

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

CRA-S-1871-SB-2004
Date of decision: 12.12.2023

Ajit Singh ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: None for the appellant.

Mr. Vinay Kumar Gupta, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present appeal has been filed by the appellant against the judgment and order dated 09.09.2004 whereby appellant was convicted and sentenced to RI for 2 years and to pay a fine of Rs.25,000/- and in default of non payment of fine to further undergo RI for 3 months by the Court of Judge, Special Court, Kapurthala.

2. The brief facts of the case of prosecution are that on 27.05.1997 ASI Charanjit Singh along with some other police officials held Naka in the area of village Nathu Chahal and at that time appellant was seen coming from side of other village on a scooter and he is tried to slip way on seeing the police officials and was immediately apprehended and one gunny bag was found from his scooter bearing No.PJU-577. On checking on the bag it was found to be containing 10 kg of poppy husk out of which 250 grams was separated as a sample. The remaining bulk contained in a bag and aforesaid sample were converted into 2 parcels and ASI Charanjit Singh

appended his seal bearing impression CS on both the parcels and sample seal impression was separately prepared and entire case property was taken into possession by the police vide memo Ex.P-C and investigating officer also sent ruqa Ex.P-D/1 and resultantly FIR Ex.P-D/2 was registered in the police station. On return to police station the entire case property was produced before the DSP concerned who after checking the case property appended his seal on the entire case property. Then the entire case property was deposited with MHC concerned. Subsequently, the sealed sample parcel was sent for its analysis to the office of Chemical Examiner. On receipt of report of Chemical Examiner Ex.P-F and on completion of investigation, the challan was presented against the appellant.

3. The trial Court framed charge under Section 15 of NDPS Act to which the appellant had not pleaded guilty and claimed trial.

4. The prosecution in order to prove its case examined PW-1 Mohan Lal who took the sealed sample to the office Chemical Examiner bearing seals CS and JS and he tendered his affidavit Ex.P-A. PW-4 ASI Charanjit Singh investigating officer of the case deposed regarding the entire recovery proceedings and he proved recovery memo Ex.P-C ruqa Ex.P-D/1 and FIR Ex.P-D/2 and sample seal impression Ex.P-1. PW-2 Sucha Singh corroborated the statement of PW-4. PW-3 HC Lakhwinder Singh who was MHC at the relevant time tendered his affidavit is PD in order to prove the link evidence.

5. On conclusion of prosecution evidence the appellant was examined under Section 313 Cr.P.C. and he pleaded innocence and denied the entire incriminating evidence appearing against him. Appellant

examined HC Ranjit Singh in his defence.

6. After hearing the counsel for the parties, the learned trial Court convicted and sentenced the appellant as detailed in the first paragraph of this judgment/

7. I have heard the State counsel and gone through the record of the trial Court.

8. There is no representation on behalf of the appellant for the last so many dates.

9. As per prosecution version, 10 kg of poppy husk was recovered from possession of the appellant on 27.05.1997. From the perusal of the record, it appears that the case property was not produced before the Court of Illaqa Magistrate concerned within 24 hours of the aforesaid recovery of contraband. As per the testimony of the investigating officer, he on return to the police station produced the case property before DSP Jarnail Singh Randhawa on the day of recovery i.e. 27.05.1997 and the said DSP after checking the case property appended his seal bearing impression JS on the entire case property. However the prosecution failed to examine DSP Jarnail Singh Randhawa during trial. Further from the perusal of the report of Chemical Examiner Ex.P-F. It is evident that the sealed sample was received in the said laboratory on 10.06.1997. So there was delay in sending of sample for its analysis. Admittedly, in this case no sample was ever separated in presence of the Magistrate concerned as per the law laid down by Hon'ble Supreme Court in ***Union of India Vs. Mohan Lal and another 2016 (1) RCR Criminal 858*** wherein it was held that the process of drawing of samples has to be in presence and under the supervision of the Magistrate

and entire exercise has to be certified by him to be correct. In the instant case, the aforesaid mandatory procedure was not followed by the investigating officer and further there is no certification of the case property by the Magistrate concerned. The seals which were used by the police officials, for the purpose of the sealing the case property, through out remained with the police officials. Prosecution has failed to establish that the sealed sample which was sent for its analysis remained intact from the stage of recovery till it reached the office of Chemical Examiner. There are so many gaps in the link evidence adduced by the prosecution.

10. In the wake of above discussion, the prosecution is unable to prove its case against the appellant beyond a shadow of doubt, in the absence of any independent corroboration.

11. For the forgoing reasons, the present appeal is hereby allowed and the impugned judgment and order dated 09.09.2004 are set aside and the appellant is acquitted.

12.12.2023

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No