

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

210

Criminal Appeal-S-214 of 2020

Date of Decision: September 16, 2020.

Sarwan Lal

.....Appellant

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Kuldip Singh, Advocate, for the appellant.
Mr.H.S.Multani, AAG, Punjab.

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Vivek Puri, J.

[1] The present appeal has been preferred by Sarwan Lal-appellant against the judgment of conviction and order of sentence dated 05.12.2019 passed by the learned Judge, Special Court, Fazilka, vide which the appellant has been convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.20,000/-, in default whereof to further undergo rigorous imprisonment for a period of six months. It was further directed that the period of detention already undergone by the appellant during the course of trial, shall be set-off against the substantive sentence imposed upon him.

[2] The brief facts, as put forth by the prosecution, are to the effect that on 23.04.2011, ASI Rachhpal Singh alongwith the fellow police officials were patrolling in the official vehicle and were proceeding from village Malook Pura to village Bahadar Khera. When they were about two Kilometers short of

side and he was holding a plastic bag in his right hand. On seeing the police party, the appellant turned to the fields on the left side and sat on the pretext of urinating. On suspicion, the appellant was apprehended. Meanwhile, Nirranjan Singh arrived at the spot and was joined in the police party. The identity of the appellant was verified and he was apprised on his legal right to get the search conducted in the presence of a Gazzeted Officer or a Magistrate. The appellant reposed confidence upon ASI Rachhpal Singh and his consent statement was recorded. On the search of the bag being carried by the appellant, Opium wrapped in a glazed paper was recovered. A sample of 10 grams was separated and remaining Opium, weighed 990 grams. Separate parcels of the sample and bulk were prepared and sealed with the seal impression 'RS'. The specimen seal was prepared and the incriminating articles were taken into possession vide a separate memo. Rs.120/- were recovered during the personal search of the appellant. Ruqa was reduced into writing and dispatched in the Police Station, on the basis of which the present FIR has been registered. On return to the police station, the appellant, entire case property alongwith the witnesses were produced before ASI Ranjit Singh, the officer in charge of Police Station, who verified that facts of the case and put his counter seal bearing the impression "RS" on the parcels.

[3] On completion of investigation, the challan was presented in the Court. A prima-facie case under Section 18 of the Act was made out against the appellant to which he pleaded not guilty and claimed trial.

[4] At the first instance, the appellant was declared proclaimed offender and subsequently, on his re-arrest, supplementary challan was presented against him.

[5] In support of its allegations, the prosecution has examined as many

as four witnesses, namely, PW-1 Inspector (Retired) Rachhpal Singh (then ASI), the Investigating Officer; PW-2 ASI Indraj (then HC), the recovery witness; PW-3 Inspector Ranjit Singh, SHO and PW-4 ASI Raj Pal Singh. The recovery has been effected by PW-1 ASI Rachhpal Singh in the presence of PW-2 HC Indraj. At the first instance, the appellant was apprised of his legal right to get the search conducted in the presence of a Gazetted Officer or a Magistrate but the appellant reposed confidence upon the Investigating Officer and his consent statement was reduced in writing. The incriminating articles were taken into possession vide recovery memo Ex.P-4 and specimen seal Ex.P-2 were prepared. Personal search of the appellant was conducted vide search memo Ex.P-5. Ruqa Ex.P-6 was reduced into writing, on the basis where of FIR Ex.P-7 was recorded. Ex.P-8 is the site plan depicting the place of recovery and Ex.P-9 is the memo regarding grounds of arrest served upon the appellant.

[6] On return to the police station, the case property was produced before PW-3 SHO Ranjit Singh and the same was retained vide handing over memo Ex.P-11. On the following day, the appellant alongwith the case property and inventory report Ex.P-15 were produced before the learned Judicial Magistrate, Abohar. PW-4 ASI Rajpal Singh took the sample parcel to the Chemical Examiner and as per the report of the Chemical Examiner Ex.P-12, the contents of the parcel were that of Opium.

[7] In his statement under Section 313 Cr.P.C., the appellant has denied the correctness of the incriminating evidence appearing against him and pleaded false implication. However, no defence evidence has been led by the appellant.

[8]

Vide the impugned judgment of conviction and order of sentence,

the appellant has been convicted and sentenced as aforesaid.

[9] Aggrieved by the aforesaid judgment, the present appeal has been preferred.

[10] I have heard learned counsel for the parties and perused the record.

[11] While assailing the judgment of the learned trial Court, the learned counsel for the appellant has mainly putforth following arguments:-

- (i) The mandatory provisions of Section 50 of the Act have not been complied with as the recovery has not been effected in the presence of a Gazetted Officer or a Magistrate. Further, the compliance of Section 50 of the Act is necessitated as the personal search of the appellant was also conducted;
- (ii) There is a delay of 5 days in sending the sample parcel to the Chemical Examiner;
- (iii) The consent statement Ex.P-1 does not bear the FIR number; and
- (iv) The case of the prosecution is based on the deposition of the official witnesses only. Niranjana Singh, an independent witness, was joined at the time of recovery but he has not been examined during the course of trial.

[12] On the contrary, while supporting the judgment of the learned trial Court and refuting the arguments of learned counsel for the appellant, the following contentions have been put forth by the learned State counsel:

- (i) The provisions of Section 50 of the Act are attracted in the event the recovery of incriminating articles has been effected during the course of personal search of the appellant. Further, the contraband being carried by the appellant was in a plastic bag which was being carried in his hand;
- (ii) The delay of 5 days in sending sample parcel to the Chemical Examiner is inconsequential as there is nothing to suggest that sample parcel was

tampered with at any point of time;

(iii) At the time of giving option to the appellant and preparing the consent statement, the FIR was not registered. Consequently, non-mentioning of the FIR No. on the consent statement becomes inconsequential;

(iv) There is no bar to base the conviction on the statements of the official witnesses. Niranjana Singh, an independent witness, was not examined during the course of trial as he was given up having been won over by the appellant. The witnesses to the recovery have given a fairly satisfactory and consistent version to bring home the guilt of the appellant beyond the shadow of any reasonable doubt.

[13] At the very outset, it may be mentioned here that the recovery was effected from a plastic bag which the appellant was holding in his hand. The mandate of Section 50 of the Act is confined to personal search only and its non-compliance will not render the recovery proceedings to be invalid as the recovery has been effected from the plastic bag being carried by the appellant in his hand.

[14] In State of Himachal Pradesh versus Pawan Kumar, 2005(2) R.C.R. (Criminal) 621, it has been held as following:-

“A bag, briefcase or any such article or container, etc., can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a hold all, a carton etc., of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it

would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include there articles within the ambit of the word “person” occurring in Section 50 of the Act.”

Furthermore, in the aforesaid decision, it has also been held as following:-

“13. The above quoted dictum of the Constitution Bench shows that the provisions of Section 50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container, etc., which he may be carrying.”

[15] In the aforesaid decision, it has been concluded that Section 50 of the Act has no application in the case where contraband was recovered from the bag which was carried by the accused.

[16] The aforesaid decision has been reiterated in Ram Swaroop versus State (Govt. of NCT) of Delhi, 2013 (3) RCR (Criminal), 946 in which it has been laid down as following:-

“We have referred to the aforesaid decisions as the learned counsel has strenuously urged that the provision, being mandatory, there has to be strict compliance. But, a significant one, in the case at hand 32 bags of poppy straw powder weighing 64 Kgs., had been seized from two bags. It has not been seized from the person of the accused-appellant. It has been established by adducing cogent and reliable evidence that the bags belonged to the appellant. In **Ajmer Singh versus State of Haryana, 2010 (2) R.C.R. (Criminal) 132: 2010 (2) Recent Apex Judgments (R.A.J.) 13: 2010 (3) SCC 746**, the appellant was carrying a bag on his shoulder and the said bag was searched and contraband articles were seized. While dealing with the applicability of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, two learned Judges referred to the decisions in **Madan Lal vs.State of H.P. 2003 (4) R.C.R.**

(Criminal) 100: 2003 (7) SCC 465 and State of H.P. Vs. Pawan Kumar, 2005 (2) R.C.R. (Criminal) 622: 2005 (4) SCC 350, and came to hold as follows:

“Thus, applying the interpretation of the word “search of person” as laid down by this Court in the decision mentioned above, to facts of present case, it is clear that the compliance with Section 50 of the Act is not required. Therefore, the search conducted by the investigating officer and the evidence collected thereby, is not illegal. Consequently, we do not find any merit in the contention of the learned counsel of the appellant as regards the non-compliance with Section 50 of the Act”.

14. Tested on the bedrock of the aforesaid dictum, the contention, so assiduously raised, that there has been non-compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act is wholly sans substance.”

[17] The argument as put-forth by learned counsel for the appellant that personal search of the appellant was also conducted and in such circumstance, the recovery in the instant case having been effected without joining the Gazetted Officer of a Magistrate, stands vitiated cannot be accepted in view of the decision rendered in the State of Punjab versus Baljinder Singh and another, 2020 (1) R.C.R. (Criminal) 58, wherein it has been laid down as following:-

“16. As regard applicability of the requirements under Section 50 of the Act are concerned, it is well settled that the mandate of Section 50 of the Act is confined to “personal search” and not to search of a vehicle or a container or premises.

17. The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in Baldev Singh clearly states that the conviction may not be based “only” on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there be

other evidence on record, such material can certainly be looked into.

In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as “personal search” was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.”

[18] In these set of circumstances, the case of the prosecution cannot be disbelieved or discarded on the score that search of the appellant has not been conducted in the presence of the Gazetted Officer or a Magistrate. Moreover, in the case in hand, the appellant was apprised of his legal light to get the search conducted in the presence of a Gazetted Officer or a Magistrate but he reposed confidence of PW-1 ASI Rachhpal Singh and the search has been conducted as per the consent given by the appellant.

[19] In the instant case, learned counsel for the appellant has argued that there is a delay of 5 days in sending the sample parcel to the Chemical Examiner, which is fatal to the prosecution case. It may be mentioned here that the delay in sending the sample parcel to the office of Chemical Examiner will render the case of the prosecution to be doubtful in the event the material on record indicates that the case property was tampered with or any prejudice has been caused to the appellant. In this regard, reference can be **Hardip Singh versus State of Punjab, 2008(4) R.C.R. (Criminal) 97**, (Supreme Court) wherein it has been held that the delay of 40 days in sending the sample parcels

was inconsequential as it had not caused any prejudice to the accused. Moreover, in a case reported as *Jarnail Singh v. State of Punjab, (2011) 3 SCC 521*, there was 12 days delay in sending the samples of narcotic substance for chemical examination, it was held that mere delay in sending the sample parcels for chemical examination would not be a sufficient ground to conclude that the sample was tempered with.

[20] In the case in hand, there is sufficient and reliable material to indicate that the sample was not tampered with at any point of time. All the witnesses who had handled the case property have testified to the effect that the same was not tempered with during the period it remained in their custody. On the following day of recovery, the case property was also produced before the learned Judicial Magistrate (Duty), Abohar and a perusal of the order Ex.P-17 indicates that the seals on all the parcels were found to be intact. There is nothing to suggest that the the sample parcel was tampered with at any point of time till it reached in the office of the Chemical Examiner. No prejudice has occurred to the appellant on account of delay of 5 days in sending the sample parcels to the Chemical Examiner.

[21] The argument put-forth by learned counsel for the appellant to the effect that FIR number has not been mentioned on the consent statement Exh-P-1, does not cause any dent in the prosecution case. It may be mentioned here that the appellant was apprehended on suspicion and at the first instance consent statement Ex.P-1 was prepared. Subsequent to the recovery and preparation of recovery memo, the Ruqa was prepared which was sent to the Police Station, on the basis whereof, the FIR was registered. After making an endorsement on Ruqa, the same was sent back to the Investigating Officer. As such the FIR No. was not available with PW-1 ASI Rachhpal Singh when he

had prepared the consent statement Ex.P-1. Consequently, non-mentioning of the FIR No. on the consent statement is inconsequential.

[22] The last limb of the argument raise on behalf of the appellant is that Niranjana Singh, an independent witness, has not been examined during the course of trial and the case of prosecution is based upon the deposition of official witnesses only. In this regard, it may be mentioned here that it is well settled that if testimony of official witnesses is credible, it cannot be doubted on the score that no independent witness was joined and if joined, has not been examined during the course of trial. The non-joining and non-examination of the independent witness can be fatal only if the official witnesses are inconsistent on the material aspects of the case. There is no legal proposition that evidence of the official witnesses is unworthy of credit without the support of the independent witness. The deposition of the official witnesses cannot be outrightly rejected only because of their official status.

[23] In the instant case, though an independent witness was joined but he has not been examined during the course of trial because he was won over by the appellant. Furthermore, the appellant has not examined the said witness during the course of his defence evidence to impeach the credibility of official witnesses in any manner.

[24] In the instant case, the recovery has been effected by PW-1 ASI Rachhpal Singh in the presence of PW-2 HC Indraj. Both of them have given a detailed and satisfactory account with regard to the sequence of events leading to the recovery of incriminating articles from the possession of the appellant. No ill-will, bias or animosity is made out against the appellant by the police officials and no reason is made out for his false implication. Both the witnesses to the recovery have deposed in a fairly satisfactory manner with regard to all

the material aspects of the case. Their deposition inspires confidence and forms valid ground for founding the conviction of the appellant. No reason is made out for false implication of the appellant. The prosecution has successfully proved and established the guilt of the appellant beyond the shadow of any reasonable doubt. The trial Court has recorded the findings of conviction on the basis of reliable and satisfactory evidence establishing the guilt of the appellant beyond the shadow of any reasonable doubt. The judgment of conviction, as recorded by the learned trial Court is on the basis of satisfactory and reliable evidence and the same does not suffer from any illegality or irregularity which may call for any interference by this Court. As such, the findings of conviction, as recorded by the trial Court, are affirmed.

[25] With regard to quantum of sentence, it may be mentioned here that the trial court has already taken a fairly lenient view. It cannot be said that the sentence upon the appellant is in any manner not commensurate with the guilt of the appellant. In these circumstances, the conviction of the appellant has been correctly recorded and adequate sentence has been imposed upon the appellant.

[26] For the aforesaid reasons, the appeal being devoid of any merit, is dismissed.

September 16, 2020
mohinder

(VIVEK PURI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes