

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2295-SB-2003

Reserved on: 17.11.2022

Date of Decision:22.11.2022

Kuldeep Singh

...Appellant

VS.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Argued by : Mr. Dhirinder Chopra, Advocate
for the appellant.

Mr. Vipin Pal Yadav, Additional Advocate General, Punjab.

N.S.Shekhawat J.

The present appeal is directed against the judgment and order dated 20.11.2003 passed by the learned Judge, Special Court, Patiala, whereby, the present appellant has been convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and has been sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.100/- and in default of payment of fine, to further undergo rigorous imprisonment for ten days.

As per the prosecution story, on 16.04.2002, SI Barinder Singh along with some other police officials were present at Rajla Road, Samana and in the meantime, Gurnam Singh met them and they started talking there. As per the complainant, the accused was seen coming on foot from the other side and he was carrying a plastic bag on his head. He noticed the police party and tried

to run away. However, the police party suspected that he was carrying some suspicious material and he was apprehended by SI Barinder Singh with the help of other fellow police officials. On enquiry by the police team, he disclosed his name and other particulars. SI Barinder Singh told him that he wanted to conduct the search of the bag and apprised him about to his right to get the search conducted in the presence of some other Gazetted Officer or the Magistrate and the said official can be called at the spot. However, the accused Kuldip Singh reposed faith in him at his consent memo was recorded, which was signed by the accused after admitting the same to be correct and the same was attested by the witnesses. Thereafter, SI Barinder Singh conducted the search of the bag carried out by the accused, which was found to contain poppy husk weighing 10 kgs. Two samples of 250 gms each were separated and were sealed in the parcels and the remaining substance was found to be 9 ½ kgs. The remaining substance was put in the same bag and all the three parcels were prepared and sealed with the seal bearing impression BS. The sample seal impression Ex.P-1 was also prepared and was handed over to HC Bhupinder Singh after use and the case property was taken into possession vide separate recovery memo, which was attested by the witnesses. Ruqa was sent to the police station for registration of the case, on the basis of which a formal FIR was registered and the visual site plan with correct marginal notes was also prepared. Thereafter, the mandatory procedure as per the provisions of the NDPS Act was followed.

After completion of the investigation, the challan was filed against the accused and on finding a *prima facie* case, charge under Section 15 of the NDPS Act was framed against the accused, to which he pleaded not guilty and

claimed trial. In support of the prosecution case, five PWs were recorded and the statement of the accused was recorded under Section 313 Cr.P.C. In his statement under Section 313 Cr.P.C., the accused denied all the allegations and stated that he was innocent and no recovery was ever effected from him. He did not assign any specific reasons for his false implication and opted not to lead any evidence in his defence. After the closer of the evidence of both the sides, vide the impugned judgement and order, the present appellant was convicted and sentenced as mentioned above.

I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record.

Learned counsel for the appellant vehemently contended that the appellant has been falsely implicated in the instant case and the mandatory provisions of the NDPS Act have been violated. As per the prosecution story, SI Barinder Singh, PW-1 had associated one independent witness, namely, Gurnam Singh, at the time of alleged search and recovery, but during the course of trial, the prosecution failed to examine the said independent witness. Further, the Investigating Officer, SI Barinder Singh should have handed over the seal after use to the said independent witness, but as per the prosecution story, SI Barinder Singh gave his seal to HC Bhupinder Singh. Still further, the documents Ex. PB, Ex. PC and Ex.P1 were recorded before the registration of the FIR, however, the FIR number has been mentioned on the said exhibits and this discrepancy points out that the documents were prepared only after the registration of the FIR. Learned counsel for the appellant further submitted that the recovery was effected from the appellant on 16.04.2002, whereas, the alleged sample was sent for Chemical Analysis on 24.04.2002 and under such

circumstances, the tampering with the case property cannot be ruled out. Still further, SI Barinder Singh was the complainant and he should have handed over further investigation to some other police official.

Learned counsel for the State has vehemently opposed the submissions made by the learned counsel for the appellant. He submits that the Investigating Officer had complied with all the mandatory provisions under NDPS Act and the impugned judgment cannot be set aside on minor irregularities, pointed out by the learned counsel for the appellant and prays that the impugned judgment and order may be upheld by this Court.

In support of the charge, the prosecution examined PW-1, SI Barinder Singh, who was on patrolling duty on 16.04.2002 and had apprehended the present appellant on the suspicion of carrying some contraband in a plastic bag on his head. On seeing the police party, he tried to run away, but he was apprehended at the spot. Vide consent memo Ex.PA, which was signed by the appellant, he was given the option to get his search conducted in the presence of some other Gazetted Officer or the Magistrate. However, he reposed faith in PW-1, SI Barinder Singh and 10 kgs poppy husk was recovered from the bag. Two samples of 250 gms each out of the recovered substance were separated and the remaining poppy husk weighted 9.5 kgs, which was put in the same bag. All the three parcels were prepared and sealed with the seal impression 'BS'. Sample seal impression Ex.PA was also prepared and the seal after use was handed over to HC Bhupinder Singh. The case property was taken into possession vide recovery memo Ex.PB. Memo Ex.PC was also prepared regarding the personal search of the accused. On the basis of ruqa

Ex.PD, formal FIR Ex. PD/1 was recorded by SI Wirsal Singh, whose signatures were identified by PW-1 SI Barinder Singh.

The accused was served with the grounds of arrest vide memo Ex.PF and the accused, the case property and PWs were produced before SHO Harbhajan Singh. He also affixed his seal bearing impression HS on the case property as well as specimen impression of seal Ex.P1 and deposited the case property with MHC Udham Singh. The case property was produced in the Court as well. The said witness was examined at length and has supported the case of the prosecution. The prosecution further examined PW-2, Constable Narinder Singh, which completed the link evidence. PW-5, HC Bhupinder Singh supported the testimony of PW-1, SI Barinder Singh. PW-4, Inspector Harbhajan Singh prepared the challan after receipt of the FSL report Ex.PK and the accused was presented in the Court by him.

Learned counsel for the appellant vehemently contended that Gurnam Singh was joined with the police party and he was the witness whose presence the search and seizure was made and his non-examination by the prosecution was fatal. However, I do not find any substance in the said argument as there is no requirement that such witness must be examined by the prosecution. Sometimes, an independent witness is won over by the accused and is given up by the prosecution at the time of his examination, but still the prosecution can prove the offence by leading other material evidence. The non-examination of any such independent witness would not result an acquittal of the accused and the non-examination of PW Gurnam Singh would have no effect in the instant case. Still further, from the statements of PW-1, SI Barinder Singh and PW-5, HC Bhupinder Singh, it is apparent that the prosecution had

complied with the mandatory provisions of Section 42 and Section 50 of the NDPS Act. Still further, as per memo Ex. PF, the accused was informed about the ground of his arrest and he was forwarded without unnecessary delay to the Magistrate. Similarly, from the FIR Ex.PD/1, it is apparent that the special reports were sent to the learned Illaqa Magistrate and other senior officials and the compliance of Section 57 of the Act was established. Even the report received from the Forensic Science Laboratory, Ex.PK proves that the recovered substance was the poppy husk. The accused in his statement under Section 313 Cr.P.C. did not mention in specific reasons for his false implication and could not lead any evidence in his defence.

From the above discussion, it is apparent that the prosecution had proved the case beyond the shadow of reasonable doubt and had complied with all the mandatory provisions of the NDPS Act and the impugned judgment of conviction passed by the learned trial Court does not suffer from any infirmity and is liable to be upheld.

However, this Court cannot lose sight of the fact that the FIR in the instant case was registered on 16.04.2002 and the present appellant is facing the agony of trial for the last more than 20 years. Even the recovery of the contraband is non-commercial in nature. As per the custody certificate produced by the learned State counsel, the present appellant had undergone an actual period of 13 days. Even though the custody certificate shows that one more case bearing FIR No. 176 dated 17.12.2002 under Section 15 of the NDPS Act, Police Station Guhla was also registered against the present appellant, however, the appellant had already undergone the sentence on 27.05.2006. In the period of last 20 years, no other case under the NDPS Act has been registered against

the present appellant. In such circumstances, the ends of justice would be suitably met, if his substantive sentence is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant, as recorded by the learned trial Court is maintained. However, his substantive sentence of imprisonment is reduced to the one already undergone by him. The sentence of fine will remain the same and the same has already been deposited by the present appellant. The present appeal is, accordingly, disposed of.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation. The trial court record be sent back.

22.11.2022
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes