

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Criminal Appeal-S-2185-SB of 2004

Date of Decision: February 26, 2020.

Janak Raj

.....Appellant

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Lalit Kumar Gupta, Advocate, legal aid counsel, for the
appellant.

Mr.Sulinder Kumar, AAG, Haryana.

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Vivek Puri, J.

[1] The present appeal has been preferred against the judgment of conviction dated 23.07.2004 vide which the appellant has been convicted by the learned Additional Sessions Judge, Fatehabad, under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and order of sentence dated 24.07.2004 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 three months.

[2] Briefly, the case as put-forth by the prosecution is to the effect that on 25.12.2000, ASI Sadhu Ram alongwith fellow police officials had raised nakabandi near Peer Baba in the area falling between kacha path of village Marh to village Alikan. The appellant was spotted while he was coming from the side of village Marh carrying a plastic bag on his shoulder.

The appellant was apprehended on suspicion. A notice under Section 50 of

the Act was served upon him but he reposed confidence upon ASI Sadhu Ram. The search of the bag being carried by the appellant was conducted which led to the recovery of poppy husk. Two samples of 100 grams each of poppy husk were drawn and the remaining poppy husk on weighing was found to be 14 kgs. 900 grams. Both the sample parcels and bulk parcel were sealed with the seal bearing impression 'SR'. The incriminating articles were taken into possession vide separate recovery memo. On completion of the investigation, a prima-facie case under Section 15 of the Act was made out against the appellant but the appellant pleaded not guilty and claimed trial.

[3] To substantiate its case, the prosecution has examined as many as six witnesses, namely, PW-1 Inspector Jai Pal Singh, PW-2 SI Ram Phal, PW-3 ASI Sadhu Ram, PW-4 ASI Janeshwar, PW-5 HC Chhatar Pal, PW-6 C.Darshan Singh. The recovery was effected by PW-3 ASI Sadhu Ram in the presence of PW-4 ASI Janeshwar. The case property was produced before PW-1 Inspector Jai Pal Singh, who was posted as Station House Officer of Police Station Ratia, who verified the facts of the case and put the counter seal bearing the impression 'JS'. PW-3 ASI Sadhu Ram has prepared the report under Section 173 Cr.P.C. PW-5 HC Chhatar Pal was posted as MHC and had retained the case property in safe custody in the malkhana. The documentary evidence has also been led by the prosecution.

[4] In his statement under Section 313 Cr.P.C., the appellant has denied the correctness of incriminating evidence appearing against him and pleaded false implication on account of party faction in the village. However, no defence evidence has been led by him.

[5] Vide the judgment of conviction and order of sentence, the appellant has been convicted and sentenced as mentioned in para No.1 of the judgment.

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

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

[8] While assailing the judgment of the learned trial court, it has been argued on behalf of the appellant that the case of the prosecution is based upon the deposition of the official witnesses only and no independent witness has been joined at the time of recovery. Furthermore, the mandatory provisions of Section 50 of the Act have not been complied with and there are discrepancies in the statements of the official witnesses which renders the case of the prosecution to be doubtful.

[9] On the contrary, it has been argued by the learned State counsel that there cannot be any bar to base the conviction on the deposition of the official witnesses. The provisions of Section 50 of the Act are not attracted and discrepancies emerging in the statements of the witnesses in the instant case are inconsequential.

[10] It is no doubt true 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. The deposition of the official witnesses cannot be discarded merely because of their official status only, until and unless cogent ground is therefor. Furthermore, it is a case of chance recovery. The police officials had no prior information that the appellant was having contraband with him. The appellant was spotted during the

course of nakabandi and was apprehended on suspicion. Consequently, the non joining of independent witness becomes insignificant and does not in any manner effect the genuine version of the prosecution.

[11] The significant question to be looked into is with regard to the non-compliance of Section 50 of the Act. It has been pointed out by the learned counsel for the appellant that the appellant was not apprised that he was having legal right to get the search conducted in the presence of a gazetted officer or a Magistrate.

[12] On the contrary, it has been contended by the learned State counsel that recovery has been effected from the bag being carried by the appellant on his shoulder. The mandate of Section 50 of the Act is confined only to his personal search and does not render the recovery from the bag being carried on his shoulder by the appellant to be invalid.

[13] It is significant to note 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 a plastic bag on his shoulder. 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.”

[14] In these set of circumstances, the recovery effected from the plastic bag being carried on the shoulder of the appellant 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.

[15] Learned counsel for the appellant has pointed out certain discrepancies emerging in the statements of witnesses with regard to difference of time of leaving the police station, the distance from which the appellant was spotted by the police party, existence of wall at the spot and the instrument used to carry out the weighment. The discrepancies, as pointed out, do not in any manner render the version of the prosecution to

statements of the witnesses due to lapse of time and they do not in any manner tend to falsify the version of the prosecution.

[16] The recovery has been effected by PW-3 ASI Sadhu Ram in the presence of PW-4 ASI Janeshwar. Both these witnesses have deposed in a 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.

[17] 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.

[18] 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.

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

[20] 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