

CRA-S-1639-SB-2008 (O&M)
Reserved on: 13.02.2023
Date of Pronouncement: 11.04.2023

VS.

Present : Mr. Rakesh Kumar Kaachura, Advocate for
Mr. G.N Malik, Advocate
for the appellant.

The present appeal is directed against the judgment of conviction and order of sentence dated 23.08.2008, passed by Learned Special Judge, Moga, whereby the present appellant was held guilty for the offence under Section- 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act) and was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/-, along with default stipulation.

The prosecution story, as it emerges from the report under Section-173 Cr.PC, is that on 23.08.2004, a police team headed by ASI Darshan Singh was present on Government vehicle at bus stand, Kot Mohammad Khan and in the meantime ASI Darshan Singh received a secret information that Bagicha

Singh alias Chundi had concealed the bags of poppy husk in his fields near a tubewell and he would sell this poppy straw to the customers at night. If the raid was conducted immediately, huge quantity of poppy straw could be recovered from his possession. Since the information was found to be reliable, a ruqa was immediately sent to the police station for registration of formal FIR, by hand through Constable Kashmir Singh. In the meantime, the police party proceeded towards the place disclosed in the secret information. After reaching at the outskirts of Village Kot Mohammad Khan, they joined Major Singh as a private witness in the police party and the raid was conducted at the fields of Bagicha Singh alias Chundi and he was found present near a heap of fooder at his tubewell. On seeing the police party, Bagicha Singh escaped from there and when police party reached at the spot and found that four feet deep pit was there and its width was three feet. Two jute bags (tat Boras) were lying in the said pit and in the presence of the witnesses, the said bags were opened and poppy straw was recovered from the same. One sample of 250 grams of poppy straw was taken out from each bag and the remaining poppy straw weighed to be 29 Kgs 750 grams and both the samples as well as remainder quantity of contraband were taken into possession by the police vide the recovery memos. The three parcels were sealed with the seal bearing impressions 'DS'. The sample seal impressions were prepared separately and the seal after use was handed over to HC Pritam Singh. The initial investigation was conducted at the spot by ASI Darshan Singh and after completion of necessary formalities, the police party took the accused, witnesses and the case property to the police station and were produced before SI Kirpal Singh. He also affixed his seal on

the samples and the special reports were sent. The raids were conducted to arrest the Bagicha Singh alias Chundi, but he could not be apprehended and was declared as a proclaimed offender. After necessary investigation, the challan was presented in the Court. Thereafter, statement of ASI Darshan Singh was recorded under Section 299 Cr.PC and the prosecution closed its evidence and the file was consigned vide order dated 08.10.2005. The accused was later arrested in the present case and a supplementary challan was presented against him on 30.05.2006 and the main file was also summoned and was tagged along with the same.

Finding a prima facie case against the accused on the strength of the material collected during the course of investigation, the appellant/accused was charge-sheeted for the offence punishable under Section 15 of the Act, and the charge was read over and explained to him, to which he pleaded not guilty and claimed trial.

In support of the prosecution case, eight witnesses were examined to prove the charge against the appellant. The prosecution examined PW-1 SI Kirpal Singh, who was posted as SHO Police Station Dharamkot on 23.08.2004. ASI Darshan Singh produced before him two bags of poppy straw, each containing 29 Kgs 750 grams of poppy straw and two samples of poppy straw, each containing 250 grams of poppy straw. He supported the case of the prosecution as stated in the FIR. He had kept the case property with himself in his safe custody. He also sent special report Ex.P3 to the DSP, which was received by DSP Gurjit Singh vide endorsement Ex.P3/A on which he identified his signatures. He had also produced the case property before the learned

Magistrate by moving an application Ex.P4, on which Learned Magistrate passed retention order Ex.P4/A. The prosecution further examined ASI Darshan Singh as PW-2, who was the most material witness in the instant case. He supported the case of the prosecution, as mentioned in the FIR. He stated that on receipt of the secret information, he had sent a ruqa, on the basis of which formal FIR Ex.P7 was registered against the accused. Major Singh private witness met them on the way and he was also joined. He clearly stated that he and Major Singh had identified the accused, because earlier also the accused was being prosecuted under NDPS Act. The team led by him had effected the recovery from the spot. In his cross-examination he stated that the accused could not be arrested at the spot as he had run away from there. Subsequently, he was not arrested by him. The Patwari was not joined in the investigation to know the ownership of the land, from where the said recovery was effected. The prosecution further examined PW-3 HC Pritam Singh, who deposed on similar lines and was part of the raiding team, which had recovered contraband from the police. He also stated that ASI Darshan Singh had identified him. He and HC Kulwinder Singh chased the accused, but the accused was successful in fleeing from the spot. He also proved the factum of recovery of the contraband from the possession of the accused. PW-4 HC Gurpreet Singh tendered his affidavit Ex.P10 in his evidence. PW-5 HC Harjinder Singh was posted as reader to DSP. He had received the special report Ex.PF and identified the signatures of Gurjit Singh Romana, DSP, Dharamkot on special report Ex. PF and also proved his endorsement Ex.PF/1. Constable Lakhvir Singh was examined as PW-6, who filed his affidavit Ex.

P11 in his evidence. Ashok Kumar, photographer was examined as PW-7, who stated that he could not tell the date at what stage, he had taken the photographs in the present case. But he had taken the photographs. He had seen the Court file, in which no photographs were there. The prosecution examined PW-8 SI Bachan Singh, who was posted as SHO Police Station, Dharamkot on 10.03.2005 and had taken the case property for inventory proceedings and produced the case property before the Court of Learned Judicial Magistrate Ist Class, Moga. He further deposed that Jaspal Singh photographer had taken the photographs at the time of inventory proceedings. A sample of 250 grams was taken by the Court from each bag and the samples were sealed by the Court from each bag and the samples were also sealed by the Court with the seal of the Court. So long as the case property remained in his possession, no body tampered with the same.

After the closure of the prosecution evidence, statement of the accused was recorded under Section 313 of the Cr.PC and the entire incriminating evidence was put to him. He pleaded his false implication and stated that the recovery had been planted on him due to party faction in the village. Though he opted to lead defence evidence, but no witness was examined by him in the instant case.

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

Learned counsel for the appellant vehemently argued that in the instant case, even though the accused had fled from the spot, yet the prosecution was obliged to comply with the mandatory provisions of Section 50

of the Act and since there was no substantial compliance of the Act, the appellant was liable to be acquitted only on this ground. The said submission has been opposed by the learned State counsel by contending that in the instant case, recovery had taken place from the open fields and no contraband was recovered from the personal search of the accused, consequently, the provisions of Section 50 of the Act are not attracted. He prayed for upholding the findings recorded by the learned Trial Court. I have heard the submissions made by the learned counsel for both the sides and I am of the firm opinion that the provisions of Section 50 of the NDPS Act would not be applicable to the facts of the instant case. The Hon'ble Supreme Court recently considered the scope and object of Section 50 of the Act in the matter of "**Kallu Khan Vs. State of Rajasthan, 2022 AIR (Supreme Court)50: 2022 (1) RCR (Criminal) 367** as follows:-

“15.Simultaneously, the arguments advanced by the appellant regarding non-compliance of Section 50 of NDPS Act is bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance of the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore, compliance of Section 50 does not attract in the present case. It is settled in the case of Vijaysinh(supra) that in the case of personal search only, the provisions of Section 50 of the Act is required to be

complied with but not in the case of vehicle as in the present case, following the judgments of Surinder Kumar (supra) and Baljinder Singh (supra). Considering the facts of this Court, the argument of non-compliance of Section 50 NDPS Act advanced by the counsel is hereby repelled.”

Now adverting to the facts of the instant case, it is apparent that at the time of raid by the police party, Bagicha Singh alias Chundi, appellant was present at the spot and was duly identified by PW-2 Darshan Singh as well as Major Singh, independent witness. Both of them had identified him as he was earlier facing cases under NDPS Act and was known to them very well. Still further, once the accused had ran away from the spot, there was no question of giving the offer to any other person. Still further, the recovery had taken place from the open fields and not from the personal search of the accused. Consequently, the provisions of Section 50 of the Act, were not attracted to the facts of the instant case and the arguments raised by the learned counsel for the appellant are without any substance in this regard.

Learned counsel for the appellant further vehemently argued that in the instant case, the appellant had allegedly ran away from the spot and was arrested after several months. Consequently, it was imperative for the prosecution to hold the test identification parade and the identity of the appellant could not be established in the instant case. The said submission has been opposed by the learned State counsel by contending that identity of the accused has been duly established by PW-2 ASI Darshan Singh and PW-3 HC Pritam Singh, who had identified him.

Having heard the submissions on both the sides, I have found the submissions made by learned counsel for the appellant are bereft of merits. PW-2 Darshan Singh had clearly deposed that he as well as Major Singh, private witness had identified Bagicha Singh @Chundi at the spot and he was known to them as the present accused was facing case under NDPS Act earlier also. Thus, it is evident that the identity of the appellant stood established in the instant case and there was no need of holding the test identification parade in the instant case. The Trial Court has recorded well reasoned findings in this regard and the same are also ordered to be upheld.

Learned counsel for the appellant further submitted that in the instant case, Ashok Kumar photographer was examined as PW-7 and he clearly stated that he could not tell the date and the stage, when the photographs were taken in the instant case. He had seen the Court file, in which there were no photographs taken by him and the prosecution case was liable to be disbelieved. Learned State counsel supported the findings recorded by the learned Trial Court and prayed for rejection of the appeal. I find no force in the submissions made by learned counsel for the appellant. No doubt Ashok Kumar photographer tried to help the accused, but the representative samples were drawn by the Magistrate and the inventory report Ex.P12 was prepared. The orders passed by the Learned Court were duly exhibited as Ex. P13 and Ex.P14. Order Ex.P13 clearly reveals that the photographs were taken by Jaspal Singh of Prince Studio, Court Road, Moga and not by Ashok Kumar whose name was wrongly mentioned in the list of witnesses. Regarding taking of the photographs during inventory proceedings, there was a specific order of

the Judicial Magistrate dated 10.03.2005 and there is always a sanctity attached to the Court orders. Thus, the submission made by learned counsel for the appellant cannot be accepted. No other submission has been raised.

Even otherwise, I have gone through the findings recorded by the learned Trial Court. The impugned judgment is based on correct appreciation of evidence and law. Even the learned counsel for the appellant could not point out any illegality or perversity in the impugned judgment of conviction passed by the learned Special Court and the findings recorded by the learned Special Court are upheld and affirmed. Consequently, the impugned judgment of conviction is ordered to be upheld.

Now adverting to the order of sentence, the present appellant has been sentenced to undergo rigorous imprisonment for a period of 10 years for keeping in his possession 60 Kgs of poppy husk falling in the commercial quantity. As per Section 15 (C) of the Act, where the contravention involves commercial quantity, the accused can be sentenced with rigorous imprisonment for a terms which shall not be less than ten years, but which may extend to 20 years and shall also be liable to fine, which shall not be less than 1 lac rupees, but which may extend to 2 lac rupees. In the instant case, the custody certificate clearly shows that the present appellant is a hardened criminal. Several cases under NDPS Act and Indian Penal Code were registered against him after and before the registration of the FIR in the present case. Consequently, he did not deserve any leniency and the learned Trial Court has rightly sentenced him to 10 years of imprisonment. Thus, in view of the above, the order of sentenced is ordered to be upheld.

For the reasons mentioned above, the appeal fails and impugned judgment of conviction and order of sentence dated 23.08.2008, passed by Learned Special Judge, Moga are upheld and affirmed.

All pending applications, if any, are also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

The Trial Court record be sent back.

11.04.2023
Hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No