

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

CRA-S-184-SB-2005

Date of decision: 20.2.2020

Niranjan Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Ms.Ruby Kaur, Advocate for
Mr.RK Lamba, Advocate for the appellant

Mr.Vikrant Pamboo, DAG, Haryana

JITENDRA CHAUHAN, J.

The present appeal has been filed against the judgment and order dated 7/8.1.2005 passed by the Additional Sessions Judge, Fatehabad, vide which the accused–appellant has been sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo for a period of three months under Section 15 of the NDPS Act.

The trial Court noticed the facts of the present case in para No.2 the impugned judgment, which are as under:-

“.. on 9.5.2002 SI Krishan Lal alongwith police party was present at canal bridge Karnoli in connection with patrolling. In the meantime, the accused was seen coming, on the pavement of canal from the side of Gilla

Khera carrying a plastic bag on his head. On seeing the police party, he became nervous and turned back. On suspicion, he was apprehended. On search he was found to be carrying 15.2 kg of poppy husk. So this case was got registered against the accused. The Investigating Officer Krishan Lal took into possession the case property, prepared rough site plan, recorded statements of the witnesses, prepared report under Section 57 of the NDPS Act and produced the accused, the witnesses and the case property before SI/ SHO Ishwar Singh, who verified the facts from the accused and witnesses and put his seal on the case property.”

On completion of the investigation, final report under Section 173 Cr.P.C. was prepared and presented in the Court. The accused/appellant was charge-sheeted under Section 15 of the Act, to which he pleaded not guilty and claimed trial.

To prove its case, the prosecution had examined ASI Charan Singh as PW1, HC Baldev Singh as PW2, HC Om Parkash as PW3, SI Ishwar Singh as PW4, C. Lila Dhar as PW5, SI Krishan Lal as PW6 and C.Badri Parsad as PW7

After completion of the evidence of the prosecution, the accused was examined under Section 313 of the Code of Criminal Procedure. The accused denied the circumstances appearing against him in prosecution evidence and pleaded innocence. He did not lead any defence evidence

After hearing learned counsel for both the parties, learned trial

Court convicted and sentenced the accused as noticed at the outset of this judgment.

Feeling aggrieved by the judgment/ order of the learned Trial Court, the appellant had preferred this appeal.

Learned counsel appearing on behalf of the appellant submits the recovery is alleged to have been effected on 9.5.2002, whereas the sample parcel was received in the Forensic Science Laboratory on 17.5.2002 i.e. obviously after more than 8 days, whereas according to the standing instruction No.1/88 dated 15th March, 1988 of the Narcotic Control Bureau, New Delhi, the sample ought to have been sent for chemical analysis within 72 hours. She further maintains that CFSL form was not prepared on the spot nor was deposited in the malkhana. It is further asserted that no independent witness was joined during the recovery proceedings and these circumstances cumulatively are fatal to the prosecution case.

On the other hand, learned counsel for State has argued that the case of the prosecution is proved beyond reasonable doubt and the learned trial Court has rightly convicted and sentenced the appellant.

Heard.

There is no gainsaying the fact that there is delay of 8 days in sending the sample parcels for chemical analysis to the Forensic Science Laboratory, though, as per the standing instruction No.1/88 dated 15.3.1988 issued by the Narcotic Control Bureau, New Delhi, the sample parcels

should be sent within 72 hours for chemical analysis to avoid any legal objection. The prosecution has not given any reason for withholding the same for 8 days.

In **Parminder Singh vs. State of Haryana** 2006(4) Recent Criminal Reports (Crl.), 495, the samples were sent to the Chemical Laboratory after a gap of 25 days. 25 kgs. of opium milk was recovered in that case. It was held by a Division Bench of this Court that according to Narcotic Control Bureau's instructions, the sealed parcels should be deposited within 72 hours with the Chemical Examiner.

In **Bhola Singh vs. State of Punjab** 2005(2) Recent Criminal Reports (crl.) 520, the CFSL form was not prepared on the spot nor was deposited in the malkhana. Filling up of such form on the spot is a very valuable safeguard to ensure that the sealed sample is not tampered with till its analysis by the Forensic Science Laboratory. It was held that such circumstance would be fatal to the prosecution case.

In the case in hand, CFSL form was neither filled up on the spot nor was deposited in the malkhana.

Further, PW7 C.Badri Parsad, the recovery witness, in his cross- examination deposed that "people were working in the nearby fields near the bridge. No public person was summoned on the spot before taking search." There being no explanation for non-joining any independent witness, the exercise of the Investigating Officer is to be looked upon with suspicion.

In view of the above infirmities, it is held that the prosecution has not been able to bring home guilt against the accused. As such, the present appeal is accepted, the impugned judgment/order of sentence are set aside and the appellant is hereby acquitted of the charge framed against him.

20.2.2020
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No