

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

SR. No.202

CRA-S-1247-SB-2008 (O&M)

Date of Decision:06.12.2022

Rajinder Singh

...Appellant

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. H.S. Oberoi, Advocate (legal aid counsel) and
Mr. D.R. Gurna, Advocate,
for the appellant.

Mr. M.S. Bajwa, DAG, Punjab.

N.S. SHEKHAWAT, J.

The instant appeal has been preferred assailing the judgment of conviction dated 29.05.2008 and order of sentence of even date passed by the learned Special Court, Bathinda, vide which the appellant has been convicted for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and sentenced to undergo rigorous imprisonment for 02 years and 06 months with fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for five months.

Brief facts of the case are that on 04.06.2003, a police party headed by ASI Iqbal Singh was present at the Link Road, at that time Jagroop Singh son of Sardara Singh, resident of Basti No.2, Bir Talab was talking to the police party. Then a person was seen coming on a bicycle, however, on seeing the police party, he became perplexed and tried to turn the bicycle backwards. He was carrying a white plastic bag on the carrier of

his bicycle. Complainant-ASI Iqbal Singh with the help of other police officials caught him and inquired about his name and address. He disclosed his name and address as Rajinder Singh son of Gainda Singh caste Majbhi resident of Tarkhan Wala, P.S. Raman. The complainant raised his suspicion that accused-Rajinder Singh was carrying some contraband in the bag kept on the carrier of his bicycle and his search was to be conducted as per the law. Accused-Rajinder Singh had the right to get himself searched either before a Gazetted Officer or a Magistrate. However, accused-Rajinder Singh opted to get his search conducted in the presence of a Gazetted Officer. ASI Iqbal Singh talked to Manohar Lal, DSP, City Bathinda on mobile phone and requested him to come at the spot. After about 25 minutes, Manohar Lal, DSP City Bathinda reached at the spot in official gypsy along with his personal staff and disclosed his identity to the accused. He informed the accused that he was a Gazetted Officer and wanted to get his search conducted. On this, accused-Rajinder Singh gave his consent to get his search conducted before the DSP and the memos in this regard were prepared. Rajinder Singh also affixed his left thumb impression on the same and the witnesses had put their respective attestations. The complainant ASI Iqbal Singh conducted the search of the above-said Rajinder Singh on the directions of DSP Manohar Lal. The plastic bag, which was kept on the carrier of the accused's bicycle, was also opened and searched and poppy husk was recovered from the same. Two samples of 250 gms each were drawn from the recovered poppy husk and the samples were prepared separately and the remaining poppy husk was weighed to be 19 kg 500 gms. Again the remaining part of the recovered poppy husk was kept in the plastic bag and was sealed with the seal bearing

impression "IS" and the sample of the seal was separately prepared. After use, the seal was handed over to Jagroop singh son of Sardara Singh. The sample parcels and the plastic bag containing poppy- husk duly sealed along with the bicycle were taken into possession vide separate memos by DSP Manohar Lal and the witnesses signed the memos. Accused-Rajinder Singh also affixed his left hand thumb impression on the said memos and Ruqa was sent to the police for getting the case registered against accused Rajinder Singh and the FIR in question was registered against him.

After reaching the police station, the case property and other recovered articles were presented to Baljinder Kumar, SHO, who after verifying the facts of the case had put his seal bearing impression "BK" and also prepared a memo of recovery of the said articles. The accused along with the case property was produced before the learned Chief Judicial Magistrate. Again one representative sample from the bulk was drawn before the Chief Judicial Magistrate and the said sample seal as well as the bulk were sealed with the seal impression "BK". A sample drawn at the spot as well as the sample, which was taken in the presence of CJM, were sent to the Chemical Examiner for analysis. The investigation was concluded and thereafter the challan was presented against the accused in the competent court. The learned trial Court opined that a prima face case was made out against the accused/appellant under Section 15 of the NDPS Act and he was accordingly charged by the learned trial Court.

In support of the case of the prosecution, the prosecution examined four witnesses and closed its evidence. The prosecution examined PW-1 ASI Iqbal Singh, who supported the case of the prosecution, as narrated in the FIR. He also exhibited the consent memo as

EX.PB, which was duly thumb marked by the accused as well as Jagroop Singh and was also attested by DSP Manohar Lal and HC Baldev Singh. He was also a witness to the recovery and preparation of samples for sending the same to the FSL. He clearly stated that sample seal Ex.P1 was prepared and was handed over to Jagroop Singh, a private witness, after use. After making the recoveries, he produced the accused along with the recovered articles to the SHO and memo Ex.PH was prepared in this regard which was signed by him. The SHO kept the case property with him. Similarly, PW-2 Constable Surinder Pal Singh tendered his affidavit Ex.PK and supported the case of the prosecution. Inspector Baljinder Kumar, SHO, Police Station City Mansa was examined as PW-3, before whom the accused was produced along with the case property. He clearly stated that the parcels were duly sealed with the seal mark "IS" and tallied with the sample seal produced. He also affixed his own seal mark "BK" on all the parcels and sample seal was kept intact and the case property was taken into possession vide memo Ex.PH. He also stated that on 06.06.2003, the case property was sent to the office of Chemical Examiner, Patiala, through C. Surinder Pal Singh and so long as the case property remained in his custody, he did not temper with it nor allowed some one to temper with the same. The prosecution further examined PW-4 DSP Manohar Lal, who reached at the spot and on his direction, the search was conducted and the contraband and other articles were recovered from the present appellant.

After the prosecution concluded its evidence, the accused/appellant was called upon to reply to the incriminating evidence tendered by the prosecution and in his statement under Section 313 Cr.P.C., he stated that nothing had been recovered from him and he had been falsely

implicated in this case. The police had arrested him many times just to implicate him in false cases. He approached the police through Sarpanch and other respectable not to harass him but they falsely implicated him in the preset case. However, the appellant did not lead any defence evidence.

The learned trial court after appreciation of the facts and evidence brought on record concluded that the prosecution has successfully proved its case, bringing home the guilt against the accused/appellant. Consequently, the appellant was convicted and sentenced as noted above. Hence, the present appeal.

Learned counsel for the appellant has submitted that there are material contradictions in the statements of various prosecution witnesses. He has further submitted that even the mandatory provisions of the NDPS Act had not been complied with in the instant case. Still further, the link evidence was completely missing in the instant case. The seal was handed over to the independent witness after use. However, during the course of the trial, the said independent witness was not examined by the prosecution and the accused/appellant is liable to be acquitted on this ground only. Still further, as per the case of the prosecution, it was PW-1 ASI Iqbal Singh, who had called the Gazetted Officer, i.e. DSP Manohar Lal at the spot. However, PW-1 admitted in his cross-examination that he did not remember the mobile number of the said DSP and this clearly establishes that the entire proceedings of search and seizure were conducted in the police station itself and a false case was planted on the present appellant.

On the other hand, learned counsel for the State, while referring to the findings recorded by the learned trial Court, submitted that the said submissions had already been dealt with by the learned trial court and the

impugned judgment of conviction and order of sentence are liable to be upheld by this Court.

I have heard the learned counsel for the parties at length and perused the case file carefully.

Learned counsel for the appellant submitted that in the instant case, it is apparent that when accused/appellant was nabbed by the police, Jagroop Singh, an independent witness, was present at the spot and even the seal was handed over to him after use. However, the said witness had not been examined by the prosecution. This Court finds no force in the arguments raised by learned counsel for the appellant. In fact, in a case under NDPS Act, non-examination of an independent witness alone would not raise any doubt about the prosecution case, if the prosecution had been able to lead sufficient evidence establishing the complicity of the accused in the commission of the crime. Simply because of the fact that an independent witness had not been examined, being won over by the accused, the case of the prosecution cannot be rejected. The testimonies of the official witnesses have to be considered in absence of the independent corroboration if such testimonies inspire confidence, the same can be believed to convict the accused. In the instant case, the accused/appellant had not been able to prove any malice or motive on the part of the official witnesses to depose falsely against him and their testimonies cannot be discarded on the sole ground that they are the official witnesses.

The prosecution examined PW-1 ASI Iqbal Singh, who had supported the case of the prosecution in totality and withstood the test of cross-examination. Similarly, the prosecution examined PW-4 DSP Manohar Lal and even his testimony could not be shattered in any manner.

Thus non-examination of the independent witness would have no impact on the facts of the case, which otherwise stood proved from the testimonies of the official witnesses.

Learned counsel for the appellant further submitted that the mandatory provisions of the NDPS Act were not complied with by the prosecution and the appellant is liable to be acquitted by this Court. However, during the course of arguments, learned counsel for the appellant could not satisfy this Court with regard to the alleged violations. Even otherwise, this Court has perused the evidence carefully and finds that the mandatory provisions of Section 42 and 50 of the NDPS Act have been dealt with and the findings recorded by the learned trial Court in this regard are liable to be upheld by this Court. Still further, the learned trial Court had rightly held that it was apparent from the statements of PW-2 C. Surinder Pal Singh and PW-3 Inspector Baljinder Kumar, SHO, City Mansa as well as from the contents of the report of the Chemical Examiner Ex.PX. that the samples and the sample seal chit were deposited with the Chemical Examiner, Patiala, in an intact condition by PW-2 Constable Surinder Pal Singh and after analysis, it was found to be poppy husk. Even otherwise, I have gone through the learned trial Court record carefully and the findings recorded by the learned trial Court are based on due appreciation of evidence and the settled law. Thus, keeping in view the facts and circumstances of the case, the impugned judgment of conviction dated 29.05.2008 is ordered to be upheld.

At this stage, learned counsel for the appellant submitted that the appellant is facing the agony of trial/appeal since 04.06.2003 and also remained in the custody for sufficient long period and he is the sole bread

winner of the family. Thus, he prayed that a lenient view may be taken in the matter while awarding the sentence.

The submissions made by the learned counsel for the appellant have been opposed by the learned counsel for the State, who submitted that two more FIRs , i.e. FIR No.141 dated 25.06.2017 under Section 15 of the NDPS Act and FIR No.182 dated 21.07.2018 under Section 61 of the Excise Act and Section 25 of the Arms Act registered at Police Station Ramna, Bathinda have also been registered against the present appellant and he does not deserve the sympathy of this Court.

It is true that the above-said two FIRs were also registered against the present appellant, however, the fact remains that the contraband recovered from the present appellant was a non-commercial quantity. Even the learned State counsel has produced the custody certificate dated 18.05.2022, which shows that appellant has undergone 03 months and 19 days of actual custody.

Keeping in view the facts and circumstances of the case as noted above, coupled with the facts that the appellant is facing the agony of trial/appeal since the last more than 19½ years and custody period as well as his antecedents and quantum of recovery; sentence awarded to the appellant is reduced to the period already undergone by him. However, the amount of total fine imposed upon the appellants is enhanced to Rs.20,000/- which shall be deposited with the learned trial Court within a period of 03 months from today, failing which the appellant shall undergo further imprisonment of 06 months.

In view of the above, the impugned judgment of conviction dated 29.05.2008 passed by the learned Special Court, Bathinda, is upheld

and order of sentence is modified to the extent indicated above.

With the above modifications, the present appeal stands partly allowed in the above terms. Pending application(s), if any, shall also stand disposed of.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back forthwith.

06.12.2022
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO