

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

Crl. Appeal-S-711-SB-2013

Date of Decision : **November 29, 2022**

Bashar Ulla

.....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms. Sumanjit Kaur, Advocate for the appellant.
Mr. Vaishnav Gandhi, DAG, Punjab.

KULDEEP TIWARI. J.

The instant appeal is directed against the judgment of conviction dated 7.1.2013 and order of sentence dated 8.1.2013 passed by the learned Special Court, Sangrur whereby the appellant has been convicted for the commission of offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as **the Act**) and sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1 lac and in case of default in payment of fine, he was further ordered to undergo rigorous imprisonment for three years.

FACTUAL BACKGROUND

The case of the prosecution was unfolded on the complaint of police official SI Sant Singh and as per his complaint on 5.1.2011 he alongwith ASI Joginder Singh, HC Gorakh Nath, HC Jagdev Singh and PHG Jasbir Singh were going from village Jhuneer towards village Natho Heri in connection with patrolling duty. At about 11.45 a.m. when they

reached near T-point of village Kasapur, then one person coming from the opposite side, was wearing Parna (head scarf) on his head and was carrying a plastic bag in his hand. On seeing the police party, that person immediately tried to turn back. On suspicion, he was apprehended by SI Sant Singh with the help of fellow police officials/staff. On enquiry, the present appellant disclosed his name and SI Sant Singh also disclosed his identity to the appellant. He asked the accused that he has suspicion on him for carrying contraband in his plastic bag which was carried by him in his right hand. SI Sant Singh also apprised the appellant of his right to get his search conducted in the presence of a Gazetted Officer or a Magistrate, who can be called at the spot. However, the accused reposed confidence in SI Sant Singh. After preparing the consent memo, the search of plastic bag was conducted, which led to recovery of Charas in small hard granules, wrapped in a glazed envelop. Thereafter, further recovery procedure was carried out and two samples of 10 grams each were prepared and the same were put in a plastic bag and converted into separate parcels. The remaining residue, which was found to be of 1 kilo 480 grams, was also put into plastic envelop and then the same was converted into separate parcels. Thereafter all the three parcels were sealed by SI Sant Singh with his seal bearing impression "SS". The seal after use was handed over to ASI Joginder Singh. The specimen of seal was prepared. The accused alongwith the case property was produced before the SI/SHO Bhupinder Singh, who verified the case property and sealed the same with his seal bearing impression "BS". Thereafter on his

direction, the case property was deposited with HC Malkiat Singh, Malkhana Moharrir and the accused was put into lock up. The report under Section 57 of the Act was also prepared. After completion of entire investigation and on receipt of Chemical Examiner's report, final report was prepared and submitted before the learned trial Court. The accused was charge-sheeted under Section 20 of the Act by the learned Special Court, Sangrur, to which he pleaded not guilty and claimed trial.

Apart from proving documentary evidence, the prosecution examined six witnesses to prove charges against the appellant.

The learned trial Court finally recorded the verdict of conviction as mentioned above.

SUBMISSIONS BY COUNSELS FOR THE PARTIES

I have heard the learned counsel for the appellant and the learned counsel for the State at length.

Learned counsel for the appellant submitted that there is no compliance of Section 50 of the Act, therefore, the recovery is defective. She further submitted that the sample seal after use was handed over to ASI Joginder Singh, however, he was not examined by the prosecution. Therefore, it creates dent in the prosecution story. It was further argued that neither the FSL report form No.29 filled at the spot nor the same was deposited with the MHC. Investigation Officer had made no efforts to join any independent witness which caused serious dent in the prosecution version and, therefore, the appellant deserves to be acquitted from the charges against him. It was further argued that investigation of

the present case was conducted by the police officer who himself was the complainant and, therefore, the entire trial is vitiated.

Per contra, the learned State counsel placed heavy reliance upon the statements of PW1 Malkiat Singh, PW2 SI Sant Singh, complainant-Investigating Officer and PW5 ASI Jagdev Singh, who is a witness of the recovery and according to him he has fully proved the case of the prosecution. He further stated that the report of the Chemical Examiner clearly depicts that the recovered substance was Charas.

REASONS

With the able assistance of the both the learned counsel for the parties, this Court has examined the documentary as well as oral evidence adduced by the prosecution in detail.

The first submission made by the learned counsel for the appellant that there is no compliance of Section 50 of the act, therefore, the entire recovery is defective. Here, it would be relevant to note that the recovery was effected from the right hand of the accused as he was carrying plastic bag in his right hand. Therefore, Section 50 of the Act in these circumstances does not applicable. Since the recovery was not from the appellant but from the plastic bag which was carried by him in his right hand, therefore, it is not a case where compliance of Section 50 of the Act is required. For this, reliance can be placed upon **State of Himachal Pradesh Vs. Pawan Kumar, 2005(4) SCC 350.**

The second submission made by the learned counsel for the appellant is that the sample seal, its after use, was handed over to ASI

Joginder Singh, however, he was not examined by the prosecution.

I have examined the entire record. In *Zimni order* dated 21.1.2012, the learned trial Court has recorded that ASI Joginder Singh has expired. Therefore, non-examination of this witness cannot be held to be fatal to the prosecution case. Further, there are other corroborative evidence available on the record to prove the recovered contraband from the appellant.

The next submission made by the learned counsel for the appellant is that the FSL form No.29 was neither filled at the spot nor the same was deposited with the MHC. She also relied upon the judgment rendered by a co-ordinate Bench of this Court in **Sunil Kumar son of Inder Mohan Vs. State of Punjab, 2011(11) R.C.R.(Criminal) 381** and **Gurcharan Singh Vs. State of Punjab, 2005(4) R.C.R.(Criminal) 681**.

I have examined the judgments passed by a co-ordinate Bench of this Court.

However, the ratio of Sunil Kumar's case (Supra) and Gurcharan Singh's case (Supra) are not applicable to the facts and circumstances of the present case. In the said cases, the non submission of form No.29 was not the only reason for recording the judgment of acquittal, rather, the same was corroborated by other cogent evidence, upon which the reliance was placed and the accused was given the benefit of doubt. The submission of form No.29 at the spot is not a legal requirement of law, rather it is a rule of caution. The non-filling of form No.29 at the spot neither vitiates the trial nor causes any serious dent to

the prosecution version. Here is the case, the case property was produced before the learned Illaqa Magistrate, who prepared the inventory as per the prescribed procedure and thereafter, the sample was sent to the FSL. As per the FSL report, the sample was found to be of Charas. Learned counsel for the appellant failed to show any discrepancy in the inventory report prepared by the Magistrate and also in the report of Chemical Examiner. Therefore, the submission of learned counsel for the appellant in this regard is rejected.

Learned counsel for the appellant further submitted that the Investigating Officer had made no efforts to join the independent witness and, therefore, the appellant deserves to be acquitted of the charges framed against him. This lack cannot be *ipso-facto* fatal to the prosecution case. In cases, where the testimonies of official witnesses are found reliable, the same can be found basis of conviction.

In view of the above settled legal proposition, when this Court examines the statement of PW2 SI Sant Singh (IO) and PW5 Jagdev Singh, it reveals that SI Sant Singh was the complainant and the IO, who apprehended the present appellant on suspicion. After complying with the procedure, the Charas was recovered from the appellant. The compliance of Section 57 of the Act was made, which is Ex.PG. Thereafter, he produced the appellant alongwith the case property before SI/SHO Bhupinder Singh, who was lateron examined as PW6. After verification from the SHO Bhupinder Singh, the case property was deposited with MHC Malkiat Singh, Malkhana and the

accused was put into the lock up. On 6.1.2011, SI Sant Singh produced the accused alongwith case property before the Illaqa Magistrate, Malerkotla and made an application for attestation of case property and for clicking photographs of the same. The learned Judicial Magistrate 1st Class, Malerkotla saw and checked the case property. One representative sample of 10 grams of charas was taken out from the bulk parcel by breaking open the seal and parcel was prepared. The bulk parcel and sample parcel were again sealed by the learned Magistrate by his own seal impression "DCK" and with the seal of SI Sant Singh bearing impression "SS". The sample seal was also attested. The photographs were taken. Thereafter the Magistrate directed the IO to deposit the case property in Judicial Malkhana. The certificate under Section 52-A of the Act was further proved as Ex.P1/1. The case property was finally deposited with the Judicial Malkhana after receiving the order of the learned Magistrate on 12.1.2012. ASI Jagdev Singh who was examined as PW5 and one of the recovery witness also deposed on the same line as that of SI Sant Singh. Both the witnesses were put at lengthy cross-examination. However, despite minor discrepancies, nothing material could be extracted in order to shatter veracity of these witnesses. The version of these two witnesses was further corroborated by SI/SHO Bhupinder Singh, who was examined as PW6 and has categorically deposed that SI Sant Singh produced before him the appellant alongwith the case property. He put his own seal on all three parcels after verifying the case property and ordered to deposit the case property with the MHC.

This Court does not find any reason to disbelieve the statement of above three official witnesses, who categorically proved the case of the prosecution. Merely because no independent witness was examined, the testimonies of the official witnesses cannot be rejected outrightly. In a catena of judgments, the Supreme Court has held that examination of independent witness is not an indispensable requirement and as such, non-examination is not fatal to the prosecution case.

As already mentioned above, it is a case of chance recovery. Merely because the prosecution has not joined any independent witness, the version of official witnesses cannot be thrown into the dustbin. The lack of joining independent witness could not be *ipso-facto* fatal to the prosecution case. However, in the absence of any independent witness, it is the duty of the Court to adopt a degree of care while appreciating the testimonies of the official witnesses/police witnesses.

Learned counsel for the appellant submitted that the investigation was conducted by a police officer who himself was the complainant. Therefore, the entire trial is vitiated. For this, she places reliance upon **Mohan Lal Vs. State of Punjab reported in 2018(17) SCC 627**. However, this Court cannot accept the submission made by the learned counsel for the appellant for the reasons that Mohan Lal's case (Supra) has specifically been overruled by a Constitutional Bench of the Supreme Court in **Mukesh Singh Vs. State (Narcotic Branch of Delhi), 2021(1) SCC(Crl.) 356** wherein the Supreme Court has held that merely because the investigation is conducted by the complainant himself, it

would not suffer the vice of unfairness or bias and, therefore, on the sole ground that informant is the Investigator, the accused is not entitled to acquittal. The relevant part of the judgment reads as under:-

“From the above discussion and for the reasons stated above, we conclude and answer the reference as under:

I. That the observations of this Court in the cases of [Bhagwan Singh v. State of Rajasthan](#) (1976) 1 SCC 15; [Megha Singh v. State of Haryana](#) (1996) 11 SCC 709; and State by [Inspector of Police, NIB, Tamil Nadu v. Rajangam](#) (2010) 15 SCC 369 and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of [Mohan Lal v. State of Punjab](#) (2018) 17 SCC 627 and any

other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled. (emphasizes specimen).

Therefore, in view of the above, merely because the Investigating Officer and the complainant are one and the same person, appellant does not become entitle to acquittal, in the absence of any other supporting evidence.

CONCLUSION

In view of the above legal proposition as well as the factual circumstances, this Court does not find any illegality or perversity in the impugned judgment of conviction and order of sentence. The present appeal is, accordingly, dismissed being devoid of merit.

Ordered accordingly.

November 29, 2022
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(KULDEEP TIWARI)
JUDGE

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