

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

383

CRA-S-1724-SB-2004 (O&M)
Decided on : 05.01.2023

Satpal

. . . Appellant (s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Dinesh Kumar, Advocate for
Mr. M.K. Singla, Advocate for the appellant.

Mr. Jaswinder Singh Arora, DAG, Punjab.

SANJAY VASHISTH, J. (Oral)

1. Present appeal is filed by appellant – Satpal, against the judgment of his conviction and order of sentence dated 24.08.2004, passed by Ld. Judge, Special Court, Sangrur, in Sessions Case No.166, dated 16.12.2002, arising from FIR No. 284, dated 20.09.2002, under Section 15 of the Narcotic Substances and Psychotropic Substances Act, 1985 (for brevity ‘NDPS Act’), Police Station Dhuri.

2. For the recovery of 10 KG of poppy-husk, appellant (hereinafter referred to as ‘accused’), was sentenced to undergo RI for a period of one year, and to pay a fine of Rs.2000/-, and in default of payment of fine to further undergo RI for two months.

3. Case of the prosecution is that on 20.09.2002, ASI Inderpal Singh alongwith other police officials was going to village Kakarwal, Rajomajra, Bugra etc, in connection with patrolling in private jeep. On reaching the bus stand village Rajomajra, one Balbir Singh s/o Joginder Singh, r/o Janta Nagar, Dhuri, met them and he joined the police party. When the police party entered the vicinity of village Rajomajra, on the bank of canal, from the side of Jahangir bridge a person was seen coming on foot, carrying a plastic bag on his head. On seeing the police party, said person immediately retreated. On suspicion, he was stopped and on making inquiry, he disclosed his name as Satpal S/o Midhu Singh, caste Mithu, r/o Lalian wali, PS Jhaneer.

4. Notice under Section 50 of the NDPS Act was served, upon which appellant responded that he has complete faith in the ASI Inderpal Singh and is ready to be searched by him.

On making search, 10 kg of poppy husk was found in the bag and accordingly, two samples of 250-250 grams each, were prepared. Thus, residue of said poppy husk on weightment, was found to be 9 ½ kg. Accordingly, both the parcels were sealed by ASI with seal 'I. S.' and after taking into possession of all articles/parcel, sample seal was handed over to Balbir Singh, whom prosecution claimed to be an independent witness.

5. After conducting other proceedings of the investigation, final report under Section 173 (2) Cr. P.C. was prepared and after submission

of the same before the Court, appellant was charged with offence under Section 15 of the NDPS Act and accordingly, thereafter, trial commenced.

6. The prosecution, in order to prove its case, had examined 05 witnesses, which are as under:-

PW-1	ASI Inderpal Singh	Complainant/ Investigating Officer
PW-2	Inspector Bhag Singh	Investigating Officer for verification of recovery
PW-3	Ramesh Kumar	Investigating Officer for deposit of samples with FSL
PW-4	Balwinder Singh	Recovery witness with I.O on spot
PW-5	MHC Satwinder Singh	MHC at Police Station, Malkhana

By a separate statement of learned public prosecutor, PHC Gurmail Singh and Inspector Harjinder Singh were not examined by the prosecution being unnecessary, whereas, Balbir Singh was not examined on the ground of being won over by the appellant.

7. In the statement under section 313 Cr.P.C., appellant took a plea that a false case has been registered against him and claimed innocence without producing any evidence in defence.

8. While opening the arguments, learned counsel for the appellant submits that the impugned judgement passed by the trial Court is not sustainable for more than one reason.

i). First of all, ASI Inderpal Singh himself is the complainant,

recovery official and investigating officer and his conduct is not fair. While submitting so, counsel argues that although notice under Section 50 of the NDPS Act may not be of that much relevance in the present case, yet not conveying the appellant about his legal right of being searched by a Magistrate or a Gazetted Officer, shows that ASI Inderpal Singh himself was interested in planting a case against the appellant and rather, was not interested in calling any other officer of Higher rank on the spot of recovery.

ii). There appears to be no dispute on this aspect as all these facts are available on record. Thus, undoubtedly conduct of Investigating Officer is not out of doubt. Counsel also argues that the police party has alleged that they were moving for patrolling purposes in a private jeep but not jeep number is mentioned in FIR.

Said argument of the appellant could have appealed to the Court, but he himself has asked the question from the Investigating officer i.e. ASI Inderpal Singh, who explained that registration number of the jeep was PCI 3649. After such an explanation on the record, it was for the appellant to produce the owner of the vehicle in defence but for the reasons best known to him he failed in performing his duty. Therefore, this argument does not succeed. Rather, he himself has brought on record the registration number of the jeep being used by the police party during the time of patrolling.

iii). Next argument of learned counsel for the appellant is that

there are material contradictions in the statements of material witnesses.

There are only two witnesses with the prosecution who were present on the spot of the recovery i.e. PW1-ASI Inder Pal Singh (Investigating Officer) and PW4-HC Balbir Singh. While reading out the statement of investigating officer i.e. ASI Inderpal Singh (PW1), counsel argues that as per his disposition, alleged contraband (poppy Husk) was weighed in two lots but when PW4-HC Balwinder Singh appeared in the witness box, he deposed that said poppy husk was weighed in four lots.

iv). Counsel also points out that PW4 has specifically admitted that even the copy of Special Report has not been attached with the judicial file of this Case.

v). As per deposition of PW1-ASI Inderpal Singh, during their stay on the spot, no one had crossed them but when HC-Balwinder Singh (PW4) appeared before the witness box, he deposed that some persons crossed them.

vi). Counsel also argues that moreover, no independent witness was joined by the prosecution at the time of affecting the alleged recovery from appellant. One witness-Balbir Singh, whom the prosecution initially projected as independent witness has been kept away from the witness box and thus, prosecution has not given any chance to the appellant to cross examine the said witness. Mere ground of being won over is meaningless, until something is brought on record by the prosecution to substantiate their reason of not producing such a material

witness.

vii). In the absence of such material evidence, assumption cannot be raised that independent witness, who was initially joined by the police itself is left, because he was won over by the accused.

viii). Counsel also argues that the seal over the case property is also not found intact. While submitting so, counsel refers to the findings recorded by the trial Court, wherein it is mentioned that seal of Ex. PW3 was found broken, but one word 'I' was visible. This was enough for the Court to assume that there was every chance to tamper with the case property and benefit can not be extended to the prosecution by assuming that only the word 'I' is visible and due to some mishandling of bulk parcel, the seal of the case property was partially broken.

In support of his arguments learned counsel for the appellant refers to judgement passed by this Court in case CRA-S-433-SB-2004, titled as “Jaswinder Singh v. State of Punjab” vide which similarly situated accused from whom 30 KG poppy husk was recovered, had been acquitted from all the charges.

9. I have considered all the submission recorded by the counsel for the appellant and perused the record carefully and have gone through the statement(s) of the witnesses especially of PW-1 ASI Inderpal Singh and PW-2 HC Balwinder Singh, who are the star witness of the prosecution.

10. After examining the record, I find that explanation given by

the trial Court that contradictions in deposition of the material witnesses are of a minor nature, is incorrect. Where the manner of weighing of the poppy husk is not explained properly as to whether the contraband was weighed in two lots or four lots. Benefit of doubt for such a contradiction would be extended to the accused. This Court has also noticed that as per deposition of the Investigating Officer (PW1), no one had crossed the spot but when PW4 appeared, he deposed that some persons crossed from there. Both the aforementioned contradictions are so material in nature, which reflect that may be, that even police party was never present on the spot as explained in the story.

11. I have also considered the submission addressed by the counsel for the appellant with regard to breaking of the seal and benefit of doubt has to go to the accused, as this was enough for the Court to notice that there was every chance to tamper with the case property and benefit can not be extended to the prosecution by assuming that only the word 'I' is visible and due to some mishandling of bulk parcel, the seal of the case property was partially broken.

It is also noticed that contraband in this case i.e. Poppy Husk was recovered on 20.09.2002 and on 15.12.2003, during cross examination of the Investigating Officer ASI Inderpal Singh (PW1), said aspect has been highlighted. Meaning thereby, it is only after 14-15 months and not the years that seal could possibly be found partially broken. Thus, the assumption cannot be raised in the favour of the

prosecution, rather same would extend benefit to the accused.

12. There is another argument raised by the counsel for the appellant that sole independent witness joined by the prosecution from the very beginning, namely, Balbir Singh, to whom the original seal was handed over after its use, has not been produced in the witness box. Undoubtedly, prosecution has taken a ground that the witness being won over by the accused. But, said ground taken by the prosecution is very weak ground, until some material is brought on record in support of allegation of winning over the prosecution witness by the accused. Therefore, I do not find it to be a valid ground for not examining the witness, who was accompanying the police team prior to the confronting with the accused.

13. Learned counsel for the appellant also refers to the fact that there is evidence on record that after registration of FIR, no special report was forwarded to the Learned Magistrate, nor in that regard any witness was produced by the prosecution. Thus, delivery of special report to the learned Magistrate also went unproved. Therefore, very inception of the registration of FIR is highly doubtful.

14. After recording the aforementioned submission, I am of the view that judgement passed by learned Trial Court is not sustainable as the grounds taken by the appellant before this Court, makes the story of the prosecution highly doubtful.

15.. Considering the aforementioned circumstances, arguments

addressed by counsel for the parties, and after perusing of the record, carefully, I find force in the submissions addressed by learned Counsel for the appellant, and thus, the judgment of conviction and order of sentence dated 24.08.2004 passed by learned trial Court, are hereby *set-aside*, and consequently, **appeal is allowed by acquitting the appellant** from all the charges levelled against him.

16. Appeal stands disposed of.

(SANJAY VASHISTH)
JUDGE

05.01.2023

Riya

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>