

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

CRA-S-183-SB-2005(O&M)

Date of decision:-16.9.2022

Nirmal Singh Nimma

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Ms.G.K. Mann, Sr.Advocate with
Mr.Gursewak Singh, Advocate
for the appellant.

Mr.G.S. Dhillon, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant/accused Nirmal Singh Nimma was tried by learned Judge, Special Court, Amritsar in case FIR No.118 dated 14.6.2002 for an offence under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station C Division, Amritsar, on the allegations that on 14.6.2002 at about 8:00 p.m. in the area of GANDA NALA (drain), Bhagtanwala, he was found in conscious possession of 60 grams of smack without any licence or permit, thereby committed an offence punishable under Section 21 of the Act. On conclusion of trial, vide judgment dated 14.1.2005, he was convicted for

the offence for which he was booked and in terms of order of that very date, he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.3,000/- and in default thereof to further undergo rigorous imprisonment for a period of six months.

2. Briefly stated, facts of the case, as per the prosecution version are that on 14.6.2002, a police party led by ASI Shiv Darshan Singh (hereinafter referred to as the Investigating Officer/IO) was present at Chowk Bhagtanwala, Amritsar in connection with patrol duty, where the IO received a secret information that some persons were coming with narcotics near drain of Bhagtanwala going towards city and in case a picket was laid at bridge of the drain, then those persons could be apprehended along with the narcotics; accordingly a picket was laid there; two persons were spotted there, who on seeing the police party tried to turn back; they were apprehended on the basis of suspicion and on being inquired about, one of such persons disclosed his name as Nirmal Singh Nimma son of Gurmukh Singh, resident of Jiwan Singh Colony, Angarh, Amritsar; the IO informed Nirmal Singh Nimma that he suspected some contraband in possession of the accused and wanted to carry out necessary search; one Ramesh Kumar had also arrived at the spot and he was joined with the police party; the IO apprised the accused of his legal right to get the search conducted in presence of some gazetted officer or a Magistrate; the accused opted to get the search carried out in presence of a gazetted officer; a memo in that regard was prepared as Ex.PC; then DSP(City) – II – Chaman Lal, a gazetted officer was requested to come to the spot and he accordingly did so; on reaching the spot, he gave his introduction to the

accused telling him that he was a gazetted officer informing such accused that he had a legal right to get the search conducted in presence of some other Gazetted officer or a Magistrate; the accused reposed confidence in DSP(City) – II – Chaman Lal, stating that he had no objection, if search was conducted in his presence; a consent memo Ex.PA in that regard was prepared.

3. Thereafter, on instructions of DSP(City) – II – Chaman Lal, the IO conducted search of the accused and from his possession smack placed in glazed paper was recovered; 10 grams was separated therefrom as a sample and on being weighed, the residue came out to be 50 grams of smack; the sample and the residue were converted into separate parcels, sealed with the seal of IO having inscription 'SS'; then the sample parcel and bulk parcel were taken into police possession vide recovery memo Ex.PB.

4. Accused was arrested in this case. His jamatalashi was conducted, which resulted in recovery of currency notes of Rs.50/- from him, which were taken into police possession vide memo Ex.PD. Grounds of arrest were furnished to the accused and a memo in that respect was prepared as Ex.PG. The IO sent ruqa Ex.PE to the police station on the basis of which formal FIR Ex.PE/1 was recorded. The Investigating Officer prepared rough site plan of the place of recovery (Ex.PF) and recorded statements of witnesses.

5. On return to the police station, the Investigating Officer produced the accused along with the case property and witnesses before SI Harjinder Singh, SHO of the police station, who verified the facts and

sealed the case property with his seal having inscription 'HS'; thereafter the sample parcel and bulk parcel sealed with the seals having impressions 'SS' and 'HS' remained in custody of SI Harjinder Singh, SHO of the police station.

On the next day, SI Harjinder Singh produced the accused along with the case property before the Illaqa Magistrate at Amritsar, who had seen the case property. On return to the police station, the case property was again put in the double lock. On 25.6.2002, SI Harjinder Singh handed over sample parcel to Constable Dilbagh Singh for the purpose of taking it to FSL, Punjab, Chandigarh. Constable Dilbagh Singh accordingly took the sample parcel along with docket issued by the office of SSP Amritsar and sample seal impression chit, to FSL, Punjab, Chandigarh depositing those articles there and on return handed over receipt to SI Harjinder Singh on that very day. A report Ex.PJ from the office of FSL, Punjab, Chandigarh was received that the sample was found to contain 19.41 diacetyl morphine, which is active content of smack.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

6. On receipt of the case in the Court, observing that prima facie charge for an offence under Section 21 of the Act was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

7. During the course of its evidence, the prosecution examined the following witnesses:

PW1 Sh.Chaman Lal, DSP (City) – II (since promoted as SP posted at Control Room, Amritsar) had supported the prosecution story with regard to recovery of contraband from the possession of the accused in his presence.

PW2 ASI Shiv Darshan Singh, the IO lent support to the case of the prosecution with regard to accused having been found in possession of 60 grams of smack on 14.6.2002 during evening time in the area of drain Bhagtanwala, Amritsar besides deposing about his role with regard to search and seizure and investigation of the case, proving various documents.

PW3 Constable Dilbagh Singh, a formal witness, the carrier of the sample to FSL, Punjab, Chandigarh through his affidavit Ex.PH testified that during the period the sample parcel remained in his custody neither he tampered therewith nor allowed anyone to do so.

PW4 SI Harjinder Singh, SHO of Police Station C Division, Amritsar before whom the case property along with the accused had been produced after recovery and who had put his own seal having impressions 'HS' on the case property, retaining the case property in his possession and on the next day producing the same before the Illaqa Magistrate and thereafter again placing it in double lock and on 25.6.2002 sending the sample parcel through Constable Dilbagh Singh to the office of FSL, Punjab, Chandigarh, deposed regarding his part with regard to safe custody of the case property during the period, the same remained in his custody.

The prosecution tendered in evidence various documents

including report of FSL, Punjab, Chandigarh as Ex.PJ.

8. After closure of prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances in the prosecution evidence appearing against such accused were put to him but he denied the allegations contending that he was innocent and nothing was recovered from him and he had been involved in this case falsely.

9. In his defence evidence, the accused examined DW1 HC Davinder Singh, who had brought register No.19 showing that the case property relating to this case was deposited on 14.6.2002 at serial No.571/609; it was taken out on 15.6.2002 and it was redeposited and the sample was taken out on 25.6.2002.

10. The trial Court had formulated the following point for determination:

“Whether the prosecution has been able to prove the recovery of 60 grams of smack from the possession of accused?”

11. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal, which was taken up on 25.1.2005, when it was admitted for regular hearing. On an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the same was allowed vide order dated 28.2.2005 and remaining sentence of the appellant was suspended during the pendency of the appeal and he was admitted to bail, subject to his furnishing personal and surety bonds to the

satisfaction of learned CJM/Duty Magistrate, Amritsar.

12. Now the appeal has come up for final hearing.

13. I have heard learned counsel for the appellant – accused – convict, learned Assistant Advocate General for the State of Punjab besides going through the record.

14. Here both the witnesses of recovery namely PW1 DSP (City) -II Chaman Lal (since promoted as SP) and PW2 ASI Shiv Darshan Singh had fully supported the prosecution story with regard to accused having been found in conscious possession of contraband. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. No previous enmity between them and the accused – convict has been alleged or proved prompted by which they might have involved the accused in this case wrongly and deposed against him falsely to secure his conviction. The account given by these PWs come out to be worthy of reliance. Though they are official witnesses but merely for that reason, their depositions cannot be suspected. Learned Single Judge of this Court in case **Jaswant Singh alias Jassa Versus State of Haryana, 2005(1) RCR(Criminal) 802** has observed that where recovery is supported by the official witnesses only, that per se is no ground to discard their testimonies and that the only rule of caution is that their statements should be examined with extra care in order to find out whether they inspire confidence and are worthy of reliance. In this case after carefully perusing the depositions of these witnesses, I do not find any reason to doubt the same, rather they deserved to be accepted and relied upon.

15. The link evidence in this case has been provided by PW4 SI Harjinder Singh, the custodian of the case property after search and seizure and after its production before the Illaqa Magistrate concerned, as well as PW3 Constable Dilbagh Singh, the carrier of the sample parcel to the office of FSL, Punjab, Chandigarh. Report from the FSL, Punjab, Chandigarh Ex.PJ goes to show that the sample parcel had been received there duly sealed with two seals one having inscription 'SS' and other 'HS' on 25.6.2002 through Constable Dilbagh Singh. There is no mention that there was anything wrong with the seals affixed on the sample parcel. As per the result of analysis, the sample was found to have contain 19.41 diacetyl morphine, which is an active content of smack.

16. Learned counsel for the appellant has tried to find faults with the impugned judgment for various reasons. Her first ground of attack was that CFSL form was not prepared at the spot, which gives rise to a doubt about the truthfulness of the prosecution story.

17. A co-ordinate Bench of this Court in a case **Wazir Singh versus State of Haryana, 2010(1) RCR(Criminal) 480** wherein while dealing with the aspect of CFSL Form not filled on the spot, it was observed that there is no rule of evidence or procedural rule under Criminal Procedure Code or NDPS Act that every document must be prepared at the spot of recovery.

18. Hon'ble Supreme Court in Appeal (Crl.) 31 of 2000 titled **Khet Singh Versus Union of India** observed that law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become

inadmissible and the Court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.

