

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-334-SB-2009

Reserved on:30.11.2022

Date of Pronouncement:06.01.2023

Tarsem Singh

...Appellant

vs.

State of Haryana

...Respondent

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

Present : Mr. P.S. Sekhon, Advocate
for the appellant.

Mr. Rajinder Kumar, Deputy Advocate General, Haryana,

N.S.Shekhawat J.

Challenging the correctness and legality of the impugned judgment of conviction and order of sentence dated 07.02.2009, passed by learned Additional Sessions Judge, Fatehabad, whereby, the present appellant was convicted under Section 18 (C) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as Act) and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for a period of one month, the appellant has preferred the instant appeal before this Court.

The story of the prosecution, as it emerges from the report under Section 173 Cr. P.C., is that on 23.12.2006, ASI Fauja Singh along with other police officials was present in connection with patrolling and crime prevention, a person namely Harish Kumar son of Nanak Chand, caste Mahajan, resident of

Ward No.13, Tibba Colony, Ratia met him by chance and started talking to him. In the meantime, a person having a cloth bag on his shoulder was seen coming from the front side and on seeing the police party, all of sudden, turned back and started walking towards a vacant plot on the right side. On suspicion, he was caught and he disclosed his name and address as Tarsem Singh @ Semi son of Chand Singh, caste Saini, resident of Ward No.1, Ratia. The police party raised the suspicion that he was carrying some contraband in the bag, hanging on his shoulder. A notice under Section 50 of the NDPS Act was served upon him and he was given the option that he could get his search conducted in the presence of any Gazetted Officer or a Magistrate and they could be summoned at the spot as it was his legal right. However, the accused reposed confidence in the Investigating Officer. After that, the search was conducted and a polythene envelope was recovered from the bag of the accused. From the plastic envelope, one another plastic envelope was recovered and on checking the same, 180 grams of opium was recovered. Two sample parcels of 10 grams each were separated and were converted into parcels and the seals were affixed on the same. The remainder of the quantity was also sealed separately by affixing the seals on the same. The seal after its use was handed over by ASI, Fauja Singh to HC Kashmir Singh and FIR Ex.P2 was registered against the accused. ASI Fauja Singh produced the accused alongwith case property and witnesses before SHO Kulwant Singh and the SHO satisfied himself with regard to the facts of the case and again affixed his own seal bearing impression "KS" on the parcels and the same property was deposited with the MHC of the police station. The complainant ASI Fauja Singh produced the accused alongwith the case property in the Court of Learned Area Magistrate and moved an application Ex.P-13 and

the order Ex.P-14 was passed on the application Ex.P-13. After necessary investigation, the challan under Section 173 Cr.P.C. was filed in the Court against the accused.

Finding a *prima facie* case, the accused was charge-sheeted under Section 18 of the Act, to which the accused pleaded not guilty and claimed trial.

In support of the prosecution case, seven witnesses were examined. Rajender Singh, ASI, PW-1 recorded the formal FIR Ex.P2 and also made his endorsement Ex.P-3 on the rukka Ex.P1. HC Kashmir Singh, PW2 was part of the police team, which apprehended the accused at the spot. He was a witness to the entire search and seizure procedure and submitted the facts with regard to the notice Ex.P-4, which was served upon the accused under Section 50 of the Act. He also submitted the facts with regard to the initial investigation conducted at the spot. ASI Niranjan Singh was further examined as PW3, who stated that the report Ex.P-8 under Section 55/57 of the Act was received by Additional S.P., City Fatehabad and there was sufficient compliance of the said provisions. The testimony of PW-4 Constable Jasbir Singh was formal in nature. The prosecution examined PW-5 HC Madan Lal, who was posted as MHC on 23.12.2006. The IO deposited the case property with him with proper seals and he handed over the sample parcel to Constable Jasbir Singh on 28.12.2006. The prosecution examined Inspector Kulwant Singh as PW6, who was posted as SHO in Police Station Ratia on 23.12.2006. ASI Fauja Singh produced before him the case property, the sample parcels, the witnesses and the accused along with the report under Section 55 of the Act Ex.P-8. He verified the facts of the case and affixed the seal “KS” on the sample parcels and after completion of the investigation, he prepared the challan under Section 173 Cr.P.C. The

prosecution further examined PW7 ASI Fauja Singh, who was the star witness of the prosecution and submitted the facts, as verified in the FIR and fully supported the case of the prosecution. With the examination of seven witnesses, the prosecution closed its evidence.

The entire incriminating evidence was put to the appellant/accused in his statement under Section 313 Cr.P.C. and he pleaded his false implication. He also opted to lead defence evidence. In his defence, Harish Kumar was examined as DW1, who stated that police never recovered any opium from Tarsem, accused in his presence and the police had obtained his signatures on the blank papers in the month of December 2006. He never met the police party and accused was not involved in selling the opium etc. After examination of DW1, the defence evidence was closed and the case was disposed of by the learned Trial Court.

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

Learned counsel for the appellant has vehemently argued that Harish Kumar was the only independent witness, however, the prosecution failed to examine him as a witness. Harish Kumar appeared as DW1 and submitted that no recovery was effected from the accused/appellant in his presence. He never met any police party at Ratia Chowk and he was not aware as to whether he had been cited as a witness by the police in the present case. Consequently, the appellant was entitled to benefit of doubt and was liable to be acquitted. The said submission was opposed by learned State Counsel by submitting that the said witness had been won over by the accused and he appeared as a defence witness and supported the case of the accused.

Consequently, the non-examination of Harish Kumar, would have no effect on the merits of the case.

I find no substance in the argument raised by learned counsel for the appellant. The non-compliance of the provisions of Section 100 and 165 of Code of Criminal Procedure would amount to an irregularity and the effects of the same on the main case depends on the facts and circumstances of each case. Even the Court has to examine as to whether any prejudice has been caused to the accused in such a situation. In the instant case, Harish Kumar, who was initially joined by the police party was won over by the accused and he appeared as a defence witness. Consequently, the case of the prosecution would not be affected in any manner as there was sufficient incriminating evidence against the present appellant/accused. The prosecution had examined seven official witnesses to prove the charge and they had no reason to falsely implicate the present appellant in a criminal case. Moreover, even the present appellant had not assigned any reasons for falsely implicating him in a case under the Act. Moreover, 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. Consequently, the submission raised by learned counsel for the appellant is liable to be rejected.

Learned counsel for the appellant vehemently argued that a sample of 10 gram was collected during the seizure and a minimum quantity of 25 grams of the contraband was required for the analysis. Moreover, the sample parcel of 10 gram was recovered, whereas the sample weighed 16.09 grams in the FSL and this casts a cloud of suspicion on the prosecution story. Again I find no substance in the said argument as the sample weighed 16.09 grams in the

FSL, Madhuban with container. Moreover, the tests were conducted by applying the analytical techniques by FSL, Madhuban and the sample was found to be sufficient for the analysis. It has nowhere been stated that the sample was found to be insufficient, rather the sample was identified as opium containing 1.5% morphine. Still further, it was submitted by learned counsel for the appellant that there was delay of 5 days in sending the sample to the FSL, which is fatal to the case of prosecution. Moreover, the seal was also retained by the police and the sample was also with the police, so chances of tampering with the sample could not be ruled out. Apart from that, even the mandatory provisions of the NDPS Act were not complied with by the prosecution and the appellant was entitled to acquittal in such circumstances. The submissions raised by learned counsel for the appellant have been refuted by learned State counsel.

I have considered the rival submissions made by learned counsel for the parties and find no substance in the arguments raised by learned counsel for the appellant. The prosecution has led sufficient evidence to show that so long as the samples remained in the custody of police officials, there was no tampering with the prosecution evidence. PW5 HC Madan Lal, who was posted as MHC in the Police Station clearly stated that the samples were sealed with three seals of "FS" and one seal of "KS" and he handed over the sample to Constable Jasbir Singh on 28.12.2006 for depositing the same with the FSL. Even the FSL report clearly shows that the samples were properly sealed and the seals were intact and tallied with the specimen seal. Thus, it is apparent that no prejudice has been caused to the appellant by delay of five days in sending the samples to the FSL. Even the appellant has failed to point out any specific non-compliance of the mandatory provisions of NDPS Act.

From the above discussion, it is apparent that the prosecution had proved the case beyond the shadow of reasonable doubt and had complied with all mandatory provisions of the NDPS Act and the impugned judgment of conviction passed by the learned Trial Court does not suffer from any infirmity and is liable to be upheld by this Court.

However, this Court can not lose sight of the fact that the FIR in the instant case was registered on 23.12.2006 and the present appellant has faced the agony of trial for the last more than 16 years. Even the recovery of contraband from the present appellant is non-commercial in nature. During the course of hearing, the learned State Counsel has produced the custody certificate and as per the same, the appellant/accused has undergone actual sentence of 17 days. Even the custody certificate shows that the present appellant was not involved in any other case, after he was released on 19.02.2009 on bail. In such circumstances, the ends of justice would be suitably met, if the sentence of imprisonment is reduced to the period already undergone by him.

Resultantly, the conviction of the appellant, as recorded by the learned trial Court is maintained. However, his substantive sentence of imprisonment is reduced to the one already undergone by him. The sentence of fine will remain the same and the appellant is directed to deposit the same within a period of three months from today, if not already deposited; failing which he shall undergo further rigorous imprisonment for a period of one month, as observed by the learned Trial Court.

The present appeal is accordingly disposed of.

All 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 for filing the appeal, in accordance with law. The trial court record be sent back.

06.01.2023

Hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes