

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-3701-SB of 2016 (O&M)

Date of decision : May 27, 2022

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Kanshi Ram

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Nitish Garg, Advocate
Legal Aid Counsel for the appellant

Mr. Anmol Singh Sandhu, Assistant Advocate General,
Punjab

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H. S. Madaan, J.

1. This appeal is directed against judgment dated 26.4.2016 and order dated 28.4.2016, passed by Judge Special Court, Fazilka, vide which appellant-accused Kanshi Ram s/o Onkar Lal r/o Umria, P.S. Piplia Mandi, Tehsil Malahargarh, District Mandsor (M.P.), was convicted in a case registered vide FIR No. 53 dated 7.8.2013, for an offence under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act'), and sentence to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1 lac, in default of payment of fine to undergo simple

imprisonment for one year.

2. Briefly stated, facts of the case, as per the prosecution story are that on 7.8.2013, a Police Party headed by ASI Baljit Singh, was travelling in Government vehicle Bolero Camper bearing registration No. PB-05R-9850. It was on patrol duty and was checking suspicious persons. When the police vehicle had reached 1 km ahead of village Daulat Pur, accused Kanshi Ram was spotted carrying a bag in his right hand, who on seeing the Police Party tried to turn towards his left hand side. He was apprehended on the basis of suspicion. He was informed that the Police Party suspected him to be carrying some intoxicant material and wanted to search his bag and he had a right to get the search conducted in the presence of some Magistrate or Gazetted Officer. The accused desired that the search be got conducted in the presence of a Gazetted Officer. A memo in that regard were prepared. Sh. R.K.Galhotra, DSP, Abohar, was summoned to the spot, who on arrival there, informed the accused that he had a legal right to get his personal search and that of his bag conducted in the presence of a Magistrate, but the accused reposed confidence in the DSP. Documents in that regard were prepared. Thereafter, search of the bag being carried by the accused, was conducted, which revealed that opium wrapped in a glazed paper were there.

3. ASI Baljit Singh took out two samples of 10 grams each, preparing sealed parcels there of and remaining opium, on being weighed, came out to be 2 kgs 780 grams, which was put in a plastic box and converted into a sealed parcel. The recovered contraband

and the samples were taken into the police possession. Ruqa was sent to the Police Station. The accused was accordingly arrested in this case. Investigation of the case got started.

4.. The accused had disclosed that that he had brought the recovered opium from one Bikram resident of Somiyan Kachnara, Police Station Naraingarh, Tehsil Mahamargarh, District Mandsor and was to hand over the same to one Deepak resident of Amritsar. Both of them were also named as accused in this case, but they could not be arrested, as such proceedings for declaring them as proclaimed offenders were initiated against them. Sample parcels were sent to the office of Chemical Examiner, Punjab and as per report received therefrom it was found to be that of opium.

5. On completion of investigation and other formalities, challan against the accused was filed in the Court. On presentation of the challan before Judge, Special Court, Fazilka, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C. Finding a prima facie case, the accused was charge sheeted for offence under Section 18 of the Act, to which he pleaded not guilty and claimed trial.

6. During the course of prosecution evidence, it examined in as many as five prosecution witnesses i.e. PW-1 HC Balwant Singh, PW-2 ASI Balvir Singh, PW-3 ASI Baljit Singh, Investigating Officer, PW-4 ASI Sukhpal Singh and PW-5 Sh. Raj Kumar DSP. The prosecution relied upon various documents also.

7. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing

against him were put to the accused, but he denied the same contending that he was innocent and had been falsely involved in this case. The accused did not lead any evidence in his defence, despite being afforded due opportunity.

8. The trial Court had formulated the following points for determination in this case:-

1. Whether the accused as found in conscious possession of 2 kg. 800 grams of opium and is liable to be convicted under Section 18 of the NDPS Act.
2. Whether the prosecution has proved the charges levelled against the accused beyond shadow of reasonable doubt?

9. After hearing the arguments, learned Judge, Special Court, Fazilka, convicted and sentence the accused as mentioned above.

10. Feeling aggrieved, the accused – appellant Kanshi Ram has filed the present appeal.

11. I have heard learned counsel for the appellant, learned State counsel, besides going through the record.

12. Learned counsel for the appellant has contended that no independent witness was joined with the Police Party, while apprehending the accused and effecting recovery from him, which casts a doubt in the mind about truthfulness of the story. Whereas learned State counsel has contended that the Police Party had tried to join the independent witnesses, but none was ready and even otherwise, there is nothing on record to show that official witnesses of recovery had any animosity with the accused, which might have

rendered the prosecution story doubtful.

13. After hearing the rival contentions, I find that there is no merit in such argument advanced by learned counsel for the appellant-accused. Independent corroboration is a rule of prudence and not requirement of law. It is specific case of the prosecution that the Investigating Officer had tried to join the independent witnesses, but none was ready. It is a matter of common knowledge that people at large are mostly hesitant to join the investigation in such like cases, nursing an apprehension that the same may invite the wrath of the accused, who may try to harass them or their family members. Common people do try to avoid the hassles of going to the Police Station in connection with investigation of the case and so also to the courts to get their statements recorded. Furthermore, there is nothing on record to show that the official witnesses, who supported the prosecution story with regard to the recovery of contraband effected from the accused, had any previous grudge or enmity with the accused, spurred by which they might have treated the dangerous path of false implication of the accused, by making wrong statements against him. Rather they stood their cross examination well. It being so, the statements ASI Baljit Singh PW-3 , ASI Sukhpal Singh PW-4 and Sh. Raj Kumar, DSP, PW-5, have rightly been relied upon by the trial Court.

14. Another argument put forward by the learned counsel for the appellant- accused was that signatures of accused are not there on the recovery memo, which is a suspicious circumstance with regard to the prosecution case and benefit of the same should be given to the

accused. Learned counsel for the appellant has referred to judgment passed by a Co-ordinate Bench of this court, in that regard, in case titled as **Sandeep Kumar vs. State of Punjab 2019 (4) R.C.R. (Criminal) 741** .

15. This contention has been rebutted by the State counsel, stating that there is no legal requirement of getting signatures of the accused on recovery memo.

16. After considering these contentions, I find that no provision of law could be pointed out by learned counsel for the appellant, requiring that signatures of accused must be obtained on the recovery memo. The prosecution in this case, by bringing enough cogent and convincing evidence has been able to prove its case against the accused conclusively and affirmatively. Statements of PW-3 ASI Baljeet Singh , PW-4 ASI Sukhpal Singh and PW-5 Ram Kumar, DSP, duly prove the recovery of contraband in the form of 2 kg 800 grams of opium from the accused on 7.8.2013 in the area of 1 km ahead of village Daulatpura, without any licence or permit. Their evidence stands corroborated from the statement of PW-1 HC Balwant Singh, who proved the link evidence stating that he had taken the sample from Police Station Khuian Sarwar and deposited the same in the office of Chemical Examiner, Kharar and on return to the Police Station, had deposited the receipt with SHO Balbir Singh and during the period case property remained with him, it remained intact. Furthermore, PW-2 ASI Balvir Singh, with whom ASI Baljit Singh had deposited that case property on 7.8.2013, taking the same from him for producing before the Illaqa Magistrate on the next date,

had supported the prosecution version.

17. With regard to the judgment referred to by the learned counsel for the appellant, the same had different facts, where there were several infirmities and illegalities committed during the investigation of the case and the accused was not acquitted solely for the reason that his signatures had not been obtained on the recovery memo. Therefore, this judgment does not help the accused in any manner.

18. Learned counsel for the appellant raised another argument that the complainant, namely, ASI Baljit Singh, had himself carried out the investigation in this case, which is not permissible and he has referred to judgment **Mohan Lal vs. State of Punjab 2018 (17) SCC 627**, in that regard, stating that the trial got vitiated and accused is entitled to acquittal for that reason.

19. Learned State counsel has however, contended that this judgment has been overruled by a Larger bench of the Supreme Court and to support the contention he has referred to judgment **Mukesh Singh vs. State (Narcotic Branch of Delhi), in SLP Diary No. 39528 of 2018, decided on 31.8.2020.**

20. Since the judgment referred to by learned counsel for the appellant accused stands overruled, by a Larger Bench of the Supreme Court, the contention put forward by him cannot be accepted and is rejected accordingly.

21. No other argument was advanced by learned counsel for the appellant. The judgment passed by the trial Court is quite detailed and is well reasoned, based upon the proper appraisal and

appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Therefore, the same is upheld with regard to the conviction.

22. As far as, sentence part is concerned, the accused was found to be in possession of 2 kgs and 800 grams of opium, without any licence or permit. That amounts to commercial quantity. However, the trial Court has awarded him the minimum sentence provided for the offence. Neither there is any ground, nor any justification for reduction in sentence. Therefore, the appeal is devoid of any merit and is dismissed accordingly.

23. Kanshi Ram- appellant/accused is stated to be on bail granted to him by this Court vide order dated 25.9.2017, while suspending his remaining sentence. His bail is cancelled and he is directed to surrender forthwith within a week from today. If he does not do so then Chief Judicial Magistrate, Fazilka, would issue non-bailable warrants of arrest against him to get him arrested and make him undergo the remaining sentence of imprisonment and to effect recovery of fine.

May 27, 2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No