

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

**CRA-S-2802-SB-2016 (O&M)
Date of Decision: 19.10.2022**

Bhim Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Sanamjeet Kaur, Advocate,
for the appellant.

Mr. Shiva Khurmi, AAG, Punjab.

JASGURPREET SINGH PURI, J.

The present appeal has been filed challenging the orders passed by the Learned Judge, Special Court, Patiala in SC NDPS No.207-T of 25.10.2013/06.02.2014/1626/2013, decided on 22.07.2016, wherein the appellant has been convicted under Section 22 of the NDPS Act, 1985 and has been directed to undergo sentence comprising rigorous imprisonment for ten years and to pay fine of Rs.1 lac or in default of payment of fine to further undergo RI for one year.

The facts which led to filing of the FIR No.71 dated 19.04.2013, under Section 22 of the NDPS Act, registered at Police Station Civil Lines, Patiala, are that a police party comprising of one Inspector, namely, Kuldeep Singh, who was the Incharge C.I.A. Staff, Patiala along with ASI Amarjit Singh, ASI Gian Singh, HC Pawan Kumar, HC Nirbhai Singh, C-I Devinder Singh received an information when they were on

routine checking and patrolling on private vehicle when they reached near the T-point of PRTC Workshop then a clean shaved person was coming in front of them on foot and while seeing the police party, he got confused and returned back immediately. On being doubtful, they stopped their vehicle and called the person and apprehended him with the help of the other police officials and asked his name and address. He told his name as Bhim Singh son of Rattan Singh (Appellant). The aforesaid Inspector Kuldeep Singh told his name and rank to him and also told him that he has a doubt that he has kept the narcotic drugs and he wants to search him but he has a right to be searched in the presence of any Gazetted Officer or a Magistrate, which can be arranged on the spot. Upon this, the appellant told that he has full faith upon him and he can search him and also gave his statement regarding consent in writing to him. The witnesses and appellant gave their signatures on the consent. Thereafter, Inspector Kuldeep Singh searched the appellant and got recovered intoxicating power rolled in a polythene envelope/bag which was found from the right pocket of his lower. Then two specimen packets of 10 grams each from the recovered powder were packed in different plastic container and the remaining intoxicating powder weighing 530 grams was collected in another plastic container/bag. Thereafter, the Inspector sealed three intoxicant powder packets with the stamp 'KS' and prepared separate parcels and affixed the sample stamps. After sealing all the three packets, they were handed over to ASI Amarjit Singh and these packets were captioned by the police with separate official witnesses. Thereafter, Ruqa was sent by hand through CI Devinder Kumar for registration of FIR. Thereafter, the police party on the spot prepared a

special report and left the spot at 5.30 p.m. The appellant was arrested vide memo Ex.PD/1. After completing the investigation the aforesaid Inspector Kuldeep Singh produced the appellant along with the case property, specimen seals and articles recovered during the personal search of the accused and witnesses before Inspector Jatinderpal Singh SHO. He also verified the facts of the case and sealed the case property with his seal bearing impression JPS, and thereafter, he deposited the case property with MHC Paramjit Kaur.

On the next day, the aforesaid Inspector Kuldeep Singh took the case property from the MHC and produced the appellant along with the case property before the learned JMJC Patiala along with the application for remand, application for inventory and application for depositing the case property in judicial malkhana. The learned Judicial Magistrate took a representative sample of 10 grams from the bulk, and thereafter, sealed the bulk parcel and representative sample parcel with his seal bearing impression 'AS'. The learned Magistrate also saw the seals of the parcels being intact and also initialled the same and thereafter handed over to Inspector Kuldeep Singh for depositing the same in the Judicial Malkhana, Patiala. Thereafter, the Inspector Kuldeep Singh deposited the entire case property with the MHC as the Judicial Malkhana was closed due to holiday. On 22.04.2013, HC Gurcharan Singh was handed over one bulk parcel containing 520 grams intoxicant powder, one representative sample of 10 grams intoxicant powder sealed with seal 'AS' and one sample parcel containing 10 grams of intoxicant powder by the MHC, who deposited the same in Judicial Malkhana, Patiala. The sample was sent to the laboratory

on 22.04.2013 through Constable Nirmaljit Singh and after receipt of report of chemical examiner, the report under Section 173(2) Cr.P.C. was presented against the appellant before the competent Court.

At the time of prosecution evidence, in order to prove its case, the prosecution examined Constable Nirmaljit Singh as PW-1, who tendered into evidence his affidavit. He was cross-examined very briefly by the learned defence counsel. HC Paramjit Kaur deposed as PW-2, who also tendered into evidence his affidavit in examination-in-chief and was also cross-examined very briefly by the learned defence counsel. Thereafter, ASI Amarjit Singh deposed as PW-3, who was cross-examined in detail. Inspector Kuldeep Singh deposed as PW-4 and was also cross-examined in detail. Thereafter, Inspector Jatinderpal Singh, who was the SHO of Police Station deposed as PW-5 and was cross-examined in brief by the learned defence counsel. After the closing of the evidence of the prosecution, the statement of the appellant under Section 313 Cr.P.C. was recorded. The appellant examined 4 witnesses in defence. One Sh. Harpreet Singh, Advocate was examined as DW-1, PHG Sham Singh, who is the brother of the appellant as DW-2, Mohan Lal as DW-3 and Prabhjot Singh as DW-4. Thereafter, the defence counsel closed his defence evidence.

Learned counsel for the appellant has submitted that the appellant has been falsely implicated in the present case. She submitted that the learned trial Court has wrongly ignored the defence evidence by which it was proved on the strength of the statements of Advocate Harpreet Singh and one PHG Sham Singh, who is the brother of the appellant that the appellant was in fact picked up by the police party in the morning at about

5.30 a.m. and the present case was planted upon the appellant in the evening. She has further made the following submissions:-

- (i). One of the material witness, namely, ASI Gian Singh, who was also a part of the police party had drafted and scribed the consent memo and was, therefore, a material witness. However he was not examined by the prosecution. Since the allegations made by the appellant were pertaining to his false implication and the aforesaid witness being a material witness, who was neither examined nor was cited as witness by the prosecution and there is no justification for the same.
- (ii). Similarly, another material witness, namely, HC Pawan Kumar was also a part of the police party but was not examined as witness by the prosecution and there is no justification for the same.
- (iii). The police party was in a private vehicle and there is no justification as to why they were not using the Government vehicle while patrolling which corroborates the fact that it was a case of false implication.
- (iv). No independent witness was joined at the time of alleged recovery. As per the prosecution evidence of Inspector Kuldeep Singh and ASI Amarjit Singh, there were shops near the place of alleged occurrence and the PRTC workshop was also very near where Government officials are working but no effort was made to join any of them. Rather PW-3 ASI Amarjit Singh specifically stated that no shopkeeper or

official from PRTC workshop were called to join investigation although PRTC workshop is about 200-300 yards from the place of recovery.

(v). The Investigating Officer and the complainant was the same person i.e. Inspector Kuldeep Singh, and therefore, it was fatal to the prosecution.

(vi). The sample of 10 grams which was drawn in the presence of JMIC, Patiala on which her stamp of 'AS' was made, was never sent to the Forensic Laboratory for chemical examination whereas the samples which were drawn on the first day by the police party itself which were bearing the seal of the police officials i.e. 'KS' and 'JPS' were sent for forensic examination and in this way there was a violation of Section 52A of the NDPS Act.

(vii). There are major and material discrepancies amongst the different prosecution witnesses.

On the other hand, Mr. Shiva Khurmi, learned AAG, Punjab, has submitted that the non-joining of independent witnesses and also the fact that the complainant and the I.O. was the same person, is not fatal to the prosecution in view of the law laid down by the Constitutional Bench of the Hon'ble Supreme Court in “**Mukesh Singh Vs. State (Narcotic Branch of Delhi)**” 2020(3) RCR (Criminal) 595. He further submitted that the discrepancies, if any, were neither material nor major and in case some minor discrepancies have come amongst the prosecution witnesses, then the same are liable to be ignored in view of the fact that the witnesses were

examined after a period of 2 years. He further submitted that the appellant was earlier also involved in two more cases under the NDPS Act in which he was convicted. In one case, he was convicted to pay fine of Rs.1000/- and in another case he was directed to undergo rigorous imprisonment for 3 months and he has undergone the sentences. He also submitted that the prosecution was able to prove its case beyond doubt, and therefore, the present appeal is liable to be dismissed.

I have heard the learned counsel for the parties and also perused the record.

The prosecution in order to prove its case, examined two witnesses, namely, Nirmaljit Singh as PW-1 and Paramjit Kaur as PW-2 for the purpose of proving that the sample was taken by them and sent to the forensic laboratory. Two witnesses, namely, ASI Amarjit Singh as PW-3 and Inspector Kuldeep Singh as PW-4 were examined to prove that the recovery was made on the spot from the appellant, who had also given his consent to get himself searched from Inspector Kuldeep Singh. The SHO to whom the report was sent after the recovery was also examined as PW-5. The defence examined one Advocate, namely, Harpreet Singh as DW-1 to prove that the appellant was falsely implicated since he himself saw the appellant in the morning at about 5.30 a.m. along with the police party and he informed the brother of the appellant, namely, PHG Sham Singh, who also deposed as DW-2 on the same lines.

The first two arguments raised by the learned counsel for the appellant were that two material witnesses, namely, ASI Gian Singh and HC Pawan Kumar were not examined by the prosecution and there was no

justification for the same. A perusal of the record would show that ASI Gian Singh was a part of the police party. A perusal of the statement of PW-3 ASI Amarjit Singh, who was also a part of the police party, in cross-examination stated that the consent statement of the appellant was scribed by ASI Gian Singh and the writing work was done by him and HC Pawan Kumar on the spot and that the writing was not done by any other person at the spot. Similarly, statement of Inspector Kuldeep Singh, who was heading the police party, in his cross-examination stated that the consent memo was not written by him but it was drafted by ASI Gian Singh, who although did not sign the consent statement but the consent statement/memo was witnessed by ASI Amarjit Singh and HC Pawan Kumar. A perusal of the consent memo Ex.PD would show that the same has been witnessed by ASI Amarjit Singh and HC Pawan Kumar. Therefore, the aforesaid ASI Gian Singh, who according to the prosecution witnesses themselves had scribed and written the consent memo was a material witness and a perusal of the report under Section 173 Cr.P.C. would show that in the list of witnesses, the name of the aforesaid ASI Gian Singh has not even been mentioned nor he was examined. No justification has come forward to show as to why the aforesaid material witness was not examined. Similarly, another person who was a part of the police party, namely, HC Pawan Kumar was a witness to the consent memo and was also in the list of the witnesses attached along with the report under Section 173 Cr.P.C. and was also not examined even though he was also a material witness in the present case.

Another argument raised by the learned counsel for the appellant was that the police party was on a private vehicle and according to

the prosecution they had started from the police station for the purpose of patrolling the area and were wearing uniform but there is no justification as to why a Government vehicle was not used and only a private vehicle was used in this regard. A perusal of the statement of Inspector Kuldeep Singh as PW-4 would show that in the examination-in-chief he stated that they were patrolling on private vehicle and in the cross-examination, he stated that they left the CIA Staff Office at about 2.00 p.m. after recording an entry in the DDR and they were in the private Innova vehicle owned by his friend, namely, Sukhwant Singh. However, nothing has come in the statements as to why only a private vehicle was used for the purpose of patrolling and that too a car which belonged to the friend of the I.O. against whom the allegations of false implication have been levelled by the appellant.

Next argument which was raised by the learned counsel for the appellant was that no independent witness was examined, and therefore, the same was fatal to the prosecution. The statement of ASI Amarjit Singh PW-3 would show that he stated in his cross-examination that they tried to join the independent witnesses but none agreed but this fact was not recorded in the Ruqa. Two/three persons were added to join as independent witnesses by the I.O. but he does not remember the distinctive features of those persons as they were passerby. He categorically stated that no shopkeepers were asked to join investigation and no official from PRTC workshop was called to join investigation and that the aforesaid workshop is about 200/300 yards from PRTC workshop main gate. Similarly, in the statement of the Inspector Kuldeep Singh PW-4, which had come in his cross-examination wherein he stated that they asked 2-3 persons to join but nobody was ready

to join. He further stated that he did not apprise the aforesaid 2-3 persons that action may be taken against them and also he did not take action against them who refused to join the police party. Thereafter, he categorically stated that he made no efforts to call any officer from the workshop to join the police party nor did he call any person from the shops and tea stalls which were situated near the PRTC workshop. Apart from the above, he further stated that those 2-3 persons, who were asked to join the police party were on motorcycles. At the time when the search is about to be conducted safeguards have been provided under the provisions of the NDPS Act. However, in the present case, as per the prosecution the appellant had given the consent that he is willing to get himself searched from the I.O. Therefore, one another safeguard could have been to join the independent witness. As per the prosecution witnesses themselves there were shops, tea stalls and PRTC workshop just 200/300 yards away where a lot of employees work but no effort was made to join any of them whereas as per the witnesses, 2-3 persons, who were passerby on motorcycles were told to join but they refused to do so. The aforesaid action of the police party headed by an Inspector would certainly create a suspicion and doubt. However, the question as to whether non-joining of independent witnesses would alone be fatal to prosecution, it is a settled law that the mere fact that the independent witnesses were not joined cannot become fatal to the prosecution and every case has to be seen on its own facts and circumstances.

Another argument which was raised by the learned counsel for the appellant was that it was a case of false implication and the defence was

able to prove the same on the basis of statement of an Advocate, namely, Harpreet Singh as DW-1 and PHG Sham Singh as DW-2, who is the brother of the appellant. As per the learned counsel for appellant, the aforesaid Advocate, who stepped into the witness box, categorically stated that on 19.04.2013 at about 05.35 a.m. when he was outside his house for morning walk then he saw the appellant was sitting in the Maruti car along with four police officials, who inquired about the address of another person, thereafter, he immediately contacted the brother of the appellant, namely, PHG Sham Singh and intimated him that his brother has been taken into custody by four police officials and in the evening they came to know that one case has been registered against the appellant under the NDPS Act. The statement of PHG Sham Singh, who is the brother of the appellant, would show that he also corroborated the aforesaid fact by stating that he was informed by Sh. Harpreet Singh, Advocate, who is his neighbour that the appellant has been kept by four police officials, who were sitting in the white Maruti Car and they inquired from him about the address of another person. In his cross-examination, he further stated that due to the false implication of his brother, he had filed a complaint before the Punjab Human Rights Commission regarding the same but he was not aware of the outcome of the proceedings. Similarly, another defence witness i.e. Mohan Lal as DW-3 also stated that at 05.30 a.m., he was outside his house for going to Gurudwara Sahib for paying obeisance, where he saw Bhim Singh (Appellant) sitting in white Maruti car along with four police officials and the police officials told that they only want to inquire about the address of one another person from Bhim Singh and he will be released after that but in

the evening he came to know that a case has been registered against the appellant-Bhim Singh. The learned trial Court while discussing the defence evidence came to the conclusion that no credibility can be given to the defence witnesses because the brother of the appellant, namely, PHG Sham Singh also gave a complaint to the Punjab Human Rights Commission but he has not produced any copy of an order passed by the aforesaid Punjab Human Rights Commission except for one order, which shows that the matter was adjourned to 14.01.2014. He also gave an application to SSP, Patiala about false implication and the matter was inquired by the DSP, City-I, Patiala, who found no truth in the said application, and therefore, no reliance can be placed upon the statements of the defence witnesses. The non-production of any final order passed by the Punjab Human Rights Commission or the inquiry conducted by the DSP, City-I, Patiala, which is the police itself, cannot become a ground to disregard the entire evidence led by the defence. A perusal of the statements of Harpreet Singh, Advocate, PHG Sham Singh and Mohan Lal would show that there are no discrepancies amongst all the three witnesses and rather they are corroborative to each other. It cannot be said that the defence story is not believable. Rather it creates a dent in the prosecution story when false implication has been alleged against the police party due to reasons stated by the defence witnesses. The learned Trial Court has, therefore, wrongly ignored the defence witnesses, who were in tandem with each other.

Another important argument which has been raised by the learned counsel for the appellant was that at the time of the alleged recovery, two samples of 10 grams each were drawn from the total 550

grams of intoxicating powder and stamps of 'KS' and 'JPS' were put on the same, thereafter, the appellant was produced before the learned JMIC, Patiala along with the intoxicant powder and it was in the presence of the learned JMIC that another representative sample of 10 grams was taken from the plastic bag which was sealed with the seal of JMIC as 'AS'. However, when the sample was sent to the forensic laboratory, the sample which was drawn in the presence of the learned JMIC was not sent for examination but the samples which were drawn by the police were sent to the forensic examination, and therefore, it is not only violation of Section 52 (A) of the NDPS Act but it is fully fatal to the prosecution.

In order to examine the aforesaid factual position, a reference should be made to the orders passed by the learned JMIC on 20.04.2013. The alleged occurrence was of 19.04.2013 and the appellant was produced before the learned JMIC on 20.04.2013. As per the order, 550 grams of intoxicant powder containing three parcels i.e. one parcel containing 530 grams and two parcels containing 10-10 grams each bearing impression 'KS' and 'JPS' were produced. From the bulk sample seal which was opened in the presence of learned JMIC, a representative sample of 10 grams of narcotic powder was taken and sealed with the seal of JMIC bearing impression 'AS' and the remaining bulk sample containing 530 grams was also sealed with the seal bearing impression 'AS'. The aforesaid order dated 20.04.2013 is reproduced as under:-

“Inspector Kuldeep Singh has presented before the undersigned 550 gm Narcotic powder containing in three parcels i.e. one parcel containing 530 gm and two sample parcels each containing 10-10 gm

respectively, sealed with seals bearing impressions KS and JPS which are intact. I have initiated over the parcels in token of their correctness. Bulk sample seal was opened in my presence and representative sample of 10 gm of Narcotic powder was taken and sealed with my seal bearing impression AS. Bulk sample containing 520 gm was also sealed with my seal bearing impression AS. One parcel of 10gm of narcotic powder is handed over back to said official for the stated purpose of sending to the Chemical Examiner for testing. One sample parcel and one representative parcel of 10gm of Narcotic powder and bulk sample containing 520 gm of Narcotic Powder are also handed over back to him for deposit in the Judicial Malkhana.”

*Sd/-
Aman Sharma
JMIC/20.04.2013.*

It has come specifically in the statement of Constable Nirmaljit Singh that he had taken the sample of 10 grams bearing seal KS/JPS from the malkhana on 22.04.2013 from MHC Paramjit Kaur and sent it to the Forensic Laboratory, Kharar. This was the sample which was drawn by the police party on 19.04.2013 on which seal of Inspector Kuldeep Singh was put as 'KS', and thereafter, the seal of SHO Jatinderpal Singh was also put as 'JPS', which was ultimately sent to the forensic laboratory for examination. A perusal of the report of the chemical examiner would show that the quantity of sample received by him was 10 grams and there were seals of 'KS+JPS'. It also shows that the sample was a miscellaneous powder which was tested as *Dextropropoxyphene*. Therefore, it is clear that the sample which was drawn in the presence of the learned JMIC on which seal of the

JMIC-Aman Sharma was put as 'AS' was never sent to the forensic laboratory for chemical examination.

The judgment of Hon'ble Supreme Court passed in “**Union of India Vs. Mohan Lal and others**”, 2016(3) SCC 379, wherein it has been observed that when the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyance is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the NDPS Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub Section 3 of Section 52-A, under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the Magistrate. Para 31.1 of the aforesaid judgment is reproduced as under:-

“31.To sum up we direct as under:

31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as discussed by us in the body of this judgment under the heading “seizure and sampling”. The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.”

Therefore, it is clear that the process undertaken by the State was contrary to the law laid down by the Hon'ble Supreme Court in *Union of India Vs. Mohan Lal and others case (supra)*, since the sample which was drawn in the presence of the learned JMIC on which seal of 'AS' was put was never sent to the forensic laboratory. The prosecution has, therefore, not been able to prove that there was a recovery of any contraband from the appellant. Apart from the above, there was no justification as to why two material witnesses, namely, ASI Gian Singh and HC Pawan Kumar were not examined. The non-joining of independent witness although cannot become a sole ground for acquittal but in the facts and circumstances of the present case, the police party did not even care to join the witnesses, who were the shopkeepers of the vicinity and employees of the PRTC workshop which was only 200-300 yards from the place of occurrence, would also cast a shadow upon the prosecution story. Furthermore, the evidence adduced by the defence through 4 DWs have not been properly appreciated by the learned trial Court and there was no reason to discard the evidence of the aforesaid witnesses especially in view of the fact that the allegations were pertaining to the false implication of the appellant.

In the light of the aforesaid discussion, this Court is of the considered opinion that the prosecution has failed to establish the commission of the alleged offence by the appellant beyond reasonable doubt. In the cases pertaining to the NDPS Act, the prosecution evidence should be examined very carefully so as to exclude every chance of false implication. However, in the present case in view of the aforesaid

circumstances which have been explained, the prosecution story cannot be believed to award conviction to the accused/appellant. The appellant, therefore, deserves the benefit of doubt. Consequently, the present appeal is allowed and the order dated 22.07.2016, whereby the appellant was convicted and sentenced is hereby set aside. The appellant is acquitted of all the charges framed against him. The appellant be released from custody forthwith, if not required in any other case.

19.10.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes |