

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

314

CRA-87-SB-1998 (O&M)
Reserved on: 18.07.2023
Pronounced on: 02.08.2023

Harwinder Singh ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Tarunveer Vashist, Advocate and
Mr. Shorya Veer Vashist, Advocate,
for the appellant.

Mr. Karunesh Kaushal, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
05	16.01.1996	Moonak, District Sangrur	15 and 25 of NDPS Act

Criminal Case before Sessions Court	SC No.44 dated 08.06.1996 Date of Decision and order on quantum of sentence on: 16.01.1998
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1. Aggrieved by the conviction and sentenced under Section 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act), for providing his tractor-trolley to other convicts Surjit Singh and Satpal Singh, from whose possession, the police had recovered three bags containing 34 Kg. 500 g. poppy husk each and one bag containing 15 Kg. 500g poppy husk, the appellant had come up before this Court by filing the present appeal in the year 1998.

2. As per the prosecution case, on 16.01.1996, ASI Chanan Singh (PW2), along with his team, was present for patrolling. While patrolling, they saw a tractor-trolley bearing Registration No. PB-11-4451 and signaled it to stop. The convict Surjit Singh (A-1) was driving the tractor, and Satpal Singh (A-2) sat in the trolley. They tried to run away but were apprehended. The conduct of Satpal Singh raised suspicion, and on this, the police official conveyed their attention to both Surjit Singh (A-1) and Satpal Singh (A-2) that they intended to search their trolley, and they also gave them an option under Section 50 of NDPS Act. Both the accused did not exercise the said option and agreed to search by the police officer himself and their statements Ex. PA & PB were recorded. During such search, the investigator recovered four bags containing poppy husk; three of them weighed 34 kg 500g each of poppy husk, whereas the fourth bag had 15 kg 500g. Thus, in all, the police recovered a total of 119 kg of poppy straw. The investigator took two samples of 250 grams from each bag for testing. Samples and residue, i.e., 117 kg. Poppy straw was taken into possession vide recovery memo Exts. P6 to P9. The investigator also arrested both the accused and took the tractor's documents into their possession.

3. The investigation revealed that the accused owned the tractor because he had purchased the same through an agreement dated 06.11.1995, i.e., two months before the seizure. On this, the police recovered the said affidavit, and he was arrested on 02.02.1996. On completion of the investigation, the officer-in-charge of the police station launched prosecution against the main accused under section 15 and against the present appellant under sections 25 read with 15 of the NDPS Act. The trial Court framed the charges under Section 15 of the NDPS Act against accused Surjit Singh and Satpal and under Section 25 of the NDPS Act against accused Harwinder Singh in which the accused did not plead guilty.

4. Vide above captioned judgment, the Sessions Judge accepted the prosecution version against all three accused and convicted them for the commission of offenses as captioned above. Feeling aggrieved, all three persons filed a separate appeal before this Court.

5. Vide judgment dated 30.07.2008, a coordinate Bench of this Court dismissed all three appeals, i.e., CRA-73-SB-1998, CRA-87-SB-1998, and CRA-167-SB-1998. The appellant Harwinder Singh challenged his dismissal before the Hon'ble Supreme Court on the grounds that he was unrepresented in the High Court. On this, the Hon'ble Supreme Court, vide order dated 22.08.2012 passed in Criminal Appeal No. 1895 of 2009, set aside the judgment of this Court qua the present appellant and remanded his appeal, i.e., for a fresh hearing.

6. I have heard counsel for the appellant as well as counsel for the State and I have gone through the record.

7. Since the findings qua search and seizure qua Surjeet Singh (A-1) and Satpal Singh (A-2) from whom the police had recovered the poppy husk in the tractor-trolley in which they were found present stand affirmed, as such, the limited question which needs adjudication in this appeal is the appreciation of evidence against the appellant Harwinder Singh for providing his tractor-trolley to the convicts for transporting the poppy husk. As such, this Court is not referring to the other evidence for which the appellant was neither charged nor in any way connected. Even otherwise, this Court is bound by the findings on merits qua these parts because the judgment passed by a coordinate Bench of this Court, which has attained finality.

8. The Investigator ASI Chanan Singh (PW-2) stated in his examination-in-chief that on 02.02.1996, the appellant Harwinder Singh had produced an affidavit regarding the ownership of a tractor. In the cross-examination, he stated that the Registration Certificate of the tractor was not in the name of Harwinder Singh, but as per the Registration Certificate, the tractor was registered in the name of Balwinder Singh and others. Inspector Ram Parkash (PW-3), who was SHO, testified in his cross-examination that he did not conduct any investigation regarding the ownership of the vehicle.

9. Gurdial Singh (PW-6), who is the registered owner of the tractor-trolley, testified that the said tractor-trolley was jointly owned by Balwinder Singh and him and that they sold the said tractor to appellant-Harwinder Singh through an affidavit Ex. PK. He further stated that they had received the entire sale consideration from Harwinder Singh, to whom they had also given possession of the tractor. He further stated vide affidavit dated 22.01.1996, he had also given a special power of attorney in favor of Harwinder Singh and placed on record its copy as Mark- X. In re-examination, he testified that out of two affidavits, his affidavit dated 16.11.1995 is correct, and affidavit mark X was given so that registration could be changed to the purchase name. The stand of the accused in the statement recorded under Section 313 Cr.P.C. regarding the tractor is that the tractor was purchased by him from Gurdial Singh after the alleged recovery, i.e., on 22.01.1996, and its ownership was also transferred in his name on 11.12.1996. He further submitted that ASI Chanan Singh falsely procured the affidavit dated 16.11.1995.

10. Thus, as per the prosecution's case, the appellant had purchased the tractor on 16.11.1995 through an affidavit, and to prove it, the prosecution had testified PW-6 Gurdial Singh. In his statement, PW-6 Gurdial Singh referred to two documents, firstly the Affidavit dated 16.11.1995, vide which he had handed over the tractor and received consideration, which is Ex.PK, and also one power of attorney in favor of the appellant Harwinder Singh on 22.01.1996, which is mark X. The appellant had examined defense evidence to show that there was an enmity between him and the police officials and for which reason, he was falsely implicated.

11. Thus, it remains undisputed that the appellant was the owner in possession of the tractor after 22.01.1996. However, the question which is disputed is whether, at the time of the seizure of poppy husk on 16.01.1996, the appellant had already purchased the tractor vide Affidavit dated 16.11.1995 or he had purchased the tractor through power of attorney dated 22.01.1996. The prosecution had examined the registered owner of the tractor to prove the Affidavit dated 16.11.1995 (Ex.PK). Be that as it may, the most

relevant question that even if it is hypothetically taken that the appellant was in possession of the tractor-trolley on the date of seizure of poppy husk from it, had he handed over the tractor to the other accused for transporting narcotics or such transportation was within his knowledge.

12. Sections 25 & 35 of the NDPS Act reads as follows:

“25. Punishment for allowing premises, etc., to be used for commission of an offence-

Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.”

35. Presumption of culpable mental state-

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation.—In this section “culpable mental state” includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

13. The crucial words that the Legislature used in section 25 of the statute of NDPS Act, 1985 are “knowingly permits it to be used for the commission of the offense by any other persons.” Section 35 of the NDPS Act deals with the presumption of culpable mental. However, the intent of Section 25 and Section 35 is parametria the same but carves a special role upon the investigation while proving an offense under 25 of the NDPS Act because of the usage of the word “knowingly.” Thus, the presumption under Section 35 of the NDPS Act is similar to the intent of Section 25 of the NDPS Act, and as such, Section 35 of the NDPS Act would not dilute the burden that the Legislature had put upon the investigator in section 25 of the NDPS Act. Resultantly, the presumption

under Section 35 of the NDPS Act would not apply in the case under Section 25 of the NDPS Act if there is not even an iota of evidence regarding knowingly permitting the usage of the things mentioned in Section 35 of the NDPS Act for the commission of the offence.

14. After appreciating the evidence gathered and proved by the prosecution against the appellant regarding his knowledge and permission to use the tractor-trolley for transporting poppy husk, it is clear that the prosecution could not bring its case, against the appellant, within the purview and scope of Section 25 of NDPS Act, and the essential requirements to prove knowledge are missing. There is not even an iota of evidence that the appellant knew about the other two convicts transporting the poppy husk in his tractor trolley or that he had permitted them to do so for this purpose. A perusal of the impugned judgment does not refer to the intent of the legislature as explicitly clarified in Section 25 of the NDPS Act. Thus, the prosecution has failed to prove its case beyond a reasonable doubt, and the impugned judgment convicting the appellant under section 25 of the NDPS Act is not in consonance with the law.

15. Accordingly, the present appeal is allowed. The order passed by the trial Court is set aside. The appellant stands acquitted. Bail bonds stand discharged.

Aug 02, 2023
Jyoti-II

(Anoop Chitkara)
Judge

Whether speaking/reasoned:

Whether reportable:

Yes

YES.