

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

CRA-S-378-SB-2005 (O&M)

Reserved on: 31.01.2023

Date of Decision: 07.02.2023

Hari Ram

...Appellant

Versus

State of Haryana

... Respondent

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

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

Mr. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

The present appeal has been preferred against the judgment of conviction dated 18.11.2004 and order of sentence dated 20.11.2004 passed by the Court of learned Special Judge, Rohtak, whereby, the appellant was convicted under Section 15 of Narcotics Drugs and Psychotropic Substance Act, 1985 (in short, '**the NDPS Act**') and was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 15,000/- alongwith default stipulation.

The brief facts of the case are that SI Daya Ram was present at Hissar road, Rohtak on 09.09.2002 alongwith other police officials in connection with crime checking and in the mean time, one auto rickshaw was seen coming from the side of village Bahu Akbarpur. On seeing the police party, it stopped at some distance. One person alighted from the vehicle and started going towards a factory, having a bag in his right hand. The police suspected that he was carrying some contraband and was apprehended. A notice under Section 50 of the NDPS Act was served upon him asking him to opt as to whether he wanted to get his search conducted in the presence

of a Magistrate or a gazetted officer. The accused replied in writing and opted to get his search conducted in the presence of a gazetted officer. On this, Mohammad Ishaq Khan, DSP, reached at the spot on getting the telephonic information and he was apprised of the facts of the case. At the instance of Mohammad Ishaq Khan, DSP, search was conducted and 4 kgs and 500 gms poppy husk was recovered from the bag. Two samples of 100 grams each were separated. The remainder quantity of poppy husk was kept in the same bag and three separate parcels were prepared and were duly sealed with the seal of 'DR' and 'MIK'. The seal 'MIK' was retained by the DSP, whereas the seal 'DR' was handed over to Head Constable Atma Parkash and the parcels were taken into possession by the police. *Rukka* was sent to the police station for registration of a criminal case and a formal FIR was recorded in the present case by ASI Samay Singh. After initial investigation, the accused, witnesses and the three parcels were produced before Jai Singh SHO, who verified the facts of the case and after affixation of his seal, directed the police officials to deposit the same with MHC. The statements of the witnesses were recorded and the necessary investigation was conducted by the police, which finally led to the presentation of the challan against the accused under Section 173 Cr.P.C.

Finding a prima facie case, the learned trial Court ordered framing of the charge under Section 15 of the NDPS Act against the accused, to which, he pleaded not guilty and claimed trial.

To prove the charge against the accused, the prosecution examined nine witnesses, during the course of trial.

The prosecution examined HC Attam Parkash as PW1, who was part of the police team and supported the case of the prosecution in all material particulars. PW2 Head Constable Ram Kumar and PW3 Constable Subhash Singh tendered their affidavits Ex.PC and Ex.PD, respectively. The testimonies of both of them were formal in nature. Constable Randhir Singh was examined as PW4, who produced rojnamcha dated 09.09.2002. He produced the DDR Ex.PE on record, in which, he had made the entries with regard to the receipt of the information from SI Daya Ram and Constable Vijender Singh. SI Samay Singh was examined as PW5, who had recorded the formal FIR Ex.PF/1 in Police Station City Rohtak, after making an endorsement Ex.PF/2 on the *rukka* and sent a copy of the FIR to the learned Illaqa Magistrate through Constable Subhash without unnecessary delay. Mohammad Ishaq Khan, DSP, was examined as PW6, who had gone at the spot on receipt of the telephonic information on 09.09.2002 and had given the option to the accused to get his search conducted in the presence of a gazetted officer or a Magistrate. He also supported the prosecution case. SI Daya Ram was examined as PW7, who was heading the police party on 09.09.2002, which had stopped the accused and had effected the recovery from him. The prosecution further examined PW8 EHC Jagbir Singh and PW9 Inspector Jai Singh. PW9 Inspector Jai Singh was posted as SHO on 09.09.2002 and the accused, case property and all the

witnesses were produced before him. He had verified the facts of the case and he had put additional seal on the samples as well as remainder quantity of the poppy husk. All the aforesaid witnesses had supported the case of the prosecution and were subjected to lengthy cross-examination but no dent could be caused in their respective testimonies.

After closure of the evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and he pleaded his false implication. He stated that he was running a dairy in Dairy Mohalla, Rohtak and used to supply milk to CIA Staff Rohtak. When he demanded money, he was picked up by the police from his dairy and was made to sit in the police station. The poppy straw was recovered from some other persons, who were released by the police after taking bribe from them and poppy straw was planted on him, whereas nothing was recovered from him and he was falsely implicated in the present case.

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

Learned counsel for the appellant vehemently argued that the alleged recovery had taken place on a busy road and no independent witness was made to join the process of search and seizure. In fact, no recovery was effected from the present appellant and due to a minor dispute over a trivial issue with the police, he was falsely involved in the present case. Still further, as per the story of the prosecution, independent witnesses had refused to join the

investigation, however, the said story is neither plausible nor believable. The submissions made by the learned counsel for the appellant have been vehemently opposed by the learned State counsel. I find sufficient force in the submission made by the learned State counsel. In fact, the testimonies of the official witnesses could not be thrown out only on the ground of their official status. No doubt, as a rule of prudence, the police should have associated the independent witness during the course of investigation. However, it is a matter of common knowledge that no person is normally willing to appear as a witness against the drug peddlers. Consequently, non joining of official witnesses will have no effect on the prosecution case, if the testimonies of official witnesses inspire confidence. In the instant case, the prosecution examined nine official witnesses, who had withstood the test of cross-examination and their testimonies could not be shattered in any manner. Consequently, the submissions made by the learned counsel for the appellant are liable to be rejected. Still further, during the course of arguments, learned counsel appearing on behalf of the appellant could not point out any violation of the statutory/mandatory provisions of the NDPS Act and only referred to certain minor contradictions appearing in the testimonies of the prosecution witnesses. In fact, the prosecution witnesses got a chance to appear as witnesses in the witness box after a lapse of several months and such minor contradictions and variations are bound to appear in the testimonies of the witnesses. The official witnesses have to conduct raids in various cases and, sometimes, they also forget few

of the facts of a particular case and no adverse inference can be drawn against them on the said ground. Thus, the learned trial Court has correctly placed reliance on the testimonies of the various prosecution witnesses and the findings recorded by the learned trial Court are well reasoned and are liable to be upheld by this Court.

However, during the course of arguments, it was brought to the notice of the Court, at the time of framing of charge, i.e., on 23.01.2003, the appellant was aged about 58 years and as per that, at present his age must be 77 years. Still further, the custody certificate further shows that the appellant had undergone three months and twenty six days of actual sentence out of total sentence of three years. Still further, the quantity of opium recovered from the present appellant was non-commercial in nature. Apart from that, the FIR in the instant case was registered on 09.09.2002 and the appellant is facing the agony of trial/appeal since last more than 20 years and no useful purpose will be served by sending the appellant behind the bars, when he is aged about 77 years of age at present. Thus, the impugned order of sentence is modified to the extent that the sentence awarded to the present appellant is ordered to be reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs. 15,000/- to Rs. 25,000/-, 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 further rigorous imprisonment for a period of three months.

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. 25,000/- as observed above, 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.

07.02.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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