

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

321

Criminal Appeal-S-2408-SB of 2004

Date of Decision: February 19, 2020.

Paramjit Kaur @ Pammi

.....Appellant

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.G.S.Kaura, Advocate, for the appellant.

Ms.Sakshi Bakshi, AAG, Punjab.

-. -

Vivek Puri, J.

[1] The present appeal has been preferred against the judgment of conviction and order of sentence dated 01.11.2004 passed by the learned Judge, Special Court, Barnala, vide which the appellant has been convicted for having committed the offence punishable under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/-, in default whereof to further undergo rigorous imprisonment for a period of one year.

[2] Briefly, the case as put-forth by the prosecution is to the effect that on 25.12.2002, Inspector Surinder Pal Singh of CIA Staff, Barnala alongwith ASI Harbhajan Singh and other police officials were proceeding in an official vehicle in order to search a proclaimed offender Raj Kaur from Barnala to Handiaya, Khudi road etc. When the police party was about 100 yards short from the railway crossing, they spotted the appellant- Paramjit

Kaur and Nachhatro while sitting on two gunny bags near the railway crossing and on seeing the police party accused-Nachhatro slipped away from the spot and the appellant was apprehended with the gunny bags. Meanwhile, a public person, namely, Kahan Khan also appeared at the spot, he was joined in the police party and identity of the appellant was verified. Inspector Surinder Pal Singh told to the appellant that it is suspected that she was carrying some contraband in the bags and its search has to be conducted. He apprised the appellant of her legal right to get the search conducted in the presence of a gazetted officer or a Magistrate. However, the appellant reposed confidence upon him. Accordingly, the consent memo was prepared. The search of the gunny bags was conducted and from the bags poppy husk was recovered. Two samples weighing 250 grams each of poppy husk from each bag were separated and remaining contents in the first bag were turned out to be 34 Kgs. and 500 grams and in another bag the contents were turned out to be 29 kgs. and 500 grams. All the four sample parcels and two bulk parcels were sealed with the seal bearing impression 'SPS'. Specimen seal was prepared and the seal after use was handed-over to ASI Harbhajan Singh. The incriminating articles were taken into possession vide separate recovery memo. Personal search of the appellant was got conducted through a Lady Constable Manjit Kaur and incriminating articles recovered from the appellant were taken in the possession through a separate personal search memo. Arrest of the appellant was effected. Ruqa was recorded and dispatched to the police station and on the basis thereof, FIR was registered. On return to the police station, the appellant alongwith case property and witnesses were produced before Inspector Piara Singh, SHO, Police Station Kotwali, Barnala who verified

the facts of the case and then sealed all the parcels with the seal bearing impression 'PS'. On receipt of the report of the Chemical Examiner and completion of investigation, the appellant alongwith Nachhatro co-accused were sent to face trial. Prima-facie a case under Section 15 of the Act was made out against the accused. The contents of the charge were read over to the accused but they pleaded not guilty and claimed trial.

[3] To substantiate its case, the prosecution has examined as many as five witnesses, namely, PW-1 ASI Harbhajan Singh, PW-2 HC Nirmal Singh, PW-3 Constable Raghbir Singh, PW-4 Inspector Piara Singh and PW-5 Inspector Surinder Pal Singh. Recovery of the contraband was effected by PW-5 Inspector Surinder Pal Singh in the presence of PW-1 ASI Harbhajan Singh. PW-5 Inspector Surinder Pal Singh apprised the appellant of her legal right to get the search conducted in the presence of a gazetted officer or a Magistrate as it was suspected that there was some contraband in the gunny bags. The appellant reposed confidence upon him and a consent memo exhibit PA was prepared. Search of the bags was conducted which led to recovery of poppy husk. Samples were drawn and the case property and samples were sealed and taken into possession vide recovery memo exhibit PB. Personal search of the appellant was conducted vide search memo exhibit PC and her arrest was effected and the grounds of arrest exhibit PD were served upon her. Ruqa exhibit PG was recorded and dispatched to the police station, on the basis of which FIR exhibit PH was registered. Exhibit PJ is the report under Section 57 of the Act. The appellant alongwith the case property and the witnesses were produced before PW-4 Inspector Piara Singh who was posted as Officer Incharge of Police Station Barnala and who verified the facts of the case. He put the

counter-seal on the parcels with the seal impression 'PS'. The case property was retained in the malkhana by PW-2 HC Nirmal Singh. PW-3 Constable Raghubir Singh took the sample parcels to the office of the Chemical Examiner and as per the report of the Chemical Examiner exhibit P-5, the contents of the parcel were found to be that of poppy heads.

[4] In her statement under Section 313 Cr.P.C., the appellant has denied the correctness of the incriminating articles appearing against her and alleged that she was picked up from her house alongwith the minor child and falsely implicated in the present case. Nachhatro co-accused also alleged her false implication in the case and further alleged that she was having enmity with the appellant and on the instance of the appellant, she has been falsely implicated in this case.

[5] Statement of DW-1 HC Balbir Singh was recorded who produced the register No.19 of P.S. City, Barnala. DW-2 Kahan Khan was produced in the defence evidence.

[6] Vide the judgment dated 01.11.2004, the accused Nachhatro was acquitted, whereas the appellant was held guilty, convicted and sentenced as mentioned in para No.1 of this judgment.

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

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

[9] While assailing the judgment of the learned trial court, it has been argued on behalf of the appellant that the case of the prosecution hinges on the deposition of the official witnesses only. DW-2 Kahan Khan, an independent witness, was joined at the time of recovery but he was given

up by the prosecution and has stepped into the witness box as DW-2. Moreover, there is lack of material to indicate that the appellant was in conscious possession of the contraband and furthermore, it is emerging in the cross-examination of PW-1 ASI Harbhajan Singh that seal on one bulk parcel was intact and one was broken while seals were broken on other parcel, hence, the contents of the parcels have been tempered with.

[10] On the contrary, while supporting the judgment of the learned trial Court, learned State counsel has argued that there cannot be any bar to base the conviction on the deposition of the official witnesses only. Merely because the independent witness has been won-over by the appellant and has been examined as defence witness, it can not be a circumstance to disbelieve the version as put-forth by the police officials who are witnesses to the recovery. Furthermore, the appellant was sitting on the gunny bags and it has to be construed that she was having the knowledge of contents thereof. Moreover, partial damage to the seals on the bulk parcels cannot be construed as a circumstance to disbelieve the version of the prosecution as there is nothing to indicate that the case property was tampered with at any point of time.

[11] At the time of recovery, an independent witness was joined but during the course of trial, he was given up being won-over by the accused-appellant. As such, the case of the prosecution hinges upon the deposition of the official witnesses only. The deposition of the official witnesses cannot be viewed with distrust or suspicion merely because of their official status, unless and until there are cogent grounds therefor. There is no provision of law which requires the presence of independent witness at the time of search of a suspect. It is only a rule of caution devised to seek

assurance and dispel any lingering doubt. The case of the prosecution cannot be discarded merely on the score that no independent witness was opted to be joined at the time of recovery or if joined, has not been examined during the course of trial. Furthermore, the recovery has been effected from the accused-appellant and the arrest was effected at the spot and non-examination of the independent witness on the score that he has been won-over, does not tend to raise any doubt in the prosecution case.

[12] The testimony of the official witnesses has to be considered in the same manner as that of any other witnesses and there is no principle of law that without corroboration of the independent witness, their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds and valid reasons.

[13] In the instant case, DW-2 Kahan Khan has been examined during the course of defence evidence. He has testified to the effect that neither poppy husk was recovered from the conscious possession of the appellant nor arrest was effected in his presence. It is significant to note here that during the course of his cross-examination by the Additional Public Prosecutor, he has admitted that his thumb impressions were obtained by the police though he has sought to explain that his thumb impressions were obtained after summoning him in the CIA staff. It is pertinent to note that it is further emerging in his statement that he never filed any complaint against the police officials when his thumb impressions were obtained by the police. In such circumstances, the explanation sought to be put forth by DW-2 Kahan Khan with respect to obtaining his thumb

impressions by calling him in the CIA staff, cannot be accepted. Merely because the independent witness associated at the time of recovery has been won-over by the appellant, it cannot be concluded that the conviction cannot be sustained particularly when there is lack of material to indicate that the version put-forth by the police officials is neither reliable nor credible. In such circumstances, merely because DW-2 Kahan Khan has been given up being won-over by the appellant and examined as defence witness, cannot be termed to be a circumstance to discard the case of the prosecution in toto.

[14] Learned counsel for the appellant is seeking to build up a case to the effect that the material on record does not indicate that the appellant was found in conscious possession of the contraband. There is nothing on record to indicate that any effort was made to trace out the origin of the contraband and how the same was transported to the place of recovery. The appellant was merely sitting on the gunny bags and it cannot be presumed that she was in conscious possession of the two gunny bags.

[15] It may be mentioned here that the appellant was found sitting over two gunny bags containing poppy husk and now it is for her to prove that she was not in conscious possession thereof. In this regard, reference can be made to a decision reported as 2003 (4) RCR (Criminal) 100 SC, Madan Lal and another versus State of Himachal Pradesh, wherein it has been laid down as under:-

“Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be

drawn from possession of illicit articles.”

[16] The appellant has put-forth a case of total denial. In her statement recorded under Section 313 Cr.P.C., the appellant has denied the fact of recovery of incriminating articles from her possession. It is not the case of the appellant that she was innocently sitting on the gunny bags without having knowledge of the contents of the bags. Moreover, the defence version as sought to be put-forth by the appellant is to the effect that she alongwith her minor child was lifted from her house and falsely implicated in this case does not sound to be convincing. No supporting evidence has been produced by the appellant to establish the defence version as put-forth by her. There is nothing on record to indicate that at the time of arrest, the appellant was carrying any child with her. The appellant has denied the fact of recovery of incriminating articles from her possession. Moreover, the appellant has neither alleged any ill-will, bias or animosity against her by the police officials nor such thing is evident from the material on record and no reason is made out for the false implication of the appellant in the instant case. The material on record indicates that the appellant was sitting over the gunny bags containing poppy husk which indicates that she was in conscious possession thereof.

[17] The last contention put-forth on behalf of the appellant is that seals on the bulk parcels were partially broken at the time of their production in the Court. It may be mentioned here that the case property was produced in the Court after a lapse of period of one year and it is quite natural that some damage to the seals might have occurred on account of lapse of time and due to natural wear and tear. Moreover, all the persons who have handled the case property have testified to the effect that the same

has not been tampered with during the period it remained in their custody. There is nothing to indicate that the case property was tampered with or substituted. Besides, the report of the Chemical Examiner exhibit PJ indicates that the contents of the parcels were poppy heads. It has also been certified that seals on the parcels were intact and agreed with the specimen seal. In such circumstances, it cannot be said that any prejudice has been caused to the appellant on account of partial damage to the seals on the bulk parcels at the time of production in the Court.

[18] In the case in hand, recovery has been effected by PW-5 Inspector Surinder Pal Singh in the presence of PW-1 ASI Harbhajan Singh. Both the witnesses have given a detailed and satisfactory count with regard to recovery and 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 her false implication. Both the witnesses to the recovery have deposed in a fairly satisfactory manner and 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. 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 has been correctly recorded and further adequate sentence as per the provisions of the Act, has been imposed upon the appellant. The judgment of conviction and order of sentence, as recorded by the learned trial Court are 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 and order of sentence, as recorded by the trial Court, are affirmed.

[19] For the aforesaid reasons, finding no merit in the present appeal, the same is dismissed.

[20] The appellant is on bail and necessary steps be initiated for effecting her re-arrest so that she may undergo the sentence imposed upon her.

February 19, 2020 <i>mohinder</i>		(VIVEK PURI) JUDGE
Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes