

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

CRA-S-1686-SB-2007
Date of decision:-6.5.2022

Dilbag Singh alias Bagga

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. Sagar Aggarwal, Advocate for
Mr.Ashit Malik, Advocate
for the appellant.

Mr.Brijesh Sharma, AAG, Haryana.

H.S. MADAAN, J.

1. Appellant/accused Dilbag Singh alias Bagga was tried by Presiding Officer, Special Court, Kurukshetra in case FIR No.5 dated 13.1.2005, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Ismailabad, on the allegations that on 13.1.2005 when apprehended by the police party in the area of bus-stand Malikpur on suspicion of having some illegal weapon and his personal search having been conducted, he was found in possession of 200 grams of opium, without any permit or licence. The trial ended in his conviction and vide judgment dated

11.5.2007, he was convicted for the offence under Section 18 of NDPS Act and vide order of even date, he was sentenced to undergo rigorous imprisonment for the period already undergone by him in this case i.e. from 14.1.2005 to 18.2.2005 and to pay a fine of ₹8,000/- and in default thereof to further undergo simple imprisonment for a period of two months. Fine was paid.

2. Feeling aggrieved by the said judgment of conviction and order of sentence, the accused/appellant had preferred the present appeal before this Court, which was put up on 17.1.2008, when it was Admitted for regular hearing. Now the case has come up for regular hearing.

3. I have heard learned counsel for the appellant-accused-convict and learned AAG, Haryana, besides going through the record.

4. The first ground of attack of learned counsel for the appellant has been that no notice under Section 50 of the NDPS Act was served by the police party upon the accused before conducting his search, thereby rendering the recovery as illegal and the trial Court fell in error in ignoring the non-compliance of Section 50 of the Act and convicting the accused.

5. Whereas learned State counsel has contended that there was no occasion for the police party to serve such notice since it was a chance recovery as the police party nursed a doubt that accused was carrying some weapon and for that reason, he was searched but instead of weapon, he was found to be in possession of contraband in the form of 200 gms. of opium, therefore, there was no non-compliance of Section 50 of the Act.

6. After hearing learned counsel for the appellant and learned

State counsel, I find that this plea raised by learned counsel for the appellant lacks merit. This aspect has been discussed in detail by the trial Court in para No.13 of the judgment. I am in agreement with the trial Court that on account of being a chance recovery and search having been conducted on suspicion of accused carrying a weapon and not contraband, the recovery of contraband from the accused cannot be termed as illegal.

7. As far as the second plea raised by learned counsel for the appellant that Shamsher Singh was joined as independent witness during the investigation of the case but he was not examined by the prosecution, rather he had appeared as a defence witness and stated that no recovery was effected from the accused in his presence and he did not know the accused, in that way a serious doubt has arisen over the truthfulness of the prosecution story, therefore benefit of doubt should have been given to the accused, resulting in his acquittal. But that aspect has not been taken into consideration by the trial Court.

8. Whereas learned State counsel has contended that the prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt and had not examined Shamsher Singh as a witness on its behalf for the reason that he had been won over by the accused and his subsequent deposition appearing as a defence witness does not cause any dent in the prosecution story for the reason that during his cross-examination on behalf of the State, he had admitted his signatures on the recovery memo Ex.PC and personal search memo Ex.PE, although stated that his signatures had been obtained by the police when he had gone to police station in connection with some work, which

explanation comes out to be least convincing.

9. Considering the rival contentions, I find that merely for the reason that Shamsher Singh, who had been joined with the police party as an independent witness but was not examined as a prosecution witness and rather appeared as a witness for the accused stating that no recovery had been effected in his presence, does not result in prosecution case being affected much since even otherwise, the prosecution by giving cogent and convincing evidence had successfully proved its case beyond a shadow of reasonable doubt and as has been discussed by the trial Court in the impugned judgment Shamsher Singh appeared to be not telling truth while appearing as a defence witness.

10. No further point was argued by learned counsel for the appellant.

11. The judgment and order passed by the trial Court are 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 and order, as such, the same are upheld.

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

6.5.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes