

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

CRA-S-2204-SB-2004

Reserved on: 07.03.2022

Pronounced on: 08.04.2022

KARAM SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by : Ms. Jasneet Mehra, Advocate for
Mr. L.M. Gulati, Advocate
for the appellant.

Mr. Sukhbeer Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J.

1. The present appeal raises a challenge to the judgment dated 16.10.2004 passed by the Judge, Special Court, Patiala in case FIR No. 39 dated 01.05.2003 for offence under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 registered at Police Station Julkan.

FACTS OF THE CASE

2. Before proceeding into the merits of the appeal and the submissions advanced by the learned counsel for the appellant, it would be appropriate to refer to the facts of the instant case leading to the filing of the instant appeal. A perusal of the same would show that Sub Inspector Swaran Singh along with other Police officials, while going from village Gharam to village Nandgarh in Government vehicle for patrolling noticed the accused taking a sudden turn towards Rajgarh after getting startled and perplexed on

seeing the police party. The appellant was apprehended on suspicion. He disclosed his identity and upon disclosing about a suspicion that the plastic bag held by the accused on his head contained contraband, an offer in terms of Section 50 of the NDPS Act was made. The appellant was informed of his right to be searched before a Gazetted Officer or a Magistrate. The appellant is stated to have reposed confidence in the Investigating Officer-SI Swaran Singh whereupon his consent memo was prepared and search of the bag was conducted. The same was found to contain poppy husk. Two samples of 250 grams each were drawn and the balance quantity was weighed to be 8.5 kilograms. Two parcels of the sample and one of the remaining weighed poppy husk was prepared and sealed with seal bearing impression 'SS' each and the seal after use was handed over to the independent witness Surjit Singh who had been joined. Sample seal chit was also prepared and the articles of the case property were taken in police possession through recovery memo. A ruqa was sent to the Police Station whereupon FIR was registered. The case property was thereafter produced before the SHO who verified the factum of the recovery and after tallying the seals on the parcels with sample seal chit and finding them intact, he put his own seal bearing impression 'RS' on all items of the case property and the same was thereafter deposited by the Investigating Officer with the MHC.

3. The samples were thereafter sent for chemical examination in an intact condition. Upon completion of the investigation, a final report for commission of offence under Section 15 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 was filed. Copies of the challan along with all supporting documents were duly supplied to the appellant. The case

was committed to the Court of Sessions and a charge was framed as appellant did not plead guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 05 witnesses and also tendered the report of the Chemical Examiner Ex. PX. The incriminating circumstances appearing in the evidence were put to the accused in the statement under Section 313 Cr.P.C. to which he pleaded not guilty and alleged that he had been falsely implicated in the case in order to prevent him from contesting election for the post of Sarpanch in the village. In support of his case, the appellant examined DW-1-Roshan Lal, Clerk in the office of Senior Superintendent of Police, Patiala to prove that even though the Sub Inspector Swaran Singh-the Investigating Officer of the case, was posted as SI (ORP), he was drawing pay of Head Constable.

5. Upon consideration of the evidence adduced by the respective parties, the Judge, Special Court convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of 01 year and pay fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment of 02 months. Hence the present appeal.

ARGUMENTS BY APPELLANT

6. Learned counsel for the appellant has argued that the judgment in question is erroneous and is liable to be set aside. She has argued that the search in the case has been conducted by the Investigating Officer himself and the same has not been effected by any Gazetted Officer and/or Magistrate as per mandate of Section 50 of the NDPS Act. She has further submitted that the offer being defective violated Section 50 of the NDPS Act and as such, the recovery was vitiated. It is also argued that the sample was

sent after delay to the chemical Lab & that the Investigating Officer was not competent to investigate the matter. It is also submitted that even though an independent witness namely Surjit Singh was joined to the recovery by the Investigating Officer, however, the said independent witness was previously known to the Investigating Officer. There was no occasion why the police would take along an independent witness with them when they are on a routine patrolling duty. As such, the testimony of independent witness has to be disbelieved as the same cannot be regarded as independent. Reference in this regard was made to the evidence of PW-5 wherein the said fact was noticed. It is also argued that the appellant has been implicated because of differences with the Investigating Officer as he had filed complaint against the Sub Inspector with the Human Rights Commission for demanding illegal gratification. As a parting argument, the counsel has argued that in the event of the case not succeeding on merits, the prayer of the appellant for reduction of sentence to the period already undergone may be considered. It is pointed out that as against a sentence of 01 year, the appellant has already undergone of an actual custody of more than 01 month.

ARGUMENTS BY RESPONDENT

7. Controverting the said documents, Mr. Sukhbeer Singh, Asstt. Advocate General, Punjab had argued that 09 Kg of poppy husk has been recovered from the actual and conscious possession of the appellant. Besides, the recovery was a chance recovery and not from the person of the appellant. It was rather effected from a plastic bag carried by the appellant on his head. There has been no procedural violation. He, however, did not dispute the period of custody undergone and also the fact that there is no

other case registered against the petitioner either for a period prior to the instant FIR or ever since then.

8. He, however, submits that the malice of drugs has to be sternly dealt with and no leniency should be shown to such persons.

ANALYSIS

9. While referring to the first argument that there has been a violation of Section 50 of the NDPS Act and that the recovery was defective, it would be essential to refer to the relevant statutory provision.

10. The provisions of Section 50 of the NDPS Act, 1985 is reproduced herein after below.

Section 50 in The Narcotic Drugs and Psychotropic Substances Act, 1985

50. Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

*(4) No female shall be searched by anyone excepting a female.
1[(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with*

possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

11. A perusal of the record shows that the consent memo (Ex.P.C.) was recorded as per which it was informed to the appellant that he could “get his plastic bag searched in the presence of any Gazetted Officer or in the presence of a Magistrate.” The appellant had reposed confidence in the Investigating Officer himself. The offer made by the Investigating Officer was thus in accordance with Section 50 of the NDPS Act. The act of the appellant in reposing confidence on the Investigating Officer was not a part of the offer but an exercise of a voluntary option. The same cannot render the offer under Section 50 of the NDPS Act to be defective.

12. Besides the aforesaid aspect apart, a perusal of the Section shows that the offer for search of a person in the presence of Gazetted Officer or Magistrate referred to has to be made when the search has to be done of the person of the accused. The contraband in question was contained in a plastic bag, the same would not fall within definition of search of person. It is not disputed by the counsel for the appellant that the recovery in question was not effected from the body of the appellant, rather, the contraband was being carried by him in a plastic bag over his head. Hence, even on the said aspect it cannot be held that there was any violation of Section 50 of the NDPS Act. The appellant is firstly required to establish

that mandate of Section 50 of the NDPS Act was applicable in his case and has to thereafter establish the breach thereof. Even otherwise, a perusal of the consent memo shows that offer of search had been extended to the applicant-accused in accordance with the requirement contemplated under Section 50 of the NDPS Act.

13. This leads to the next question as to whether the seized case property remained intact during the time when it remained deposited in the Police Station and till its delivery to the chemical Lab for analysis.

14. The witnesses to the recovery duly proved the recovery memo as well as the consent of the appellant/accused for his search. Besides, the recovery of poppy husk on 01.05.2003 is duly supported by the testimonies of PW-3 ASI Varinder Singh and PW-5 SI Swaran Singh. It is also duly established by the said witnesses that the recovered quantity of the contraband, after the samples were drawn was 8.5 Kg and that the recovery was duly converted into a parcel and was sealed by the impressions of the Investigating Officer which was also taken in possession vide memo Ex.PD which is duly witnessed by PW-3 as well as an independent witness. The sample seal chit Ex.P1 was also prepared. Statement of PW-4 further establishes that samples were produced before him on 01.05.2003 and the same was verified and then after checking the case property and after finding the same intact, he had put his seal bearing impression 'RS' on all the parcels and directed PW-5 to deposit the case property with the MHC and then it was accordingly deposited with MHC, Sukhpal Singh (PW-1) corroborated this fact in his affidavit. It is also established by the said prosecution witness that items of the case property and the accused were produced before the Magistrate on the next day by moving an application

Ex.PK and then the case property was re-deposited by PW-1 from where PW-2 Constable Budhgir took the samples in an intact condition to the office of the Chemical Examiner after getting the docket forwarded from the Senior Superintendent of Police. The seized contraband was forwarded to the Chemical Examiner for analysis on 12.05.2003 and was received by him on the same day. It is duly certified in the report of the Chemical Laboratory that the seals on the exhibits were intact and that the sample remained in safe custody till analysis was complete. An analysis report of the sample by the Chemical Laboratory determined the same to be poppy husk. It is also established by them that the sample was kept intact and tamper free till it reached the office of the Chemical Examiner. The said report from the Chemical Examiner Ex.PX re-establishes that the samples had been received by them in an intact condition. After the examination of the said, the same was detected to be poppy husk. The second sample Ex.P2 and bulk parcel containing weighed poppy husk Ex.P3 was also produced in the course of statement of PW-1 and the sample seals were also proved by PW-3. It is thus evident that in so far the search, seizure and the sample analysis concerned, there had been no violation of the procedure prescribed under law.

15. In so far as the argument of defence that the Investigating Officer SI Swaran Singh was not competent to conduct investigation as he was in an actual rank of Head Constable. In this regard she had referred to the statement of DW-1 alongwith contents of Ex.DA and to contend that the Investigating Officer was given ORP rank of ASI first and thereafter ORP rank of Sub Inspector vide orders Ex.DA. The said aspect was duly noticed by the Judge, Special Court and held that the aforesaid documents rather establish that the Investigating Officer had been appointed and was working

as a Sub Inspector as on the date of seizure of the contraband. The mere fact that he was drawing salary against post of Head Constable would not designate him as a Head Constable. His substantive posting is that of the Sub Inspector. It cannot therefore be perceived that he was not competent to carry out the search and seizure.

16. Learned counsel appearing on behalf of the appellant has not been able to point out to any provisions of law as would vitiate the recovery conducted by a person who had been granted ORP promotion as a Sub Inspector.

17. In so far the argument of the appellant that the independent witness was known to the Investigating Officer and the same would thus vitiate the case of the prosecution is concerned, the same, in my opinion would not hold much ground. The appellant has failed to point out any defect in drawing of sample, its sealing, its storage as also in its production before the Laboratory. There is thus no prejudice or violation of Law or procedure established by the appellant. Even otherwise, it is well known that it may not be easy to join any public witness, as people generally do not want to associate themselves with any proceedings in relation to the Police investigation.

18. The recovery cannot be held to be vitiated only because the same was witnessed by an independent witness who was previously known to the Investigating Officer and liable to be discarded. The counsel for the appellant also could not indicate any close proximity of the said witness with the Investigating Officer. Besides, the counsel for the appellant has not been able to demonstrate any malice or ill will against the petitioner by the

Investigating Officer. A mere suggestion that the appellant had submitted a complaint against the Investigating Officer cannot be the basis to discard the proceedings carried out by the Investigating Officer in accordance with law. It has to be kept in mind that the submission of the complaint to the Human Rights Commission may only be a part of the defence strategy in order to malign the recovery by casting aspersions against the Investigating Officer. Such an attempt on the part of an accused to submit complaint against the Investigating Officer or the persons likely to depose against them has to be examined with circumspection and cannot be accepted as gospel truth. The appellant could not establish any prior enmity or false motive. Invariably, possibility of submission of a false and frivolous complaint by an accused to other authorities against the Investigating Officer cannot be ruled out. The appellant could not establish the plea taken by him that the implication was on account of any intent to prevent the appellant from contesting election as Sarpanch. He has failed to even suggest the person at whose behest the Investigating Officer was working and who as a candidate, was being supported by the Investigating Officer. The allegations thus are mischievous and have been leveled solely to scandalize the recovery for availing benefit, if any, during the course of trial.

17. The same now leads to the question of sentence. A perusal of the judgment shows that the petitioner was directed to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/-. The said order was passed in the year 2004 and the applicant claimed that he had a 07 year old child. The recovery in question is 9 Kg of poppy husk and was effected on 01.05.2003 which was nearly 19 years ago. The appellant was then aged approximately 30 years and would be around 50 years old now.

Further, there is nothing on record to suggest that the appellant was involved in any other case under the NDPS Act prior to the registration of the instant FIR in the year 2003 or over a period of nearly 20 years after the registration of the instant case. Thus, it seems that the appellant has reformed. He is a first offender. The absence of continued involvement of the appellant in commission of such similar acts clearly shows that the process of law has served its purpose and has effectively checked repetition of offence at the behest of the appellant. The appellant has further lived the agony of protracted criminal proceedings for a period of 19 years. The aforesaid circumstances would cumulatively constitute sufficient mitigating circumstances to extend some leniency in the matter. The object of sentencing is to keep a balance between the penalty imposed and the interest of an accused. The punitive approach of sentencing is an order of the old norm, whereas the modern day object of the criminal justice system is reformation and rehabilitation. The said object seems to have been well served in the instant case as there is an evident reform.

18. This Court, had in the matter of **“Karamdeep Singh versus State of Punjab reported as 2015 SCC Online P & H 13589”** passed in criminal appeal No.1421-SB of 2015 had reduced the sentence of the appellant convicted under Section 15 of the NDPS Act where he was sentenced for a period of one year and to pay fine of Rs.5,000/-, to the period already undergone.

19. Further, in the matter of **CRA-S-3604-2019 (O&M)** reported as **2020 SCC Online P&H 3012 titled as “Ramandeep versus State of Punjab”**, the appellant had been sentenced to undergo rigorous imprisonment for a period of 02 years and 06 months under Section 22 of

the NDPS Act. The sentence of the accused-appellant therein was also reduced to the period already undergone by him. Existence of sufficient mitigating circumstances is made out in the facts of the instant case and the same have already been noticed in the preceding paragraphs. Directing the petitioner to undergo the remaining sentence after 19 years shall have a severe negative impact on the social life of the appellant. His children are likely to be of marriageable age and their prospects for a decent match would be jeopardized.

20. In view of the same, the present appeal is partly accepted. The judgment of conviction passed by the Judge, Special Court is upheld, however, the order of sentence is modified and the sentence awarded to the appellant is reduced to period already undergone. The appellant shall however make good the sentence of fine so imposed and would be liable to undergo the default sentence in case fine is not deposited.

Appeal is partly allowed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 08, 2022

Vishal sharma

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