

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

337

Criminal Appeal-S-1222-SB of 2005

Date of Decision: March 13, 2020.

Gurnam Singh

.....Appellant

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Krishan Singh, Advocate, for the appellant.

Mr.Sulinder Kumar, AAG, Haryana.

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Vivek Puri, J.

[1] The challenge in the present appeal is to the judgment of conviction dated 12.07.2005 vide which the appellant has been convicted under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and the order of sentence dated 13.07.2005 passed by the learned Judge, Special Court, Kapurthala, vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.3000/-, in default whereof to further undergo simple imprisonment for the period of two months.

[2] The brief facts of the instant case are to the effect that on 2.7.2003 A.S.I Parma Nand alongwith fellow Police Officials were patrolling in an official vehicle and were present at the bridge at Cheeka-Balbehra road. Meanwhile, the appellant was spotted coming from the side of village Harigarh Kingan and was carrying a plastic bag on his head. On seeing the police party, the appellant tried to turn back and was apprehended

at the spot. The identity of the appellant was verified. It was suspected that the appellant was carrying some narcotics substance and as such a notice under section 50 of the Act was served upon him seeking his option to get the search conducted in the presence of a gazetted officer or a Magistrate. The appellant opted to get the search conducted in the presence of a gazetted officer. The appellant alongwith the case property and the witnesses were taken to the office of DSP Dharampal who verified the facts of the case. The search of the bag being carried by the appellant led to the recovery of poppy husk. Two samples weighing 250gms each were separated and the remaining poppy husk weighed 11 kg 500 gm. Separate parcels of both the samples and the bulk were prepared, sealed with the seal bearing impressions 'PN' and 'DPS' and taken into possession vide separate recovery memo.

[3] Ruqa was recorded and dispatched to the police station, on the basis whereof, FIR was registered. On return to the police station, the appellant alongwith the case property and witnesses were produced before Zile Singh, Sub Inspector who verified the facts of the case and affixed his seal bearing impression 'ZS'.

[4] On completion of the investigation, challan was presented and charge was framed to which the appellant pleaded not guilty and claimed trial.

[5] In support of its case, the prosecution has examined six witnesses, namely, PW-1 Dharam Pal Singh Dalal, DSP, PW-2 ASI Parmanand, PW-3 SI Zile Singh, PW-4 Constable Virender Singh, PW-5 Head Constable Ram Singh and PW-6 Constable Krishan Kumar, besides documentary evidence.

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

[7] Vide the judgment of conviction and order of sentence, the appellant has been convicted and sentenced as aforesaid.

[8] Aggrieved by the aforesaid judgment, the appellant has preferred this appeal challenging his conviction and sentence.

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

[10] While assailing the judgment of the learned trial Court, it has been argued by learned counsel for the appellant that no independent witness was joined at the time of search; the first informant and Investigating Officer of the case is the same person and there is non compliance of the mandatory provisions of section 50 of the Act as the appellant has not been apprised of his legal right to get the search conducted in the presence of a gazetted officer or a Magistrate.

[11] On the contrary, while supporting the judgment of the learned trial Court it has been argued by the learned State counsel that there is no bar to base the conviction on the statements of the official witnesses only; no prejudice has occurred to the appellant on the score that the officer who effected the recovery has conducted the subsequent investigation and the mandatory provisions of section 50 of the Act are not attracted as the recovery has not been effected during the personal search of the appellant.

[12] The deposition of the official witnesses cannot be viewed with dis-trust or suspicion merely because of their official status, unless and until

there are cogent grounds therefore. There is no provision of law which requires the presence of independent witness at the time of search of the suspect. The case of the prosecution cannot be discarded merely on the score that no independent witness has been opted to be joined at the time of recovery. It is a matter of common observation that there is general reluctance on the part of the people to join the investigation and depose against the accused to avoid enmity. There can be variety of reasons as to why the witness is not interested to come forward, join the investigation and depose against the accused in the Court.

[13] Moreover, it is a case of chance recovery. The appellant was spotted by the police party during the course of routine patrolling duty. There was no prior information that the appellant will be passing from the place of recovery alongwith the contraband. Furthermore, the perusal of the site plan exhibit PE indicates that barring one house there are fields near the place of recovery. **In Surinder Kumar versus State of Punjab, 2020(1) RCR (Criminal) 576 (SC)**, it has been held by the Hon'ble Supreme Court of India as following:-

“14. Further, it is contended by learned senior counsel appearing for the appellant that no independent witness was examined, despite the fact they were available. In this regard, it is to be noticed from the deposition of Devi Lal, Head Constable (PW-1), during the course of cross-examination, has stated that efforts were made to join independent witnesses, but none were available. The mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed.

15. The judgment in the case of *Jarnail Singh v. State of Punjab*, (2011) 3 SCC 521: 2011(1) R.C.R. (Criminal) 925,

relied on by the counsel for the respondent-State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status. In the case of *State, Govt. of NCT of Delhi v. Sunil & Anr., (2001) 1 SCC 652: 2001(1) R.C.R.(Criminal) 56*, it was held as under:-

“It is an archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Courts cannot start with the presumption that the police records are untrustworthy. As a presumption of law, the presumption would be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature”.

[14] In the case in hand the recovery has been effected by PW-2 A.S.I Parma Nand, who has also conducted the subsequent investigation. It is significant to note that in the decision of the Hon'ble Supreme Court in **Varinder Kumar versus State of Himachal Pradesh, 2019 (1) R.C.R. (Criminal) 1003**, it has been laid down as following:-

“18. The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it unidirectional exercise. A proper administration of the criminal justice delivery system, therefore, requires balancing the rights of the accused and the prosecution, so that the law laid down in Mohan Lal (supra) is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective

of all other consideration., We, therefore, hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in Mohan Lal (supra) shall continue to be governed by the individual facts of the case.”

[15] Moreover there is nothing to suggest that any prejudice has occurred to the appellant on the score that officer who effected the recovery has also conducted the investigation of the case.

[16] With regard to the compliance of the provisions of Section 50 of the Act, it may be mentioned here that the mandate of the said Section is confined only to the personal search. In the decision State of Punjab versus Baljinder Singh and another, 2020(1) (Criminal) 58 (SC). it has been laid down as following:-

“As regards 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] In the case in hand the recovery has been effected by PW-2 ASI Parma Nand in the presence of PW-1 Dharampal DSP. Both these witnesses have given a detailed and satisfactory count with regard to the mode and manner in which the recovery has been effected and sequence of events leading to the recovery of incriminating articles from the possession of the accused. No ill-will, bias or animosity is made out against the accused by the police officials and no reason is made out for their 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 appeal. 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 and sentence, as recorded by the trial Court, are affirmed.

[18] With regard to the quantum of sentence, the recovery was effected as back as on 02.07.2003. There is nothing to suggest that the appellant has been convicted in any other case. Moreover, the custody certificate placed on record indicates that he has undergone the imprisonment for a period of 1 month and 5 days. Keeping in view the totality of the circumstances, the substantive sentence of imprisonment imposed upon the appellant is reduced to rigorous imprisonment for a period of one year without any alteration in the amount of fine and default sentence.

[19] With the aforesaid partial modification in the quantum of sentence, the appeal being de-void of merit is dismissed.

March 13, 2020
mohinder

(VIVEK PURI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes