

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

CRA-D-521-DB-2016 (O&M)
Reserved on : May 23, 2019
Date of Decision: July 22, 2019

Mohan Goyal @ Soni

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Akshay Jain, Advocate for the appellant.

Mr.SPS Tinna, Additional Advocate General, Punjab.

HARINDER SINGH SIDHU, J.

This appeal is instituted against the judgment and order dated 07.05.2016 rendered by the Judge, Special Court, Bathinda in Sessions Case No.111 of 2012 whereby the appellant, who was charged with and tried for offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'), has been convicted and sentenced to undergo rigorous imprisonment for a period of fourteen years and to pay fine of Rs.1,50,000/- and in default to further undergo rigorous imprisonment for a period of two years.

2. The case of the prosecution in a nutshell is that on 22.09.2011 ASI Kirpal Singh, CIA Staff, Bathinda along with police party was on patrol duty in a government vehicle. They were going towards railway station, Bathinda through Mal Godown road. When police party reached near Shiv Mandir then accused present in the Court was seen coming from the railway

line. He was carrying a card board box on his head. When he saw the police party he tried to go back. But he fell down. The card board box fell on the footpath. Some vials came out of the box. On suspicion the vehicle was stopped and the accused was apprehended with the help of police party. Meanwhile Sonu Sharma alias Kochhi reached the spot. He was joined in police party. The accused disclosed his name as Mohan Goyal r/o Sirsa. ASI Kirpal Singh checked the said box. After collecting the scattered vials from the ground and those in the box the total was 190 vials of Rexcof each of 100ml having batch No.A-1326. The accused failed to produce the bill for the same. ASI Kirpal Singh took one vial as sample. He prepared a sample parcel and also prepared bulk parcel of the remaining recovered rexcof vials and sealed both the parcels with his seal bearing impression 'KS'. Sample seal Ex.PW4/A was prepared separately. Seal after use was handed over to HC Harinder Singh as private witness Sonu showed his inability to accept it. He then took into possession the entire case property alongwith sample seal vide memo Ex.P1. Accused was personally searched vide memo Ex.P2. He sent ruqa Ex.PW5/A through HC Rajiv Kumar. FIR Ex.PW5/B was registered by ASI Gurinder Singh. Accused was arrested vide memo Ex.P3. He prepared rough site plan Ex.PW5/C. On return to police station he produced accused alongwith entire case property, sample seal and personal search before officiating SHO SI Pal Singh vide entrustment memo Ex.PW4/B. The samples were sent for chemical examination. On receipt of the report and completion of formalities challan was presented.

3. The prosecution examined number of witnesses in its support.

The statement of the accused under Section 313 Cr.P.C. was recorded. He

denied the allegations levelled against him and pleaded false implication. He stated that nothing was recovered from him. He was apprehended from Railway Station in late hours. No statement of any Railway employee or passenger was recorded in the case. Some altercation had taken place between him and ASI Kirpal Singh. In defence, he examined DW1 HC Sparan Singh.

4. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

5. We have heard learned counsel for the parties and have gone through the judgment and record.

6. PW1 SI Harjinder Kaur stated that on 22.09.2011 she was posted as SI/IO at Police Station Kotwali, Bathinda. On that day she received the file of this case for investigation. Same day she recorded the statement of SI Pal Singh, officiating SHO and HC Parminder Singh, who deposited the sample parcel with FSL Chandigarh, Mohali. On 24.5.2012 she recorded the statement of HC Bhim Singh of NDPS Godown, Bathinda. On completion of investigation and receipt of Chemical Examiner report Ex.P1, challan against the accused was prepared and submitted by Inspector Jagdish Lal, then SHO P.S. Kotwali.

7. PW2 HC Harinder Singh stated that on 22.09.2011 he was posted as HC at CIA Staff, Bathinda. That day he along with IO/ASI Kirpal Singh and other police officials was on patrolling duty in a Government vehicle. They were going towards Railway Station Bathinda through Mal Godam Road. When the police party reached near Shiv Mandir one person was seen coming from the railway lines of railway station with one

