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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-784-SB-2008 (O&M)

Reserved on: 01.05.2023

Date of Pronouncement: 07.06.2023

Bagga Singh @ Lakhvir Singh

...Appellant

vs.

State of Punjab

...Respondent

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

Present : Mr. Balbir Kumar Saini, Advocate for
for the applicant- appellant.

Mr. Amish Sharma, AAG, Punjab.

N.S.Shekhawat J.

1. The present appeal has been preferred against the judgment of conviction dated 25.09.2006 and the order of sentence dated 27.09.2006 passed by Learned Special Judge, Moga, whereby the present appellant has been convicted under Section 15(c) 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 ten years and to pay a fine of Rs.1,00,000/-, along with default stipulation.

2. The prosecution story, as it emanates from the report under Section 173 Cr.P.C is that on 12.11.1993, Ajmer Singh ASI/SHO from Police Station, Mehna along with other police officials had set up a picket at about 04:45 AM, one truck bearing registration No. DIL8871 driven by Bagga Singh, accused came from the side of village Kokari Kalan and it was signaled to stop with the

help of torch light. Three more persons namely, Sadhu Singh, Surjit Singh and Jarnail Singh were sitting by the side of Bagga Singh, accused. All the occupants, including the present accused Bagga Singh were apprehended by the police. Efforts were made to join any independent witnesses, but no person was willing to join. In the meantime, Narinderpal Singh, DSP, Moga also reached there in order to check the police pickets and Ajmer Singh ASI apprised him of the facts of the case. In his presence, Ajmer Singh ASI conducted the search of the truck of the accused, from which 20 bags of poppy straw were recovered. One sample of 250 grams each was taken out from each of the recovered bags of the poppy straw and separate parcels were prepared in this regard. The remaining poppy straw was also weighed along with bags and each bag was found to be containing 39 Kgs 750 grams of poppy straw. Their separate parcels were prepared and were numbered serially from 1 to 20. Sample parcels were also given serial numbers 1 to 20, as per the serial numbers of the bag from which they were drawn. The parcels were duly sealed by Ajmer Singh, ASI with his seal of mark "AS" and DSP has also sealed all the parcels with his seal mark "NPS". The samples of their seals were prepared. Ajmer Singh, ASI handed over the seal after use to ASI Prem Singh and the case property was taken into possession by preparing separate recovery memo. The truck along with its permit and other documents were also taken into possession vide the separate recovery memo. Personal search of the accused was also conducted. It was found that the accused were carrying 20 bags of poppy straw, each bag weighing 40 Kgs and the accused had retained aforesaid poppy straw without any permit or licence. Therefore, a ruqa was sent to the police station for registration of the FIR under Section 15 of the NDPS Act against the accused,

including the present appellant.

3. Initial necessary investigation was conducted by Ajmer Singh, ASI, who arrested the accused and supplied him grounds of arrest. He prepared the site plan of the place of recovery and the statements of the witnesses were recorded. On his return to the police station, he kept the case property in safe custody and later produced the case property before the learned Magistrate on 13.11.1993 and the orders were passed in this regard. After returning to the police station, the case property was deposited with MHC Surajpal Singh in intact condition. Later on, the sample parcel and the sample of seal were sent to the office of Chemical Analyst and after receipt of the report of Chemical Analyst, the final report under Section 173 Cr.PC was prepared against the accused and was presented in the Court.

4. After consideration of the material on record, the charge under Section 15 of the Narcotics Drugs and Psychotropic Substances, Act was ordered to be framed against the present appellant and appellant pleaded his innocence and claimed trial.

5. In order to prove the charge, against the accused the prosecution examined six witnesses namely, PW-1 HC Surajpal Singh, PW-2 C.Jagjit Singh, PW-3 Ajmer Singh ASI, PW-4 Chiranji Lal, Registration Clerk, PW-5 DSP Narinderpal Singh and PW-6 Prem Singh ASI.

6. After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.PC and he pleaded that he was innocent. He was brought by the police from his village on 09.11.1993, on suspicion of terrorists as nothing was against him and the poppy husk was planted on him. No recovery was effected from him. In his defence, the

appellant examined DW-1, C. Jaswinder Singh SSP, Office Moga, who had brought the original record of character roll. He had seen the order No.4295-4300/B dated 17.05.2000 which was as under:-

“Vide order dated 5905-14 F/1 dated 13.05.2000 DIG/FR/Ferozepur in compliance of direction of DGP/Punjab Chandigarh issued by his circular letter No.8694-984/E-6 dated 28.04.2000 adhoc promotion in the rank of Assistant Sub Inspector granted to Ajmer Singh vide order No.13308-09/FR-1 dated 07.09.1999 is hereby withdrawn with immediate effect and place to his substantive rank as Head Constable. He is further given ORP posting in the rank of ASI. He withdraw again said he will draw his pay etc. against his substantive post as HC and not against ORP posting in higher post of Assistant Sub-Inspector. However, he will get his regular promotion on his own term on acquiring requisite eligibility as per his seniority and suitability.”

7. I have heard learned counsel for the parties and also perused the evidence led by both the sides carefully.

8. Learned counsel for the appellant vehemently contended that in the instant case, PW-3 Ajmer Singh, ASI/SHO never sent the special report under Section 57 of the Act to his senior police authorities. Since, a report was never sent, serious prejudice has been caused to the present appellant and he was liable to be acquitted by this Court on this ground alone. Apart from that, the case property, which was in possession of the police, was tampered with and did not remain intact till production in the Court. Furthermore, the entire prosecution case is based on the testimonies of official witnesses, who were already inimical towards the present appellant and later on he was picked up by the police only on the suspicion of involvement in terrorist activities. Still

further, no recovery was effected from the present appellant and he was not in conscious possession of the contraband. The learned Trial Court completely overlooked the evidence led by both the sides and wrongly convicted him. The submissions made by learned counsel for the appellant have been vehemently opposed by the learned State counsel. He contends that the provisions of Section 57 of the Act were directory in nature and its non-compliance would have no effect on the case of the prosecution. Still further, the police made all efforts to join independent witnesses, but no one was willing to join the investigation against the drug peddler of this level. Even the case property remained intact, when it was produced before the Court. Thus, the appellant, who was found in conscious possession of the contraband, was liable to be convicted by this Court.

9. Having heard learned counsel for the parties and perusing the evidence led by both the sides, this Court is of the considered opinion that there is no force in the argument raised by learned counsel for the appellant. The main contention of the learned counsel for the appellant is that the mandatory provisions of Section 57 of the NDPS Act have not been complied with and the appellant is liable to be acquitted only on this ground alone. In fact, the said submission is meritless in view of the law laid down by the Hon'ble Supreme Court in the matter of ***Gurmail Chand Vs. State of Punjab, 2021 (14) SCC 334***, in which the Hon'ble Supreme Court held as follows:-

“10. In so far as submissions on the basis of Section 57 of the NDPS Act are concerned, it has been held that the said provision is not to be interpreted to mean that in event the report is not sent within two days, the entire proceeding shall be vitiated. The provision has been held to be directory and to be complied with

*but merely not sending the report within the said period cannot have such consequence as to vitiate the entire proceeding. A three judge Bench of this Court in **Sajan Abraham Vs. State of Kerala** has held that non-compliance of Section-57 would not vitiate the prosecution case. In para 12 the following was laid down:(SCC pp.696-97)*

“12. The last submission for the appellant is, there is non-compliance with Section 57 of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. Hence, the entire case vitiates. It is true that the communication to the immediate superior has not been made in the form of a report, but we find, which is also recorded by the High Court, that PW5 has sent copies of FIR and other documents to his superior officer, which is not in dispute. Ex.P-9 shows that the copies of the FIR along with other records regarding the arrest of the appellant and seizure of the contraband articles were sent by PW-5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said to have prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case, it would not vitiate the prosecution case. In the present case, we find PW-5 has sent all the relevant material to his superior officer immediately. Thus we do not find any violation of Section 57 of the Act.

10. Thus, in view of the law laid down by the Hon’ble Supreme Court

in the abovestated judgment, the argument raised by the learned counsel for the appellant is liable to be rejected by this Court.

11. In the instant case, it is apparent from the bare perusal of the FIR, that after apprehending the accused at the spot, every effort was made to join witnesses, but nobody was willing to join the proceedings against the present appellant, from whom huge recovery of poppy straw was made. Even, Ajmer Singh ASI Police Station City, Moga was examined as PW-3, who clearly stated that Kuldeep Singh, HC was sent to bring some respectables from village Kokri Kalan, however, he returned to the spot and told him that no person was willing to join the police party from the village. However, in the meantime, Narinderpal Singh, DSP, Moga arrived there for checking and the search was conducted from the appellant at his instance. Thus, it is apparent that the police wanted to join independent witnesses, but no one was ready to join the police party. Even otherwise, the prosecution has examined PW-3 Ajmer Singh, ASI who had conducted the search and recovered contraband. His statement has been duly corroborated by PW-5 Narinder Pal Singh, DSP, who was posted as DSP and in his presence the search was conducted by the local police. Both the abovesaid witnesses have been cross-examined at length and their testimonies could not be shattered in any manner. This Court has also perused the testimonies of said official witnesses, which inspire confidence of the Court and the findings recorded by learned Trial Court are liable to be upheld.

12. Thus, this Court has carefully examined the findings recorded by the learned Trial Court. The learned Trial Court has dealt with all the submissions raised by the learned counsel for the appellant and recorded valid reasons for rejecting the same submissions made by learned counsel for the

appellant. It has been held that the appellant having conscious possession of the 20 bags of the poppy straw and while transporting the same without any permit or licence, the appellant was apprehended by the the police party headed by PW-3 ASI Ajmer Singh. Apart from that, it is apparent that the certain minor contradictions are always there in the testimonies of truthful witnesses and are liable to be ignored.

13. In view of the above discussion, the present appeal must fail and the judgment of conviction dated 25.09.2006 and the order of sentence dated 27.09.2006 passed by Learned Special Court, Moga, does not suffer from any irregularity or perversity and is liable to be upheld by this Court.

14. Thus, the impugned judgment of conviction dated 25.09.2006 and the order of sentence dated 27.09.2006 passed by Learned Special Judge, Moga is ordered to be upheld and the appeal is accordingly ordered to be dismissed.

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

16. 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.

07.06.2023

hitesh

(N.S.SHEKHAWAT)
JUDGE

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