

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

CRA-S-127-SB-2005 (O&M)

Reserved on:-17.01.2023

Date of Decision: 14.02.2023

Raj Pal

...Appellant

Versus

State of Haryana

... Respondent

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

Present : Mr. Kapil Aggarwal, Advocate
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

Challenging the correctness and legality of the impugned judgment of conviction dated 14.12.2004 and order of conviction dated 16.12.2004 passed by the Judge, Special Court, Panchkula, whereby, the present appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short '**the NDPS Act**') and was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/-, alongwith the default stipulation, the appellant has preferred the present appeal before this Court.

In short, the prosecution story is that on 28.03.2003, a police party headed by Mohinder Singh, SI/SHO was on patrolling duty near the turning of Phase I, Panchkula near Zirakpur on a government jeep, a person, namely, Rohit Sharma son of Swatantra Kumar resident of H.No. 12, Rajiv Colony, Panchkula, met them and started talking to the police party. In the meantime, another person

was seen coming from the side of village Zirakpur having a plastic

bag of white colour on his head. On seeing the police party, he turned back and started walking at a fast speed. Further, on finding the circumstances suspicious, he was apprehended by the police team and on inquiry by Mohinder Singh, SI/SHO, he disclosed his name and address as Raj Pal son of Mohan Singh, resident of village Gangosi, District Badayun, U.P., at present resident of village Karanpur, Tehsil Kalka, District Panchkula. Since, it was suspected that he was carrying some contraband in the bag, a notice under Section 50 of the NDPS Act was served upon him to the effect that as to whether he wanted to get his search conducted before a gazetted officer or a Magistrate. On this, Raj Pal opted to be searched before a gazetted officer. On getting a wireless message from the police party, Desh Bandhu, DSP, Headquarters, Panchkula, who was a gazetted officer, reached at the spot and the police party apprised him of all the facts of the case. On the directions by the DSP, Headquarters, the search was conducted by Mohinder Singh, SI/SHO and the bag was found to be containing *choora post* (poppy husk). Two samples of 250 gms each were separated and the remaining quantity of the poppy husk was found to 17.500 kgs. The sample parcels as well as the residue quantity were sealed again with the seal "MS" of Mohinder Singh, SI/SHO and "DS" of Desh Bandhu, DSP, Headquarters. The seal of SI/SHO after use was handed over to Head Constable Ramesh Kumar whereas the DSP retained his seal with him. Sample seal and other sealed parcels were taken into possession vide separate recovery memos, which were attested by the DSP Headquarters. The *rukka* was

sent for registration of the criminal case and a FIR was formally registered in the police station. The formal investigation was conducted by Mohinder Singh, SI/SHO and after necessary investigation, he also sent a report under Section 57 of the NDPS Act to the senior police officers. The samples were sent to the Forensic Science Laboratory for analysis of the contents and it was found to be containing poppy straw. Ultimately, report under Section 173 Cr.P.C. was prepared and presented to the competent Court for trial.

After going through the evidence collected during the course of investigation, the learned trial Court ordered framing of charge under Section 15 of the NDPS Act against Raj Pal accused and he pleaded not guilty and claimed trial.

In support of the charge, the prosecution examined six witnesses, namely, PW1 Constable Bansi Lal, PW2 HC Ramesh Kumar, PW3 Constable Raj Kumar, PW4 DSP Deshbandu, PW5 SI Mohinder Singh and PW6 Head Constable Rajender Kumar.

After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and he stated that no recovery was effected from him and the police had planted a false case against him at the instance of Rohit Kumar Sharma. He was labourer at village Karanpur and the police arrested him from village Karanpur without any reason. Even no proceedings were conducted on papers in his presence and his signatures were obtained on blank papers forcibly. He opted to lead the defence

evidence, but did not examine any witness to prove the above said defence.

I have heard learned counsel for the parties and have gone through the trial Court record carefully.

Learned counsel for the appellant vehemently argued that the police had violated the mandatory provisions of Section 50 of the NDPS Act. The notice Ex.PA was issued to him by Mohinder Singh SI/SHO at the time of his arrest and he was informed that he could get his search conducted either before him or a Magistrate or a gazetted police officer. Learned counsel further submitted that the appellant was also not informed in specific terms that this was a statutory right conferred on the appellant by the NDPS Act itself and since the offence was very serious, strict compliance of Section 50 of the NDPS Act was required. However, the Investigating Officer did not follow the mandate of law and the appellant was liable to be acquitted only on this ground alone. Learned State counsel has opposed the submissions made by the learned counsel for the appellant and submitted that the recovery in the instant case has taken place from the bag, which was being carried by the appellant on his head. Since the recovery of the contraband had taken place from the bag and not from the personal search of the accused/appellant, the mandatory provisions of Section 50 of the NDPS Act would not apply in the instant case. I find sufficient force in the submissions made by the learned State counsel. It has been held in catena of judgment by the Hon'ble Supreme Court as well as this Court that the compliance of

the provisions of Section 50 of the NDPS Act is required, when the contraband is recovered from the personal search of the accused. In the instant case, it is apparent from the testimony of PW5 Mohinder Singh SI/SHO supported by the statement of PW4 DSP Desh Bandhu that the recovery had taken place from the bag, which was held by the accused on his head. No recovery was effected from the personal search of the accused. Consequently, the provisions of Section 50 of the NDPS Act are not attracted in the facts and circumstances of the instant case and the argument raised by the learned counsel for the appellant is merit-less.

The learned defence counsel further submitted that the entire proceedings of the case were concluded at the place of recovery by the Investigating Officer. As per the prosecution, documents, notice Ex.PA, option memo Ex.PA/1, recovery memo Ex.PB, *rukka* Ex.PD and site plan Ex.PE were prepared at the spot and the said fact was duly substantiated by the testimony of PW5 Mohinder Singh SI/SHO, who was heading the raiding team. Even other prosecution witnesses had also supported his version. However, a perusal of the said document would establish that FIR number and details of the FIR have been written by the same pen with the same flow of writing in all these documents, whereas the FIR was registered subsequent to preparation of these documents and this clearly shows that the documents were prepared after the registration of the FIR, in the police station and the appellant had been falsely implicated in the instant case. On the other hand, learned State counsel submitted that

from the testimonies of PW5 Mohinder Singh SI/SHO, PW2 HC Ramesh Kumar and PW4 Desh Bandhu, DSP, gazetted officer, it is evident that the documents were prepared prior to lodging of the FIR and the details of the FIR were mentioned subsequently by the Investigating Officer. There was nothing suspicious about the same.

I find that the submissions made by the learned State counsel are liable to be accepted in view of the fact that the documents Ex.PA, Ex. PA/1, Ex.PB, Ex.PD and Ex.PE were prepared by the Investigating Officer at the spot, as proved by PW5 Mohinder Singh, SI/SHO. PW5 Mohinder Singh, SI/SHO, PW2 HC Ramesh Kumar and PW4 Desh Bandhu, DSP, were subjected to lengthy cross-examination and their creditworthiness could not be shattered in any manner. These documents were prepared by the Investigating Officer at the spot and the proceedings were concluded. Thereafter, the FIR was registered with promptitude and the Investigating Officer mentioned the FIR number and the other details at the top of these documents. The Investigating Officer is not expected to use different pens at the same time within a short span of time and since he had filled the FIR number and other details in the same pen and same flow of writing, does not raise any suspicion in any manner and the findings recorded by the learned trial Court are liable to be upheld.

Learned counsel for the appellant further submitted that a person, namely, Rohit Kumar, was associated during the course of initial investigation and the recovery of the contraband. However, the

prosecution intentionally did not examine the said witness and this shows that there was no independent corroboration of the testimonies of the official witnesses. On the other hand, learned State counsel submitted that the prosecution witnesses were officials who had no reason to falsely involve the present appellant in such a serious matter. Further, the appellant/accused stated in his statement under Section 313 Cr.P.C. that a police case had been planted on him at the instance of one Rohit Kumar Sharma and the police had illegally picked him from his village. However, the accused did not lead any evidence to show that the said Rohit Kumar Sharma was inimical towards him and he wielded some influence with the local police. Even no evidence was led by the defence to substantiate the said plea and the argument is liable to be rejected. The submissions made by the learned State counsel carry more weight and are liable to be accepted by this Court. No doubt, the entire case hinges on the testimonies of the official witnesses, but the defence led no evidence to impeach their testimonies in any manner. The testimonies of official witnesses cannot be rejected only on the ground of official status of the witnesses. It has been held in plethora of judgments by the Hon'ble Supreme Court that independent corroboration is required as a rule of caution and the case of the prosecution cannot be thrown only on the ground that the same is based on the testimonies of the official witnesses. If the testimonies of such official witnesses inspires confidence and the defence had failed to dislodge those in any manner, the same can be relied upon to base the judgment of

conviction. Thus, the learned trial Court has recorded correct findings in this regard and the same are affirmed by this Court.

Apart from that, I have perused the evidence led by the prosecution, which proved the guilt of the accused to the hilt. 18 kgs of poppy husk was recovered from the bag, which was carried by the accused on his head. The recovery memos were separately prepared and the recovery was taken in the presence of a gazetted officer. The samples as well as the residue quantity of contraband were duly sealed and the samples were sent to the FSL for analysis of the contents of the contraband. As per the FSL report Ex.PH, the sample was identified as poppy husk (*choora post*) and, consequently, there was sufficient evidence to establish on record that the accused was carrying 18 kgs of poppy husk consciously, without any permit or licence. Thus, the findings recorded by the learned trial court are upheld and the impugned judgment of conviction, whereby, the appellant/accused had been convicted under Section 15 of the NDPS Act, calls for no interference by this Court.

However, from the record, it is apparent that at the time when the recovery was effected from the present appellant, he was aged about 30 years. He is facing the agony of trial/appeal for the last about 20 years. During the course of hearing, learned State counsel had filed the custody certificate and as per the custody certificate, he had undergone actual sentence of two months and sixteen days. Apart from that, the custody certificate shows that no other criminal case was registered against him for the last about 20 years and at present

he must be more than 50 years of age. As per the learned counsel for the appellant, he is sole bread earner of the family and has clean antecedents. Even, as per the prosecution, 18 kgs of poppy husk was recovered from him, which is non-commercial in nature; thus, no purpose would be served by sending him behind the bars at this stage. Thus, taking a lenient view in the matter, the sentence imposed upon the appellant/accused is reduced to the period already undergone by him. However, the amount of fine is enhanced to Rs. 30,000/-, which shall be deposited by the 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 rigorous imprisonment for period of six months, as ordered by the learned trial Court.

With the above modifications, the appeal is partly allowed and the impugned judgment of conviction is upheld, whereas the order of sentence is modified to the extent that the sentence imposed on the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced to Rs. 30,000/- as observed, which shall be deposited by him within a period of three months from today.

The appeal stands disposed off accordingly.

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.

14.02.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No