cardboard box on his head. On seeing the police vehicle he started going

back quickly. He fell down and the cardboard which he was carrying on his head fell on the footpath. Some vials fell out of the box. On suspicion the IO stopped his vehicle and apprehended that person with the help of police party. Meanwhile private witness Sonu Sharma @ Kochhi, resident of Multania Road, Bathinda reached the spot. The IO joined him in the police party. In the presence of witnesses the IO asked the person his name and address. He disclosed his name as Mohan Goyal, resident of Sirsa. On checking IO found 190 vials of Rexcof, each containing 100 ml., having batch number A-1326. Despite being asked by the IO the accused failed to produce any bill or permit for the same. The IO took sample of one vial of Rexcof and put the remaining 189 vials of Rexcof in the same cardboard and converted them into sample and bulk parcel of recovered Rexcof vials. IO sealed both the parcels with his seal impression 'KS' and seperately prepared the sample seal. After use the IO handed over the seal to PW2 as the independent witness Sonu refused to receive it. IO took into possession abovesaid parcels along with sample seal vide memo Ex.P1. IO took into possession Rs.500/- and one mobile phone of Nokia and wrist watch vide his personal search memo Ex.P2. These memos were attested by PW2 and private witness Sonu Sharma. The accused also appended his signatures. IO sent ruqa through HC Rajiv Kumar to the police station for registration of case against the accused. After arrest of accused the IO gave information of arrest of Naresh Goyal to father of accused through mobile phone. Arrest memo Ex.P3 was prepared. It was similarly attested and signed. The IO prepared rough site plan of recovery.

8. PW3 HC Parminder Singh proved on record his affidavit

Ex.PW3/A wherein he stated that he was posted on general duty at Police

Station Kotwali. He had received the case property of case No.193 dated 22.9.2011 i.e. one sample parcel containing one intoxicant vial of Rexcof weight 100 ML duly sealed with seals bearing impression KS/PS along with sample seals vide R/C No.402 dated 26.9.2011 with directions to get the docket prepared from the office of SSP Bathinda and thereafter deposit the same in the office of FSL Punjab, SAS Nagar Mohali. He stated that he received the parcel in intact condition.

9. After getting the docket issued by the office of SSP Bathinda on 26.9.2011 he deposited the case property in the Forensic Science Laboratory, Mohali on 27.9.2011, obtained the receipt which on return he handed over to SI Pal Singh on 28.9.2011. As long as the case property remained with him he did not tamper with it nor allowed anybody else to tamper with it.

10. PW4 Inspector Pal Singh stated that on 22.09.2011 he was posted as officiating SHO of PS Kotwali. On that day ASI Kirpal Singh produce accused Mohan Goyal along with case property, personal search Form No.29, sample seal before him. After checking and comparing the seals of the parcels he affixed his seal bearing impression 'KS'. He also affixed his seal on the sample seal chit Ex.PW4/A. He kept the case property in safe custody vide memo Ex.PW4/B which was attested by ASI Kirpal Singh. The accused was put behind bars. He retained the case property in safe custody. He proved Form No.29 Ex.PW4/C and report of FSL Mohali Ex.PW4/D. Inventory memo Ex.PW4/E, application for depositing the case property Ex.PW4/F, application under Section 52A of NDPS Act Ex.PW4/G and order of court Ex.PW4/H.

11. On return to police station, he deposited the bulk parcel with

chit and Form No.29. Accused was sent to judicial custody.

12. On 26.09.2011, he handed over above mentioned sample parcel along with sample seal and Form No.29 to HC Parminder Singh and directed him to get the docket forwarded from the office of SSP Bathinda and then deposit the sample parcel in the office of FSL Mohali. Accordingly HC Parminder Singh got the docket forwarded from the office of SSP Bathinda and on 27.09.2011 he deposited the sample parcels, specimen seal slip in the office of FSL Mohali in intact condition and obtained the receipt. He handed over the receipt to PW4 on return. As long as the case property remained with him he did not tamper with the same nor did he allow any body else to tamper with. His statement was recorded.

13. PW5 ASI Kirpal Singh stated that on 22.09.2011 he was posted as ASI at CIA Staff, Bathinda. That day he along with police party was on patrol duty in a government vehicle. They were going towards railway station, Bathinda through Mal Godown road. When police party reached near Shiv Mandir then accused present in the Court was seen coming from the railway line. He was carrying a card board box on his head. When he saw the police party he tried to go back. But he fell down. The card board box fell on the footpath. Some vials came out of the box. On suspicion the vehicle was stopped and the accused was apprehended with the help of police party. Meanwhile Sonu Sharma alias Kochhi reached the spot. He was joined in the policy party. The accused disclosed his name as Mohan Goyal, r/o Sirsa. PW5 checked the said box. After collecting the scattered vials from the ground and those in the box the total was 190 vials of Rexcof each of 100ml having batch No.A-1326. The accused failed to produce the

a sample parcel and also prepared bulk parcel of the remaining recovered rexcof vials and sealed both the parcels with his seal bearing impression 'KS'. Sample seal Ex.PW4/A was prepared separately. Seal after use was handed over to HC Harinder Singh as private witness Sonu showed his inability to accept it. He then took into possession the entire case property alongwith sample seal vide memo Ex.P1. Accused was personally searched vide memo Ex.P2. He sent ruqa Ex.PW5/A through HC Rajiv Kumar. FIR Ex.PW5/B was registered by ASI Gurinder Singh. Accused was arrested vide memo Ex.P3. He prepared rough site plan Ex.PW5/C. On return to police station he produced accused alongwith entire case property, sample seal and personal search before officiating SHO SI Pal Singh vide entrustment memo Ex.PW4/B. He recorded statements of witnesses u/s 161 Cr.P.C. and after completion of investigation challan was prepared by the then SHO Inspector Jagdish Lal. He identified the case property in Court Ex.MO1.

14. DW1 HC Sparan Singh produced the original summoned record of Register No.19 of DDR No.20 dated 22.09.2011 vide which Pal Singh SI Incharge, PP Bus Stand officiating SHO of P.S. Kotwali deposited one parcel containing 189 vials of Rexcof and one sample parcel containing one vial of Rexcof and articles of Jamatlashi in Malkhana. The above said articles were taken by IO on 23.09.2011. The IO again deposited one sample in Malkhana. Thereafter, sample was handed over to HC Parwinder Singh on 26.09.2011. True copy of the same is Ex.D1. Copy of DDR No.20 is Ex.D2, true copy of DDR No.14 dated 23.09.2011 is Ex.D3, DDR No.22 dated 23.09.2011 Ex.D4, copy of DDR No.21 dated 26.09.2011 is

Ex.D5, and there is no departure of SI Pal Singh entered in DDR on dated

26.09.2011 and on 27.09.2011 Pal Singh again arrived in police station on 27.09.2011.

15. From the above evidence it is clear that police party headed by PW5 ASI Kirpal Singh was on patrol duty. Accused was seen coming from the railway line. He was carrying a card board box on his head. When he saw the police party he tried to go back. But he fell down. The card board box fell on the footpath. Some vials rolled out of the box. On suspicion the patrol vehicle was stopped. The accused was apprehended. Meanwhile Sonu Sharma reached the spot. He was joined in police party. The accused disclosed his name as Mohan Goyal r/o Sirsa. The scattered vials and those in the box totalled 190 vials of Rexcof of 100ml each. The accused failed to produce the bill for the same. One vial was taken as sample. The sample parcel and bulk parcel of the remaining recovered Rexcof vials were prepared and sealed. Sample seal Ex.PW4/A was prepared separately. Seal after use was handed over to HC Harinder Singh as private witness. Sonu showed his inability to accept it. On return to the police station ASI Kirpal Singh produced the entire case property, sample seal etc. before the officiating IO SI Pal Singh vide entrustment memo Ex.PW4/B.

16. In the present case the accused was carrying a cardboard box on his head. On seeing the police party he turned back. He fell down. The cardboard box fell on the footpath causing some of the vials to spill out of the box. The box was checked. It contained vials of Rexcof. The scattered vials and those in the box totalled to 190 bottles of Rexcof of 100 ml each. It was thus clearly not a case of 'personal search' of the accused. The provisions of Section 50 of the NDPS Act are not attracted.

proved by the testimony of the official witnesses. The independent witness Sonu was given up as won over. In these circumstances merely his non-examination would not dent the prosecution case.

18. The case property had remained intact from the time of recovery at the spot till the same was produced before the Ilaqa Magistrate and then before the Chemical Examiner. The Chemical Examiner report is Ex.P1. It states that the average quantity of ingredients in the parcel was '*Chlorpheniramine Maleate 3.8mg/5ml and codeine Phosphate 9.8mg/5 ml*'. The recovery was effected from the accused on 22.9.2011. As per notification No.S.O. 2941 (E) dated 18.11.2009 of the Ministry of Finance (Department of Revenue) amending notification dated 19.10.2001 which inserted table specifying small and commercial quantity of the contrabands, the entire quantity of contraband is required to be taken into consideration for determining the commercial quantity and not just the pure drug content. Accordingly there is no dispute that the recovery is 'commercial quantity'.

19. Thus the prosecution has been able to prove the case against the accused beyond reasonable doubt. There is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 22, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No