

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

CRA-S-519-SB-2005 (O&M)

Date of Decision: 19.02.2020

Surjeet Singh

... Petitioner

v/s

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. D.N.Ganeriwala, Advocate for the appellant.

Mr. Sulinder Kumar, AAG, Haryana.

* * *

VIVEK PURI, J. (ORAL)

The present appeal has been preferred against the judgment of conviction dated 18.2.2005 vide which the appellant has been convicted for having committed the offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'The Act') and sentenced vide order dated 21.02.2005 to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs.50,000/-, in default whereof to further undergo rigorous imprisonment for a period of one year.

The facts as putforth by the prosecution are to the effect that on 5.1.2002 SI Janardhan, the officer-In-Charge of Police Station Odhan along with fellow police officials were present at the bridge of Kaluwana Minor in the area of Village Jandwala Jattan in connection with 'Nakabandi'. Meanwhile, the accused came from the side of

Village Ram Pura Bishnoian and he was carrying a gunny bag on his head. The appellant was signalled to stop. On suspicion, the appellant was apprehended and his identity was verified. SI Janardhan apprised the accused of his legal right to get the search conducted in the presence of a Gazetted Officer or a Magistrate and the appellant reposed confidence upon him. The search of the gunny bag, being carried by the appellant, led to the recovery of poppy straw. Two samples of 10 gms each were separated and the remaining poppy straw weighed 32 Kg 800 gms. Both the sample parcels and the bulk parcel were sealed with the seal bearing impression JD. The specimen seal was prepared and the seal after use was handed over to ASI Ram Singh. Ruqa was recorded and dispatched to the police station. On the basis thereof FIR was registered.

On completion of the investigation, the challan was presented in the Court. A prima facie case under Section 15 of the Act was made out against the appellant. The charge was accordingly framed to which appellant pleaded not guilty and claimed trial.

In support of its allegations, the prosecution has examined 5 witnesses. The recovery has been effected by SI Janardhan, PW5 who was posted as Officer in-charge of Police Station Odhan. The recovery has been effected in the presence of ASI Ram Singh, PW3. HC Kanwar Singh, PW1 had registered the FIR on the receipt of the ruqa. The case property was retained in the malkhana by HC Mangat

Singh, PW4. Basant Kumar PW2 took the sample parcel to the Forensic Science Laboratory. Before conducting the search, the appellant was apprised of his right to get the search conducted in the presence of Gazetted Officer or Magistrate vide notice Ex.PC. The appellant reposed confidence upon SI Janardhan. The search of the appellant was conducted and the incriminating articles were taken into possession vide recovery memo Ex.PD. Ex. PF is the site plan depicting the place of recovery. Ruqa Ex.PA was recorded, dispatched to the Police Station and on the basis thereof, FIR Ex.PA/1 has been recorded. As per the report of Forensic Science Laboratory Ex.PH, the contents of the parcel were that of poppy straw.

In his statement recorded under Section 313 Cr.P.C. the appellant has denied the correctness of the incriminating evidence appearing against him. The defence version putforth by the appellant is to the effect that he has been falsely implicated at the instance of Seeta Singh, Lambardar of Village Jandwala Jattan with whom he had strained relations and on account of party faction in the village. The appellant has examined Subhash Chander, DW1 who has testified with regard to the entry in the Daily Diary registered in Police Station Odhan and Constable Zile Singh, DW2 who has deposed from the log book of the vehicle in which the police party was travelling.

Vide judgment of conviction and order of sentence the appellant was convicted and sentenced as mentioned in Para 1 of the judgment.

Aggrieved, the appellant has preferred the present appeal.

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

It has been mainly contended by learned counsel for the appellant that the case of the prosecution hinges on the deposition of official witnesses only. No independent witness has been joined at the time of recovery which renders the case of prosecution to be doubtful. In the cross-examination of ASI Ram Singh, PW3, it is emerging that the seal of the bulk parcel was in broken condition and not legible. Furthermore, there is a delay of 18 days in sending the sample parcel to the Forensic Science Laboratory. It has also been pointed out that the sentence imposed upon the appellant is on a higher side.

On the contrary, it has been contended by learned State counsel that there can be no bar to base the conviction on the basis of the statements of the official witnesses. There is nothing to suggest that the case property was tampered with at any point of time and furthermore, the delay in sending the sample to the office of chemical examiner is inconsequential and does not in any manner affect the genuineness of the version of the prosecution and adequate sentence has been imposed by the learned trial Court.

It is no doubt true that the case of the prosecution hinges on the deposition of official witnesses only but it cannot be construed as a circumstance to dispute the version of the prosecution. It is a case of chance recovery. The police party was not having any prior

information that the appellant was carrying some contraband with him. Moreover, the appellant was spotted during the course of routine 'Nakabandi'. The appellant was spotted and apprehended during the night hours. The perusal of the site plan Ex.PF also indicates that the place of recovery is not situated in a busy locality. In such circumstances, the non-joining of public witnesses at the time of recovery cannot be termed to be a circumstance to discard the version of the prosecution or disbelieve the version as put forth by the police officials. There is no provision of law which requires the presence of independent witnesses at the time of search of a suspect and the testimony of police officials has to be considered in the same manner as that of any other witness.

It is emerging in the cross-examination of ASI Ram Singh, PW3 that the seal on the bulk parcel was in broken condition. However, there is nothing on record to suggest that the case property was tampered with or substituted at any point of time. It is quite possible that the seal on the bulk parcel might have broken due to lapse of time and natural wear and tear. Moreover, all the witnesses who had handled the case property have deposed to the effect that the same was not tampered with during the period it remained in their possession. As per the report of Forensic Science Laboratory, Ex.PH, it has been certified that the seals on the parcel were intact and tallied with the specimen seal.

The recovery was effected on 04.01.2002 and the sample was dispatched to Forensic Science Laboratory on 22.1.2002. It may be mentioned here that the delay in sending the sample to the Forensic Science Laboratory will render the case of the prosecution to be doubtful, in the event the material on record indicates that the case property was tampered with or any prejudice has occurred to the appellant. In the decision reported as **AIR 2009 Supreme Court 432; Hardeep Singh versus State of Punjab**, it was held that the delay of 40 days in sending the sample was inconsequential as it had not caused any prejudice to the accused. In the case in hand, as already observed, all the witnesses who have handled the case property have testified to the effect that the same was not tampered with during the period it remained in their custody. Consequently, the delay of about 18 days in sending the sample parcel to the Forensic Science Laboratory is inconsequential and does not cause any dent in the genuineness of the version of the prosecution.

The appellant has sought to put forth a defence version to the effect that he has been falsely implicated at the instance of Seeta Singh, Lambardar of Village Jandwala Jattan with whom he had strained relations and on account of party faction in the village but significantly, no supporting evidence has been produced by the appellant in support of his defence version.

Both the witnesses have deposed in a fairly satisfactory manner on all the material aspects of the case. In the instant case, the

recovery has been effected by SI Janardhan, PW5 in the presence of ASI Ram Singh, PW3 and both of them have given a detailed and satisfactory count with regard to the recovery and sequence of 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 appellant by the police officials. Their deposition inspires confidence and forms a valid ground for founding the conviction of the appellant. The deposition of both the witnesses to the recovery proves and establishes the material fact of recovery of incriminating articles from the conscious possession of the appellant beyond the shadow of reasonable doubt. Once the material fact of recovery of incriminating articles from the conscious possession of the appellant is proved and established beyond the shadow of reasonable doubt, the inconsequential infirmities and unimportant flaws in the case of prosecution tend to pale into insignificance. Learned trial Court has recorded the finding of conviction on the basis of satisfactory and reliable evidence establishing the guilt of the appellant beyond the shadow of reasonable doubt. As such, the judgment of conviction does not suffer from any illegality or irregularity which may call for any interference by this Court and the same is upheld.

With regard to the quantum of sentence, it has been pointed out by the learned counsel for the appellant that the petitioner is having a family and is a sole bread-winner. Furthermore, he is a first offender and the sentence imposed by the learned trial Court is on higher side.

Learned State counsel has pointed out that adequate sentence has been imposed which does not call for any interference.

In the case in hand, the quantity of contraband recovered from the possession of the convict falls in the category of less than commercial quantity. The appellant is facing the agony of trial and appeal since the year 2002. In such circumstances, some leniency in the matter of sentence can be extended to the appellant. As such, the substantive sentence of imprisonment imposed upon the appellant is reduced to rigorous imprisonment for a period of two years and the fine is reduced to Rs.10,000/- and in default whereof to further undergo rigorous imprisonment for a period of three months for having committed the offence under Section 15 of the Act.

With the aforesaid partial modification in the quantum of sentence, the appeal being devoid of merit is dismissed.

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

19.02.2020

Janki

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No