

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.410

CRA-S-2476-SB-2004 (O&M)

Reserved on:23.01.2023

Pronounced on:14.02.2023

Harjeet Singh

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. H.S.Rakhra, Advocate,
for the appellant.

Mr.Rajinder Kumar, DAG, Haryana.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction dated 17.11.2004 and order of sentence dated 19.11.2004 passed by the learned Additional Sessions Judge, Fatehabad, whereby the present appellant was convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced to undergo rigorous imprisonment for a period of 04 years and to pay a fine of Rs.25,000/- with default stipulation.

Brief facts of the case are that on 29.08.2002, ASI Randhir Singh along with other police official was present outside the Bus Stand, Ratia and in the meantime Surjit Singh, an independent witness, came there and started talking to him. A jeep came there and a young boy alighted from the jeep. However on noticing the police party, he became nervous and

started walking towards Bus Stand, Ratia. On suspicion, he was questioned by the police party and he told his name and address as Harjeet Singh s/o Ram Sarup, r/o Alika. Since there was suspicion that he was carrying some contraband, a notice under Section 50 of Act was served upon him. He was informed that he had a legal right to get himself searched either in the presence of a Magistrate or a Gazetted Officer. If he desired, then the said officers could be called at the spot or he could be produced before them. The notice was read over and explained to him and he signed it and replied that he had been informed about his right through the notice served upon him and he had fully understood the notice. He did not want to get his search conducted before any Magistrate or Gazetted officer and reposed confidence in the investigating officer. After admitting the contents to be correct, he had also appended his signatures on the reply. The witnesses had also signed the notice under Section 50 of the Act and replied to the notice as well. Thereafter, ASI Randhir Singh conducted the search and opium in polythene paper was found, which was tied with white bandages on the front side of the stomach of the accused-appellant. Two samples of 10 grams each were separated from the recovered opium and the parcels were made after filling the samples in the plastic boxes and the remainder also weighed to be 9.800 kilogram. The remainder quantity was also filled in a plastic container along with polythene paper and white bandage and the parcels were made. All the parcels were sealed with the seal of 'RS' and were taken into possession by the police by way of recovery memos. The seal after use was handed over to ASI Suraj Bhan. The memos were signed by the

witnesses. Since, the accused-appellant had kept 1 kg of opium without any permit or licence, he had committed the offence under Section 18 of the Act and the information was sent to the police station for the registration of the FIR, which led to registration of the case against the accused. After the necessary investigation, the final report under Section 173 Cr.P.C. was prepared and presented in the competent Court.

After due consideration of the matter, the learned trial Court ordered framing charge under Section 18 of the Act against the present accused-appellant, to which he pleaded not guilty and claimed trial.

During the course of trial, seven witnesses were examined to prove the charge against the accused-appellant. The prosecution examined PW-1 HC Bhaga Ram, who was posted as a Reader to the DSP Ram Kumar on 30.08.2002. On receipt of the report Ex.P1 under Section 57 of the NDPS Act, he produced the said report before DSP on the same day. It was perused and signed by the DSP on the same day. The prosecution further examined PW-2 ASI Randhir Singh, who was heading the team, which had apprehended the accused-appellant. He supported the case of the prosecution in all material particulars. He served a notice Ex.P2 under Section 50 of the NDPS Act on the accused to the effect that he had suspicion that some narcotic substance was with him and if he so desired, the search could be arranged in the presence of a Magistrate or a Gazetted officer and it was his legal right. The accused-appellant vide his reply Ex.P3, reposed full faith on PW-2 ASI Randhir Singh and stated that he could search his person. On search of the accused-appellant, one kg of

opium was found, which was wrapped in a wax paper and the same was tied with the help of white bandages on his stomach. ASI Randhir Singh conducted the initial investigation at the spot and had prepared the memos. The prosecution further examined PW-3 ASI Suraj Bhan, who was part of the police team with PW-2 ASI Randhir Singh and deposed on similar lines. He also stated the facts with regard to serving of the notice under Section 50 of the Act on the accused-appellant and duly exhibited the documentary evidence. HC Baldev Singh, who was working as MHC on 29.08.2002 was examined as PW-4. He had recorded the formal FIR Ex.P6 and also made endorsement Ex.P12 on the ruqa. He also tendered his affidavit Ex.P13 in his evidence and had also sent special reports. PW-5 HC Om Prakash tendered his affidavit P14, who was also posted as MHC in the Police Station. PW-6 SI Veer Singh was posted as SHO Police Station, Ratia on 19.08.2002. On that day, ASI Randhir Singh produced before him the accused-appellant, witnesses and the case property along with the report Ex.P1. He verified the facts from the accused-appellant and the witnesses and affixed his seal 'VS' on all the parcels. He also made endorsement Ex.P9 on the report and directed the IO to deposit the case property with the MHC and formally arrested the accused-appellant. On completion of the investigation, he prepared the report under Section 173 Cr.P.C. PW-7 C. Bhola Singh tendered his affidavit Ex.P15 in evidence and the same was taken on record.

After the closure of the evidence, the statement of the accused was recorded under Section 313 Cr.PC and he pleaded his false implication

in the instant case. He stated that he and his brother Malkiat were picked by the police on the same day at 4.00 AM and both of them were falsely implicated in cases of NDPS Act.

To prove his defence, the accused-appellant examined DW-1 Ishwar Dass, who was member of Panchayat at village Alike. On 29.08.2002, he had gone to his village from Fatehabad and was waiting at Bus Stand, Ratia for a bus. Three-four persons and Ram Sarup, father of the accused-appellant, met him and they told him that Malkiat Singh and his brother i.e. the accused had been brought by the police in some false case and they requested him to accompany them to the police station. Even he accompanied them to police station and enquired from the SHO as to why the two persons had been brought from the village and the SHO told them that they were indulging in sale and purchase of opium and a case has been registered against them under the NDPS Act. No recovery of opium was effected in his presence from the present accused-appellant. The accused-appellant further examined DW-2 Surjit Singh s/o Pritam Singh, who was initially joined by the police during the course of investigation. The said witness stated that no recovery of opium was ever effected from the present accused-appellant in his presence and he was never associated in the investigation of the case by the police and his signatures had been obtained on blank papers. With these two witnesses, the accused-appellant closed his defence evidence and the case was finally disposed off by the learned trial Court by passing the impugned judgment.

Learned counsel for the appellant vehemently argued that the

provision of the Section 50 of the NDPS Act are mandatory in nature and have to be complied with strictly. However from a perusal of the prosecution evidence in the instant case, it is evident that the search was not conducted either in the presence of a Gazetted Officer or a Magistrate. Thus, there was a breach of a mandatory provision of law, which entitles the appellant to be acquitted by this Court. The said submission has been opposed by learned State Counsel and he submitted that the notice in this regard was duly served upon the accused-appellant and the compliance was made by the prosecution.

After hearing the learned counsel for the parties and perusing the case file minutely, the submission made by the learned counsel for the appellant is liable to be rejected. The prosecution examined PW-2 ASI Randhir Singh, who apprehended the accused on suspicion. He served a notice Ex.P2 on the accused to the effect that he had suspicion that the accused was carrying some narcotic substance and if he desired, the search could be arranged in the presence of a Magistrate or a Gazetted officer and it was his legal right. Notice was read over and explained to the accused. Vide his reply Ex.P3, the accused refused to get the search conducted in the presence of gazetted officer or a Magistrate and reposed full faith on ASI Randhir Singh. The notice under Section 50 of the NDPS Act Ex.P2 and reply Ex.P3 were exhibited in accordance with law. The statement of PW-2 ASI Randhir Singh was corroborated by the statement of PW-3 ASI Suraj Bhan. Both the said witnesses were searchingly cross-examined, but nothing could be elicited from their respective cross-examination to discredit their

testimonies. Thus, the submission made by learned counsel for the appellant is without any force and is rejected.

The learned counsel for the appellant further argued that as per the case of the prosecution, Surjit Singh, independent witness was examined. Rather than appearing as a prosecution witness, Surjit Singh appeared as DW-2 and clearly stated that no recovery was effected from the appellant in his presence nor he was associated in the investigation of case by the police and his signatures had been obtained on the blank papers. Thus, in absence of independent corroboration, the learned trial Court could not have relied upon the testimonies of official witnesses alone. The submissions have been opposed by learned Stated Counsel by submitting that the testimonies of official witnesses inspired confidence and there was a detailed discussion on the same in the impugned judgment. The trial Court has recorded detailed findings, duly supported by the case law and the same are liable to be affirmed by this Court.

I do not find any merit in the arguments raised by the learned counsel for the appellant. A police officer is always a competent witness like any other witness from the public. The testimony of a police officer cannot be doubted or discarded only on a ground that he happened to be an official witness. It is not the judicial approach to distrust or suspect him without any good and valid ground thereof. It is equally true as a rule of caution and depending on the facts and circumstances of the each case, the courts often look for independent corroboration. However, it does not imply that the testimonies of the official witnesses should be discarded out-rightly. In the

instant case, I have gone through the testimonies of various official witnesses and no material has been placed on record to discredit their testimonies by the defence. Still further, all the official witnesses have no reason to falsely involve the appellant in a criminal case by planting such a huge quantity of contraband. Thus the said submission is bereft of any merits and is not legally tenable.

The learned counsel for the appellant further referred to certain minor contradictions in the testimonies of PW-2 ASI Randhir Singh, PW-3 ASI Suraj Bhan and PW-6 SI Veer Singh. The same inconsistencies/contradictions have already been examined by the learned trial Court in detail in the impugned judgment. I agree with the findings recorded by the learned trial Court that such minor and superficial contradictions regarding number of seals, which were affixed on the sample parcels and the residue parcels by the IO and the SHO are liable to be ignored. It is impossible for the police officials to remember each minor aspect of the evidence with precision. The police officers often conduct raids and have to depose the facts in different court and are bound to contradict to each other on certain trivial aspects, which could never serve as a ground for rejection of the testimonies of the official witnesses.

In the instant case, the evidence led by the prosecution has been consistent and the findings recorded by the learned trial Court are affirmed in this regard. Apart from that, I have carefully perused the evidence led by the prosecution and all statutory provisions of the Act have been complied with. During the course of submissions, the learned counsel

for the appellant could not point out any non compliance of the mandatory provisions and the impugned judgment is based on correct appreciation of prosecution evidence in the light of the various judicial pronouncements.

However, while considering the order on sentence, this Court cannot loose sight of the fact that the appellant was aged about 20 years at the time of presentation of challan against him, as per the trial Court record. As per the custody certificate produced by the learned State Counsel, he has undergone 3 months and 25 days of actual sentence. The custody certificate further reveals that no other criminal case was registered against him in the last 21 years. Thus, it is evident that the appellant has been facing the agony of trial/appeal for the last more than 21 years and has not indulged in any other criminal activity during this period. Even otherwise, he has undergone substantial period of actual sentence and sending him behind bars after a period of 21 years would not serve meaningful purpose. Moreover, the recovery of the contraband from the present appellant is non-commercial in nature. Consequently, the ends of justice would be suitably met, if his substantive sentence is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant, as recorded by the learned trial Court vide its impugned judgment dated 17.11.2004, is maintained and order of sentence dated 19.11.2004 is modified to the extent that the sentence awarded to the appellant is reduced to the period already undergone by him. The sentence of fine will remain the same and the appellant is directed to deposit the same within a period of 03 months from today, if not paid already, failing which he shall undergo further rigorous imprisonment for a period of 01 year as observed by the learned trial Court.

With the above modifications, the present appeal stands partly allowed in the above terms. Pending application(s), if any, shall also stand disposed of.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back forthwith.

14.02.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO