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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: April 13, 2023

Gursharan Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON’BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Satnam Singh Gill, Advocate,
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana.

SANJAY VASHISTH, J.

1. Appellant – Gursharan Singh, then aged 29 years (as mentioned in the impugned judgment), has filed the present appeal, impugning the judgment of conviction dated 19.07.2005, and order of sentence dated 20.07.2005, passed by learned Additional Sessions Judge, Hisar, vide which appellant has been convicted for committing an offence punishable under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’), for keeping in his possession 15 Kgs. of poppy husk without any permit or licence and accordingly he has been sentenced by the Trial Court as under:-

Section	Sentence	Fine	In default
15(c) of the NDPS Act	2 years R.I.	Rs.5,000/-	1 month R.I.

2. Facts of the case, emerging from Sessions Case No. 07, dated 28.01.2004/12.05.2005, arising out of FIR No. 822, dated 28.10.2003, under Section 15 of the NDPS Act, registered at Police Station Sadar, Hisar, are that on 28.10.2003, ASI Rajender Parshad, ASI Mohinder Singh and other police officials were present at Bus Stand, Azad Nagar, Hisar, for patrolling and crime detection duty. A person with a white colour bag on his shoulder, was seen coming from the side of village Gangwa. On seeing the police party, he turned back and started walking briskly. Having suspicion, ASI Rajender Parsad, with the help of other police officials, apprehended said person, and on inquiry, he disclosed his name as Gursharan son of Satvinder Singh, Caste Rai Sikh, resident of Lohgarh, District Mansa (Punjab).

Being suspected that there may be some contraband substance in the bag of the accused, ASI Rajinder Parsad, being the Investigating Officer, served a notice under Section 50 of the NDPS Act upon the accused, to the effect that he intended to take search of the bag and if the accused so desires, search could be made in presence of a Magistrate or Gazetted Officer. The accused vide his reply reposed confidence in the Investigating Officer. Said notice and reply were signed by the accused and attested by witness ASI Mohinder Singh.

Thereafter, the Investigating Officer conducted the search of the bag of the accused and found poppy husk therein. Two samples of 250 grams each were separated from the bulk and remaining on weighment was found to

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be 14 Kgs. and 500 grams. Samples and the residue of poppy husk were converted into parcels and sealed with the seal ‘RS’ by the Investigating Officer. The seal after use was handed over to ASI Mohinder Singh. On receipt of *ruqqa* sent by the Investigating Officer to the police station, formal FIR was registered.

3. After recording the statements of witnesses and completing all the proceedings as required in the NDPS Act, final report under Section 173 Cr.P.C., was prepared and submitted to the Court. Accordingly, appellant was charge sheeted for committing an offence under Section 15 of the NDPS Act. During trial, prosecution examined following five witnesses:

Rajmal, Head Constable, Police Station Sadar, Hisar (PW-1)	<i>He tendered his affidavit (Ex. PA), to the effect that after collecting samples and seal from HC Jagdish Parshad (PW-2), same were deposited with the Forensic Science Laboratory, Madhuban, on 30.10.2003, and samples and seals were never tampered with.</i>
Jagdish Parshad, Head Constable, No. 894, Police Station Sadar, Hisar (PW-2)	<i>He tendered his affidavit (Ex. PB), to the effect that samples and residue of poppy husk alongwith sample seals were deposited with him by ASI Rajender Parshad on 28.10.2003, and said articles were never tampered with as long as it remained in his custody.</i>
Mahender Singh, Assistant Sub Inspector, No. 429, Police Station Sadar, Hansi (PW-3)	<i>He deposed in regard to the recovery of contraband from the appellant, attestation of recovery memos, notice and reply etc. In fact, he was member of the patrolling party.</i>
Rajender Parshad, Assistant Sub Inspector, Incharge Police Post, Azad Nagar, Hisar (PW-4)	<i>He is a star witness being Investigating Officer of the case. He proved the notice (Ex. PC), reply (Ex. PD), recovery memo (Ex. PE), rough site</i>

	<i>plan (Ex. PF), report under Section 57 of the NDPS Act (Ex. PG), ruqqa (Ex. PH), and FIR (Ex. PH/1).</i>
Ishwar Singh, Sub Inspector/SHO, Police Station Uklana (PW-5)	<i>He proved that the accused, case property, witnesses alongwith report under Section 57 of the NDPS Act, were produced before him by ASI Rajender Parshad, for verification. After verification of the facts, he affixed his seal on the samples.</i>

No other evidence was led by the prosecution.

4. In the statement under Section 313 Cr.P.C., following stand was taken by the appellant:-

“Q.10. Anything else you want to say?

Ans. I am innocent. Nothing was recovered from my possession. I was taken in police custody in early hours of the morning at bus stand Hisar as the police officers misbehaved me and when I protested to made a complaint to higher officers, the police falsely implicated me in the present case.”

5. After scanning complete evidence led by the prosecution, learned Trial Court convicted and accordingly sentenced the appellant for committing the said offence. Hence, appellant is in appeal.

6. Learned counsel for the appellant argues that in the present case, there is non-compliance of Section 50 of the NDPS Act because Investigating Officer ASI Rajender Parshad (PW-4) has offered himself for conducting search of the bag.

6(a). To check authenticity of the submission made by learned counsel, notice (Ex. PC) is perused by this Court. Translated version of the notice (Ex.

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PC) is reproduced here below:-

“

Notice

In the presence of the witnesses, accused Gursharan Singh s/o Satvinder Singh, caste Rai Sikh, R/o Lohgarh, Police Station Sardulgarh, District Mansa (Pb), has been informed by serving a written notice that in the bag (Katta) of white colour on your shoulder, there is doubt of having intoxicated item (Chura-post). For effecting search of this bag some Gazetted Officer or Judicial Magistrate be called on the spot.

Witness

*ASI Mahender Singh 429
Police Post Azad Nagar
Hisar*

*Sd/- (In English)
(Rajinder Parshad)*

Sd/- Mahender Singh (In English)

*ASI
70 HSR*

*I/c P.P
Azad Nagar
HSR
28.10.03”*

6(b). In response to the said notice, reply (Ex. PD) was given by the appellant, and English translation of the same says as under:-

“

Reply to Notice

In the presence of witnesses, accused Gursharan Singh s/o Satvinder Singh, caste Rai Sikh, R/o Lohgarh, Police Station Sardulgarh, District Mansa, in response to the notice replied that he does not want to get the search of bag upon his shoulder through any Gazetted Officer, Judicial Magistrate. I have full confidence in you. You can yourself take search of the bag with me.

Sd/- Gursharan Singh (In Punjabi)

Witness

*ASI Mahender Singh 429
Police Post Azad Nagar
Hisar*

*Sd/- (In English)
(Rajinder Parshad)*

Sd/- Mahender Singh (In English)

*ASI
70 HSR*

*I/c P.P
Azad Nagar
HSR
28.10.03”*

6(c). Countering the argument addressed by the appellant, learned State counsel has submitted that the said argument is without any force in view of settled proposition of law, inasmuch as, compliance of Section 50 of the NDPS Act is mandatory only if search is to be conducted from the ‘person’ of the suspect.

7. I have heard the aforementioned submissions of both the sides, considered and find that the argument addressed by learned counsel for the appellant is not tenable in view of the fact that Investigating Officer never offered to search ‘person’ of the accused. Rather, he raised his doubt over the bag, which was carried by accused on his shoulder. Thus, this argument fails and in view of the judgments passed by Hon’ble Apex Court in the cases of State of Himachal Pradesh v. Pawan Kumar, (2005) 4 SCC 350, and Jeet Ram v. Narcotics Control Bureau, Chandigarh (Criminal Appeal No. 688 of 2013, decided on 15.09.2020), the issue of valid or invalid notice is of no weight, once neither the ‘person’/body of the accused is suspected nor same is searched.

8. Learned counsel for the appellant further argues that appellant is resident of District Mansa, State of Punjab, but prosecution has framed the case in the area of Azad Nagar, Hisar (Haryana) on 28.10.2003, in the early hours of the morning. Due to some altercation with the police, appellant was taken to the police station and later on to teach him a lesson, a false case was planted against him.

9. This argument appears to be hypothetical only because it was upon the appellant to prove that for what specific purpose he, being resident of District Mansa (Punjab), was present at the place of recovery in the city of Hisar. Appellant was free to produce any other witness of the nearby area or whomsoever he had gone to meet on the fateful day. But appellant has failed to produce any such witness in the witness box.

10. Learned counsel for the appellant further argues that there is contradiction in the statements of prosecution witnesses because as per deposition of ASI Mahender Singh (PW-3), the weights were of 5 Kg, 1 Kg, ½ Kg, 100 grams and 50 grams and material for preparing sealed parcel was procured from the nearby shop.

10(a). While referring the statement of Investigating Officer - ASI Rajender Parshad (PW-4), learned counsel for the appellant refers the cross-examination where it is explained that the scale was having a capacity of 5Kg. and the material for preparing the samples was with him in the investigation bag. Thus, learned counsel try to point out a big defect/ contradiction about the weights and scale, explained by both the witnesses.

11. Learned State counsel responds that the argument addressed by learned counsel for the appellant is hypothetical in nature because in the cross-examination of Investigating Officer – ASI Rajender Parshad (PW-4), nowhere a specific question about all the weights with which contraband was weighed, has been asked.

12. Thereupon, I have gone through the cross-examination of both the

witnesses and find that specific question was posed to ASI Mahender Singh (PW-3) in regard to the number of weights, whereas no such question was put to the Investigating Officer – ASI Rajender Parshad (PW-4). The question put to him is in regard to the capacity of the scale, which was answered as capacity of 5 Kg.

13. Next argument addressed by learned counsel for the appellant is that notice under Section 50 of the NDPS Act (Ex. PC) does not bear any signature of the accused and said fact has been admitted by the Investigating Officer ASI Rajender Parshad (PW-4) in his cross-examination.

14. This argument also does not help the appellant because notice (Ex. PC) has been issued by the Investigating Officer to the appellant and the appellant was supposed to sign only the reply (Ex. PD), which as a matter of fact has been signed by the appellant as well as Investigating Officer ASI Rajender Parshad (PW-4). Thus, said argument addressed by learned counsel for the appellant also fails.

15. The last argument addressed by learned counsel for the appellant is that there is no independent witness in the present case, therefore, appellant cannot be convicted in the absence of joining of any independent witness. However, no such specific law has been cited by learned counsel for the appellant in support of his submission.

16. Learned State counsel also responds that the investigating agency can only try to make request to the independent witnesses, but if the witnesses do not join the proceedings, investigating officer cannot force anybody.

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17. I have also gone through the statement of ASI Mahender Singh (PW-3). In his cross-examination, he states that 15/20 persons were collected at the spot and on being asked to join the investigation, they refused to become witness in the case. No further question was asked about said fact and details of 15/20 persons who were collected at the spot and if they were approached for joining the investigation, are recorded in the police zimni or not. Thus, only half baked question was asked and answer to the said question does not satisfy the parameters required for acquitting the accused under the NDPS Act.

Even otherwise, law is well settled on the issue of joining and/or non-joining of independent witness by the police. In Kalpnaath Rai v. State (Through CBI), AIR 1998 SC 201, one of the issue, *inter alia*, raised was that police party did not examine a single independent witness to support the case that the 5 accused were rounded up on the early hours, nor did they secure the signature of at least one such independent person in any of the documents prepared at the time of seizure of the arms and ammunition. Having considered the said issue, their Lordships' of Hon'ble Apex Court observed as under:-

“90. As a legal proposition it was argued that it would be unsafe to base a conclusion on the evidence of police officers alone without being supported by at least one independent person from the locality. To reinforce the said contention Shri V.S. Kotwal, Senior Advocate cited the decision of this Court in Pradeep Narayan Madgaonkar and Ors. v. State of Maharashtra wherein want of independent witnesses of the locality rendered suspicious a raid conducted by the police.

91. There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy

of acceptance. Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that court must reject the prosecution version solely on the ground that no independent witness was examined.” (emphasis added)

Reliance is also placed on the judgment of Hon’ble Apex Court in the case of Raveen Kumar v. State of Himachal Pradesh, 2020 (4) R.C.R. (Criminal) 873 : LawFinder Doc ID #1756614, wherein similar view has been reiterated.

18. No other specific point has been raised by learned counsel for the appellant.

19. Learned State counsel produced the custody certificate dated 13.09.2022, of the appellant, which is taken on record. Registry is directed to tag the same at an appropriate place in the paper book. Learned State counsel submits that out of substantive sentence of 2 years awarded by the learned Trial Court, appellant has undergone total 2 months and 4 days of sentence and that too during the time when he faced trial.

Learned State counsel also points out that as per custody certificate dated 13.09.2022, pursuant to an order dated 02.01.2004, passed by learned Judicial Magistrate Ist Class, Hisar, appellant was released on bail on 07.01.2004 in this case. Subsequently, vide order dated 08.09.2005, passed by this Court in CRM-40679-2005, jail sentence of the appellant was directed to remain suspended during pendency of this appeal.

20. I have considered the submissions of both sides and perused the

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record carefully.

As already arguments have been noticed and dealt with, I conclude by holding that the appellant has failed to satisfy this Court to reach to the conclusion that it is a planted recovery from the appellant and, thus, while maintaining the judgment of conviction, dated 19.07.2005, passed by the learned Trial Court, appeal stands dismissed.

21. However, considering the fact that appeal is pending before this Court since August, 2005 and considerable period has already elapsed, resulting into a very long wait for the appellant, thereby causing lot of agony, therefore, by taking a lenient view in the matter of sentence, **I hereby reduce the period of substantive sentence from two years to one year, as awarded by the learned Trial Court. However, the other part of sentence with regard to the fine imposed, shall remain intact. Accordingly, appellant is directed to surrender within two months from today to undergo his remaining part of sentence.**

22. Let a copy of this judgment and order alongwith original Lower Court Record be sent back to the learned Trial Court immediately for initiating necessary steps, if any, in accordance with law.

(SANJAY VASHISTH)
JUDGE

April 13, 2023
Pkapoor

Whether Speaking/Reasoned: **YES/NO**
Whether Reportable: **YES/NO**