

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

CRA-S-2467-SB-2004 (O&M)

Date of Decision: 18.02.2020.

Amrik Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. S.S. Sidhu, Advocate,
for the appellant.

Mr. A.A. Pathak, Addl. AG Punjab.

JITENDRA CHAUHAN.J.(ORAL)

This appeal is directed against the judgment and order dated 17.11.2004 passed by Judge, Special Court, Bathinda, vide which the accused/appellant was convicted under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and sentenced to undergo RI for ten years and to pay fine of Rs.1 lakh and in default of payment of fine to further undergo RI for six months.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. It is a prosecution case that PW2 Major Singh, SHO, Police Station Phul along with posse of Police officials was present near TDP Malva College road on the turning point of road leading to village Mehraj and Sub Inspector Devinder Kumar, SHO, P.S. Rampura also arrived there along with posse of police officials. In

the mean while, PW-2 Major Singh received secret information that Amrik Singh is in a habit of selling the poppy husk and if raid be conducted immediately at his house, then heavy quantity of poppy husk can be recovered. The said information was reduced into writing vide ruqa Ex.PD sent to the police station for registration of a case. He along with SHO Devinder Kumar and posse of police officials went towards the disclosed place. On the basis of ruqa formal FIR Ex.PD/1 was registered against the accused. Independent witness Beera Singh was already joined in the police party. The police raided the house of accused Amrik Singh and found him present there. Investigating officer had told the accused that he suspected some contraband inside his house and he wanted to conduct the search. But the accused vide consent memo Ex.PD desired the search of his house in the presence of a Gazetted Officer. Intimation was sent to DSP Balbir Singh Khera, who reached at the spot and he himself introduced himself to the accused being DSP and a Gazetted Officer of Government of Punjab and apprised the accused of his right of search of his house in the presence of any other Gazetted Officer or a Magistrate. But the accused reposed confidence upon the DSP and allowed him to search the house.

After due search of the house three bags each containing 40 kgs of poppy husk was recovered from the fodder room wherein wheat husk (Toori) was kept. All the bags were given No.1 to 3 and two samples of 250 gms each were separated from each bag i.e. in total six samples were separated and converted into parcels. The residue poppy husk was also converted into separate parcels. All the parcels were sealed with the seal of investigating officer having impression 'MS'. Seal after use was handed over to independent witness Beera Singh. Entire contraband was taken into possession vide memo Ex.PB. From personal search of the accused Rs.65/- were recovered vide memo Ex.PD. Grounds of arrest were known to the accused vide memo Ex.PF and Ex.PG. Rough site plan Ex.PH of the place of recovery was prepared. Special report Ex.PJ was prepared on the same day and sent to Deputy Superintendent of Police (SD) on 16.12.2002. Inventory Ex.PK was prepared and same along with case property and sample seal was produced before Sub Divisional

Judicial Magistrate, Phul on 16.12.2002. Sample parcels were sent to the Chemical Examiner through C. Thana Singh, which were received by Chemical Examiner on 19.12.2002. Chemical Examiner vide his report Ex.PN has opined that contents of sample were that of poppy husk.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court.

Charge under Section 15 of the NDPS Act was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 DSP Balbir Singh, PW-2 SI Major Singh, PW-3 Constable Thana Singh and closed the evidence.

The statement of the accused under Section 313 Cr.P.C was recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

In defence evidence, the accused had examined DW-1 Constable Naranjan Kumar and DW-2 Rajpal Singh and closed the evidence.

After appraisal of evidence, the learned trial court vide impugned judgment and order dated 17.11.2004, convicted and sentenced the accused, as narrated in the first paragraph of the judgment.

Feeling dissatisfied with the impugned judgment, the

present appeal has been filed by accused/appellant Amrik Singh.

It is contended by the learned counsel for the accused/appellant that the appellant was framed in another FIR under the NDPS Act wherein he stands acquitted. In the said FIR, he was shown to be in possession of non-commercial quantity though he was not present on the spot. No recovery was effected from him. In the present FIR also, the house in question was not in exclusive possession of the appellant. He is staying with the family of his younger brother Ranjit Singh. It is further contended that although, there was secret information with the police, the same was neither reduced into writing nor the same was sent to the immediate superior officer and therefore, there has been non-compliance of Section 42 of the NDPS Act. Learned counsel has placed reliance upon (i) Gurnam Kaur and others vs. State of Punjab, 2006(3) RCR (Criminal) 984; (ii) Karnail Singh vs. State of Haryana, 2009(5) RCR (Criminal) 515 and Nachhattar Singh vs. State of Haryana 2014 (1) RCR (Criminal) 490.

It is further contended that no person from the locality or from the village was joined by the police party so much so even no effort was made by the police party to join any independent witness in search proceedings, therefore, the search conducted at the spot is in violation of the provisions of Section 100(4) of Code of Criminal Procedure.

It is further contended that alleged independent witness, namely, Beera Singh was not only the resident of some other village

but was also a stock witness of the police because in the year 2002 itself, he had been cited as an independent witness in two other FIRs Ex.DA and Ex.DB registered under the NDPS Act. Even the said witness was not examined by the prosecution.

It is further contended that there is violation of Section 52(3) of the NDPS Act as neither the accused nor the article seized by the investigating officer were forwarded to the officer In-charge of the nearest Police Station. Even the recovery has been effected in violation of the provisions of Section 55 of the NDPS Act as only one seal bearing impression 'MS' was affixed upon all the sample parcels and no other officer had affixed the counter seal upon the said sample parcels. Moreover, no representative sample was drawn in the presence of learned Magistrate which is in contravention of provisions of Section 52-A(C) of the NDPS Act.

On the other hand, learned State counsel, contends that the accused/appellant is named in the secret information which was immediately sent to the officer immediate superior to him. In the memorandum also, the accused had accepted that it was his house and he agreed to the search of the house and the recovery was effected on his instructions.

We have heard the learned State counsel and have gone through the case file very carefully.

In the present case, PW-2 SI Major Singh, the investigating officer has admitted that brother of the accused also resides in the outer

portion of the house. He did not verify the ownership of the room from where the recovery was effected. Even, PW-1 DSP Balbir Singh had admitted that some ladies and children were present when he reached the house of the accused. Therefore, the house from where the alleged recovery was effected was jointly occupied by a number of family members including family of younger brother Ranjit Singh as well. It is not even the case of the prosecution that the recovery is effected from the room possessed by the accused/appellant as the alleged recovery is effected from the room meant for storing chaff (Toori) which was open and accessible to all and is jointly used by the family members as well as the workers. Considering the composition of the family, the Court feels that the ownership of the house as well as the fact that the appellant was in actual and physical possession of the house is not conclusively established. In the circumstances, non compliance of Section 100(4) of Code of Criminal Procedure as admitted by PW-2 SI Major Singh that neither any person from the locality or from the village was joined by him nor an effort was even made to do so. The non-compliance of Section 100(4) Cr.P.C also proves fatal to the case of the prosecution in the given context. The provisions of Section 52(3) of the NDPS Act have also not been complied with as neither the accused nor the articles seized were sent to the officer In-charge of the nearest Police Station and in total non-compliance of the provisions, the investigating officer kept the entire case property as well as sample parcels with himself.

In view of above, the present appeal is allowed. The judgment of conviction and order of sentence passed by the trial Court are set aside. The appellant is acquitted of the charges framed against him. The bail-bonds and surety bonds stand discharged.

18.02.2020.

SN

(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No