

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

CRA-S-2283-SB-2016(O&M)
Date of decision:-2.3.2020

Kanwaldeep Singh alias Kanwal alias Jolly (since deceased) through his
legal heirs

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.Alok Jagga, Advocate
for the appellant.

Ms.Amarjit Kaur Khurana, DAG, Punjab.

H.S. MADAAN, J.

This appeal has been preferred against judgment dated 11.5.2016 passed by Judge, Special Court, Amritsar vide which accused was convicted for AN offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹1,00,000/- and in default thereof to further undergo rigorous imprisonment for one year.

The accused - convict – Kanwaldeep Singh alias Kanwal alias Jolly (now deceased), who was appellant before this Court prayed

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 summed up, the prosecution story is that on 26.5.2014, a police party from Police Station Chheharta, District Amritsar headed by ASI Jaswant Singh (hereinafter referred to as the Investigating Officer/I.O.) was present at Old Octroi near Guru Nanak Dev University in connection with search of bad elements, where the accused Kanwaldeep Singh alias Kanwal alias Jolly was spotted coming from the side of university, on seeing the police party, he got nervous and started walking briskly by taking a turn towards Polytechnic College. He was apprehended by the police party while he tried to throw one polythene bag after taking it out from right pocket of his pant. On being inquired, he disclosed his name as Kanwaldeep Singh alias Kanwal son of Jagir Singh, resident of Dashmesh Avenue, Amritsar. The Investigating Officer tried to join independent witnesses but in vain. Thereafter, the Investigating Officer checked the polythene bag carried by the accused in his his right hand, which he tried to throw and that led to recovery of intoxicant powder. The Investigating Officer separated one sample of 10 grams of intoxicant powder putting it in a plastic container, whereas the remaining contraband came out to be 190 grams of intoxicant powder, which was also put into a different plastic container and both the bulk and sample powder were converted into different parcels sealed with the seal of Investigating Officer bearing inscription ' JS' . The case property was taken into police possession vide seizure memo. On the basis of ruqa sent

to police station, formal FIR Ex.P3 was registered at Police Station Chheharta.

The Investigating Officer prepared rough site plan of the place of recovery. The accused was arrested in this case and memo of arrest was prepared. His personal search was also conducted, which did not result in recovery of any article. On reaching the police station, the Investigating Officer handed over the case property and related documents, articles to SHO Sukhwinder Singh, who affixed his own seal bearing inscription 'SS' on the parcels and kept the same in double lock of *malkhana* after preparing sample seal impression.

On the next day i.e. 27.5.2014, SHO Sukhwinder Singh handed over the parcels of intoxicant powder and other documents along with the accused to the Investigating Officer giving him application Ex.P8. Accordingly, the case property was produced before the Court of Illaqa Magistrate at Amritsar. The Investigating Officer had taken one sample of 10 grams from the bulk parcel in presence of Illaqa Magistrate putting it in a plastic container converting it into a parcel which was sealed by Illaqa Magistrate Ms.Surekha Rani with her seal having inscription 'SR'.

On 28.5.2014, during interrogation, accused suffered a disclosure statement regarding committing of theft. On 29.5.2014, SHO Sukhwinder singh handed over to the Investigating Officer the bulk parcel and sample parcel, who deposited the same in Judicial Malkhana.

On 9.7.2014, SHO Sukhwinder Singh took out the sample parcel along with sample seal and Form M-29 from double lock and

handed over the same to HC Gurinder Singh for depositing those in the office of FSL, Punjab, Mohali. It was so done accordingly. On receipt of report from FSL and after completion of investigation, challan against the accused was presented.

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

Learned Judge, Special Court, Amritsar finding that charge for an offence under Section 22 of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, the accused pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined in as many as five witnesses as detailed below:

PW1 HC Gurinder Singh provided the link evidence stating that on 9.7.2014 while he was posted at Police Station Chheharta, Amritsar, SHO/Inspector Sukhwinder Singh had handed over to him one sample parcel of this case having seals of JS and SS with seals intact along with sample seals, Form M-29. He deposited the sample parcel and other documents on the same day in the office of FSL, Punjab, Mohali with seals intact and on return handed over receipt to SHO.

PW2 ASI Jaswant Singh, Investigating Officer deposed regarding his part.

PW3 Inspector Sukhwinder Singh, who was posted as SHO

of Police Station Chheharta on 26.5.2014 deposed with regard to his role.

PW4 ASI Balwinder Singh, one of the recovery witness supported the prosecution story with regard to the recovery.

PW5 Harpal Singh, Clerk, Office of Chemical Examiner, Kharar stated that as per the official record, the sample parcel and other relevant documents were deposited in the office of FSL, Punjab, Mohali on 9.7.2014 by HC Gurinder Singh. Thereafter, he along with Mohinder Pal and Krishan Dass, employees of their office as per policy of Government went to FSL, Mohali on 16.10.2014 and brought the sample parcel and other relevant documents of the present case along with sample parcels of other cases from FSL, Punjab depositing the same in the office of Chemical Examiner, Kharar on the same day. Thereafter, examination of sample was conducted and report was also given by Chemical Examiner, Kharar.

The prosecution had given up PWs HC Gurpartap Singh, HC Harpinder Singh, HC Raman Kumar, MHC Sahib Singh, ASI Gursahib Singh, Clerk Rajbir Singh.

With that the prosecution evidence got concluded.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but the accused denied the allegations contending that he is innocent and had been falsely involved in this case and nothing has been recovered from him; he was picked up from his house by the police officials who planted a false recovery upon him.

During the course of his defence evidence, accused examined

HC Sahib Singh as DW1, Amarjit Singh Chhina as DW2 and Jagir Singh as DW3.

With that the defence evidence got concluded.

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

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

The prosecution by leading cogent and convincing evidence has been able to prove its charge against the accused beyond a shadow of reasonable doubt that accused was found in possession 200 grams of intoxicant powder having Alprazolam as an active ingredient without any permit or licence. All the contentions raised by learned counsel for the appellant have been dealt with in a proper and appropriate manner by the trial Court.

With regard to non-compliance of Section 50 of the Act, this provision is not attracted since the contraband had not been recovered, as a result of personal search of the accused, rather on seeing the police party, he had taken out the contraband, which was put in a polythene bag from the right pocket of his pant and tried to throw it away and when it was searched it was found to contain contraband. Thus, it is not a case of personal search of the accused. Therefore, no notice was required to be served upon the accused apprising him of his legal right to be searched by gazetted officer or Magistrate.

With regard to no independent person having been joined with the police party, it is specific case of the prosecution that no independent witness could be located, therefore was not joined. In this case no previous enmity between the official witnesses and the accused is alleged or proved prompted by which they might have involved the accused in this case wrongly and deposed against him to secure his conviction. Statements of the official witnesses are at par with those of independent witness unless some motive for false implication and false deposition is established. Therefore, non-joining of any independent witness in the investigation is not of much value.

Another contention raised by learned counsel for the appellant was that provision of Section 42 of the NDPS Act has not been complied with inasmuch as the information in writing was not taken down and a report sent to the higher police officers by the Investigating Officer. Such compliance is mandatory and failure to send report to immediate superior would cause prejudice to the accused.

However, I find that Section 42 of the NDPS Act does not come into play. Firstly, the it was a chance recovery not based upon any prior secret information that accused was carrying contraband with him.

As regards the next contention that only one sample had been drawn from the bulk instead of two samples, again drawing of two samples is matter of procedure and provisions in that regard are not having the statutory force. They are more so administrative in nature. The trial Court has dealt with this matter at length and rightly held that there was no violation of Section 42 of the Act in the present case.

Learned counsel for the appellant has referred to judgments i.e. Ritesh Chakarvarti Versus State of Madhya Pradesh, 2006(4) RCR(Criminal) 480, Bhola Singh and Anr. Versus State of Punjab, 2015(6) RCR(Criminal) 695, Randhir Singh Versus State of Haryana, 2010(2) RCR(Criminal) 388, Amar Singh @ Kabu Versus State of Haryana, 2008(4) RCR(Criminal) 440, Kewal Singh Versus State of Punjab, 2018(4) RCR(Criminal) 580, Gannu and another Versus State of Punjab, 2017(3) RCR(Criminal) 566, Jagdish Singh @ Thandu Versus State of Punjab, 2018(2) RCR(Criminal) 308 and Arif Khan @ Agha Khan Versus State of Uttarakhand, 2018(2) RCR(Criminal) 931.

However, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

The accused has expired during the pendency of the appeal. His legal representatives are pursuing the matter since they are nursing a hope that in case the appeal is accepted and deceased/accused/appellant is granted clean chit, then his family members may get his retiral benefits since the accused was in Government service.

The judgment 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 in the judgment, as such, the same is upheld.

The appeal is found to be without merit, hence it stands dismissed.

The appellant has expired. However, the State may recover

the amount of fine from his legal representatives/estate in accordance with law.

2.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes