

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

370

CRA-S-2042-SB-2004 (O&M)

Reserved on:-08.02.2023

Date of Decision: 01.03.2023

Chamkaur Singh @ Kaura

...Appellant

Versus

State of Punjab

... Respondent

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

Present : Mr. Rajesh Kumar Dadwal, Adocate
for the appellant.

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

N.S.SHEKHAWAT, J.

By way of the instant appeal, the appellant had impugned the judgment of conviction and order of sentence dated 05.10.2004 passed by the learned Judge, Special Court, Barnala, whereby, the appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short '**the NDPS Act**') and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1,000/-, alongwith the default stipulation,

The story of the prosecution, in brief, is that on 07.05.2002, Amarjit Singh, Inspector, was going on his official jeep for patrolling alongwith other police officials from village Kutba towards the canal bridge. On the way, Darshan Singh, watchman of the village Hardasspur met them and was joined by the police party with them. When the police party proceeded ahead, the accused was seen coming from the opposite side and was carrying something in a plastic bag on his head. He got perplexed on noticing the police party and turned towards the right side. Since his activities were suspicious, he was apprehended by the police. On asking, he disclosed his name

and address to the police party. Amarjit Singh, Inspector told the

accused that there was suspicion that he was carrying some contraband in the bag and the search was to be conducted. Further, he was informed that he had a legal right to get his search conducted either in the presence of a gazetted officer or a Magistrate. However, the accused reposed confidence in the police officials vide his consent memo, which was signed by the accused and was attested by both the officials Darshan Singh and Barinder Pal Singh and Darshan Singh watchman. The final search of the accused was also conducted and the poppy husk was recovered from the plastic bag, which was on the head of the accused. Two samples of 250 gms each of poppy husk were separated from the bag and were kept in separate parcels. The remaining quantity of poppy husk weighed to be 9 kgs and 500 gms and the remaining quantity was kept in the plastic bag. The samples as well as the case property were sealed with the seal bearing impression "AS" and the specimen of the seal Ex.P1 was prepared and the seal was handed over to HC Barinder Pal Singh. The case property was taken into possession by the police vide separate recovery memo and a *rukka* was sent to the police station. On the basis of *rukka*, a formal FIR was recorded by the police against the accused. The grounds of arrest were supplied to the accused and the site plan of the place of the recovery was also prepared. The report under Section 57 of the NDPS Act was also prepared and sent to the higher police officers. On return to the police station, the case property was deposited with the MHC in intact condition and the accused was formally arrested. The samples were sent to the FSL and vide report Ex.PJ, it was found that

the samples contained poppy heads. After the necessary investigation, the report under Section 173 Cr.P.C. was presented before the competent Court by the police.

After due consideration of the material placed before the trial Court, in the shape of final report under Section 173 Cr.P.C., the trial Court ordered framing of charge under Section 15 of the NDPS Act against the accused, to which, he pleaded not guilty and claimed trial.

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

Inspector Amarjit Singh was examined as PW1, who had supported the case of the prosecution as narrated in the FIR. On suspicion, he apprised the accused of his legal right to get his search conducted either in the presence of a Magistrate or a gazetted officer. However, the accused reposed confidence in him and 10 kgs of poppy husk was recovered from the accused. The sample parcels as well as residue quantity of poppy husk were duly sealed separately and he also prepared various memos and proved the initial investigation. The prosecution further examined PW2 HC Barinder Pal Singh, who was part of the police team, which was headed by Inspector Amarjit Singh. He also deposed on the similar lines. The prosecution further examined PW3 HC Gurtej Singh who tendered his affidavit in evidence Ex.PG. He was posted as MHC of the police station and the case property was deposited with him. Two sample parcels and one more parcel of the remaining poppy husk were deposited with him.

The prosecution further examined PW4 HC Parmel Singh, who tendered his affidavit Ex.PH.

After the closure of the evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and he stated that he was innocent and no recovery was effected from his possession. His signatures were obtained on the blank papers and, thereafter, a false case was planted on him.

To prove his defence, the accused examined Darshan Singh, Chowkidar as DW1. He stated that he did not know the accused present in the Court and in his presence, the poppy husk was not recovered from the accused. He further stated that he used to visit the Police Station Mehal Kalan in connection with official working i.e. production of register of Births and Deaths and his signatures were obtained on blank papers in the police station. The accused further examined DW2 Constable Banta Singh, who produced on record the copy of the DDR No. 13 dated 07.05.2002 as Ex.DA. He also produced on record the photocopy of entry No. 326 dated 07.05.2002 of register No. 19 as Ex.DB. However, in his cross-examination, he admitted that the original of Ex.DA and Ex.DB were not in his hand writing.

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 the learned trial Court committed grave error in relying upon the

testimonies of the official witnesses and the prosecution case, being bereft of independent corroboration, was liable to be discarded. He further submitted that the police party associated Chowkidar Darshan Singh as a witness initially, however, Chowkidar Darshan Singh appeared as DW1 and clearly stated that no recovery of poppy husk was effected in his presence. Rather his signatures were obtained on blank papers by the police, when he had gone to the police station in connection with official work, i.e., production of register of Births and Deaths. The submissions made by the learned counsel for the appellant have been opposed by the learned State counsel and prayed for upholding the findings recorded by the learned trial Court. I have heard learned counsel for the parties and considered their rival submissions in the light of settled cannons of law. The learned trial Court considered the evidence of the official witnesses, who had subjected to lengthy cross-examination. Even, I have minutely examined the statements of various prosecution witnesses, who have deposed and supported the case of the prosecution in totality. In spite of pointed cross-examination, their testimonies could not be shattered in any manner. PW1 Inspector Amarjit Singh and PW2 HC Barinder Pal Singh have given picturesque account of the entire raid and have shown the sufficient compliance of mandatory provisions of NDPS Act. Even, their testimonies are found credible and trustworthy by this Court. Thus, the findings recorded by the learned trial Court are upheld.

Still further, the learned counsel for the accused stated that there was material contradictions in the statements of the various prosecution witnesses. I have considered the said submission also. The said contradictions have already been dealt by the learned trial Court in para 9 of the impugned judgment. Such minor contradictions are bound to appear in the testimonies of official witnesses, who got a chance to depose before the learned trial Court after several months. In the meantime, the police officials conducted various other raids as well and cannot be expected to depose the facts so minutely. Minor contradictions are bound to be there in their testimonies. The learned trial Court has correctly dealt with such minor contradictions/variations and the findings are liable to be upheld.

The learned counsel for the appellant further submitted that the provisions of Section 55 of the Act were not complied with in the instant case. In the instant case, Inspector Amarjit Singh did not deposit the case property with the Incharge of Police Station Mehal Kalan and directly deposited the case property with the MHC. The said submissions have been opposed by the learned State counsel. I have considered the contentions raised by learned counsel for both the sides and find no substance in the submissions made by the learned counsel for the appellant. PW1 Inspector Amarjit Singh was himself the SHO of Police Station Mehal Kalan. He was the IO as well as the SHO of the Police Station and was competent to straightaway order the case property to be deposited with the MHC. Even I have considered the statement of PW1 Inspector Amarjit Singh in this

regard and found that there was no violation of Section 55 of the NDPS Act. The findings recorded by the learned trial Court are upheld in this regard. No other submission was raised. Thus, the impugned judgment of conviction is upheld.

Adverting to the order of sentence, this Court finds that at the time of conviction on 05.10.2004, the present appellant was aged 22 years and was a newly married person. He was the sole bread winner of his family and is facing the agony of trial/appeal for the last about 19 years. As per the custody certificate, he has undergone one month and nineteen days of actual sentence out of total sentence of rigorous imprisonment for a period of one year. As per the custody certificate, no other case was registered against him for the last about 19 years. Even, the police had recovered about 10 kg of poppy husk from him, which is non-commercial in nature. Thus, no purpose would be served by sending the appellant behind the bars after such a long period. Ends of justice will be suitable met if his sentence is reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs. 1,000/- to Rs. 25000/- which shall be deposited by the appellant in the Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund within a period of three months from today, failing which, the appellant shall undergo rigorous imprisonment for a period of one month as observed by the learned trial Court

With the above modifications, the appeal is partly allowed and the impugned judgment of conviction is upheld, whereas

the order of sentence is modified to the extent that the sentence imposed on the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced to Rs. 25,000/- as observed, which shall be deposited by him within a period of three months from today.

The appeal stands disposed off accordingly.

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

01.03.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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