

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

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**CRA-S-433-SB-2004
Decided on : 21.12.2022**

Jaswinder Singh

. . . Appellant(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Rittu Punj, Legal Aid Counsel
for the appellant.

Mr. JS Arora, DAG, Punjab.

SANJAY VASHISTH, J.

Present appeal is filed by appellant – Jaswinder Singh, then aged 24 years, against the judgment of his conviction and order of sentence dated 05.02.2004, passed by Ld. Judge, Special Court, Patiala, in Sessions Case No.68, dated 06.12.2001/08.12.2003, arising from FIR No. 308, dated 09.09.2001, under Section 15 of the Narcotic Substances and Psychotropic Substances Act, 1985 (for brevity 'NDPS Act'), Police Station City Rajpura.

For the recovery of 30 KG of poppy-husk, appellant (hereinafter referred to as 'accused'), was sentenced to undergo RI for a period of one year, and to pay a fine of Rs.2000/-, and in default of payment of fine to further undergo RI for two months.

2. Prosecution case is that on 09.09.2001, at about 07:00 AM, when Insp. Gurinderjit Singh (PW1) along with other police officials was present in connection with the patrolling duty in search of the anti-social elements near Sabji Mandi, Rajpura. There, one Omparkash s/o Ajmer Singh met them and was joined in police party. After some time, from the side of

Railway Station, Rajpura, accused was seen coming towards them with a bag on his head. On seeing the police party, accused tried to return back, but on suspicion he was apprehended. On making inquiry, accused disclosed his name as Jaswinder Singh s/o Rakha Singh, Ramdasia, r/o Village Sakrali. As per initial version of the prosecution, accused was told by Insp. Gurinderjit Singh that if he wants conducting the search of his bag in the presence of some Gazatted Officer or Magistrate, they can be called on the spot. However, on deposing confidence in the Inspector, the consent statement (Ex.PA) of the accused was recorded, and same was read over and explained to him. Below which, signatures were affixed as a token of his correctness. On affecting search of bag, 30 KG of poppy-husk was found. Two samples of 250 grams each, were prepared.

All the three parcels were sealed with the seal bearing impression GS of Investigating Officer, Insp. Gurinderjit Singh. Sample seal chit Ex.P1 was prepared, and seal after use was handed-over to ASI Raunaq Singh. Seizure memo of the case property Ex.PB was prepared. Thereafter, case property was produced before the SI/SHO William Jeji, who after conducting the verification proceedings affixed his seal bearing impression WJ on the case property, and also on the sample seal. Thereafter, case property was produced before the Ld. Judicial Magistrate, Rajpura.

After completion of the investigation, report under Section 173 Cr.PC was submitted, and accused was charge-sheeted by the Court for committing of offence under Section 15 of the NDPS Act. Prosecution examined total 06 witnesses i.e. Inspector Gurinderjit Singh as PW1, SI/SHO William Jeji as PW2, ASI Shailender Singh as PW3, ASI Raunaq Singh as PW4, C. Bhupinder Singh as PW5, and HC Nahar Singh as PW6, and

thereafter, closed its evidence.

PW C. Sukhwinder Singh was not examined by the prosecution being unnecessary, whereas, PW Omparkash (independent witness) was also not examined having been won-over by the prosecution. After examining of the witnesses, Ld. Trial Court analyzed the evidence in his own way and found the accused to be guilty of offence, which is punishable under Section 15 of the NDPS Act, and was accordingly, sentenced as mentioned above.

3. Since, no one was appearing to represent appellant, this Court vide its order dated 16.12.2022, appointed Mrs. Rittu Punj, Advocate, as Legal Aid Counsel to address arguments in the appeal and to assist this Court.

4. While starting the arguments, Ld. Legal Aid Counsel for the appellant reads out the relevant portion of the evidence of Inspt. Gurinder Singh (PW1), and submits that as per deposition in Court, the offer given by him under Section 50 of the NDPS Act, is not as per law, which is as under:-

“I asked him that he was carrying some contraband in the bag, and that he had option to get himself searched by Gazetted Officer or Magistrate, who could be summoned at the spot, but he deposed confidence in me. I recorded his consent statement Ex.PA, and it was read over and explained to accused, who signed the same and was attested by PWs.”

5. Ld. Legal Aid Counsel further submits that nowhere from the said deposited of the Investigation Officer (PW1), it transpires that accused was apprised of his legal right of being searched through a Magistrate or a Gazetted Officer.

Considering this argument, this Court finds some force in the

contention of the arguing counsel, but said argument could only be available to the appellant, had it been a case of personal search of the accused. As per case of the prosecution, the offer of search was in regard to the bag, which he was carrying on his head, and not for the personal search.

6. The second arguments addressed by Ld. Legal Aid Counsel is that prosecution has cited an independent witness namely Om Parkash. AS per deposition of the Investigating Officer, seal after use was handed-over to ASI Raunaq Singh. Had independent witness been present truly along with police party on the spot, there was no reason with the Investigating Officer to not to handover the seal after use to such a witness. Meaning thereby, said person namely Om Parkash was never present there on the spot of recovery. In support of said contention, Ld. Legal Aid Counsel, cites the judgment rendered by this Court in case of **Parmod Kumar and another Vs. State of Punjab**, 2016(2) RCR (Criminal) 115, (Law Finder Doc Id # 735503). Para No.16 of the said judgment says as under:-

“16. It is settled principle of law that prosecution is required to establish its case in the manner alleged by it by leading cogent, convincing and reliable evidence. Even if the defence plea raised by the accused may not be convincing, the onus of the prosecution does not shift. In the instant case, as per the prosecution version one Jagmail Singh son of Pritam Singh, resident of Sunam was associated as a public witness in the investigation of the case and the search and seizure was alleged to have been effected in his presence but said Jagmail Singh has not been examined by the prosecution, nor the seal after use was entrusted to him. He was given up as having been won over by the accused by the learned Public Prosecutor vide statement dated 15.09.2004. In absence of Jagmail Singh, the public witness,

the entire case of the prosecution is based on the testimonies of the official witnesses alone and in that eventuality, the Court is required to scrutinizes the prosecution evidence carefully, consciously and minutely. Even the minor circumstance may assume significance.”

7. I have considered the said argument, and find that such an argument is having good force in it. More specially when the same is supported with a judgment of this Court.

In the present case also neither the seal after use was handed-over to the independent witness Om Parkash, nor he was produced by the prosecution in witness-box, on the ground that witness being won-over by the accused. In fact, such a ground is without any basis in the absence of some material to support the same.

8. Ld. Legal Aid Counsel also pointed out from the statement of SI/SHO William Jeji, who appeared as PW2, who has accepted that “*Om Parkash, independent witness in the present case is the same witness in case FIR No. 417, dated 02.12.2000, PS City Rajpura, under Section 15 of the NDPS Act*”. From the said part of the statement also it appears that during that period (2000-2001) said Om Parkash was a police tout, and was usually introduced as witness in the cases to give a colour to the story, as a probable one. Thus, on this argument, case of the prosecution gets weaker.

9. Ld. Legal Aid Counsel also refers to the fact that there is evidence available on record that after registration of FIR, no special report was forwarded to the Ld. Magistrate, nor in that regard any witness was produced by the prosecution. Thus, delivery of special report to the Ld. Magistrate also went unproved. Therefore, very inception of the registration of FIR is highly doubtful.

10. Next argument by the Ld. Legal Aid Counsel is that there are material contradictions in the statements of the witnesses. PW1, in cross-examination deposed that accused was apprehended at about 07:00 AM, and ruqa was sent at about 07:15 AM.

While referring the statement of PW4 – ASI Raunaq Singh, counsel submits that as per cross-examination of this witness, police team left CIA Staff, Rajpura at 05:00 AM and apprehended the accused at about 05:30 AM. From the statement of ASI Raunaq Singh (PW4), it is also referred that Om Parkash (independent witness) is resident of Village Dhamauli, which is located in the State of Haryana, and there is no reason available on file, as to for what reason, said procured independent witness namely Om Parkash was made available at the place of recovery.

11. Considering the submissions of Ld. Legal Aid Counsel for the appellant, this Court again find some force in it. First of all there are contradictions in the statements of the material witness, and that too of police witnesses, who are none other, but the members of the investigating agency right from the beginning. Such discrepancies shows that no such recovery is affected from the alleged spot, rather, proceedings have been conducted at some other time and at some other place, may be by sitting in the police station.

Moreover, no reason is available as to for what reason, independent witness - Om Parkash, was present at the time of recovery, and that too at 05:30 AM or 07:00 AM. In support of the non-examination of the alleged one independent witness, who was joined during investigation, Ld. Legal Aid Counsel also relies upon the judgment passed by this Court in case of Swaroop Singh Vs. State of Haryana, 2014(2) RCR (Criminal) 571,

(Law Finder Doc ID # 493353). She further relies upon another judgment of this Court rendered in case of Ram Pal Singh Vs. State of Punjab, 2017(4) Law Herald 3336, (Law Finder Doc ID # 948184), and submits that where the accused is facing allegations of serious crime with stricter provisions of punishment, in the absence of non-examination of independent witness, benefit of acquittal should be extended to the accused. Relevant para Nos. 13 & 14 of the aforesaid judgment, are reproduced hereunder:-

“13. There is no evidence that the police made any effort to conduct a raid at the house of the accused. This is a serious flaw in the prosecution case. The only independent witness Gurmail Singh was given up. He was the person to whom the seal was handed over. The prosecution also failed to produce the registration certificate of the scooter to show that it was owned by one of the accused.

14. Interestingly, Sarwan Singh made a casual statement in the examination-in-chief when he said that he knew the accused and had identified them. He was expected to disclose how he knew them. The accused were of different villages. He did not say that any case had been registered against either of them earlier. Such kind of statement could not have been accepted by the trial Court. The prosecution had been unable to prove its case beyond all reasonable doubts and the trial Court had not given cogent reasons for accepting the statement of H.C. Sarwan Singh. The findings recorded by the Court below are set aside. The appeal is accepted. The accused is acquitted of the charges.”

12. While rebutting the arguments of Ld. Legal Aid Counsel, Ld. State counsel submitted that there is nothing brought on record by the accused to prove any motive of the police party to involve the accused falsely in the

present case. Offence being serious in nature, and crime against the society, accused do not deserve any leniency. He further relies upon the statements of the police officials available on file for maintaining the finding of guilt against accused.

However, while producing the custody certificate dated 21.12.2022, he could not dispute the fact that as per custody certificate, after release of the accused/appellant on bail on 12.12.2001, he is never found involved in any other case of similar nature.

13. Considering the aforementioned circumstances, arguments addressed by counsel for the parties, and after perusing of the record carefully, I find force in the submissions addressed by Ld. Legal Aid Counsel, and thus, the judgment of conviction and order of sentence dated 05.02.2004, passed by Ld. Trial Court, are hereby set aside, and consequently, appeal is allowed by acquitting the appellant.

Appeal stands disposed of.

(SANJAY VASHISTH)
JUDGE

December 21, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No