

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

204

CRA-S-1076-SB-2005 (O&M)
Judgment reserved on 17.01.2023
Pronounced on 31.01.2023

Mehar Singh

. . . Appellant

Versus

State of Haryana

. . . Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. B.S. Mamli, Advocate,
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana.

SANJAY VASHISTH, J.

1. Present appeal is filed by appellant – Mehar Singh, against the judgment of conviction dated 16.05.2005 and order of sentence dated 21.05.2005, passed by Ld. Presiding Officer, Special Court, Kurukshetra, in Sessions Case No.110 of 2005, arising from FIR No. 38 dated 12.06.2004, under Section 15 of the Narcotic Substances and Psychotropic Substances Act, 1985 (for brevity ‘NDPS Act’), Police Station Jhansa.

2. For the recovery of 5 KG of poppy-husk, appellant was sentenced to undergo RI for a period of 05 months and to pay a fine of Rs.5,000/-, and in default of payment of fine to further undergo RI for two months.

As per order of sentence, fine amount has already been paid
by the appellant.

FACTS OF THE CASE, LEADING TO REGISTRATION OF FIR:

3. On 12.06.2004, ASI Ram Avtar alongwith other police officials was present at the bank of Bhakra canal near Dera of Tehal Singh in the area of village Salpani Kalan. He was talking to one Sukha Singh, meanwhile, one person was seen coming from the side of the village Goghpur having a plastic bag in his right hand. On seeing the police party, said person (accused) turned back and started walking briskly. On suspicion, he was apprehended and he disclosed his identity. 5 kg poppy husk was recovered from the plastic bag carried by him.

From the said poppy husk, two samples of 250 grams of each were separated while, remaining 4.5 kgs was sealed separately as residue parcel with seal bearing impression 'MS'. Specimen seal impression were prepared and all the parcels were taken into possession vide recovery memo which was attested by the witnesses. Notice under Section 50 of the NDPS Act was served upon the accused. After recording the statement of witnesses and accused, the witness was produced before SI/SHO Amar Nath, who completed the proceedings of the verification of investigation and affixed his seal on all the parcels and specimen seal impression.

4. After completion of the investigation, final report under Section 173 Cr.P.C. was submitted to the Court and vide order dated 20.10.2004, appellant was charge-sheeted under Section 15 of the NDPS Act, to which appellant pleaded not guilty and claimed trial.

5. Prosecution examined total 08 witnesses i.e. Sukha Singh

(Independent witness) as PW-1, Constable Jaswinder Singh as PW-2, ASI

Rattan Singh as PW-3, ASI Ram Avtar, Investigating Officer as PW-4, Constable Isham Singh as PW-5, Head Constable, Sunil Dutta as PW-6, SI Amar Nath as PW-7 and ASI Mahabir Singh as PW-8.

6. In the statement recorded under Section 313 Cr. P.C., appellant stated that on 11.06.2004, he and his brother Tirlochan Singh were sitting on a tea stall at bus stand of Village Ajrana Kanal where some police officials were also present in civil dress. A cup of tea suddenly fell on the pant of the one police man from his hand due to which the police person used hot words and threatened them with dire consequences and they took his brother to the police Station, Jhansa. When there was a threat of arrest in some false NDPS case, an application was sent through speed post to the Hon'ble Chief Justice, Punjab and Haryana High Court and D.I.G, Ambala on 12.06.2004 at about 1.30 P.M. .

7. In support of the defence taken, appellant, examined Ram Chand, Sub Post Master as DW1 and Attar Singh as DW2.

8. On the basis of said evidence, referred hereabove, appellant was found guilty and has thus, filed present appeal.

9. First argument addressed by the counsel for the appellant is that independent witness-Sukha Singh, who appeared as PW-1 has failed to support the case of prosecution. It is undisputed that on recovery memo Ex. PC and on notice under Section 52 of the NDPS Act (Ex. PC), signatures of said witness Sukha Singh are appearing. Counsel further argues that ASI Ram Avtar, who investigated the case has appeared as

stand with its case as there is no corroborative and independent evidence with the prosecution to support the case framed up by said Investigating Officer.

10. Counsel has also argued that trial Court has not given any weightage to the fact that on the same date i.e. 12.06.2004, letter was sent to Hon'ble the Chief Justice, Punjab and Haryana High Court, Chandigarh and DIG, Ambala at 1.30 PM i.e. prior to the registration of the case as the FIR in the present case was registered on 12.06.2004 at 2.00 PM.

11. Moreover, learned counsel submits that learned Trial Court have got themselves prejudiced by noticing the registration of the other cases against the appellant i.e. FIR no. 92/2003 and FIR No. 108/2003. Thus, the finding recorded by the trial Court can not be said to be strictly based upon the evidence available on record of the case before it.

12. While opposing the arguments addressed by the learned counsel for the appellant, learned State counsel submits that complete set of evidence proves the guilt of the accused. There is nothing brought on record by the accused that why the police will involve him in any false case, without there being any strong enmity.

Learned State counsel has relied much upon the statement of ASI Ram Avtar (PW-4) and SI Amar Nath (PW-7) who verified the investigation vide its report Ex. PD and the statement of recovery witness Mahabir Singh PW-8.

13. I have gone through the evidence adduced by the prosecution from the record available and find that there are material

issues to be considered.

14. First of all, for the purpose of proving the defence taken by the appellant, Ram Chand, Sub Post-Master has appeared in the witness box and has produced a photocopy of the telegram (Ex PA) which was addressed to Hon'ble High Court and DIG, Ambala. Thus, only by relying on the photocopy of the telegram, it cannot be concluded that defence taken is worth believable. Prosecution relied upon its own witness i.e. Sukha Singh claiming him to be as PW-1, but he has failed to support the case of the prosecution. As per his deposition, nothing was recovered from the possession of the appellant in his presence. Thus, story of the prosecution is false on account of its dependency upon the version of so called independent witness.

15. In cross examination, it has also been admitted by investigating officer (PW-4) that *'he had affixed three seals on each parcel. One seal of 'MS' was affixed on specimen seal impression. SHO Amar Nath had affixed two seals of each parcel and one of specimen seal impression. Today, on Ex. PI only one seal is visible. However, remaining seals are in broken condition.'*

Thus, it is clearly admitted by the investigating officer that on the parcel Ex PI only one seal is visible. But he failed to explain that how remaining others seals are found broken. Even, he also failed to explain the registration numbers of all motorcycles.

16. Regarding seals of the parcels, there is deposition of another witness i.e. ASI Amar Nath PW-7. In cross examination *'he deposed that*

Ex. P1 was bearing three seals. I had affixed my two seals on Ex PI. Today only one seal is visible. However, remaining seals are in broken condition. I had affixed my on specimen seal impression'.

Thus, undoubtedly, fact available on record is that except of one seal, other seals were found broken and said fact has been proved by two star witnesses of the prosecution and third one i.e. Independent Witness Sukha Singh, has already turned hostile, without supporting the version of the prosecution.

17. This Court has also examined the statement of ASI Ram Avtar, Investigating Officer (PW-4). In his cross examination, PW-4 refers to the fact that he alongwith other members of the police party started for police patrolling on 4 motorcycles at 06.30 AM from police Station, Jhansa, but in the deposition during examination-in-chief or in the FIR version, no details of alleged motorcycles are mentioned. Rather, in the FIR, it is claimed that police party was moving in a private vehicle for police patrolling.

18. There is another contradiction in the statement of police officials ASI Mahabir Singh, who appeared as PW8 and is the witness of recovery, as he was the member of the police party. It is surprising that in first line of his cross examination, he says that they left the police Station at 6.30 am in private jeep. Thus, said statement of the member of the police party is in total contradiction to the statement of investigating officer ASI Ram Avtar, who says that they started from police station at 6.30 am at 04 motor cycles.

note down a specific defence taken by the accused-appellant in his statement under Section 313 Cr.P.C., which is reproduced here below:

“Q.12

Ans.

I am Innocent. I have been falsely implicated in this case. On 11.6.2004 I and my brother Trilochan Singh were sitting at a tea stall at village Airana Kalan, Bus Stand where some Police personnel in civil dress were also sitting on that tea stall near us. A cup of tea which was in my hand, suddenly the tea fell down on the pant of one police personnel. They used hot words and threatened us to face dire consequences and these police personnel had taken my brother to Police Station, Jhansa. When we reached at Police Station police told me that they will arrest me in false case under NDPS Act. Then I sent application through speed post to Chief Justice, Punjab & Haryana High Court, DIG Ambala on 12.6.2004 at about 1.30 P.M. from Jhansa.”

20. To justify the stand, appellant produced one Sub Post Master, namely, Ram Chand as DW1. His deposition without there being any cross examination, despite opportunity given, is reproduced here-in-below:-

“On 17.6.2004. I was posted as sub post master at post office Jhansa. on that day, at about 9.30 AM., Mehar Singh son of Gurnam singh had sent a telegram to Chief Justice, Punjab & Haryana High Court Chandigarh and D.G.P. Haryana Police Chandigarh, the Photocopy of the telegram are Ex-.DA and DB and receipt Ex.DC and DD.

XXX by shri Sadhu ham, P.P. for the state xxx

Nil, opportunity given.”

21. To prove the stand of 313 Cr. P.C. statement, appellant has also produced one witness i.e. Attar Singh as DW2, who is co-villager of the appellant.

22. Considering the contradictions which are material in case and also considering specific stand taken in defence, this Court finds that case of the prosecution is not completely proved.

23. It is doubtful whether alleged recovery of 5 kg of poppy husk has been affected from the spot as alleged by the prosecution or the proceedings have been completed by the Investigation agency, while sitting in the police station.

24. Thus, undoubtedly benefit of doubt would be extended to appellant (accused). In view of the submission and reasoning recorded here above, the case of prosecution suffers from material contradictions.

25. Considering the aforementioned circumstances, judgement of conviction dated 16.05.2005 and order of sentence dated 21.05.2005 passed by learned trial Court, are hereby *set-aside*, and consequently, **appeal is allowed by acquitting the appellant-Mehar Singh** from all the charges levelled against him.

26. Appeal stands disposed of.

(SANJAY VASHISTH)
JUDGE

January 31, 2023

Riya

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No