

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-498-SB-2004

Reserved on: 15.12.2022

Date of Pronouncement: 06.01.2023

Kehar Singh`

...Appellant

VS.

State of Haryana

...Respondent

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

Present : Mr. Gaurav Mohunta, Advocate (Amicus Curiae)
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.Shekhawat J.

Feeling aggrieved of the impugned judgment of conviction and order of sentence dated 16.02.2004, passed by the learned Additional Sessions Judge, Jagadhri, whereby the present appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'the NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/-, and in default thereof, to further undergo rigorous imprisonment for one month, the appellant has preferred the instant appeal before this Court.

The case of the prosecution in brief is that on 16.05.2003, ASI Hardev Singh was present in police post Kalanaur, when he received an information that the accused- Kehar Singh had gone to U.P. for bringing *choora post* and he is in the habit of selling *choora post* and he would come with

choora post through the kacha passage along the river Yamuna. On this, an information was sent to DSP (Headquarter), as per the provisions of Section 42 of the NDPS Act after the said information was reduced into writing and the complainant alongwith other police officials proceeded for setting up of a nakka. The police team reached at Lapra Road and started checking the passers-by. In the meantime, a person came on a cycle from Lapra side and he was stopped and asked about his name and address, who disclosed his name to be Mohinder s/o Kripa Ram, caste Harijan, resident of village Jai Ram Pura, Police Station Buria. While the complainant was talking to him, one more person came, who was holding a cloth bag in his right hand and had come from the side of Yamuna on foot. On seeing the police party, he entered in a sugarcane field on the pretext of urination. However, the complainant alongwith other police officials caught him and he disclosed his name to be Kehar Singh. The Police party raised the suspicion that he was having some contraband in his cloth bag and a consent memo under Section 50 of the NDPS Act was reduced into a writing. He gave his consent that he shall get his search conducted in the presence of the gazetted officer and on this, Ashok Kumar, DSP (Headquarter) was called at the spot. However, the DSP (Headquarter) stated that Kehar Singh and his bag should be produced before him and on this, Kehar Singh, accused was taken to the office of DSP (Headquarter) and his bag was checked and on checking, *choora post* (poppy straw) weighing 3 kgs 750 grams was recovered. After recovery, two sample parcels of 250 grams each were prepared for analysis and the remainder of the quantity was again put in the same bag and sealed separately.

The accused as well as the case property were produced before the concerned SHO and even he had put his own seal bearing Mark 'DR' on all the parcels. Thereafter, the case property was deposited with the incharge of the Malkhana and one sample parcel was sent to the FSL, Madhuban for examination. After analysis, it was found to be containing poppy straw (*choora post*).

After necessary investigation, the challan was presented in the trial Court and after finding sufficient evidence against the appellant/accused, the learned trial Court ordered framing charge under Section 15 of the NDPS Act against the present appellant, to which he pleaded not guilty and claimed trial.

In order to bring home the guilt of the accused, the prosecution examined 7 witnesses. Ashok Kumar, DSP appeared as PW-1, in whose presence, the search of the appellant was conducted. The accused was carrying a bag and on his direction, the bag was checked and was found containing 3 kgs 750 grams of poppy straw (*choora post*). The search and seizure procedure was conducted in his presence. The prosecution further examined PW-2 Nand Lal ASI, who had recorded the FIR Ex.PC on receipt of the ruqa Ex.PB sent by ASI Hardev Singh. PW-3, Hardev Singh ASI stated that on receipt of the secret information on 16.05.2003, he alongwith other police officials reached to the turn of village Ishapur and caught the accused with the contraband. He also served notice Ex.PE to the accused, apprising of his right to have a search either before the gazetted Officer or a Magistrate, in terms of Section 50 of the Act. Ultimately, he was produced before the DSP (Headquarter) who was a gazetted officer and he had conducted the initial investigation as well. The parcels were prepared at the spot and the memos in this regard were accordingly drawn at the

spot. The prosecution further examined PW-4, SI Des Raj, who was posted as SHO Police Station, Sadar, Yamuna Nagar and the accused as well as the case property were produced before him in the police station. He also verified the facts of the case and ultimately presented the report under Section 173 Cr.P.C. The prosecution further examined Ram Kumar, Head Constable as PW-5, who was part of the raiding team as well as was a witness to various memos during the course of investigation. The EHC, Satpal Singh, PW-6 delivered the special report to the Area Magistrate and other officers on the same day without any delay. Even PW-7, HC Balinder Singh was posted as MHC in Police Station, Sadar, Yamuna Nagar on 16.05.2003. On that day, at about 7.30 p.m., ASI Hardev Singh deposited three parcels of the case property with him and the parcels were sealed with the seal impressions bearing marks HS, AK and DR. On 19.05.2003, he sent one sample parcel to FSL, Madhuban through constable Satpal Singh. Till the time, the parcels remained in his custody, he did not tamper with the same nor allowed anyone else to do so.

After prosecution evidence was closed, the entire incriminating evidence was put to the accused/appellant and he pleaded his false implication. He opted to lead evidence, however, ultimately, he did not lead any evidence in his defence.

I have heard 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 at the time of arrest of the accused/appellant, an independent witness Mohinder Singh was joined, but he was not examined during the course of trial and the appellant was liable to be acquitted by this Court. It was further submitted that after use,

the seal was not handed over to an independent witness and false implication of the accused in the instant case cannot be ruled out. The submissions made by learned counsel for the appellant have been seriously disputed by the learned State counsel by contending that these were just mere irregularities in the search and cannot vitiate the seizure of the articles.

I have heard the respective contentions raised by the learned counsel for the parties and find no substance in the submission raised by the learned counsel for the appellant. The non-compliance of the provisions of Section 100 and 165 of the Code of Criminal Procedure would amount to an irregularity and the effect of the same on the main case depends upon the facts and circumstances of each case. The Court has to consider as to whether any prejudice has been caused to the accused and has to examine the evidence in its totality. It is well settled that the testimony of a witness is not to be doubted or discarded only on the ground that he happened to be an official witness; but as a rule of caution and depending on the circumstances of the case, the Courts should look for an independent corroboration. In the instant case, the failure to associate independent persons in the search would not effect the prosecution case in toto and the same cannot be thrown out or doubted on that ground alone. Moreover, the report of FSL, Madhuban Ex.PJ clearly shows that the specimen seal was also sent to the laboratory with the sample parcel. The seals on the sample parcels were compared with the specimen seal before examination. Consequently, it is apparent that the parcels alongwith the sample seals were deposited at the Malkhana and were sent simultaneously to FSL, Madhuban for analysis. Even the learned counsel for the appellant has failed to show any

prejudice to the accused in this regard. Consequently, the submissions made by learned counsel for the appellant are liable to be rejected by this Court.

This Court has further perused the testimonies of all the official witnesses and found the same worthy of credence. Even the witnesses were subjected to lengthy cross-examinations but nothing material could be elicited during the said cross-examination and the witnesses produced by the prosecution are liable to be believed by the Court.

Consequently, the impugned judgment passed by the learned trial Court is ordered to be upheld. In alternative, the learned counsel for the appellant has submitted that the alleged recovery was effected from the appellant on 16.05.2003 and he has faced the agony of trial for the last more than 19 years. Even as per the charge-sheet, he was aged about 30 years at the time of framing of charges i.e. on 22.09.2003 and it is apparent from his custody certificate that he never indulged in any other criminal activity after grant of bail by this court. Even he has undergone 01 month and 01 day of actual sentence and a lenient view may be taken in the matter.

In that way, while upholding the judgment of conviction passed against the appellant/accused, the order of sentence is modified and his sentence is reduced to the one already undergone by him in this case. Whereas, the fine part is kept as intact. The appellant/accused is directed to deposit the amount of fine in the trial Court within a period of three months from today, if not already paid and in case of default of payment of fine, the appellant shall be liable to be taken into custody and made to undergo the sentence of RI for one month by the learned Chief Judicial Magistrate, concerned by issuing non-bailable warrants against him.

With the aforesaid modifications, the instant appeal is partly allowed.

Intimation be sent to the learned Chief Judicial Magistrate, concerned for necessary compliance.

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. The trial court record be sent back.

In the end, I record my appreciation for Mr. Gaurav Mohunta, learned Amicus Curiae, for the able assistance rendered to this Court.

06.01.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes