

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

CRA-S-815-2017(O&M)

Date of decision:-1.11.22

Rajinder

...Appellant

Versus

State of Punjab

...Respondent

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

Argued by: Mr.Mukesh Tomar, Advocate for
Mr.S.S. Brar, Advocate
for the appellant.

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

H.S. MADAAN, J.

1. This appeal is directed against the judgment dated 18.11.2016 passed by learned Judge, Special Court, Jalandhar vide which on conclusion of trial appellant Rajinder, an accused in case FIR No.183 dated 14.8.2013 for an offence under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Navi Baradari, Jalandhar, was convicted for the offence under Section 22(c) of the Act and in terms of order of that very date, he was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/- and in default thereof to further undergo rigorous imprisonment for a period of one year.

2. Briefly stated, facts of the case, as per the prosecution version are that on 14.8.2013, a police party from Police Station Navi Baradari, Jalandhar headed by ASI Sewa Singh (hereinafter referred to as the

Investigating Officer/IO) was going from Ladowali Road to Railway Colony, Double Storey Quarters, Jalandhar in connection with patrolling; when the police party had reached near cremation ground, the accused carrying a polythene bag in his hand, was spotting coming on foot from Guru Nanakpura side; he was apprehended on the basis of suspicion and his name and other particulars were inquired about, which he disclosed; the IO told the accused that he suspected him to be in possession of some contraband and as such wanted to carry out his search; the IO informed the accused that he had a legal right to get the search carried out in presence of some gazetted officer or a Magistrate but the accused reposed faith in the IO; a consent memo in that regard was prepared, executed by the accused; the IO then proceeded to search the polythene bag being carried by the accused in his hand, which was found to contain intoxicant powder; the IO drew two samples of 5 grams each from the recovered intoxicant powder and on being weighed, the residue intoxicant powder came out to be 150 grams; the two samples and the residue were converted into parcels, sealed by the IO with his seal having inscription 'SS'; separate Form M-29 was prepared at the spot and seal after use was handed over to HC Harbhajan Lal; then the sample parcels, bulk parcel and Form M-29 were taken into possession vide recovery memo.

The IO sent ruqa to the police station, on the basis of which formal FIR was recorded. The accused was arrested in this case as per rules and requisite documents were prepared. The Investigating Officer prepared rough site plan of the place of recovery and recorded statements of witnesses.

On return to the police station, the Investigating Officer produced the case property and Form M-29 as well as accused before Inspector Sukhdev Singh, SHO of the police station, who verified the facts and put his own seal having inscription 'SS' on two samples, one bulk parcel as well as Form M-29. Then Inspector Sukhdev Singh deposited the case property with MHC of the police station.

On the next day, the sample parcels and bulk parcel along with the accused were produced before the Illaqa Magistrate by the IO and learned Illaqa Magistrate verified the case property made his endorsement 'seen' and appended his signatures passing an order to return the case property to the IO, who accordingly re-deposited the same with MHC for safe custody, whereas accused was sent to judicial custody. During the course of investigation, a sample parcel was sent to the office of Chemical Examiner, Kharar and as per report received therefrom as Ex.PZ, it was found to be have '*Diphenoxylate*' which is an intoxicant substance.

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

3. On presentation of the challan, copies of the documents relied upon therein were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C.

4. Then on observing that prima facie charge for an offence under Section 22(c) of the Act was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

5. During the course of its evidence, the prosecution examined Inspector Sukhdev Singh as PW1, ASI Harbhajan Lal as PW2, Constable Hardeep Singh as PW3, HC Balwant Singh as PW4 and ASI Sewa Singh as PW5.

With that the prosecution evidence stood closed.

6. 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 had been involved in this case falsely.

7. Accused did not lead any evidence in his defence.

8. The trial Court had formulated the following points for determination:

(i) Whether accused Rajinder was found in conscious possession of 160 grams intoxicant powder containing Narcotic Drugs & Psychotropic Substance 'Diphenoxylate' without any valid permit or licence?

(ii) Whether non joining of independent witness is fatal to the prosecution case?

(iii) Whether investigating officer has not complied with the mandatory provisions of Section 50 of the NDPS Act, if so its effect?

(iv) Whether prosecution has been able to prove the guilt of the accused beyond all reasonable doubt?

9. 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 1.3.2017, when it was admitted for regular hearing and recovery of fine was ordered to remain stayed. 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 29.4.2019 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, Jalandhar.

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

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

12. Here ASI Sewa Singh, who was heading the police party, which had apprehended the accused and effected recovery from him appearing as PW5 and PW2 ASI Harbhajan Lal, who was member of the said police party had fully supported the prosecution story with regard to accused having been found in conscious possession of contraband on 14.8.2013 in the area of near cremation ground within the jurisdiction of P.S. Navi Baradari, Jalandhar. 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.

13. The link evidence has been provided by Inspector Sukhdev Singh PW1 before whom the case property was produced by IO soon after the recovery, PW4 HC Balwant Singh, with whom the case property had been deposited and PW3 Constable Hardeep Singh, who had taken the sample parcel to the office of Chemical Examiner, Kharar. From the statements of these PWs, it comes out that no tampering with the case property had taken place and the sample parcel had reached at the office of Chemical Examiner, Kharar with seals intact. Report from the office of Chemical Examiner, Kharar also goes to show that. This report further disclosed that on analysis the recovered powder was found to be containing intoxicant substance 'Diphenoxylate'.

14. The accused has simply denied the recovery from him without rendering any reasonable or plausible explanation for his alleged false implication in this case. As has been observed supra, the IO and the witnesses of recovery are not shown to have any previous enmity with the accused prompted by which, they might have involved the accused in this case falsely or depose against him to secure his conviction. False plantation is a very serious crime and the police officers, who are government officials are well aware of indulging in such type of acts, which entail not only strong disciplinary action but criminal prosecution also. It is not for nothing that the police officials would tread such dangerous path of wrongly involving an innocent person in serious crime of drug peddling. Accused is not shown to have submitted any written

representation to the higher authorities against his alleged false implication in this case. He has not led any evidence in defence to support his version. As a matter of fact, he has no plausible explanation at all.

15. Learned counsel for the appellant has attacked the prosecution case on three grounds, which are being taken up one by one.

The first ground of attack is non-compliance of Section 50. However, such provision does not come into play in this case because the recovery had been effected from the polythene bag, which the accused was carrying in his hand at the relevant time and not as a result of his personal search. The Apex Court in judgment **State of Himachal Pradesh Versus Pawan Kumar 2005(2) RCR(Cri.) 621** has observed that Section 50 of the Act applies to personal search of the accused and not with regard to the search of bag in his possession.

The second ground of attack was that there had been delay of 7 days in sending the sample to the office of Chemical Examiner, Kharar. Again this submission is without force. 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.

The third ground was that there are discrepancies in the statements of witnesses of recovery as regards time i.e. when the accused was spotted; when recovery was effected from him; when ruqa was sent to the police station and when the police party had returned to the police

station etc. as well as the distance between the place of recovery and police station; the distance from which the accused was spotted etc. But these discrepancies are with regard to inconsequential details of the incident, which do not go to the root of the matter. Both the witnesses of recovery were unanimous as regards the accused having been found in possession of 160 grams of intoxicant powder.

16. As regards the order dated 28.5.2019 passed by a Co-ordinate Bench of this Court in CRM-M-5074-2019 in case titled '*Joginder Singh Versus State of Punjab*', referred to by learned counsel for the appellant, the same does not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

17. The prosecution has 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 intoxicant powder without any licence or permit thereby showing that he was in conscious possession of intoxicant powder.

18. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for ten years, which is the minimum prescribed sentence for possession of commercial quantity of the contraband. Even otherwise, 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. The sentence awarded to the appellant/accused is the minimum for possession of contraband amounting to commercial quantity, which is the case here. Neither any reduction in the sentence is permissible nor the same ought to be granted in this case.

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

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

1.11.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes