

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

CRA-S-144-SB-2005

Date of decision:-5.3.2020

Som Nath

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Harkesh Manuja, Advocate with
Mr.Vishva Bahl, Advocate
for the appellant.

Ms.Amarjit Kaur Khurana, DAG, Punjab.

H.S. MADAAN, J.

This appeal is directed against the judgment dated 11.12.2004 passed by learned Judge, Special Court, Patiala vide which, accused Som Nath was convicted for an offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*the Act*') and vide order of the same date, he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default thereof, to further undergo rigorous imprisonment for two years.

The accused-convict – Som Nath, who is appellant before

this Court prays that the appeal be accepted, the impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per the prosecution story are that on 25.6.2002, Inspector Jassa Singh (hereinafter referred to as the Investigating Officer/I.O.), SHO of Police Station Sadar, Patiala along with other police officials travelling in a official vehicle make Allwyn Nissan bearing registration No.PB-11B-7278, in connection with checking of suspects, was present at bus stand of Kauli, where he received a secret information that accused Paramjit Singh and Som Nath were selling opium in the area of villages Shankarpur, Alamapur and Fatehpur Jattan on scooter No.PB-12C-8127 make Bajaj Chetak and if a raid was conducted, they could be caught red handed. The information being reliable, the Investigating Officer sent ruqa to the Police Station Sadar, Patiala for registration of the FIR. He sent a wireless message to Sh.Sandeep Sharma, DSP(R). Thereafter, the police party in the said vehicle proceeded further to hold a picket. However, on the way near village Kauli, Shabeg Singh, an independent witness joined them. Picket was laid at drain bridge in the area of village Kauli, where scooter bearing registration No.PB-12C-8127 driven by accused Som Nath was spotted coming from the side of village Shankarpur. Paramjit Singh was pillion riding that scooter. The said scooter was intercepted and names and addresses of accused persons were ascertained. In the meanwhile, Sandeep Kumar, DSP(R), Patiala reached there in a official gypsy along with Gunmen. The said DSP disclosed his identity as a gazetted officer to

the accused persons. Accused Paramjit Singh was holding a bag (JHOLA) in his hand. DSP expressed his intention to search the bag carried by the accused and they were informed of their right to get the search conducted in presence of gazetted officer or Magistrate. However, both the accused reposed confidence in the DSP and consent memo in that respect was prepared, which was signed by the accused and duly witnessed. Then on directions of DSP, bag being held by accused Paramjit Singh in his hand was searched and it was found to contain opium wrapped in glazed paper. Two samples of 10 gms. each were drawn therefrom. The samples were converted into parcels and the remaining opium on being weighed came out to be 4.980 kgs. It was put in a small tin box and was converted into a parcel. All the three parcels were sealed with the seal of the Investigating Officer – Jassa Singh having inscription 'JS' and that of Sandeep Kumar, DSP having inscription 'SK'. Separate sample chit was prepared. The case property was taken into possession vide recovery memo. The Investigating Officer handed over his seal to an independent witness, namely, Shabeg Singh, whereas Sandeep Kumar, DSP retained his seal with himself. The scooter along with its registration certificate and other documents was taken into possession vide a seizure memo. The accused persons could not produce any permit/licence for possessing of opium. Special reports were sent to Illaqa Magistrate and higher police officers. The site plan of the place of recovery was prepared. Grounds of arrest were furnished to the accused and a memo were prepared in that regard. The personal search of accused Som Nath was conducted, which resulted in recovery of currency notes of Rs.135/- and a wrist watch. Those were

taken into possession vide a memo. Whereas on account of personal search of accused Paramjit Singh, a mobile phone and currency notes of Rs.260/- were recovered, which were also taken into possession vide a separate recovery memo. On return to the police station, the case property was deposited in condition intact with MHC Sudh Singh.

On 26.6.2002 ASI Tarsem Lal took the case property for producing the same before Illaqa Magistrate. An application was filed in that regard. After obtaining orders from the Magistrate, the case property was redeposited with MHC Sudh Singh in intact condition. Sample was sent to the office of FSL, Punjab, Chandigarh through HC Fakir Chand. A report therefrom was received.

After completion of investigation and other formalities, challan against both the accused, who were arrested at the spot was prepared and filed in the Court.

On presentation of challan in the Court of Judge, Special Court, Patiala, he supplied copies of documents relied upon in the challan to both the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judge, Special Court, Patiala finding that charge for an offence under Section 18(b) of the Act was disclosed against the accused, charge-sheeted the accused accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for the evidence of the prosecution.

Thereafter, accused Paramjit Singh jumped the bail and was declared a proclaimed offender and only accused Som Nath faced the trial.

To bring home guilt to the accused, the prosecution examined as many as eight witnesses as per the details below:

PW1 C-II Gopal Singh had taken the special reports handing over the same to Illaqa Magistrate, DSP and SSP.

PW2 HC Fakir Chand had taken the sample to FSL, Chandigarh. He had furnished an affidavit Ex.PA that he had received the sample from MHC Sudh Singh when its condition was intact and deposited the same in the office of FSL, Punjab, Chandigarh on 12.7.2002.

PW3 Pal Singh, Clerk, office of DTO, Ropar deposed with regard to ownership of the recovered scooter bearing No.PB-12C-8127 in the name of Randeep Kumar son of Sant Ram of village Boor Majra, District Ropar.

PW4 Inspector Jassa Singh, Investigating Officer of this case deposed with regard to apprehension of the accused, recovery of contraband from them and other proceedings conducted by him in this case.

PW5 DSP Sandeep Kumar Sharma testified regarding his role.

PW6 ASI Harvinder Singh, a witness of recovery deposed about that.

PW7 ASI Tarsem Lal stated that he had produced the case property before the Magistrate and at that time, it was in intact condition and he had carried out part of investigation.

PW8 HC Sudh Singh, Moharrir of the MALKHANA with

whom the case property was deposited provided the link evidence with regard to deposit of the case property with him and the same having not been tampered with while it remained in his possession.

With that the prosecution evidence stood closed.

Statement of accused Som Nath was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him, were put to him but he denied the allegations contending that he was innocent and had been falsely involved in this case after picking him up from his house on 25.6.2002.

During the defence evidence, accused Som Nath examined Ashok Kumar as DW1 and Shabeg Singh as DW2.

After hearing arguments, learned Judge, Special Court, Patiala convicted and sentenced the accused Som Nath as mentioned supra, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Punjab besides going through the record.

Learned counsel for the appellant/accused has contended that informant and investigator in this case should not be the same for having a fair investigation. According to him, this was so in the instant case because Inspector Jassa Singh had lodged the FIR and then proceeded to investigate the case. Therefore, the proceedings were vitiated and the accused is entitled to acquittal. He has referred to judgment **Mohan Lal Versus State of Punjab, 2018(4) RCR(Criminal) 101** in that regard.

Learned counsel for the appellant/accused further contended

that there has been non-compliance of Section 42 of the Act in this case since the secret information received by Inspector Jassa Singh was not reduced into writing and no copy was sent to higher police officer. No explanation for that lapse is coming forth showing that there was totally non-compliance of the provisions of Section 42 of the Act and conviction of accused cannot be upheld under such circumstances.

He had referred to judgment **State of Rajasthan Versus Jag Raj Singh @ Hansa, 2016(4) Recent Apex Judgments (R.A.J.) 196,** where the Apex Court had observed that when contraband was recovered on the basis of secret information, however provisions of Section 42 were not complied with, it may not vitiate trial but would render the recovery of illicit articles suspect and vitiate the conviction and sentence of accused.

Learned counsel for the appellant/accused has further placed reliance upon **State of Punjab Versus Hari Singh and others, 2009(2) RCR(Criminal) 143,** wherein it was observed that a circumstance about which the accused was not asked to explain cannot be used against him to convict him.

Learned counsel for the appellant had further referred to judgment **Gannu and another Versus State of Punjab, 2017(3) RCR(Criminal) 566,** wherein it was held that when entire contents of the three bags of poppy husk allegedly recovered from the accused were not put on a paper or cloth to know about whole of it, therefore, the Investigating Officer did not follow the prescribed procedure and it cannot be believed that the whole of the contents of the bags were poppy

husk.

As regards the first contention of learned counsel for the appellant that informant and investigator should not be same for having a fair investigation and authority referred to by him i.e. *Mohan Lal Versus State of Punjab* (supra), the same does not help the appellant in any way since in the instant case there is nothing to show that any prejudice was caused to the accused for the reason of the informant and investigator being the same person or that element of some unfairness had crept in the investigation.

As regards the authority referred to by learned counsel for the appellant, the Apex Court in judgment *Mukesh Singh Versus State (Narcotic Branch of Delhi) 2019(5) RCR(Criminal)437* has discussed the entire law on the subject and then inferred that the matter required consideration by the Bench of three Hon'ble Judges but a prima facie view was expressed that in a given case where the complainant himself had conducted investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record but it would be completely a different thing to say that trial itself would be vitiated for such infraction. The view taken in Mohan Lal's case (supra) was not approved.

Coming to the other contentions raised by learned counsel for the appellant and authorities referred to by him in support thereof, those have already been considered and dealt with by the trial Court in a proper and appropriate manner.

An independent witness Shabeg Singh was joined with the

police party though he was not examined by the prosecution and rather appeared on behalf of the accused. But Shabeg Singh cannot hold the entire case to ransom when the official witnesses i.e. PW4 Inspector Jassa Singh, Investigating Officer and witness of recovery PW6 ASI Harvinder Singh had supported the prosecution story on material aspects. There is nothing on record to show that the Investigating Officer or other witness including witnesses of recovery had any previous enmity with the accused prompted by which they might have come forward to depose falsely against the accused.

The law is well settled that the deposition of the official witnesses are at par with that of independent witness unless some motive for false implication is there on the part of the official witnesses, which is not the case here.

Considering the quantity of the contraband recovered in the form of 5 kgs of opium, it is difficult to believe that the same could be planted upon the accused wrongly since even if it is believed that accused were to be involved in this case under NDPS Act much less amount of contraband could have been planted.

Since as stated by PW1 C-II Gopal Singh, special reports handed over to him by SI Tej Pal Singh were transmitted by him to Illaqa Magistrate, DSP and SSP, in that way necessary compliance of Section 42 and 57 of the Act was there.

A few minor contradictions in pointed out between statements of witnesses of recovery do not go to the root of matter since those are bound to occur due to difference in power of perception,

observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc.

PW5 DSP Sandeep Kumar Sharma, a Gazetted Officer had also supported the prosecution story on material aspects. Necessary link evidence is there and as per report received from FSL, the sample was found to be of opium.

The impugned judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

With regard to the sentence part, it is observed that the drug trafficking is rising at an alarming rate in this region, especially in the State of Punjab, which has ruined the lives of young men and women. Drug peddlers for a small monetary consideration make the youth to use drugs for a small time excitement/kick. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increase drug trafficking. Therefore, considering the quantity of contraband recovered, the accused is not entitled to any leniency in sentence.

Thus, the judgment of conviction and order of sentence are upheld whereas the appeal is found to be without any merit and the same is dismissed accordingly.

Som Nath - appellant/accused is stated to be on bail granted

to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Patiala is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

5.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No