

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

365

CRA-S-1987-SB-2004 (O&M)

Reserved on:12.01.2023

Date of Decision: 13.01.2023

Raja Ram

...Appellant

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Angel Sharma, Advocate
for the appellant.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

N.S.SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 07.10.2004 passed by the Court of learned Judge, Special Court, Barnala, whereby, the appellant had been convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') and sentenced to undergo rigorous imprisonment for one years and to pay a fine of Rs. 1,000/- alongwith default stipulation.

The facts of the case in brief are that on 29.03.2003, SI Suraj Bhan alongwith other police officials were going from village Khaili towards Kurar and in the mean time, a person, carrying a plastic bag on his right shoulder containing some heavy substance was seen coming from the opposite side and on seeing the police party, he got perplexed and turned towards the fields. The police party

got suspicious and apprehended him, who disclosed his name to be Raja Ram. The police party apprised him about his legal right to get his search conducted by some gazetted officer or a Magistrate and also informed him that he could be produced either before the gazetted officer or a Magistrate for the said purpose. However, vide written consent memo Ex.PA, the accused reposed confidence in the police party. After that, contents of the plastic bag were checked and it was found containing 6 kgs of poppy husk. The accused was carrying the said quantity without any permit or licence and consequently, two samples of 250 grams of poppy husk each were taken out from the recovered poppy husk and the remaining quantity weighed to be 5 kg and 500 grams. The remainder quantity of poppy husk was kept in the same bag and the sample as well as the case property were again sealed with the seal impression 'SB'. The specimen of the seal was also prepared and the seal after use was handed over to private person Jora Singh. The recovery memo Ex.PB was prepared and on receipt of *ruka* Ex.PC in the police station, formal FIR Ex.PC/1 was registered against the accused. Personal search memo Ex.PD of the accused was prepared. After returning to the police station, the accused, witnesses and the case property were produced before the SHO, who verified the facts as well as the investigation. Thereafter, the case property was deposited in an intact condition with the MHC and the accused was confined in the police lock up. A report under Section 57 of the NDPS

Act was also submitted. After the completion of the investigation, the challan was presented against the accused for trial.

After presentation of challan, finding a prima facie case, charge under Section 15 of the NDPS Act was ordered to be framed against the accused. He pleaded not guilty to the charge and claimed trial.

In support of the charge, the prosecution examined 5 witnesses.

SI Paramjit Singh was examined as PW1, who was posted as SHO on the said day and the case property, accused and the witnesses were produced before him. He checked the seals on the case property, verified the investigation and interrogated the accused. He also had put his seal on the parcels. The prosecution further examined PW2 SI Suraj Bhan, who was part of the police team and had conducted the initial investigation. HC Daljit Singh was examined as PW3, who was also part of the raiding team. He had been a witness to all the memos, which were prepared at the spot. The statement of PW4 MHC Sarabjit Singh was formal in nature and he tendered his affidavit Ex.PJ. Similarly, Constable Hardeep Singh tendered his affidavit Ex.PK, while appearing as PW5.

After the prosecution evidence was closed, the statement of accused under Section 313 Cr.P.C., was recorded and he pleaded

his false implication. He stated that he had been falsely implicated due to political rivalry and nothing was recovered from him.

In defence, the accused examined DW1 HC Jasbir Singh, who had brought the original register No. 19 and roznamcha and proved on record Ex.D1 to Ex. D3. DW2 Jora Singh, who was an independent witness was examined and he stated that in his presence, poppy husk was not recovered from the accused and his thumb impressions were obtained on blank papers in the police station.

I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

Learned counsel for the appellant vehemently argued that in the instant case, Jora Singh was joined as independent witness, whereas the prosecution did not examine the said witness. Ultimately Jora Singh appeared as a defence witness and was cross-examined by the prosecution. DW2 Jora Singh clearly stated that no recovery was effected in his presence and his signatures were obtained on blank papers. Learned State counsel has vehemently opposed the said contention and submitted that the prosecution had examined five official witnesses and all the said witnesses had supported the case of the prosecution. The sole independent witness Jora Singh was won over by the accused and he brought on the record as DW2 by the defence. Thus, the appeal is liable to be dismissed.

I have heard the rival submissions made by the learned counsel for the parties and find no substance in the arguments raised by the learned counsel for the appellant. No doubt, Jora Singh was associated as independent witness during the search and seizure, however, he was won over by the accused as he also belonged to the same area. In fact, other-wise also non-examination of an independent witness is merely an irregularity and the recovery as well as the trial cannot be held to be vitiated only on this ground alone. Further, it is a matter of common knowledge that the private witnesses do not depose against the drug peddlers. Further, the testimonies of official witnesses cannot be discarded or rejected only on the ground of their official status. In fact, as a rule of caution, the Courts normally look for independent corroboration. However, when the statements of official witnesses are found to be reliable, the same can be fully relied upon by the learned Courts. In the instant case, I have perused the statements of five official witnesses and they had been subjected to lengthy cross-examination. However, all the witnesses withstood the test of cross-examination and their testimonies have been rightly relied upon by the learned trial Court.

Learned counsel for the appellant further vehemently argued that the mandatory provisions of Section 50 of the NDPS Act had not been complied with in the instant case. However, there is no force in the said contention. I have perused the facts of the instant

case and the evidence on record carefully. In fact, the offer of search in the presence of a gazetted officer or a Magistrate was duly communicated by the police party to the present appellant, however, he reposed confidence in the police party and allowed them to go ahead with the search and seizure. Even otherwise, the recovery of the contraband was effected from the bag, which was being taken by the appellant from one place to the other. No recovery was effected from the personal search of the appellant. Thus, even the provisions of Section 50 of the NDPS Act were not attracted and the submissions made by the learned counsel for the appellant are without any substance.

Thus, in view of the above discussion, impugned judgment of conviction is upheld.

However, this Court can not lose sight of the fact that the FIR in the instant case was registered on 29.03.2003 and the present appellant has faced the agony of trial/appeal since last about 20 years. Even, the recovery of poppy husk from the present appellant is non-commercial in nature. Still further, as per the charge sheet dated 30.09.2003, the appellant was aged 35 years and at present he must be aged about 55 years. Still further, as per the custody certificate, produced by the learned State counsel, he has undergone 02 months and 13 days of actual sentence out of total sentence of one year. Even, the custody certificate shows that no other case was registered against

the present appellant. Thus, the ends of justice will be suitably met, if the sentence imposed on the present appellant is reduced to the period already undergone by him.

Resultantly, the substantive sentence is ordered to be reduced to the one undergone by him. However, the sentence of fine of Rs. 1000/- shall remain the same. The appellant is directed to deposit the amount of fine within a period of 03 months from today, if not already paid, failing which, he shall undergo further rigorous imprisonment for a period of one month in default of payment of fine.

All pending applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

13.01.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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