

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

353

CRA-S-866-SB-2004 (O&M)

Reserved on:02.12.2022

Date of Decision: 07.02.2023

Balbir Singh

...Appellant

Versus

State of Punjab

... Respondent

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

Present : Mr. K.P.S. Virk, Advocate
for the appellant.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

N.S.SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 19.03.2004 passed by the Court of learned Judge, Special Court, Patiala, whereby, the appellant was convicted under Section 15(c) of Narcotics Drugs and Psychotropic Substance Act, 1985 (in short, '**the NDPS Act**') and was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 lac alongwith default stipulation.

The brief facts of the case are that on 10.02.2001, ASI Tarsem Lal alongwith other police officials set up a *nakka* on the bridge of the canal in the area of village Bibipur and in the meantime, Sukhdev Singh, a public witness came there and started talking to him. In the meantime, a canter bearing registration No. RJ-02-G-2311 was seen coming from the side of village Dharamheri on the *kacha* path, which was signaled to stop with the torch light by ASI Tarsem

Lal and the driver of the canter stopped the same and ran away after leaving the canter at the spot. Two more persons also, who were sitting by the side of the driver succeeded in fleeing from the spot. However, the present appellant was apprehended at the spot and he disclosed the names of his accomplices as Sukha, Bira and Jasbir Singh, all residents of village Sarola. Suspecting the transportation of the contraband in the canter, ASI Tarsem Lal informed the accused that search of the canter was to be conducted and if he desired, the search could be conducted in the presence of a gazetted officer or a Magistrate. The accused opted to get search conducted from a gazetted officer and a separate memo was prepared in this regard, which was signed by the accused and attested by Sukhdev Singh, public witness and ASI Jagdish Chand. Shamsher Singh Bhoparai, DSP (D) Patiala was called at the spot and after arriving at the spot, he disclosed his identity and the accused agreed to get the search conducted from ASI Tarsem Lal in the presence of the DSP (D) Patiala and again a memo was signed by the accused, which was attested by Sukhdev Singh, public witness, ASI Jagdish Chand and DSP Shamsher Singh. The search of the canter, which was conducted by ASI Tarsem Lal with the help of other police officials led to the recovery of 11 bags containing poppy husk. Two samples of 250 grams each were drawn from each bag and parcels were prepared and the remaining quantity of the poppy husk in each bag weighed to be 31.500 kgs. All the parcels containing samples as well as bags containing the remaining poppy husk were separately sealed by ASI

Tarsem Lal with his seal bearing impression 'TL' and also with the seal 'SS' of DSP, which were also affixed on the chit separately.

A memo was prepared with regard to taking into possession of the canter as well as the case property, which was attested by ASI Jagdish Chand, public witness Sukhdev Singh and DSP Shamsher Singh. Seal after use was kept by the DSP with him whereas ASI Tarsem Lal handed over the seal to ASI Jagdish Chand after use. ASI Tarsem Lal also conducted the initial investigation at the spot. The grounds of arrest were supplied to the accused vide separate memo and the personal search memo was also prepared regarding the recovery of Rs. 160/- from the personal search of the accused and all the memos were signed by the accused and attested by the witnesses. A special report from the spot by ASI Tarsem Lal through Constable Narinder Singh sent to the SHO. After returning the police station, ASI Tarsem Lal produced the case property, accused and witnesses before Balwinder Singh, the then Station House Officer and the SHO verified the facts of the case and affixed his seal bearing impression 'BS' on all the parcels as well as the chit. On directions of the SHO, the case property was deposited with MHC Jagga Ram and on the next day, the case property was produced before the learned Illaqa Magistrate by ASI Tarsem Lal vide request Ex.PD and the order Ex.PD/1 was passed on the same. After producing the case property before the learned Illaqa Magistrate, the case property was again deposited with MHC Jagga Ram in the police station.

After the initial investigation, the police found sufficient incriminating evidence against the accused and the final report under Section 173 Cr.P.C. was presented against the accused for the commission of an offence punishable under Section 15 of the NDPS Act.

Finding prima facie case, the learned trial Court ordered framing of charge under Section 15 of the NDPS Act against the present appellant, to which, the appellant pleaded not guilty and claimed trial. As a consequence, the prosecution examined seven witnesses to prove the charge against the present appellant.

The statement of MHC Jagga Ram recorded as PW1, who was posted as MHC in Police Station Samana and he had tendered his affidavit Ex.PA as his statement. He clearly stated that so long as the parcels remained under his custody, there was no tampering by him or anyone else. The statement of Constable Santokh Singh was recorded as PW2, who tendered into evidence his affidavit Ex.PB. Satya Narain Sharma, Lower Division Clerk, RTO, Alwar, was examined as PW3 and he proved on record that the canter was registered in the name of Charan Singh son of Suresh Kumar and he was the owner of the said vehicle. The statement of Inspector Balwinder Singh, was recorded as PW4, who was posted as SHO on 10.02.2001. The case property, parcels containing sample as well as the canter were produced before him. Even, the accused and the witnesses were also produced. He verified the case property and also affixed his seal on all the parcels bearing impression 'BS'. He also

affixed seal impression on the specimen seal chit Ex.P2. On his directions, the case property was deposited with MHC Jagga Ram PW1 by ASI Tarsem Lal. He also prepared the challan against the accused. On the next day, on his directions, ASI Tarsem Lal picked the case property from MHC Jagga Ram and produced the same before the learned Illaqa Magistrate alongwith his request Ex.PD, duly signed by him. PW5 ASI Tarsem Lal was the key witness of the prosecution, who supported the case of the prosecution and narrated the facts as mentioned in the FIR. The prosecution further examined ASI Jagdish Chand as PW6, who was the part of the raiding team on 10.02.2001 and deposed on similar lines. He was also a witness to the various memos prepared by the prosecution during the course of investigation and also exhibited the said record before the learned trial Court. Shamsheer Singh DSP was examined as PW7, who had reached the spot after receiving the telephonic message and in his presence, the search was conducted by ASI Tarsem Lal from the canter. He had also affixed his seal on the sample parcel as well as on the remainder quantity of the poppy husk which was recovered from the present appellant.

After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and he stated that he had been falsely involved in the present case and was taken from his house on 09.02.2001 in the presence of Hakim Singh Sarpanch and Santokh Singh by ASI Tarsem Lal. The motive behind involving the appellant in the present case was that he had become a

witness against ASI Tarsem Lal in a raid conducted on the orders of this Court.

To prove his defence, the accused examined Santokh Singh as DW1. As per the said witness, in the night intervening 9/10.02.2001, ASI Tarsem Lal alongwith 10/12 police officials raided the house of the accused and even Tehal Singh called DW1 Santokh Singh at the spot. He saw the police officials, who had taken away Balbir Singh accused and even confronted the police officials but the police party did not release the accused. After 15 days of the said incident, they had gone to the Office of SSP Patiala and made a complaint in this regard. The photocopy of the application has been placed on record as Mark A. DW2 Hakim Singh also deposed on similar lines and also stated that he had filed the application Mark-A before the Governor of Punjab. HC Dharampal DW3 had brought DDR register of Police Station Samana and exhibited entry No. 28 dated 10.02.2001 as Ex.DE.

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

Learned counsel for the appellant submitted that the provisions of Section 57 of the NDPS Act had not been complied by the Investigating Officer, which was evident from the fact that neither the report under Section 57 of the NDPS Act had been produced before the learned trial Court nor the same was part of the challan. Even no witness had mentioned about the report under Section 57 of

the NDPS Act and the said non-compliance vitiated the recovery proceedings. The submissions made by the learned counsel for the appellant have been vehemently opposed by the learned State counsel by contending that the Investigating Officer had duly informed his higher officers and sufficient compliance was there.

I do not find any substance in the submission made by the learned counsel for the appellant. First of all, it is observed that the provisions of Section 57 of the NDPS Act are not mandatory and are directory in nature. Consequently, in any case, the non-compliance of Section 57 of the NDPS Act would not vitiate the prosecution case in any manner, if the prosecution evidence is found to be worth placing reliance. Still further, in the instant case, it is apparent from the testimony of PW5 ASI Tarsem Lal that he had sent a telephonic message to DSP (D) Patiala, who had reached at the spot. Still further, even he had sent a special report from the spot through Constable Narender Singh to the SHO and had also produced the case property, the accused and the witnesses before the SHO Balwinder Singh, who had verified the facts of the case and the case property as well. Still further, the necessary information was already forwarded by the Investigating Officer to his higher officers and this constituted substantial compliance and it cannot be stated that the absence of any special report further had prejudiced the accused in any manner. While holding that the provisions of Section 57 of the NDPS Act are directory in nature, the Hon'ble Supreme Court in the matter of

Gurmail Singh Vs. State of Punjab AIR 2020 SC 2161 held as follows:-

9. The mere fact that the witness of seizure Hari Krishan has appeared as DW1 does not led to the conclusion that the entire prosecution story has to be disbelieved. There are signatures of Hari Krishan in the seizure memo along with other police officers. The Trial Court as well as the High Court has rightly accepted the seizure, which was held to be in accordance with law. DW1 has not denied his signatures on the seizure memo rather his excuse was that it was taken on the blank paper which was rightly disbelieved by the Courts below. In so far as production of the case property, the Judicial Magistrate himself has appeared in the witness box and deposed that it was produced in the Court. The mere fact that one seal was illegible does not vitiate the proceeding. In so far as submissions on the basis of Section 57 of NDPS Act is 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 mere 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 v. State of Kerala (2001) 6 SCC 692 has held that non-compliance of Section 57 would not vitiate the prosecution case. In paragraph 12 following was laid down:

"The last submission for the appellant is, there is noncompliance 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. Ext.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 PW5 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 PW5 has sent all the relevant material to his superior officer immediately. Thus we do not find any violation of Section 57 of the Act."

Still further, learned counsel for the appellant submitted that the appellant was apprehended, while he was sitting in the front of the canter, whereas the recovery of 11 bags of poppy husk had been effected from the rear side of the canter. The appellant was not the owner of the canter and the driver of the canter fled away from the place of occurrence. Still further, the evidence led by the prosecution

did not suggest that the appellant had any connection or link with the canter and the conscious possession of the appellant over the contraband remained unproved and the appellant was entitled to benefit of doubt. The submissions made by the learned counsel for the appellant have been opposed by the learned State counsel by submitting that the appellant and his accomplices were transporting the contraband in the canter and his accomplices had run away from the spot and it cannot be presumed that the appellant had no knowledge with regard to the contraband in the canter. Still further, Section 35 of the NDPS Act provides that in any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental State but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. The explanation appended to Section 35 of the Act further clarifies **“culpable mental state”**, which included intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

I find that the above submissions made by the learned counsel for the appellant do not hold ground and the same are liable to be rejected. The appellant alongwith his accomplices were carrying huge quantity of poppy husk in a canter and on seeing the police party, the canter was stopped and his accomplices ran away from the spot. However, the present appellant was apprehended at the spot. The statutory presumption under Section 35 of the Act is against the present appellant and he could not lead any evidence to show that he

had no knowledge of the fact that the contraband was loaded in the said canter. Still further, the huge quantity of the contraband was visible apparently and the appellant could not offer any explanation for transporting the same nor could show any licence or permit to transport the same.

Still further, the learned counsel for the appellant submitted that Sukhdev Singh was joined in the investigation, but neither the seal after use was handed over to him nor he was examined during the trial. His testimony was very crucial and adverse inference must be drawn for non-examination of an independent witness despite his availability. The learned counsel appearing on behalf of the State opposed the said submission and submitted that vide statement dated 31.01.2002, the learned public prosecutor had given up PW Sukhdev Singh as having been won over by the accused. Thus, his non-examination by the prosecution would not be fatal and there was sufficient incriminating evidence in the shape of the testimonies of the official witnesses. I find sufficient force in the submissions made by the learned State counsel that the testimonies of official witnesses could not be rejected only on the ground of their official status. In fact, the Court must insist for independent corroboration, but it is a matter of common knowledge that sometimes the independent witnesses do not wish to appear as witnesses against drug peddlers and sometimes such witnesses are influenced by the accused. Consequently, it is preferable to examine the testimonies of official witnesses with caution and circumspection

and if such testimonies inspires confidence, the conviction can be based on such evidence. In the instant case, I have gone through the testimonies of various official witnesses and they had withstood the test of cross-examination. The testimonies of such witnesses appeared to be truthful and could not be shattered in any manner during the course of trial. Thus, the non-examination of independent witnesses would have no effect on the prosecution case.

Learned counsel for the appellant submitted that there had been delay of 18 days in sending the samples to the FSL as recovery was effected on 10.02.2001 whereas the samples were sent to FSL only on 28.02.2001. There was no explanation for such an inordinate delay in sending the samples and the prosecution miserably failed to prove that the case property remained intact in the hands of the police officials. The learned State counsel opposed the said submission by submitting that there was no tampering with the case property in any manner. In fact, the submissions made by the learned State counsel in this regard carry more weight and rather liable to be upheld. The prosecution examined PW1 MHC Jagga Ram, who clearly stated that he remained posted as MHC from 2000 to July 2001 and tendered his affidavit Ex.PA in his evidence. He clearly stated that from 10.02.2001 to 28.02.2001, the case property remained in his custody. Neither he tampered with the case property nor allowed anyone to tamper with the same and it remained in the safe custody. Only because of some procedural delay or negligence, the sample could not be sent to FSL for 18 days and this does not

prejudice the case of the accused in any manner. Still further, the case property had already been produced before the learned Illaqa Magistrate, who had initialed the same. Apart from that, the SHO had also put his seal on the case property. Even, the seals were found to be intact by the FSL, when the samples were analyzed. Thus, the delay in sending the sample did not effect the prosecution case in any manner and the findings recorded by the learned trial Court are liable to be upheld.

The learned counsel for the appellant also submitted that the appellant had taken a specific defence that he had been falsely implicated in the instant case and was picked from his house on 09.02.2001 in the presence of Hakim Singh Sarpanch and Santokh Singh by ASI Tarsem Lal, Investigating Officer. In fact, the appellant had become a witness in a raid on the orders from this Court on ASI Tarsem Lal and due to this reason, the appellant was falsely implicated in the present case. Santokh Singh was examined as DW1 whereas Hakim Singh appeared as DW2, who categorically deposed the facts with regard to the aforementioned submission. Even they had moved representations to SSP Patiala and Governor of Punjab regarding the false implication of the appellant. Even, their testimonies remained unshakable during cross-examination. Still further, the defence version was more probable and trustworthy and the story of the prosecution was liable to be disbelieved by the trial Court. The learned State counsel while opposing the submission contended that the appellant had failed to prove any such

representation and the representation was placed on record as Mark A. The appellant had produced no evidence from the office of any higher police officer to prove the said fact. I find that there are no grounds to accept the submissions made by the learned counsel for the accused. As per DW1 Sukhdev Singh and DW2 Hakim Singh, the present appellant was taken away by the police on the night of 09/10.02.2001. When the appellant was allegedly taken away, there was no complaint either by DW1 Sukhdev Singh or by DW2 Hakim Singh and rather they made complaint to the SSP after a period of 15 days. Even, the copy of the said representation was not exhibited by the present appellant. Thus, the learned trial Court rightly believed the prosecution version and convicted the present appellant.

In view of the above discussion, the findings recorded by the learned trial Court are based on correct appreciation of evidence and law and are liable to be upheld by this Court. The impugned judgment of conviction and order of sentence warrant no interference.

Accordingly, the appeal is dismissed and the impugned judgment of conviction and order of sentence dated 19.03.2004 passed by the learned Judge, Special Court, Patiala, are upheld and affirmed.

The appellant/accused is directed to surrender within 15 days from today, failing which, the CJM concerned shall issue non bailable warrants against the present appellant/accused and shall

commit him to custody to serve the remaining sentence of imprisonment.

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.

07.02.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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