

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Criminal Appeal-S-518-SB of 2005
Date of Decision: February 26, 2020.

Hari Ram

.....Appellant

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Sh.D.N.Ganeriwala, Advocate, for the appellant.
Sh.Sulinder Kumar, AAG, Haryana.

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Vivek Puri, J.

[1] The present appeal has been preferred against the judgment of conviction dated 04.03.2005 vide which the appellant has been convicted by the learned Sessions Judge, Sirsa, under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and order of sentence dated 07.03.2005 vide which he was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10000/- in default whereof, to further undergo rigorous imprisonment for a period of four months.

[2] Briefly, the case as put-forth by the prosecution is to the effect that on 05.05.2002, ASI Baldev Raj alongwith HC Rajinder Singh and other fellow police officials were present at Phephana bridge in the area of village Maleka. Meanwhile, the appellant came from the side of Phephana on a moped bearing registration No.HR-24F-4079 and he was carrying a plastic bag on the carrier of the moped. He was signaled to stop by ASI Baldev Raj. ASI Baldev Raj served a notice on the appellant informing him that it was suspected that some narcotic substance is being carried in his bag. He offered him to get the search conducted in the presence of a gazetted officer

The search of the bag being carried by the appellant led to the recovery of puppy husk. Two samples of 100 grams each of the contraband were separated and remaining poppy husk on weighing was found to be 19 kgs.800 grams. Both the sample parcels and bulk parcel were sealed with the seal bearing impression 'BS' and a separate recovery memo was prepared. The moped and driving licence of the appellant were taken into possession. Ruqa was dispatched to the police station on the basis whereof FIR was registered. On return to the police station, the appellant, witnesses and case property were produced before SI Chet Ram who was the Station House Officer of the police station. He verified the facts of the case and put his counter seal bearing the impression 'CRB' on all the parcels. The parcels were deposited with the MHC. The sample parcel was sent to Forensic Science Laboratory, Madhuban. On completion of the investigation challan was presented. A prima-facie case under Section 15 of the Act was made out against the appellant to which he pleaded not guilty and claimed trial.

[3] To substantiate its case, the prosecution has examined as many as seven witnesses, namely, PW-1 ASI Raja Ram, PW-2 Constable Dalbir Singh, PW-3 ASI Maan Singh, PW-4 Inspector Chet Ram, PW-5 SI Hawa Singh, PW-6 HC Rajinder Singh and PW-7 ASI Baldev Raj. PW-7 ASI Baldev Raj has effected the recovery in the presence of PW-6 HC Rajinder Singh. Both these witnesses have testified with regard to the mode and manner in which recovery was effected and proceedings conducted at the spot. The case property was produced before PW-4 Chet Ram who was posted as Officer Incharge of Police Station Sadar, Sirsa. He verified the facts of the case and put the counter seal bearing the impression 'CRB' on all the parcels. The case property was retained in the malkhana by PW-1 ASI

Raja Ram. PW-2 C.Dalbir Singh took the sample parcel to Forensic Science Laboratory. PW-3 ASI Maan Singh has recorded the FIR and report under Section 173 Cr.P.C. has been prepared by PW-5 SI Hawa Singh. Notice exhibit PF under Section 50 of the Act was served upon the appellant and vide reply PF/1, he had reposed confidence upon PW-7 ASI Baldev Raj. The incriminating articles were taken into possession vide recovery memo exhibit PG. Ruqa exhibit PC was recorded and on the basis of which the FIR was registered. Exhibit PD is the report under Section 57 of the Act. As per the report of FSL exhibit PE the contents of the parcel were that of poppy straw.

[4] In the statement recorded under Section 313 Cr.P.C., the appellant has denied the correctness of the incriminating evidence appearing against him. He has pleaded his false implication on account of party faction in the village at the instance of Bahal Singh, ex-sarpanch. However, no defence evidence has been led by the appellant. Vide the judgment of conviction and order of sentence, the appellant has been convicted and sentenced as aforesaid.

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

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

[7] 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 upon the deposition of the official witnesses only. The seals on the parcels were in broken condition. The Investigating Officer has given an option to the appellant for his search to be conducted by him which is not in

conformity with the provisions of Section 50 of the Act and has placed reliance upon the decision reported as **2014 (2) RCR (Criminal) 40 (SC), State of Rajasthan versus Parmanand and another.** Furthermore, there are discrepancies in the statements of the witnesses.

[8] 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 requirement to join the independent witness at the time of recovery and there is nothing to suggest that the case property has been tampered with. Furthermore, the recovery of contraband has been effected from the plastic bag being carried on the carrier of the moped and not from the personal search of the appellant. The mandate of Section 50 of the Act is confined only to the personal search and will not render the recovery from the vehicle invalid. Moreover, the discrepancies are insignificant.

[9] It is no doubt that no independent witness was joined at the time of recovery but it cannot be termed to be a circumstance to disbelieve the version of the prosecution in toto. The deposition of the witnesses can be relied upon in the event the version given by them is fairly reliable and consistent. Moreover, the seal on the bulk parcel at the time of its production in the Court was in broken condition. The same may have occurred due to natural wear and tear and lapse of time.

[10] The main stress of learned counsel for the appellant is with regard to non-compliance of Section 50 of the Act. It has been pointed out that three options were given to the appellant which are as following:-

- (i) In the event the appellant reposes confidence upon PW-7 ASI Baldev Singh, he can conduct the search of the bag;

- (ii) Search can be conducted in the presence of a gazetted officer
or
- (iii) In the presence of a Magistrate.

[11] The appellant has sought to put-forth a case to the effect that option given to him for search by the Investigating Officer is uncalled for, misleading and renders the search and seizure to be illegal. In this regard, it may be mentioned here that no recovery of contraband has been effected during the course of personal search of the appellant. The contraband was being carried by the appellant in the plastic bag being carried on the carrier of the moped. The provisions of Section 50 of the Act are required to be complied with in the event the recovery has been effected from the personal search and its non-compliance will not vitiate the recovery which has not been effected from the personal search of the appellant. In this regard, reliance is placed upon the decision reported as **2020 (1) RCR (Criminal) 58 (SC), State of Punjab versus Baljinder Singh and another**, wherein it has been laid down as follows:-

“16. 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. The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in Baldev Singh clearly states that the conviction may not be based “only” on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there be other evidence on record, such material can certainly be looked into.

In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was

any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as “personal search” was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.”

[12] In these set of circumstances, the recovery effected from the carrier of the moped is not vitiated in any manner and the case of the prosecution cannot be discarded on the score that the provisions of Section 50 of the Act have not been complied with in accordance with law.

[13] Learned counsel for the appellant has pointed out certain discrepancies emerging in the statements of PW-7 ASI Baldev Raj and PW-6 HC Rajinder Singh. They have given discrepant version with regard to the person by whom the writing work was conducted at the spot and who carried weightment of the contraband. They have also given discrepant version with regard to the passing by of public persons and vehicles at the spot. However, the discrepancies, as pointed out, do not in any manner render the version of the prosecution to be doubtful. A few minor discrepancies are bound to appear in the statements of the witnesses due to lapse of time and they do not in any manner tend to falsify the version of the prosecution.

[14] The recovery has been effected by PW-7 ASI Baldev Raj in the presence of PW-6 HC Rajinder Singh. Both these witnesses have deposed in fairly satisfactory manner on all the aspects of the case. They have given satisfactory and consistent count with regard to sequence of the events

leading to the recovery of incriminating articles from the possession of the appellant. No ill-will, animosity or bias is made out against the accused by the police officials and no reason is made out for false implication. The deposition of the witnesses sufficiently proves and establishes the material fact of recovery of incriminating articles from the conscious possession of the appellant. Once the material fact of recovery of incriminating articles from the conscious possession of the appellant is proved and established by satisfactory and reliable evidence, the inconsequential infirmities and unimportant flaws in the case of prosecution tend to pale into insignificance.

[15] The trial Court has correctly recorded the findings of conviction on the basis of satisfactory and reliable evidence establishing the guilt of the appellant beyond the shadow of any reasonable doubt. As such the findings of conviction, as recorded by the learned trial Court, are upheld.

[16] With regard to the quantum of sentence, it may be mentioned here that the adequate sentence commensurate with the guilt of the appellant has been imposed by the learned trial Court and it does not call for any interference by this Court.

[17] For the aforesaid reasons, the appeal being de-void of merits is dismissed.

[18] The appellant is on bail and necessary steps be initiated for effecting his re-arrest so that he may undergo the sentence imposed upon him.

February 26, 2020

mohinder

(VIVEK PURI)

JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No