19. The second contention was that there had been delay of 11 days in sending the sample to FSL, Punjab, Chandigarh.

20. The Apex Court in **Hardip Singh Versus State of Punjab, 2008(4) RCR(Criminal)97** while dealing with a case relating to recovery of 7 kgs. of opium when samples were sent to chemical examiners after 40 days of recovery, however, there was no evidence that samples were tampered with or any prejudice was caused to the accused, the delay was not held to be fatal to the case.

21. The aspect of delay in sending the sample to the office of Chemical Examiner was also discussed in case **Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25** holding that when the samples were not sent to the office of Chemical Examiner within 72 hours, the prosecution and conviction cannot be vitiated on that ground since there was no specific provision in the Act in that regard and the instructions/standing orders in that respect were only the guidelines to regulate and control their internal working of Narcotic Control Bureau.

22. Learned counsel for the appellant had further contended that Ramesh Kumar, independent witness was not examined.

23. Although an independent witness namely Ramesh Kumar was joined with the police party, who was however not examined during the trial but that does not effect the credibility of the prosecution version. Learned Additional P.P. by making statement in the Court on 22.10.2003 had given up Ramesh Kumar for the reason of having been won over by the accused. Thus, adequate explanation has been rendered for non-examination of Ramesh Kumar. Nevertheless non-examination of Ramesh Kumar as a prosecution witness is of little consequence. In **Sucha Singh's** case (supra), which a case when an independent witness had been joined during the search and recovery of contraband; he had appeared as a witness for the defence stating that his signatures were procured on blank papers when he had visited the police station in drunken condition, it was observed that such contention was not accepted further holding that it cannot be believed that numerous signatures on various papers having different written material could be signed by a witness on blank papers. The testimony of that witness was held to be unreliable and was discarded. In that very judgment, credibility of official/police witnesses was considered and it was observed that when there is no allegation of any enmity against the police officials to falsely implicate the appellants and there was no reason for them to depose against the appellants, the trial Court had rightly concluded that non-examination of independent witness of search and recovery being won over by the accused does not raise any doubt in the prosecution case.

24. Learned counsel for the appellant had further argued that secret information received by the IO was not reduced into writing and

report sent to immediate official superior, in that way Section 42 which is mandatory in nature was violated vitiating the search and seizure and the appellant is entitled to be acquitted for that reason. In support of her such contention, she had referred to judgment **Dharamveer Prasad @ Dharambir Prasad Versus State of Bihar & Anr., 2018 Cri.L.R.(SC)1210** by the Apex Court.

25. However, I find little merit in this contention. On receipt of secret information, the police party had laid a picket. Any delay in the matter could have resulted in the accused managing to escape. Furthermore, after getting option from the accused, Sh.Chaman Lal, DSP, a gazetted officer had been summoned to the spot in whose presence search and seizure had been carried out. Therefore, it cannot be said to be a case of non-compliance of Section 42 of the Act, causing any prejudice to the accused. Furthermore, after the search and seizure, on ruqa being sent to the police station, formal FIR had been recorded and thereafter special report sent to the higher police officers as well as Illaqa Magistrate. Therefore, the argument by learned counsel for the appellant is without merit. The judgment **Dharamveer Prasad @ Dharambir Prasad Versus State of Bihar & Anr.** (supra) does not find application due to different facts and circumstances and the context in which such observations had been made. As per the facts of that case, there were various other reasons considering which the accused had been acquitted and not solely for the reason of non-compliance of Section 42 of the Act.

26. For similar reasons, the other judgments referred to by learned counsel for the appellant i.e. **Kamaljit Singh @ Pappu Versus**

State of Punjab, 2019(4) Scale 18 by the Apex Court, Nazar Singh Versus State of Punjab, 2014(33) RCR(Criminal) 102, Satnam Singh Versus State of Punjab, 2019(4) RCR(Criminal)919, Jaspal Singh alias Pala Versus State of Punjab, 2017(4) RCR(Criminal)591 by a Single Judge of this Court and Guddu Kumar Versus The State of Bihar, 2019(2) PCCR 141 by a Division Bench of Patna High Court, those do not help the appellant in any manner due to different facts and circumstances and the context in which such observations had been made.

27. The prosecution had proved its charge against the accused conclusively and affirmatively. The accused could not render any reasonable or plausible explanation for his alleged false implication nor could he account for possession of the contraband without any licence or permit thereby showing that he was in conscious possession of the contraband.

28. As regards the sentence part, the appellant/accused for a pecuniary benefit opted to play with lives and health of people of the area by making them addict to taking drugs. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increased drug trafficking. Therefore, the sentence awarded to the appellant/accused is not found to be on very high side and does not call for any reduction.

29. The impugned judgment of conviction and order of sentence passed by the trial Court are well reasoned one, the impugned judgment is

based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas the appeal is found to be without any merit and the same is dismissed accordingly.

30. Appellant Nirmal Singh Nimma is stated to be on bail granted to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Amritsar is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

16.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes