

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.418

CRA-S-2542-SB-2004 (O&M)

Reserved on:25.01.2023

Pronounced on:14.02.2023

Shallu Ram alias Khilawar Ram

...Appellant

Versus

State of Haryana

..Respondent

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

Present: Mr. Salil Bali, Advocate,
for the appellant.

Ms. Sheenu Sharma, DAG, Haryana.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction dated 29.11.2004 and order of sentence dated 30.11.2004 passed by the learned Additional Sessions Judge, Rohtak, whereby the present appellant was convicted and sentenced in the following manner:-

Offence under Section**Sentence**

15 of the NDPS Act

Rigorous imprisonment for three years with fine of Rs.15,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

61(1) of the Punjab Excise Act, 1914

Rigorous imprisonment for six months with fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 15 days.

The story of the prosecution, as it emerges from the report under Section 173 Cr.P.C. is that on 19.12.2001, ASI Maha Singh was

present near Gaur Brahman School in connection with excise checking and Suraj Bajaj, an independent person, met him by chance. Both were talking to each other and in the meantime a secret information was received that the accused-appellant was selling liquor pouches in his house and if a raid was conducted immediately, he could be apprehended at the spot. Finding the information reliable, a raiding team was constituted and the room of the accused was raided, where he was found present. During the search, a plastic bag was found lying in the room and on checking, a bag was found containing 40 pouches of country-made liquor marked as 'Mastana'. Even poppy husk was recovered from a polythene bag lying under the pouches of liquor. The total quantity of poppy husk weighed to be 4 Kg 500 grams. Two samples of 500 grams each of poppy husk was separated and were sealed with the seal 'MS'. One pouch was also separated as a sample. The remaining pouches were also put in the same bag and the bag was sealed with the seal 'MS' and after use, the seal was handed over to Suraj Bajaj, after taking the specimen impressions of the seal. All the parcels were taken into possession vide a separate memo, which was signed by the witnesses. The ruqa was sent to the police station, which finally led to the registration of the formal FIR by ASI Bhalle Ram. After conducting the initial investigation at the spot, the accused, case property and the witnesses were produced before SI/SHO Daya Ram, who verified the facts from the witnesses as well as the accused and had put his seal 'DR' on both the parcels. He also prepared the sample seal and directed the case property to be deposited with the MHC and the accused-appellant was formally arrested. A report under Section 57 of the Act was prepared and was sent to

the concerned Deputy Superintendent of Police. After conducting the necessary investigation, the final report under Section 173 Cr.P.C. was prepared by SI/SHO Narinder and was submitted to the competent Court for trial.

After evaluating the incriminating evidence collected during the course of investigation, the learned trial Court found a prima facie case under Section 15 of the NDPS Act and Section 61(1) of the Punjab Excise Act against the present accused-appellant and he was ordered to the charge sheeted for the said offences. The contents of the charge were read over and explained in vernacular to the accused, to which he pleaded his false implication and claimed trial.

To bring home the guilt of the accused-appellant, the prosecution examined six witnesses and a brief account of the prosecution witnesses is mentioned hereinafter. HC Dilbag Singh was examined as PW-1, who was part of the raiding team. He supported the case of the prosecution, as per the version of the FIR. He stated that the house of the accused/appellant, from where the alleged recovery had taken place was situated in the abadi and they had not joined any person from the locality before conducting the search of his house as the independent witness Suraj Bajaj was already with them. The prosecution further examined PW-2 ASI Rajinder Singh, who tendered his affidavit Ex.PD in evidence. Further SI Daya Ram was examined as PW-3. The said witness was posted as SHO Police Station City Rohtak on 19.12.2001. ASI Maha Singh produced before him the accused, witnesses and the case property for verification. He inspected the case property, verified the facts from the accused as well as

the witnesses and found the facts to be correct. He had also put his seal 'DR' on both the parcels and attested them and also prepared a sample seal. He also directed the investigating officer to hand over the case property and deposit the same in the Malkhana of the police station and the accused-appellant was formally arrested in the matter. The prosecution further examined PW-4 Suraj Bajaj, who was joined by the police party as an independent witness. He remained associated with the police party during the search and seizure and had also witnessed the recovery memo. Still further PW-5 HC Jagbir Singh tendered his affidavit Ex.PF in the evidence, but his testimony was formal in nature. PW-6 ASI Maha Singh was the star witness of the prosecution, who supported the case of the prosecution in totality. He also conducted the initial investigation and had prepared all the memos at the spot. He also recorded the statements of the witnesses under Section 161 Cr.P.C and produced the accused, witnesses and the case property before the then SHO Police Station City Rohtak. He also sent the report Ex.PH, as required under Section 57 of the NDPS Act to the DSP Detective, Rohtak on the same date. He also deposited the case property in the Malkahana in the Police Station.

After the closure of the prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and the entire incriminating evidence was put to him. In his defence, the accused-appellant pleaded his false implication and stated that in the month of January, 2001, he had sold a buffalo to Krishan S/o Har Gopal and had not paid the money at that time. When he demanded money from him, he got a false case registered against the accused in collusion with the police and nothing was

recovered from him. Though the accused-appellant had set up a defence, but he did not lead any evidence to prove the said stand and the defence evidence was ordered to be closed by the Court.

Learned counsel for the appellant vehemently argued that the mandatory provisions of the Act were not complied with by the prosecution and the appellant was entitled to be acquitted on this ground. While elaborating his arguments, the learned counsel further submitted that mandatory provisions of Section 57 of the NDPS Act were not complied by the prosecution, which are mandatory in nature. The above-said submissions have been opposed by the learned State Counsel by submitting that a special report Ex.PH under Section 57 of the NDPS Act was sent by PW-6 ASI Maha Singh on the same day itself and it was sent to the DSP, who was the senior police officer.

After hearing the learned counsel for the parties and going through the case file minutely, I do not find sufficient force in the argument raised by learned counsel for the appellant. PW-6 ASI Maha Singh clearly stated in his deposition that he had sent the report Ex.PH, as required under Section 57 of the NDPS Act, to DSP Detective Rohtak on the same day. The said witness was cross-examined at length and his testimony could not be shattered in any manner. Thus, there was sufficient compliance of the said provision by the investigating officer of the case. Even otherwise, the provisions contained in Section 57 of the NDPS Act are directory in nature and if no prejudice is caused to the accused-appellant, he cannot be acquitted on this ground. However, from the evidence, it is apparent that in the instant case, there was sufficient compliance of the provisions of Section

57 of NDPS the Act as well as other mandatory provisions of the NDPS Act.

Learned counsel appearing on behalf of the appellant further urged that no independent evidence was led by the prosecution and the entire case was based on the testimonies of official witnesses and no reliance can be placed on such testimonies. However, the said argument has been opposed by learned State counsel by submitting that the prosecution had examined PW-4 Suraj Bajaj, who was an independent person.

The said submission of the learned counsel for the appellant is without any substance. As per the statement of PW-6 ASI Maha Singh, when he was present near Gaur Brahman School in connection with excise checking, one Suraj Bajaj met him and in the meantime a secret information was received regarding the sale of illicit liquor by the accused/appellant. Consequently, a police party was constituted without any further delay and the raid was conducted on the house of the accused/appellant, which led to the recovery of the pouches of the illicit liquor as well as of poppy husk. PW-4 Suraj Bajaj was examined by the prosecution as an independent witness and he had supported the case of prosecution. Thus, it can never be stated that no independent witness was associated during the course of raid.

Learned counsel for the appellant further submitted that the link evidence was missing and the evidence was lacking with regard to the fact as to who delivered the sample to the office of Chemical Examiner. However, the said submission has been opposed by the learned State Counsel and submitted that the entire chain of the incriminating evidence was complete in all respects and the evidence has been correctly appreciated by the learned trial Court.

The prosecution examined PW-2 ASI Rajinder Singh, who had tendered his affidavit Ex.PD in evidence. He stated that on 19.12.2001, he was posted as MHC in Police Station City Rohtak and the sample parcels as well as residue parcel, duly sealed and case property, which was also duly sealed, were deposited with him in the Malkhana by PW-6 ASI Maha Singh. On 21.12.2001, the sample parcels were handed over to C. Jagbir Singh for depositing the samples in the FSL for analysis. HC Jagbir Singh was examined as PW-5, who had tendered his affidavit Ex.PF in evidence and he clearly stated that he had deposited the case property in intact condition on 21.12.2001 itself with the FSL. Even there was no tempering with the case property in any manner as per the testimonies of the said witnesses and consequently, it was duly proved that there was no chance of any kind of tempering with the samples and even the same were received by the FSL with the seals intact. As per the report Ex.PC, submitted by FSL, Madhuban, the sample was identified as poppy straw (chura post). Thus the chain of incriminating evidence was complete and the accused-appellant wrongly claimed acquittal on this ground.

Apart from that, I have carefully gone through the findings recorded by the learned trial Court. The learned trial Court has considered the submissions made by counsel for the accused and has recorded valid reasons for rejecting the submissions made by the accused. Even the findings have been recorded after discussing the evidence led by the prosecution in detail and the same are legally sustainable. As a consequence, I have no hesitation to hold that the findings recorded by learned trial Court are based on correct appreciation of the facts, prosecution evidence and the

settled canons of the law and the findings are affirmed. Thus, the impugned judgment of conviction is liable to be upheld.

Finally, learned counsel for the appellant has prayed for taking a lenient view in the matter by reducing the sentence to the period already undergone by the appellant. In my opinion, he has been facing the agony of trial/appeal for the last more than 21 years. He is the sole bread earner of the family. Moreover, he was aged about 23 years at the time of framing the charge sheet by the learned Special Court on 23.10.2002. However the said submission has been opposed by the learned State Counsel on the ground that one more case FIR No.348 dated 12.11.2017 under Section 21 of the NDPS Act PS Old Sabji Mandi, Rohtak was registered against the present appellant and he was convicted and sentenced by the learned Special Court Rohtak. One more case i.e. FIR No.833 of 1997 under Section 61 Excise Act PS City Rohtak was also registered against the present appellant, in which he has been bailed out. Apart from that a case FIR No.824 dated 07.12.2016 under Section 21 of NDPS Act PS City Rohtak was also registered against the present appellant, in which he was convicted and the sentence was reduced to the period already undergone by him.

I have heard learned counsel for the parties and found sufficient force in the submissions made by learned State Counsel. Apart from the present case. two more cases under the NDPS Act have been registered against the present appellant and he has been convicted in both the cases by the competent courts. Consequently, the present appellant does not deserve any leniency in the present case and accordingly, the impugned order of sentence is also liable to be upheld.

Considering the facts and circumstances of the case coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merits and without any substance. Accordingly, the same is hereby dismissed. The impugned judgment of conviction dated 29.11.2004 and order of sentence dated 30.11.2004 passed by the learned Additional Sessions Judge, Rohtak, are upheld.

Pending application, if any, shall also stand disposed off.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

The trial Court record be sent back forthwith.

(N.S. SHEKHAWAT)
JUDGE

14.02.2023
mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO