

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Criminal Appeal-1964-SB of 2004

Date of Decision: February 11, 2020.

Hawa Singh

.....Appellant

versus

State of U.T. Chandigarh

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Aditya Sanghi, Advocate and
Ms.Shaveta Sanghi, Advocate, for the appellant.

Mr.Lalit K.Gupta, Additional PP for UT Chandigarh.

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Vivek Puri, J.

[1] The present appeal has been preferred against the judgment of conviction and order of sentence dated 01.10.2004 passed by the learned Judge, Special Court, Chandigarh, vide which the appellant has been convicted under Section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.10,000/-, in default where to further undergo rigorous imprisonment for six months.

[2] Briefly, the case as put-forth by the prosecution is to the effect that on 07.02.2001, the police party headed by SI Hari Kumar was present near the market of Sector-15, Chandigarh. Raj Kumar Aggarwal also met

the police party and soon thereafter, a secret information was received to the

effect that the appellant has arrived in Sector-15, Chandigarh for the purpose of selling the opium and is likely to go towards Sector-15 as well as Punjab University, Chandigarh from the local bus stop of Lajpat Rai Bhawan, Chandigarh. Relying upon the secret information, the police party reached near the petrol pump of Sector-15, Chandigarh. Soon thereafter, the appellant appeared from the side of local bus stop and was apprehended on the basis of the suspicion. The appellant was carrying a brown coloured printed bag. An intimation was sent to HGS Dhaliwal, ASP (Central), Chandigarh. The appellant was apprised of his right to get the search conducted in the presence of a gazetted police officer or a Magistrate and the appellant opted to get the search conducted in the presence of a gazetted police officer. HGS Dhaliwal, ASP (Central), Chandigarh, on his arrival, gave his introduction to the appellant who gave his consent to get the search conducted in his presence. The search of the appellant was conducted which led to recovery of one kg. opium kept in a poethylene bag. 50 grams opium was separated as a sample. The bulk as well as sample parcels were sealed with the seal impression 'HK' and taken into possession vide a separate recovery memo. The seal after use was handed over to Raj Kumar Aggarwal. Thereafter. SI Sukhwinder Singh, second investigating officer, was called for further investigation. The parcels were produced before him who recorded the statements of the witnesses. The entire case property alongwith the appellant and the witnesses were produced before Inspector Satbir Singh, Station House Officer who verified the facts of the case and put the seal impression as 'SS' on both the parcels.

[3] On presentation of challan, *prima-facie* a case under Section 18 of the Act was made out against the appellant. Charge was accordingly

framed to which the appellant pleaded not guilty and claimed trial.

[4] During the course of its evidence, the prosecution has examined as many as 10 witnesses, namely, PW-1 Hargobinder Singh Dhaliwal, S.P. (Operation), PW-2 SI Sarwan Singh, PW-3 Constable Yash Pal, PW-4 MMHC Jaspal Singh, PW-5 Constable Devinder Singh, PW-6 Ashok Kumar Dalela, Junior Scientific Officer, PW-7 Inspector Satbir Singh, PW-8 SI Hari Kumar, PW-9 SI Sukhwinder Singh and PW-10 Raj Kumar. Statement of the appellant under Section 313 Cr.P.C. was also recorded and he has produced a copy of the statement of HGS Dhaliwal Ex.DA, recorded in another case.

[5] Vide the impugned judgment and order the appellant was convicted and sentenced as mentioned in para No.1 of this judgment.

[6] Aggrieved by the aforesaid judgment of conviction and order of sentence, the instant appeal has been preferred by the appellant.

[7] I have heard learned counsel for the appellant and perused the record.

[8] Primarily, the allegations against the appellant are to the effect that he was found in conscious possession of one kg. of opium. The recovery has been effected by PW-8 SI Hari Kumar in the presence of PW-1 HGS Dhaliwal, who was posted as ASP (Central) Chandigarh and PW-10 Raj Kumar, a public witness. The appellant was apprehended in pursuance of receipt of secret information. Search of the appellant was conducted which led to the recovery of contraband. 50 grams of opium was separated as sample. Bulk and sample parcels were sealed with the seal bearing impression 'HK'. The aforesaid three witnesses have testified with regard to the mode and manner in which recovery was effected and proceedings were

conducted at the spot. PW-9 SI Sukhwinder Singh is the second investigating officer who was called at the spot to conduct the further proceedings. PW-2 SI Sarwan Singh has registered the FIR and PW-3 Constable Yash Pal has prepared the scaled site plan. The case property was produced before PW-7 Inspector Satbir Singh who was posted as Officer Incharge of Police Station Sector-11, Chandigarh. He has put the counter-seal impression as 'SS' on the bulk and sample parcels and specimen seal. PW-4 MMHS Jaspal Singh has detained the case property in the malkhana. PW-5 Constable Devinder Singh carried the sample parcels to the office of CFSL. PW-6 Ashok Kumar Dalela is working as Junior Scientific Officer in the CFSL and he has proved the report of CFSL Ex.PG and as per the report, the contents of the sample parcels were that of opium.

[9] In the statement recorded under Section 313 Cr.P.C., the appellant has denied the correctness of incriminating evidence appearing against him and has denied the fact of recovery of incriminating articles from his possession. It has been alleged that the documents were prepared and fabricated while sitting in the police station.

[10] While assailing the judgment of the learned trial Court, learned counsel for the appellant has primarily raised two-fold arguments. It has been argued that while drawing the samples of opium, bulk was not made homogenous and there is a delay of 12 days in sending the sample parcels to the CFSL.

[11] On the contrary, it has been argued by the Additional PP for U.T. Chandigarh that a parcel of 50 grams of opium was drawn from the top layer as well as middle of the contraband. Furthermore, there is nothing to suggest that sample parcel was tampered with and delay in sending the

sample parcels to CFSL is inconsequential.

[12] As per the version of the prosecution, the appellant was spotted and apprehended while he was carrying opium in a polethene bag which weighed one kg. It is emerging in the statement of PW-8 SI Hari Kumar that he had taken a sample from the middle and upper layer of the contraband. It is significant to note that recovered substance was not in a liquid or powdery shape. A perusal of the report of CFSL exhibit PG indicates that the recovered substance is of dark brown coloured semi solid mass. In such a circumstance, it was not possible to mix the contents of the contraband. Efforts have been made to make the representative sample by drawing the contraband from the middle. The matter can be viewed from another angle also. The quantity of opium separated from the drawing sample was to the tune of 50 grams which is more than the small quantity. In such a circumstance, no benefit can be drawn by the appellant on the score that the representative sample was not drawn in a proper manner, as even otherwise, the entire contents of the sample parcel exceeded the small quantity of opium.

[13] In the instant case, the recovery was effected on 07.02.2001 and the sample parcel was delivered in the CFSL on 19.02.2001, i.e. after a delay of 12 days. Consequently, an attempt has been made by the appellant to dispute the genuineness of the version of the prosecution on the score that there is delay of 12 days in sending the sample parcels to CFSL. In this regard, it may be mentioned here that the contention put forth on behalf of the appellant with regard to delay in sending the sample parcel to CFSL is untenable. In the decision of the Supreme Court reported as Hardip Singh versus State of Punjab, 2008(4) R.C.R. (Criminal) 97, the delay of 40

days in sending the sample parcels was held to be inconsequential. There is nothing to suggest that the delay in sending the sample parcel to CFSL has resulted into any prejudice to the appellant. It is significant to note here that there is cogent and reliable evidence to indicate that sample of opium was not tampered and the seals affixed thereupon were intact during the course of transit and till the delivery to CFSL. It is pertinent to note here that all the witnesses who had handled the case property in the malkhana and during the course of transit to CFSL have specifically deposed that the case property was not tampered with during the period, it remained in their custody. Furthermore, as per the report of the CFSL Exhibit PG, it has also been duly certified that the seals on the parcel were intact and tallied with the specimen seal impression. In such a circumstance, the delay in sending the sample parcel to CFSL is inconsequential and does not in any manner effect the genuineness and veracity of the prosecution version against the appellant.

[14] In the case in hand, the recovery has been effected in the presence of a public witness PW-10 Raj Kumar. All the witnesses to the recovery have deposed in a fairly satisfactory manner. The slight discrepancy, as appearing in the statements of the witnesses with regard to time is inconsequential which is bound to appear in the statements of the witnesses due to lapse of time. The witnesses to the recovery have given a satisfactory count with regard to the sequence of events leading to the recovery of incriminating articles from the possession of the appellant. No ill-will, animosity or bias is made out against the appellant by the police officials nor any reason is made out for his false implication. In the instant case, the version put-forth by the official witnesses is duly corroborated by

the deposition of PW-10 Raj Kumar, a public witness. The witnesses have deposed in fairly and satisfactory manner of all the material aspects of the case, their deposition inspires confidence and form a valid ground for founding the conviction of the appellant. The prosecution has successfully proved and established the guilt of the appellant beyond the shadow of reasonable doubt. The judgment of conviction has been recorded by the trial Court 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, findings of conviction, as recorded by the trial Court, are affirmed.

[15] With regard to quantum of sentence, it has been stated on behalf of the appellant that a lenient view may be taken as he is a poor man and the only earning member of the family. Even no record of previous conviction has been produced on record. At the same time, it has to be borne in mind that the offence under the Act cannot be viewed lightly. Furthermore, keeping in view the fact that recovery was effected as back as on 07.02.2001 and quantity of the contraband recovered from the appellant falls in the category of less than the commercial quantity, some further leniency in the matter of sentence can be granted to him. In these circumstances, the substantive sentence of imprisonment of four years imposed upon the appellant is reduced to rigorous imprisonment for a period of three years without any alteration of sentence with regard to fine and the default sentence thereof.

[16] With the aforesaid partial modification with regard to quantum of sentence, the appeal being devoid of any merits is dismissed.

The appellant is on bail and requisite steps be initiated to effect his re-arrest, so that he shall undergo the sentence imposed upon him.

February 11, 2020
mohinder

(VIVEK PURI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes