

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRA-S-1032-SB-2005 (O&M)
Date of Decision: 10.05.2023**

Savinder Singh ...Appellant
Versus
State of Haryana ... Respondent

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

Present : Mr. Nayandeep Rana, Advocate
as Amicus Curiae for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

The present appeal is directed against the impugned judgment of conviction dated 28.04.2005 and order of sentence dated 29.04.2005 passed by the learned Additional Sessions Judge, Sirsa, whereby, the appellant was convicted for the commission of offence under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 2,000/- alongwith default stipulation.

As per the case of the prosecution, a police party headed by ASI Satbir Singh, Incharge, Police Post Jiwan Nagar, Police Station Rania was present near the village Jagmalera. In the meantime, a person was seen with yellow polythene envelope. On seeing the police party, he threw the polythene envelope and fled from the spot. However, he was identified as Savinder Singh son of Sawaran Singh resident of village Sant Nagar. When the police party searched the polythene envelope, the opium was found in the same. Out of the said opium, 10 gms were separated as sample and the remaining quantity was weighed to be 30 gms. The sample parcels of

the residue were separately sealed with the seals bearing inscription

“SS” and after preserving the sample seal impression, the seal after use was handed over to HC Raj Kumar. A *rukka* was prepared by ASI Satbir Singh and the same was sent to the SHO concerned for registration of the case. After registration of the FIR, the IO conducted the initial investigation and a report under Section 57 of the Act was submitted to the SHO, Police Station Rania. He verified the facts of the case from the witnesses and affixed his seal “HS” and forwarded the report under Section 57 of the Act to the DSP Ellenabad. The case property was handed over to ASI Satbir Singh for depositing the same with the MHC of the police station, who complied with the directions and the sample parcel was sent to the FSL Madhuban for analysis. Initially, the accused was declared to be proclaimed offender and was arrested on 06.08.2002. Finally, report under Section 173 Cr.P.C. was prepared and presented in the Court for the trial of the case.

After hearing both the sides and perusing the challan, the learned trial Court ordered framing of the charges under Section 18 of the Act against the accused, to which, the accused pleaded his innocence and claimed trial.

To prove the charge, the prosecution examined five witnesses.

Constable Jagdish Chander was examined as PW1, who tendered his affidavit Ex.PF in his evidence. The prosecution further examined ASI Suresh Kumar as PW2 who tendered his affidavit Ex.PC in his evidence. SI Satbir Singh was examined as PW3, who was the complainant in the present case and had initially conducted

the investigation. He supported the case of the prosecution, as narrated in the FIR. Further, HC Raj Kumar was examined as PW4 and he deposed on the similar lines and supported the testimony of PW3 ASI Satbir Singh. SI Hawa Singh was examined as PW5, who was working as SHO at Police Station Rania on 02.10.2001. On that day, Satbir Singh ASI had produced one sample parcel and another parcel containing residue opium and the witnesses of the case before him. He had also affixed his own seal and directed the IO to deposit the case property with the MHC with the seals intact. ASI Satbir Singh also submitted a report under Section 57 of the NDPS Act as Ex.PD to him and after making his endorsement Ex.PD/1, he had sent a report to the DSP Ellenabad. Even he had registered the FIR initially on getting the *rukka* in the present case.

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 falsely implicated in the present case due to party faction in the village and nothing was recovered from him. The accused/appellant opted not to lead any evidence in defence and closed the evidence.

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

Learned counsel for the appellant contended that the entire prosecution case is based on the testimonies of the official witnesses and no independent witness was examined by the prosecution, even though, the prosecution had ample opportunity to do so. The alleged recovery had taken place near the Phirni (boundary wall) of a village and the police could have associated any Panch,

Sarpanch or other respectable from the village during the process of search and seizure. The said contentions have been opposed by the learned State counsel by submitting that in the instant case, all the five official witnesses have been subjected to lengthy cross-examination and their testimonies could not be shattered in any manner. I have considered the rival submissions made by the learned counsel for the parties and find no substance in the submissions made by the learned counsel for the appellant. I have perused the testimonies of all the five official witnesses, who have been subjected to lengthy cross-examination by the learned defence counsel and questions have been put on every aspect of the matter. However, nothing could be elicited during their cross-examination, which could affect the credibility of any of the witnesses. Even otherwise, the official witnesses cannot be disbelieved on the ground of their official status. The accused has failed to point out any ground or reason for his false implication. Even, it has not been alleged that the official witnesses were inimical towards the present appellant. Thus, the police officials had no reason to intentionally involve the present appellant in a criminal case and the learned trial Court has correctly believed their statements.

Learned counsel for the appellant further argued that the prosecution had examined PW3 SI Satbir Singh and PW4 HC Raj Kumar, who were part of the raiding team, at the time of the alleged recovery. Even, from a perusal of the testimonies of the said two witnesses, it is apparent that the said witnesses were not present at the time of the alleged recovery from the present appellant. Even, certain

minor inconsistencies have been pointed out by the learned counsel for the accused. On the other hand, the learned State counsel opposed the said submissions and contended that minor discrepancies are bound to appear in the testimonies of official witnesses. I have considered the submissions made by the learned counsel for both the sides and also perused the findings recorded by the learned trial Court in the impugned judgment. The learned trial Court has dealt with these submissions in detail in the impugned judgment and I find no grounds to deviate from the said findings. The learned trial Court has referred to certain minor discrepancies appearing in the statements of PW3 ASI Satbir Singh and PW4 HC Raj Kumar. In fact, the police officials have to conduct the raids at different places and in case there are minor variations in the statements of such witnesses, the same are liable to be ignored.

In view of the above discussion, I find no ground to interfere with the findings recorded by the learned trial Court. The learned trial Court has recorded valid reasons, while recording the judgment of conviction and there is no illegality or perversity in the impugned judgment, warranting interference by this Court. Thus, the appeal is meritless and is, accordingly, dismissed.

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.

In the end, I record my appreciation for Mr. Nayandeep Rana, learned Amicus Curiae, who had rendered able assistance to this Court.

10.05.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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