

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

517

CRA-S-1000-SB-2005 (O&M)

Reserved on:-02.03.2023

Date of Decision: 03.03.2023

Sukha Singh

...Appellant

Versus

State of Punjab

... Respondent

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

Present : Mr. Nandan Jindal, Advocate
for the appellant.

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

N.S.SHEKHAWAT, J.

The present appeal was preferred by the appellant/accused against the impugned judgment of conviction and order of sentence dated 23.05.2005 passed by the learned Judge, Special Court, Sangrur, whereby, the present 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 two years and to pay a fine of Rs. 1,000/-, alongwith the default stipulation.

The prosecution story, as it emerges from the report under Section 173 Cr.P.C., is that on 13.12.2001, a police party headed by ASI Mahavir Singh was present in connection with patrolling and checking of suspected persons. All the police officials were riding the private motorcycles and scooters and were going from village Dhandran to village Memsa. On the way, Rulda Singh son of Amar Singh resident of Issi met the police party and he also joined them. On the way, one person was seen carrying a gunny bag and on

side of *katcha* path of the drain. However, he was intercepted by the police party and on inquiry, he disclosed his name and address to be Sukha Singh son of Parsa Singh resident of Bugra. The Investigating Officer raised suspicion with regard to some contraband in his bag and informed him of his right to get his search conducted in the presence of a gazetted officer or a Magistrate. However, the said accused reposed faith in him and stated that the gunny bag could be searched by the Investigating Officer and a consent memo was prepared in this regard. The consent memo was thumb marked by the accused and was attested by Rulda Singh, independent witness and ASI Gurbhajan Singh. On this, the Investigating Officer conducted the search from Sukha Singh accused and, on checking, the gunny bag was found to be containing 20 kgs of poppy husk. Two samples of 250 gms each were kept in a parcel and the remaining quantity, on weighment, was found to be 19 kgs 500 gms. The remaining quantity was put in the same gunny bag and was sealed with the seal "MS" by the Investigating Officer. The sample seal was prepared separately and the sample parcel was also duly sealed. The sample parcel as well as the case property, i.e. residue parcels were taken into possession by the police vide a separate memo. The reasons for arrest were informed to the accused and his personal search was also conducted by the police. On receipt of the *rukka*, formal FIR was recorded by the police. The Investigating Officer conducted the initial investigation at the spot as well. The sample parcels were sent to the chemical examiner and vide his Ex.PG, the samples were found to be

containing poppy husk.

After the necessary investigation, the challan was presented against the accused in the competent Court and the copy of the challan was supplied to the accused under Section 207 Cr.P.C. After due consideration of the entire material, the charge under Section 15 of the NDPS Act was framed by the learned trial Court against the accused, to which, he pleaded not guilty and claimed trial.

The prosecution examined seven witnesses to prove the charge, PW1 Mohd. Nazir, Reader to SDJM, Dhuri, PW2 Constable Dharamvir Singh, PW3 ASI Mahavir Singh, PW4 HC Bahadur Singh, PW5 MHC Narinder Singh, PW6 ASI Gurbhajan Singh and PW7 Inspector Joginder Singh.

After the closure of the prosecution evidence, the entire incriminating evidence was put to the accused in the shape of his statement under Section 313 Cr.P.C. and he clearly stated that he was innocent and nothing was recovered from him. In his defence, the accused examined DW1 Ruldu Singh, the independent witness. DW1 Ruldu Singh stated that he did not know any person, namely, Sukha Singh son of Parsa Singh (accused). He was not joined in the police party by the police on 13.12.2001 nor any poppy husk was recovered from Sukha Singh in his presence. He further stated that the police had obtained his signatures on the blank papers and did not record his statement in his present case. With the examination of DW1 Ruldu Singh, the accused closed his defence evidence.

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

The learned counsel appearing on behalf of the appellant has vehemently argued that as per the admitted case of the prosecution, the police officials were riding private scooters and motorcycles. However, the prosecution did not lead any evidence to prove the registration numbers of the private vehicles used by the police. Apart from that, the registration number of the said vehicles was also not recorded in the said FIR or DDR and the presence of the police officials at the spot was extremely doubtful. The said submission has been opposed by the learned State counsel by contending that in the instant case, the registration numbers of the vehicles used by the police officials were irrelevant in the instant case and the police officials had mentioned the vivid account of the entire occurrence. Further, huge recovery has been effected from the appellant and could not have been planted by the police officials. Thus, the officials were present at the spot and had conducted the investigation as per the procedure established by law. Learned counsel for the appellant has also referred to the law laid down by this Court in the matter of **Ranbir Singh Vs. State of Haryana 2001 (1) R.C.R. (Criminal) 674.**

I have considered 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. In fact, the mode of transport used by the police officials in the instant case was not at all

relevant. Further, the police officials, i.e. PW3 Constable Dharamvir Singh and PW6 ASI Gurbhajan Singh, who were part of the raiding team, were cross-examined at length. However, their respective testimonies could not be shattered in any manner. Further, the accused has not attributed any motive for falsely implicating the present appellant in a false criminal case. Thus, the argument carries no weight and is liable to be rejected. Still further, learned counsel for the appellant had relied upon the law laid down by this Court in **Ranbir Singh's case (supra)**. However, the facts of the said case were entirely different and the said judgment is not applicable to the facts of the instant case. In the said case, the police was patrolling in a private jeep and the driver of the jeep was not examined to prove the presence of the police officer at the place of recovery. In the instant case, the police officials had gone on their personal scooters and motorcycles and there was nothing unusual in that.

The learned counsel for the appellant further contended that in the instant case, Ruldu Singh, independent witness was not examined by the prosecution and rather he appeared as defence witness. While appearing as DW1 Ruldu Singh clearly stated that on 13.12.2001, he was not joined by the police party during the raid. No poppy husk was recovered by the police in his presence and his signatures had been taken on blank papers and he could not tell as to what was written by the police in Ex.PB, Ex.PC and Ex.PD. Thus, it was contended that in absence of independent corroboration, the appellant was liable to be acquitted by this Court. However, the said

submission has been opposed by the learned State counsel. Having considered the rival submissions of both the learned counsel, I am of the considered view that findings recorded by the learned trial Court are valid and are liable to be upheld. In the instant case, no doubt, Ruldu Singh was associated as an independent witness initially. However, he was won over by the accused and after colluding with the accused, he chose to appear as a defence witness. However, the testimonies of the official witnesses cannot be thrown only on the ground that they are officials of the police. In fact, all the police officials were subjected to pointed cross-examination and there was nothing on record to disbelieve their testimonies. Apart from that, no doubt, the Court must look for independent corroboration as a rule of caution. But the independent witness joined hands with the accused and did not support the case of the prosecution. However, the accused cannot be acquitted on this ground alone, when the testimonies of the official witnesses inspire confidence. Even, detailed findings have been recorded by the learned trial Court and the same are upheld.

The learned counsel for the appellant further contended that there was delay of one day in sending the sample to the FSL and the CFSL form was not filled at the spot. I find no ground to accept the said contention. In fact, the prosecution examined Mohd. Nazir, Reader to the Court of learned SDJM, Dhuri and he clearly stated that the accused alongwith case property were produced before the Court of learned SDJM Dhuri with the remand request Ex.PA. The seals and all the parcels were intact. Even, the seals were found intact by the

chemical examiner. Thus, the delay of one day in sending the sample to the chemical examiner was of no consequence. Even, the non filling of CFSL form at the spot would not entitle the present appellant to acquittal and the trial Court has recorded valid reasons in this regard. Even otherwise, I have gone through the impugned judgment passed by the learned trial Court and the same is based on correct appreciation of evidence and law.

However, at this stage, this Court cannot lose sight of the fact that at the time of his conviction, i.e. on 23.05.2005, the present appellant was aged about 43 years and at present, apparently, he is a senior citizen. Even, 20 kgs of poppy husk was recovered from him, which is non-commercial quantity. Apart from that, the present appellant had undergone 02 months and 14 days of actual sentence. However, the custody certificate shows that about 19 years ago, one more FIR No. 273 dated 11.10.2003 under Section 15 of the NDPS Act, Police Station Dhuri was also registered against the present appellant, in which, he was convicted. However, in the said case also, he had undergone about 06 months of actual sentence and the recovered contraband was non-commercial in nature. The custody certificate further shows that in the last more than 19 years, no other case has been registered against the present appellant and no useful purpose will be served by sending him behind the bars after such a long period. Even otherwise, he is a senior citizen and the recovery of the contraband from him was non-commercial in nature.

Consequently, 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. 50,000/-, 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. In case, the appellant does not deposit the said fine, as indicated above, he shall undergo rigorous imprisonment for a period of six months, as observed by the learned trial Court.

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.

03.03.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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