) Apex Court Journal, 49 (SC)*, wherein it was observed that no officer other than an empowered officer can resort to Section 41(2) or exercise powers under Section 42 (1) of the NDPS Act or make a complaint under clause (d) of sub section (1) of Section 36-A of the NDPS Act. The conclusion drawn by the learned trial Court, is that the investigation in the case having been conducted by a police officer holding a substantive rank of C-II which is even below the rank of a Head Constable, the alleged recovery of opium effected by him, would be per se illegal and has affected the case of the prosecution, rather it has vitiated the trial.

Learned trial Court has taken note of various other factors affecting the credibility of the prosecution story, which include that no attempt was made by the Investigating Officer to join an independent witness in the investigation and in view of tainted testimony of witnesses it is not safe to place reliance upon such depositions. Further considering the discrepancies in the statements of the recovery witnesses, learned trial Court has found that either no recovery had been effected from the possession of the accused as per version of the prosecution or that the witnesses were not present at the spot. Therefore, it can be safely said that the prosecution had failed to prove beyond the shadow of doubt that recovery of any opium was effected from the accused. In view of the cumulative factors, the accused was acquitted by the Judge Special Court,

Ludhaina.

The prosecution felt aggrieved by the said judgment and has approached this Court seeking special leave to appeal, which was granted vide order dated 10.2.2003 and notice was issued to the accused, who has put in appearance through counsel.

We have heard learned State counsel, as well as learned counsel for the respondent – accused.

The impugned judgment by learned Judge, Special Court, Ludhiana, is well reasoned and is based upon proper appraisal and appreciation of evidence, the legal and factual position. The judgment is certainly not perverse. No relevant evidence which deserve to be considered has been ignored and no irrelevant factors which did not need attention of the Court have been considered. The biggest lacuna in the prosecution case was that the Investigating Officer was not holding substantive rank of Sub Inspector and was not competent to carry out the investigation, causing the fatal blow to the prosecution case.

Thus we do not see any reason to interfere with such judgment. The appeal is found to be without any merit and the same is dismissed accordingly.

27.09.2019
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(Jitendra Chauhan)
Judge

(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No