

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1455-2019(O&M)

Date of Order:23.07.2019

Sukhwinder Singh

..Appellant

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S.Sekhon, Advocate, for the appellant.
Mr. Bhupender Beniwal, AAG, Punjab

ANIL KSHETARPAL, J.

Appellant-convict has filed this appeal against judgment passed by learned Special Court, Patiala, dated 04.05.2019, in FIR No.83, dated 17.06.2016, registered under Section 15 of the NDPS Act, at Police Station Sadar, Samana, convicting and sentencing him to undergo rigorous imprisonment for a period of 9 months and to pay fine of Rs.5,000/- or to undergo further rigorous imprisonment for a period of two months in default of payment of fine.

Facts of the prosecution's case are that on 17.06.2019 Sub Inspector Simarjit Singh along with Head Constable Jaswant Singh and other police officials in a private vehicle were present at Bus Stand Bibipur in connection with patrolling to keep check on the bad elements. Investigating Officer received secret information that Jarnail Singh son of Joginder Singh and Sukhwinder Singh son of Jarnail Singh, resident of village Nagra, who are now residing at Mohalla Amamgarh, Samana are indulging in sale of poppy husk and Jarnail Singh had sent Sukhwinder

Singh towards village Kamalpur side for sale of poppy husk. Sukhwinder Singh is present at bus stand, Kamalpur with poppy husk, waiting for customers. If the raid is conducted he could be apprehended with narcotics. The Investigating Officer having found the information reliable, proceeded to the bus stand Kamalpur where they spotted one Hindu Gentleman at Bus Stand Kamalpur at about 1.00 PM with a white coloured plastic bag. The Investigating Officer apprehended him with the help of fellow officials and the accused on being asked disclosed his identity as Sukhwinder Singh son of Jarnail Singh. Investigating Officer disclosed his identity to the accused and informed him of having suspicion that he apprehend some contraband substance in possession or in the bag carried by the accused and for that purpose he intends to search him. The accused was made aware of his legal right of getting the search conducted in the presence of a Magistrate or a Gazetted Officer, who can be called at the spot, but the accused reposed confidence in the Investigating Officer and opted for search to be conducted by the Investigating Officer. The Investigating Officer prepared consent memo which was got signed from the accused attested by witnesses. Thereafter, the Investigating Officer conducted search of the plastic bag from which poppy husk was recovered, on weighment thereof, it came to be 8 Kgs. The Investigating Officer thereafter prepared bulk sample and sealed the same with the seal impression bearing SS. The seal after use was handed over to HC Jaswant Singh. The specimen seal impression was also prepared. The case property was taken into police possession through a recovery memo which was attested by the witnesses.

The Investigating Officer, thereafter, sent information to the police station, on the basis thereof, a formal FIR was registered. Rough site

plan of the place of recovery was also prepared. The accused was arrested and the grounds of arrest were served upon him and a memo of the personal search of the accused was also prepared. The Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C and also prepared the compliance report as required under Section 57 of the NDPS Act and sent the same to the higher police officer. On reaching police station, the entire case property and the accused was produced before the officiating SHO/ASI Labh Singh, who questioned the accused and verified the facts of the case and affixed his counter seal bearing impression LS on the bulk as well as on the specimen seal chit and thereafter SHO got deposited the case property with MHC.

Next day, as directed by SHO, Investigating Officer produced the inventory, accused along with the case property before the learned Judicial Magistrate, Patiala, who compared the seals with the inventory and after opening the seal of bulk parcel, took out two samples of 100 grams each. Both the samples as well as bulk parcel were sealed by learned Judicial Magistrate Ist Class with seal bearing impression AD. Sample seal slip was also prepared separately and learned Magistrate passed the order. The photographs were also clicked. The Investigating Officer was directed to deposit the parcel/case property in Judicial Malkahana, which was complied with by the Investigating Officer except one sample parcel, sample seal and form No.M-29 which were required to be sent for analysis to the office of Chemical Examiner, Kharar.

On 08.08.2016, when Investigating Officer was present at Police Post, Ram Nagar, Pargat Singh Nambardar produced Jarnail Singh along with copy of order of the Court. Jarnail Singh was formally arrested

and after serving grounds of arrest and nothing was recovered from his personal search. Laboratory found that in the sample parcel, the poppy husk was found. On completion of the investigation and other formalities, challan was presented against the accused.

When accused appeared in court, copies of challan and documents etc. were supplied to both the accused free of cost as provided under Section 207 Cr.P.C.

Finding prima face case for commission of offence under Section 15 of the NDPS Act, charges were framed against both the accused to which they pleaded, not guilty and claimed a trial.

In order to prove its case, prosecution examined as many as 7 witnesses. Head Constable Jaswant Singh was examined as PW1 who was a member of raiding party. Balwant Singh Head Constable was examined as PW2. Whereas Inspector Gurpartap Singh was examined as PW3. Labh Singh, ASI was examined as PW4. He recorded a formal FIR on the basis of information received. Devinder Kumar Attari, Deputy Superintendent of Police was examined as PW5, whereas Nirmal Singh, ASI was examined as PW6. Investigating Officer Sub Inspector Simarjit Singh was examined as PW7.

Statement under Section 313 Cr.P.C was recorded and entire incriminating evidence brought on record by the prosecution was put to the accused to which they pleaded not guilty and claimed trial.

The accused did not lead any evidence in defence.

As notice above, learned trial Court convicted the appellant whereas acquitted Jarnail Singh.

This court has heard learned counsel for the appellant as well as

State at length and with their able assistance gone through the judgment passed by the trial court along with the record.

Learned counsel for the appellant has raised following arguments:-

- (1) That as per the case of the prosecution, Investigating Officer received secret information when they were present at Bus Stand village Bibipur but the Investigating Officer did not comply with requirements of section 42 of the NDPS Act i.e. did not reduce the secret information in writing and did not forward the same to any higher officer
- (2) The recovery is from bus stand village Kamalpur, however, no independent witness was associated
- (3) HC Balwant Singh was a member of the police party when search was conducted resulting in apprehension of the appellant. However, when PW2 appeared in evidence, he has stated that he was never associated with the investigation and Ex. PB was not prepared in his presence. He has also stated that no sample was drawn from the bag of 8 KG poppy husk at the spot. It may be noted here that he was declared hostile and additional public prosecutor was permitted to cross examine the witness. He, hence, while taking benefit of the statement of PW2, has stated that the prosecution has failed to prove its case beyond the shadow of reasonable doubt.
- (4) He further submitted that the police party was in a private

vehicle, however, vehicle number, details of the vehicle have not been disclosed.

- (5) He submitted that the CFSL Form i.e. M-29 was not filled at spot because as per record Form 29 is signed only by SHO of the police Station on 22.06.2016 whereas the alleged recovery is of 17.06.2016.
- (6) He further submitted that Section 50 of the Act has not been complied with.

On other hand, learned counsel for the State has supported the judgment passed by the trial Court.

Now let's examine with the arguments of learned counsel for the appellant.

No doubt, when Investigating Officer appeared in evidence, he admitted that he received secret information from a informant but he did not reduce the same into writing. He also admitted that he did not sent any message in writing or orally to DSP or Inspector. He further admitted that no document was prepared regarding secret information disclosed to the fellow police officials. Section 42 of the NDPS Act lays down a procedure so as to avoid any false implication. It is provided in Section 42 of the NDPS Act that secret information is required to be reduced into writing. However, question is “whether Section 42 of NDPS Act is applicable or not? On careful reading of Section 42 of the NDPS Act, it is apparent that it is applicable when entry, search, seizure and arrest is to be carried out from any building, conveyance, or enclosed place between sunrise and sunset. In the present case, the seizure and arrest is from a public place i.e. bus stop at village Kamalpur. Hence, Section 42 of the NDPS Act would not be

applicable.

Next argument of learned counsel for the appellant that no independent witness has been associated, although, the recovery and arrest of the appellant is from the Bus Stand is to be examined in the context of the statement made by Investigating Officer. The Investigating Officer has specifically stated that when search was carried at bus stand village Kamalpur, no panch, sarpanch or numberdar of the village was called at the spot. No doubt, merely because an independent witness has not been examined, cannot be sole ground to disbelieve the case of the prosecution. However, the Court is required to analyze the evidence produced by the prosecution in absence of an independent witness having been associated by the Investigating Agency more minutely and carefully. In the present case, there is some sustenance in the argument of learned counsel for the appellant particularly when the recovery is from Bus Stand, Kamalpur and the police party had already got secret information in advance, the police should have made sincere attempt to associate independent witness so as to add to the credibility of the case set up by the prosecution.

As regards the next argument of learned counsel for the appellant, it may be submitted that Balwant Singh Head Constable has been examined as PW2. He has admitted that he never remained associated in the investigation of this case before 22.06.2016 and no such incident happened in his presence on 17.06.2016. As per the final report submitted by the prosecution, Balwant Singh Head Constable PW2 was very much alleged to be member of the police party which apprehended appellant. The public prosecutor did not get the aforesaid witness declared hostile from the Court as also no effort was made to cross examine the witness. Apart therefrom, if

one reads the statement of Jaswant Singh examined as PW1, another member of the police raiding party, has gone to the extent of denying his signatures on Ex.PB, a recovery memo. He has also stated that no sample was taken from the bag of 8 Kgs poppy husk.

Cumulative reading of ocular evidence of both i.e. Jaswant Singh and Balwant Singh, counsel for the appellant has certainly made a dent in the case set up by the prosecution. Learned Presiding Judge of the Special Court brushed aside these contradictions by stating that the oral evidence is against record. The entire approach of the learned Presiding Judge was not correct. A case under NDPS Act is required to be proved by the prosecution beyond shadow of reasonable doubt. In such circumstances, it is the prosecution which has to stand on its own legs and establish its case before the Court.

Next argument of learned counsel for the appellant that particulars of the private vehicle in which the members of police party raided has not been provided, is to be noticed and rejected. It is apparent from the reading of the statement of Investigating Officer, who has been examined as PW7 that his attention was not drawn during cross-examination on this aspect of the matter.

As regards next argument of learned counsel for the appellant that Form M-29 was not filled by the prosecution at the spot again has some merit. A bare look at Form M-29, it is apparent that Station House Officer of the Police Station has signed Form M-29 along with his seal. Form M-29 is a form through which sample parcels are forwarded to the Laboratory in order to give its opinion. In this case, unfortunately, the trial Court did not realise that the form was not filled up at the place of incident. Investigating

Officer or other members of the police raiding party have not signed the same. Form M-29 is signed on 22.06.2016 i.e. after 5 days of the incident.

Last argument of learned counsel for the appellant that there is non-compliance of Section 50 of the NDPS Act has no merit. After the search of plastic bag held in hand, the police raiding party thereafter conducted a personal search. Such search of bag followed by a personal search requires that the accused-convict has to be given right/option as required under Section 50 of the NDPS Act. In this case accused was apprised of his right.

Taking into consideration the facts of the present case, evidence led by the prosecution which has been discussed above, this court is of the opinion that prosecution has failed to establish its case beyond shadow of reasonable doubt. Therefore, appellant is entitled to the benefit of doubt. Hence, the judgment passed by the learned trial Court dated 04.05.2019 is set aside and the appellant is ordered to be acquitted.

Appeal allowed.

July 23, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No