

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

CRA-S-1664-SB-2004 (O&M)

Date of Decision: 13.12.2022

Jeeto	Versus	...Appellant
State of Punjab		... Respondent

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

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

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

N.S.SHEKHAWAT, J.

Feeling aggrieved of the judgment of conviction and order of sentence dated 05.08.2004 passed by the Special Court, (N.D.P.S. Act), Patiala, whereby, the appellant had been convicted under Sections 15 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 2,000/- alongwith default stipulation, the appellant has preferred the instant appeal before this Court.

The brief facts, which are necessary for the disposal of the case are that on 14.07.2003, ASI Ranbir Singh alongwith certain police officials was going from the side of village Pasiana towards Shermajra in a government vehicle for checking the anti-social elements, Surinder Kumar son of Atma Ram resident of Market Colony, Patiala met the police party and they started talking to each other. In the mean time, three women carrying heavy bags on their

heads, were seen coming from the right side on the path of the drain, however, on seeing the police party, they all turned back and started moving at a fast pace. The police party got suspicious and chased the women. Jeeto, appellant/accused was apprehended by the police party.

The police party raised suspicion about her that she was carrying some contraband in her bag on her head and on this ASI Ranbir Singh told her that her search was to be conducted and, if she desired, the search could be conducted in the presence of a Gazetted Officer or a Magistrate. Jeeto accused, in the statement Ex.PB reposed faith in ASI Ranbir Singh and stated that the search might be conducted by him and she had no objection to the same. On this, the search of the bag was conducted and poppy husk was found in the same. Two samples of 250 grams each were drawn and the remaining poppy husk weighed to be 33.500 kgs and the remainder was again put in the same bag. Both the sample parcels as also the bag containing the remaining quantity of poppy husk were separately sealed by ASI Ranbir Singh with his seal impression 'RS' and also fixed the same on the chit Ex.P1 and the seal after use was handed over to Head Constable Hari Chand. After the ruka was sent, the formal FIR Ex.PD/1 was recorded by SI Kuldeep Singh. The Investigating Officer recorded the statements of various witnesses and the necessary steps were taken for the investigation of the case. The case property was deposited by SHO Shamsher Singh with MHC

Sudh Singh in an intact condition. Next day, the case property was produced by ASI Ranbir Singh before the Illaqa Magistrate vide application Ex.PJ and he passed the order thereon Ex.PJ/1. The sample parcels were sent to the chemical examiner and vide report Ex.PK, the chemical examiner declared the contents of the sample parcels to be poppy husk.

After completion of the investigation, the report under Section 173 Cr.P.C., was presented against the present appellant.

After the presentation of challan, the provision under Section 207 Cr.P.C., was complied and the appellant was ordered to be charge sheeted under Section 15(b) of the NDPS Act, where to, the accused pleaded not guilty and claimed trial.

In support of the prosecution case, five witnesses were examined.

HC Sudh Singh was examined as PW1, whose evidence was of formal nature. The prosecution examined ASI Ranbir Singh as PW2, who was part of the raiding team and supported the case of the prosecution. He explained in detail the process regarding the search and seizure and explained the case of the prosecution against the present appellant. He, however, admitted that no independent witness was joined in the police party although he was available at the spot. The prosecution further examined HC Faquir Chand as PW3, who tendered his evidence by way of affidavit Ex.PL. PW4 Shamsheer

Singh, Inspector/SHO was examined as PW4, before whom, the case property alongwith the accused was produced and he had also affixed his seal 'SS' on the sample parcels, the bag and the remaining bulk of poppy husk. He also affixed his seal on the sample chit Ex.P1 and attested the same. He also recorded statement of ASI Ranbir Singh under Section 161 Cr.P.C.; HC Hari Chand PW5 was part of the raiding team and deposed on similar lines. He supported the testimony of PW2 ASI Ranbir Singh and nothing material could be elicited from his cross-examination.

After the prosecution evidence was closed, the statement of the accused under Section 313 Cr.P.C., was recorded, who submitted that she was innocent and had been falsely implicated in this case. All the three accused were picked by the police from their respective homes and nothing was recovered from her possession.

I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

The learned counsel for the appellant submitted that at the time of the alleged raid, Surinder Kumar son of Atma Ram was present alongwith the police party. However, during the course of trial, Surinder Kumar was not examined. Apart from that, despite availability, no other independent witness was examined and the entire case is based on the testimonies of the official witnesses. Learned counsel further submitted that provisions of the NDPS Act

are stringent in nature and to convict the appellant, independent corroboration was required.

The submissions made by learned counsel for the appellant have been vehemently opposed by learned State counsel and he submits that the prosecution had examined five official witnesses to prove its case and the testimonies of the official witnesses could not be shattered in any manner.

This Court has considered the rival submissions made by the learned counsel for the parties and hold that no doubt, the official witnesses were required to join the independent witnesses, to maintain the purity and the sanctity of the investigation process. However, some times, the witnesses are not willing to join the police in raiding a person who is carrying the contraband or is a drug peddler. Moreover, it is also a matter of common experience that the independent witnesses are won over by the accused and the testimonies of official witnesses cannot be discarded only on account of their status of being the public servants. If the testimonies of official witnesses inspire confidence, the same can be relied upon by the Courts to base the judgment of conviction. In the instant case, the prosecution had examined PW2 ASI Ranbir Singh, whose testimony has been supported by PW5 HC Hari Chand. Both the said witnesses were subjected to incisive cross-examination, but nothing material could be found during the cross-examination, which could affect the

credibility of these witnesses. Consequently, the learned trial Court was justified in placing reliance on the testimonies of the official witnesses.

The learned counsel for the appellant further submitted that the mandatory provisions of Section 50 of the NDPS Act were not complied with by the prosecution and due to the same, the recovery and the entire seizure process stood vitiated. However, from a perusal of the facts of the case, it is evident that the recovery was made from the bag, which was kept by the appellant on her head and no recovery was effected from her personal search. Consequently, when no personal search was conducted and the recovery of the 34 kgs of poppy husk was from the bag held by the appellant, the provisions of Section 50 of the NDPS Act would not be attracted in the instant case.

The learned counsel for the appellant further submitted that the grounds of arrest were not provided to the appellant and there was delay in sending the sample to the FSL and the appellant is liable to be acquitted by this Court. However, this Court finds no force in the said argument raised on behalf of the present appellant. From the perusal of the evidence, it is apparent that the present appellant was carrying the contraband on her head and was given the offer to get her search conducted either before a Magistrate or a Gazetted Officer. Even though, the provisions of Section 50 of the NDPS Act are not

required to be followed in view of the facts of the instant case, still, she was given an offer under the said provision. On this, she reposed faith in ASI Ranbir Singh and got her search conducted from him. Still further, even at the time of the arrest, the arrest memo was prepared and she was apprised of her rights under the statute. Still further, learned counsel for the appellant had failed to show that any prejudice had been caused by the delay in sending the samples to the FSL rather the evidence led by the prosecution clearly shows that the samples were kept in an intact condition and there was no tampering with the samples, while those remained in police custody or while sending the same to the FSL and there was sufficient compliance of the mandatory provisions of the NDPS Act. Thus, the impugned judgment of conviction passed by the learned trial Court is liable to be upheld.

At this stage, the learned counsel for the appellant submits that at the time of disposal of the case by the learned trial Court, the age of the appellant was about 45 years and at present she is aged about more than 63 years and is a senior citizen. She is suffering from various old age related deceases. Apart from that, she is facing the agony of trial/appeal for the last about 19 years and the sentence imposed on her may be reduced to the period already undergone by her.

The custody certificate has been filed by the learned State counsel, which shows that she has undergone one month of actual sentence. Her sentence was ordered to be suspended by this Court on 27.08.2004 and since then, she was out of custody and was not involved in any other criminal case. She has never misused the concession of suspension of sentence also. Moreover, she is a senior citizen and is facing the agony of trial/appeal for the last more than 19 years. The impugned judgment of conviction dated 05.08.2004 passed by the Special Court, (N.D.P.S. Act), Patiala is ordered to be upheld. However, her sentence is ordered to be reduced to the one already undergone by her. The sentence of fine will remain the same and the same has already been deposited by the present appellant.

With these above modifications, the present appeal stands partly allowed in the above terms.

All pending applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

13.12.2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No