

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.369

CRA-S-1448-SB-2004 (O&M)

Reserved on : 24.11.2022

Pronounced on:29.11.2022

Chhota Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Ms. Sushma Verma, Advocate,
for the appellant.

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

N.S. SHEKHAWAT, J.

The instant appeal is directed against the judgment of conviction and order of sentence dated 08.07.2004 passed by the Special Court, Patiala, whereby the appellant had been convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

The FIR in the instant case was got registered by ASI Kanwaljit Singh, Anti-Narcotic Staff, Patiala. On 05.01.2002, ASI Kanwaljit Singh along with other police officials was going on govt. vehicle Alwyn PB-11A-7848, driven by C.Sukhbir Singh, in connection with patrolling and for checking of suspicious activities from village Banera Khurd on the *Katcha Path* to village Barsat. When the police party reached near the

crossing, Rachhpal Singh s/o Mukhtiar Singh, met him there and he was talking to him. In the meantime, from the side of Banera Kalan, a person having a bag on his right shoulder was seen coming on foot and on seeing the police party, he got perplexed and turned back. On getting suspicious, the complainant along with other police officials and Rachhpal Singh stopped him and enquired about his name and address. The said person disclosed his name to be Chhota Singh @ Chhotu S/o Sucha Singh, caste Sansi resident of Banera Khurd, Police Station, Nabha. The complainant told him that he suspected some contraband in his bag and his bag was to be searched. He informed of his right to get his search conducted from any Magistrate or Gazetted officer, who could be called at the spot. However, Chhota Singh @ Chhotu replied that he did not want to call any Gazetted Officer or Magistrate and reposed faith in the complainant and offered himself to be searched by him. Upon this, his consent was recorded separately, on which Chhota Singh @ Chhotu had put his signatures and the same was attested by the witnesses. The bag of Chhota Singh @ Chhotu was searched and poppy husk was recovered in this. Two samples of poppy husk weighing 250 gms each were separated from the recovered poppy husk and remaining poppy husk weighed to be 6 kg and 500 grams. The two samples of poppy husk were sealed with his seal impression 'KS' and the sample seal was prepared separately. The seal after use was handed over to the witness Rachhpal Singh. The remaining quantity of poppy husk, i.e., 6 kg and 500 grams was again kept in the bag and was sealed separately. Since, the accused/appellant Chhota Singh @ Chhotu had committed the offence under Section 15 of the NDPS Act by keeping the poppy husk in his

possession, the ruqa was sent to the Police Station for registration of the case and the present FIR was registered against the present appellant.

The rough site plan of the place of recovery Ex.PN was prepared and the complainant returned to the police station. The case property, the accused/appellant and the witnesses were produced by him before Balwinder Singh, SHO, who also verified the facts and checked the case property and the sample seal chit Ex.P1. On direction by the SHO, the complainant deposited the case property with MHC Lakhbir Singh. Next day, the accused/appellant was produced before the Court. The recovered contraband was sent to the Forensic Science Laboratory and vide report Ex.PN, the sample was found to be containing chura poppy heads.

After completion of the investigation, the challan under Section 15 of the NDPS Act was presented against the present appellant and he was charge-sheeted under Section 15 of the NDPS Act by the learned trial Court. He pleaded not guilty to the charge and claimed trial.

In order to prove the charge, the prosecution examined six prosecution witnesses. The prosecution examined ASI Gurdial Singh as PW-1, who recorded the statement of MHC Lakhbir Singh and C. Rajinder Singh under Section 161 Cr.P.C. The prosecution further examined PW-2 MHC Lakhbir Singh, who tendered his affidavit Ex.PA and was a formal witness. The prosecution further examined PW-3 HC Kulwant Singh, who was part of the police party headed by ASI Kanwaljit Singh. He supported the case of the prosecution with regard to the recovery of the poppy husk from the present appellant. Still further, the prosecution examined PW-4 Balwinder Singh, Inspector, who was posted as SHO, Police Station, Sadar

Nabha. He stated that on 05.01.2002, ASI Kanwaljit Singh produced before him the accused along with the case property and sample parcel of the poppy husk. All the three parcels were sealed with the seal bearing seal impression "KS" along with the seal of ASI Kanwaljit Singh. He verified the investigation of the case in the presence of witnesses and the accused was also interrogated by him. On the next day, he wrote request Ex.PG to get the police remand of the accused and the request Ex. PH to produce the case property before the Illaqa Magistrate, Nabha. Sample seal impression Ex P1 and the case property along with sample seals were handed over to ASI Kanwaljit Singh. Still further, C.Rajinder Singh was examined as PW-5 whose evidence is formal in nature. The prosecution examined PW-6 ASI Kanwaljit Singh, In charge, Police Post Handesra, who had initially conducted the search and seizure.

The statement of the accused was recorded under Section 313 Cr.P.C. and he pleaded false implication. He submitted that a false case had been planted on him after picking him from home and no recovery was effected from him. Thereafter, the accused opted not to lead defence evidence.

After hearing the counsel for both the parties and going through the record of the case, the learned trial Court concluded that the prosecution has successfully proved its case, bringing home the guilt against the accused/appellant. Accordingly, accused/appellant was convicted and sentenced as noted above.

Hence, the present appeal.

Learned counsel for the appellant has vehemently contended

that the appellant has been falsely implicated in the instant case. There were material discrepancies in the statements of the prosecution witnesses and the independent was, though, joined but not examined for the reasons best known to the prosecution. Still further, the appellant was allegedly seen by the police team at 01.15 PM and the ruqa was also shown to have been sent at 01.30 PM. As per the case of the prosecution, the ruqa was sent after the option for search was given to the accused, consent memo was prepared, poppy husk was weighed and the parcels were also prepared. It was highly improbable that the entire process of search and seizure was completed in just 15 minutes. She also referred to various provisions of law and submitted that the mandatory provisions of the NDPS Act have not been followed by the police at the time of arrest of the accused/appellant.

On the other hand, learned State counsel has opposed the contentions raised by the learned counsel for the appellant and submitted that the prosecution has failed to explain as to which provision of law was violated by the police. Still further, the search was conducted by the police as per the mandatory provisions of law and the impugned judgment of conviction and order of sentence are liable to be upheld by this Court.

This Court has heard the learned counsel for the parties and perused the case file minutely.

Learned counsel for the appellant vehemently contended that even though an eye witness was joined but no independent was produced before the Court. In fact, the testimonies of police officials cannot be brushed aside only on the ground that they are the official witnesses. The accused/appellant could not lead any evidence to show that any police

official was inimical towards him or had any reason to falsely involve the appellant in a criminal case. To prove the charge, the prosecution examined six witnesses, as explained above and all the prosecution witnesses withstood the test of cross-examination. Even learned counsel for the appellant could not point out any violation of mandatory provisions of law and has simply referred to minor discrepancies appearing in the testimonies of official witnesses. In fact, the law is well settled that minor inconsistencies are bound to creep in the testimonies of various witnesses, who deposed before the court of law after several years and the prosecution evidence cannot be thrown away only on the basis of such minor inconsistencies. Thus, the prosecution has been able to prove the charge against the accused/appellant and the testimonies of various prosecution witnesses are found worthy of credence and the impugned judgment of conviction is ordered to be upheld.

The record shows that the case pertains to the year January 2002, when the accused was found carrying 07 kg of poppy-husk, which is non-commercial quantity. The learned State counsel has produced the custody certificate of the present appellant and it shows that the appellant has undergone 26 days out of total sentence of 06 months. Even his sentence was ordered to be suspended by this Court vide order dated 27.07.2004 and since then, he is not involved in any other case. Even he has faced the agony of trial/appeal for the last more than 20 years. Thus, this Court is of the considered view that it is just and expedient to reduce the sentence of the appellant to the period already undergone by him, while upholding his conviction.

In view of the above, the present appeal is partly allowed. The impugned judgment of conviction dated 08.07.2004 passed by the learned Sessions Judge, Narnaul is upheld, however his sentence is ordered to be reduced to the period already undergone by him.

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

29.11.2022
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO