

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

CRA-S-1086-SB-2005

Reserved on: 01.03.2023

Date of Pronouncement: 09.03.2023

Ram Singh

...Appellant

VS.

State of Haryana

...Respondent

Coram : **Hon'ble Mr. Justice N.S.Shekhawat**

Present : Mr. R.K Lamba, Advocate for
for the appellant.

Ms. Sheenu Sura, Deputy Advocate General, Haryana,

N.S.Shekhawat J.

The present appeal had been directed against the judgment of conviction dated 14.06.2005 and the order of sentence dated 15.06.2005 passed by Learned Sessions Judge, Fatehabad, whereby the present appellant had been convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Act, 1985 (herein after referred to as the NDPS Act) and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/-, along with default stipulation.

The case of the prosecution in brief is that on 13.08.2002, a police party headed by Subhash Chander A.S.I. was present at Chandpura head of Bhakra Canal and in the meantime, one person was seen coming from the side of Village Naya Gaon. On seeing the police party, he turned back and started moving swiftly. On seeing his movements, the police party got suspicious and was apprehended by them. ASI Subhash Chander raised the suspicion that the accused was carrying some contraband, so a notice under Section 50 of the

Act was served on him. He was informed of his right of being searched either in the presence of a Gazetted Officer or a Magistrate. The accused submitted a reply in writing that he wanted to get his search conducted in the presence of a Gazetted Officer. Consequently, Ramphal, the then DSP Tohana was requested to visit the spot and he came at the spot along with his staff in an official vehicle. He verified the facts from the accused as well as the IO and directed ASI Subhash Chander to conduct the search of the accused. On his direction, ASI Subhash Chander searched the person of the accused and found opium in the left pocket of his pant, which was wrapped in a wax paper. Two samples of 10 grams each were taken out of the said opium by ASI Subhash Chander and were put them into separate match boxes, which were converted into parcels. The residue quantity was weighed and was found to be 410 grams. The remaining quantity was again wrapped in the wax paper and was converted into parcel. All the three parcels were duly sealed and were taken into possession by the police party. The accused was informed about the grounds of his arrest. A ruqa was sent to the police station, on the basis of which a formal F.I.R. was recorded. Initial investigation was conducted by A.S.I Subhash Chander at the spot.

Thereafter, the accused, witnesses and the case property were produced before Bhagwan Dass, SI/SHO along with report and he also verified the facts from the accused and the witnesses and affixed his seal bearing impression 'BD' on all the three parcels. As per directions of the Bhagwan Dass, Subhash Chander, A.S.I deposited the case property with the M.H.C and the accused was formally arrested. The investigation was conducted and after all formalities and necessary investigation, a report under Section 173

Cr. P.C was prepared by PW-6, Bhan Singh Inspector and was presented in the Court.

After findings sufficient evidence against the accused for framing of the charges, the appellant/accused was charge-sheeted for the commission of the offence punishable under Section -18 of the Act, to which he pleaded not guilty and claimed trial.

In support of the prosecution case, Bhagwan Dass, SI was examined as PW-1. He was posted as SI/SHO, Police Station Jhakhal on 13.08.2002. On receipt of the ruqa Ex.P-1, he had recorded the formal FIR Ex.P-2. ASI. Subhash Chander produced before him the accused, witnesses and the case property. Even a report Ex.PW-4 was prepared under Section-57 of the Act by ASI Subhash Chander and was submitted to him. He directed A.S.I Subhash Chander to deposit the case property in the Malkhana and ordered the arrest of the accused. C.Murari Lal was examined as PW-2, who tendered his affidavit Ex. P8 in his evidence. PW-3 HC Ram Niwas tendered his affidavit Ex.P-9 in his evidence. HC Rajbir Singh was examined as PW-4, who was part of the police team and supported the case of the prosecution in totality. C.Parkash Chand PW-5 was posted as Naib Reader to the DSP, Tohana. He received the report Ex.P4 in the office of DSP and produced the same before the DSP. The DSP had put his signatures at point A of the report after reading the same. Inspector Dhan Singh prepared the report under Section 173 Cr.P.C and presented the same in the competent Court and he was examined as PW-6 by the prosecution. PW-7 SI Subhash Chander was the star witness of the prosecution and he was heading the team, which arrested the accused. He narrated the entire sequence of events, as mentioned in the FIR. Ramphal, the

then DSP, appeared as PW-8. He was posted as DSP Tohana on 13.08.2002 and had gone to the spot on getting the information from the raiding team. He was a witness to the search and seizure conducted by the police team and had witness the memos at that moment.

After the prosecution completed the evidence, the entire incriminating evidence was put to the appellant/accused in the shape of his statement under Section 313 Cr.P.C. He stated that he was innocent and nothing was recovered from him and he was a taxi driver and had been falsely implicated in the instant case, as he had refused to provide his vehicle without any charges (*begar*) to the police.

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

Learned counsel for the appellant vehemently argued that the entire prosecution case is based on the testimonies of the official witnesses, who had the motive to falsely involved the present appellant. The appellant has refused to provide his vehicle without any charges to the local police and the police was annoyed with him. Due to this, he was falsely involved in the present case. Apart from that, no independent witness was joined by the police during the course of investigation. The said submissions have been opposed by the learned State counsel on the ground that in the instant case, there was nothing on record to disbelieve the testimonies of the official witnesses. Even the appellant has lead no evidence to substantiate his defence and the submissions are liable to be rejected.

I have considered the rival submissions made by learned counsel for the parties and find no force in the submissions made by learned counsel for

the appellant. In the instant case, the appellant alleged that he was falsely involved by the police as he fail to provide vehicle free of charges to the local police. However, the appellant had lead no evidence to prove the said fact. The appellant was provided ample opportunity during defence evidence, but he failed to lead any evidence in his defence. Apart from that, in the instant case, the prosecution examined eight official witnesses and their testimonies appear to be truthful. The statements of official witnesses cannot be discarded only on the ground of their official status. In the instant case, the official witnesses had no enmity with the present appellant and he was rightly apprehended by the police, while carrying the contraband substance. No other submission was raised.

Even otherwise, I have carefully gone through the trial Court record. The prosecution has complied with all the mandatory provisions of the Act and the learned Trial Court has correctly appreciated the evidence in the light of the canons of the law. Thus, impugned judgment is upheld and affirmed.

However, in the instant case the present appellant has been sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 5,000/- for keeping in his possession 430 grams of opium without any permit or licence. The impugned judgment shows that at the time of his conviction, he was aged about 29 years. He has faced the agony of trial/appeal for the last about 21 years. Even the prosecution has shown the recovery of 430 grams of opium from the present appellant, which is non-commercial in nature. Apart from that, it is apparent that the present appellant

has undergone three months and 22 days of actual sentence out of total sentence of one year. Still further, the custody certificate also shows that he is not a previous convict and no other criminal case was ever registered against him except the present case. Thus, no purpose will be served by sending him behind the bars.

Consequently, the sentence imposed on the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs.5000 to Rs.25,000/- which shall be deposited by the present appellant in the Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund within a period of three months from today, failing which the appellant shall undergo simple imprisonment for a period of three months, as observed by the learned Trial Court.

With the above modifications, the present appeal is partly allowed and the impugned judgment of conviction dated 14.06.2005 passed by the learned Sessions Judge, Fatehabad is ordered to be upheld, whereas the order of sentence is modified to the extent that the sentence imposed upon present appellant is reduced to the period already undergone by him and the amount of fine is enhanced from Rs.5,000/ to Rs.25,000/-, as mentioned above.

With these directions, the appeal stands disposed off.

All pending applications, if any, are also disposed off, accordingly.

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.

(N.S.SHEKHAWAT)
JUDGE

09.03.2023

Hitesh

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