

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

CRA-S-530-SB-2005

Date of decision: 20.2.2020

Murat Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: None for the appellant

Mr.Vikrant Pamboo, DAG, Haryana

JITENDRA CHAUHAN, J.

The present appeal is directed against the judgment and order dated 28.2.2005/2.3.2005 passed by Additional Sessions Judge, (Special Court under NDPS Act, 1985), Kurukshetra, whereby the accused–appellant has been sentenced to undergo rigorous imprisonment for a period of 18 months and to pay a fine of Rs.18,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 15 of the NDPS Act (in short 'the Act').

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

“On. 22.3.2002, ASI Kartar Singh (Investigating Officer) PW8, alongwith other police officials was present at Sodhi T-point, falling within the jurisdiction of Police Station, Sadar Thanesar, in connection with detection of crime and was

checking the vehicles after putting a Naka. In the meantime, a person having a gunny-bag (Bori) on his head was seen coming on foot from the side of Indri Road. On seeing the police party, he immediately turned back and started walking briskly. On suspicion, he was apprehended by ASI Kartar Singh (I.O.) with the help of other police officials. On interrogation, he disclosed his name and address as Murat Singh alias Murti son of Kundan Singh, caste Jat Sikh, resident of village Sodhi. Search of the gunny bag (which the accused was carrying on his head), lead to the recovery of Churapost. 250 grams was separated from it as a sample. The remaining contraband, on weighment, was found to be 18.250 Kgs. including gunny bag. Then the sample as well as the remaining contraband after converting into separate parcel, were sealed with the seal 'K.S.' The seal 'K.S.' after its use and after retaining specimen seal impressions thereof, was handed over to HC Krishan Kumar (PW6). Thereafter, the sample, remaining contraband (Ex.P1) and the specimen seal impressions were taken into police possession vide recovery memo (Ex.PE); it was duly attested by the witnesses HCs Krishan Kumar and Raj Pal. Thereafter, ASI Kartar Singh had sent ruqqa (Ex.PA) through Constable Jeet Singh to the Police Station, Sadar Thanesar, for registration of a case. On this basis, formal FIR (Ex.PA/1) was recorded by ASI Raghbir Singh (PW1), who had also made his endorsement (Ex.PA/2) on the ruqqa (Ex.PA). Thereafter, ASI Kartar Singh (I.O.) had prepared rough site plan (Ex.PG) with correct marginal notes. After apprising the grounds of arrest to the accused, the accused was formally arrested in this case as per law.”

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 as many as eight witnesses.

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 has preferred this appeal.

None has appeared on behalf of the appellant. In the grounds of appeal, it has been averred that despite the recovery being allegedly effected from a busy passage, no independent witness was joined in the recovery proceedings. There is violation of Section 50 of the Act as the alleged recovery was not effected in the presence of any Gazetted Officer or Magistrate.

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.

This Court has heard learned counsel for the respondent-State

and perused the record with his able assistance.

In his cross examination, PW8 ASI Kartar Singh, the Investigating Officer has specifically stated that “efforts were made to join in the investigation the independent witness through Constable Dheer Singh but none was available. 2/4 persons crossed the place of recovery after apprehension of the accused. They were asked to join the investigation but they did not become ready.”

In **Aher Raja Khima vs. State of Saurashtra, AIR 1956 Supreme Court 217**, Hon'ble the Supreme Court has held that “the presumption that a person acts honestly applies as much in favour of a public officer as of other persons, and it is not a judicial approach to distrust and suspect him, without good grounds therefore, such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.” Of course, the statements of the police officials are to be scrutinised with due care and caution when the same do not find corroboration from any independent source, but herein a careful delving into their statements would reveal that there is no material infirmity. Therefore, the averment raised in the grounds of appeal pales into insignificance, as no infirmity surged to the surface during the course of cross-examination of the prosecution witnesses.

Further regarding non-compliance of Section 50 of the Act, there is no force in the said averments because in the present case, the recovery being from a gunny bag carried by the accused on his head, the said Section will not apply.

Hon'ble the Supreme Court in **Kalema Tumba vs. State of Maharashtra and another 1994(4) RCR (CrL.) 575** has held as under:

“The appellant challenged his conviction before the High Court. His appeal (Criminal Appeal No. 401 of 1994) was partly allowed by the High Court. His conviction was confirmed but the sentence awarded in default of payment of fine was reduced. Ms. M Qamaruddin, learned counsel for the appellant, submitted that the mandatory requirement of Section 50 of the NDPS Act was not complied with and therefore the evidence regarding recovery and seizure of heroin should be regarded as illegal. She further submitted that the appellant could not have been convicted on the basis of that evidence. It was submitted by her that the appellant was not told, before the search by the officers of the Narcotic Control Bureau that he had a right to be searched in presence of a Gazetted Officer or a Magistrate. This contention deserves to be rejected because only when a person of an accused is to be searched then he is required to be informed about his right to be examined in presence of a Gazetted Officer or a Magistrate. As rightly pointed out by the High Court search of baggage of a person is not the same thing as search of the person himself. In *State of Punjab v. Baldev Singh*, [1999] 4 SCC 595 this Court has held that the requirement of informing the accused about his right under Section 50 comes into existence only when person of the accused is to be searched. The decision of this Court in *State of Punjab v. Jasbir Singh & Ors.*, JT. (1995) 9 SC 308, wherein it was held that though poppy Straw was recovered from the bags of the accused, yet he was required to be informed about his right to be

searched in presence of a Gazetted Officer or a Magistrate, now stands overruled by the decision in Baldev Singh's case (supra). If a person is carrying a bag or some other article with him and narcotic drug or the psychotropic substance is found from it, it cannot be said that it was found from his 'person'. In this case heroin was found from a bag belonging to the appellant and not from his person and therefore it was not necessary to make an offer for search in presence of a Gazetted Officer or a Magistrate.”

The instant case of the prosecution is fully established beyond reasonable doubt. Accordingly, the judgment of conviction dated 28.2.2005 passed by learned trial Court is upheld.

As regard quantum of sentence, the appellant has undergone 2 months and 3 days of actual sentence out of the total substantive sentence of 18 months. The sentence of the appellant was suspended by this Court vide order dated 17.3.2005. The FIR in the instant case was registered in the year 2002. The appellant has suffered protracted trial of more than 17 years. Nothing has been pointed out by the learned counsel for the State that the appellant has misused the concession of bail during the pendency of the appeal, therefore, the Court feels that the ends of justice would be met if the appellant is let off for the jail term already undergone by him. Ordered accordingly. However, the same shall be subject to deposit of Rs.5000/- as costs in addition to the fine already imposed and the same shall be deposited with the Punjab & Haryana High Court Bar Association Advocates' Welfare Fund within 45 days from the date of receipt of the

certified copy of this judgment, failing which, the appeal shall be deemed to be dismissed without further notice.

The present appeal is partially allowed and order of sentence dated 2.3.2005 passed by the learned trial Court stands modified to the extent indicated above.

Copy of the judgment be sent to the appellant for necessary compliance.

20.2.2020
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No