

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

CRA-S-515-SB-2005

Reserved on: 10.02.2023

Date of Pronouncement: 09.03.2023

Mohinder Singh ...Appellant

vs.

State of Haryana ...Respondent

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

Present : Mr. Deep Singh Saini, Advocate for
Mr. Krishan Singh, Advocate
for the appellant.

Ms. Sheenu Sura, Deputy Advocate General, Haryana,

N.S.Shekhawat J.

Feeling aggrieved and dissatisfied with the judgment of conviction dated 01.03.2005 and order of sentence dated 02.03.2005, passed by learned Special Court, Kaithal, whereby the present appellant had been convicted under Section-15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as the NDPS Act) and was sentenced to undergo rigorous imprisonment for a period of eight months and to pay a fine of Rs.1000/- along with default stipulation, the appellant had preferred the present appeal before this Court.

The brief prosecution story, as it emerges from the report under Section 173 Cr.P.C is that on 28.09.2001, Amar Nath SI along with other police officials was present at 'T' point Titram chowk and in the meantime, one Haryana Roadways Bus came from the side of Jind and stopped there. One Sikh gentleman alighted from the bus and was carrying a bag of red and blue colour

on his left shoulder. He noticed the police party and started walking briskly on Hisar road. The police got suspicious and on suspicion, he was apprehended by the police officials. On enquiry by the police, he disclosed his name and address as Mohinder Singh son of Singara Singh, Labana Sikh, resident of Padta Bhoop Singh, Police Station Guhla, District Kaithal. Since there was a suspicion that he was carrying some narcotics substance, notice under Section 50 of the N.D.P.S Act was served upon him and was given an option as to whether he wanted to get his search conducted from a Magistrate or a Gazetted Officer. In reply to the said notice, the accused expressed his desired to get his search conducted from a Gazetted Officer. A consent memo was again prepared in this regard separately, which was thumb marked by the accused, whereas HC Rattan Singh and HC Manphool Singh signed the memo as witnesses. In the meantime, Pala Ram Sarpanch of Village Titram, reached at the spot and was apprised of the facts of the case. He was asked to join the investigation, however, he expressed his inability and left the spot. On this a telephonic message was sent to DSP Head Quarter and DSP Amir Singh along with his staff reached at the spot in a Government vehicle. The accused, witnesses and the case property were produced before him. The DSP made enquiries from them and verified the facts. On his asking, Amar Nath SI had taken the search of the bag of the accused. A small lock was there on the aforesaid bag and on instructions, the bag was opened and searched, poppy husk was found in two big polythene envelopes in the bag. On weighing, each polythene envelope was found to be containing 5 Kilograms of Poppy husk. From each polythene, two samples of 200 grams each were taken and the samples were separately converted into parcels and were duly sealed. The residue quantity contained in the polythene

envelopes were put back in the same red and blue coloured bag and sealed with the seal of 'AS' and 'AN'. The seal after use was handedover to HC Rattan Singh and the specimen seal impressions were retained. After initial formalities, the case property as well as specimen seal impressions were taken into possession by the police vide separate memo. A ruqa was sent by hand to the police station for registration of the FIR and a formal FIR was recorded. On reaching the police station, the accused, the case property and witnesses were produced before Ram Chander Inspector, who also verified the facts of the case and affixed his seal 'RC' on both the samples and residue and directed the I.O. to deposit the same with the MHC. A report under Section 57 of the NDPS Act was prepared and was sent to the DSP, who forwarded the same to the SP.

After initial investigation, a final report under Section 173 Cr.P.C was prepared by the police. Even the report of F.S.L was received to the effect that the samples were identified as poppy straw (Chooria Post).

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

To prove the case of the prosecution, six witnesses were examined. The prosecution examined PW-1 HC Raghbir Singh, who tendered his affidavit Ex. PA in his evidence. Similarly, C. Attar Singh was examined as PW-2, who tendered his affidavit Ex.PB in his evidence. SI Kitab Singh appeared as PW-3, who had recorded the formal FIR Ex.PC under his signatures. Ram Chander Inspector appeared as PW-4, who was posted as Incharge/SHO Police Station, Sadar, Kaithal on 28.09.2001. Amar Nath SI produced accused, case property and the witnesses appeared before him for verification and after verification of

the investigation, he had put his seal 'RC' on the parcels and directed the IO to deposit case property with the MHC. He prepared the report under Section 173 Cr.PC as well. Still further, Amir Singh, retired DSP was examined as PW5, who had reached the spot on getting a telephonic message and had witnessed the recovery proceedings at the spot. Similarly, SI Amar Nath was examined as PW6, who was heading the team, which apprehended the accused and effected the recovery from the accused. He also conducted the initial investigation after the seizure of the contraband from the accused.

After the closure of the prosecution evidence, Mohinder Singh, accused was examined by the Court and his statement was recorded under Section 313 Cr. PC. The entire incriminating evidence produced by the prosecution was put to him in the shape of various questions. The appellant/accused in his statement had stated that he was innocent and falsely implicated in the present case. Nothing was recovered from his possession and police had planted a false case on him. The accused/appellant did not lead any evidence in his defence.

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

Assailing the impugned judgment, learned counsel for the appellant vehemently argued that in the instant case nothing was recovered from the possession of the appellant/accused and was falsely implicated in this case. He further submitted that there was no compliance of Section 57 of the N.D.P.S Act. The report is silent with regard to the fact of a receipt of report by the DSP and SP. Even no date was mentioned under the signatures of DSP and SP. Consequently, it can be safely contended that there was no compliance of

Section 57 of the Act and the prosecution was obliged to send the report to the Senior officers within 48 hours of arrest of the accused or seizure of the contraband. The said submission has been vehemently opposed by the learned State counsel by contending that the learned Trial Court had recorded valid reasons for discarding the said argument. I have considered the rival submissions and find sufficient force in the submissions made by learned State counsel. In the instant case, the report Ex. PF was sent to the DSP by the Investigating Officer and he had forwarded the same to the SP without any delay. Amar Nath SI was examined as PW6 in the instant case and he clearly stated that on 28.09.2001 itself, he prepared a report under Section 57 of the Act and the same was sent to the higher officers. Amir Singh, the then DSP also appeared as PW5 and categorically deposed that on receipt of report Ex. PF he signed the same and forwarded it to SP, Kaithal.

Thus, it is apparent that Section 57 of the Act was sufficiently complied with and the findings recorded by the learned Trial Court are upheld.

Still further, it was further contended by the learned counsel that there was no independent corroboration of the prosecution case and the entire prosecution case is based on the testimonies of official witnesses, who were out to involve the present appellant. Still further, Pala Ram Sarpanch of village Titram joined the police party at the time of the recovery from the appellant, however he was not examined as a prosecution witness. The said submission has been vehemently opposed by the learned State counsel. I have minutely examined the said submissions. In fact, as a rule of question, the Court must look for independent corroboration in a criminal case. However, it does not mean that the testimonies of official witnesses can be discarded only on the

ground of their official status. If the testimonies of official witnesses inspire confidence, the same can be safely relied upon by the Courts. Apart from that, the prosecution examined six official witnesses in the instant case, who were cross-examined at length and had withstood the test of cross-examination. Thus, the said submission made by learned counsel for the appellant is liable to be rejected.

Still further, the learned counsel for the appellant further referred the certain minor contradictions appearing in the testimonies of official witnesses. However, I find no merit in the said submission. All these submissions, have been dealt with by the learned Trial Court in detail in the impugned judgment. I have perused the findings recorded by the learned Trial Court and find that valid and good reasons have been recorded by the learned Trial Court for rejecting such minor contradictions in the testimonies of various official witnesses. Further, it is apparent that such minor contradictions/variations appear in the testimonies of official witnesses, who got a chance to depose before the learned Trial Courts after several years. No other submission was raised. I have carefully gone through the judgment of conviction passed by the learned Trial Court. The learned Trial Court has rightly observed that the case property Ex.P-1 and the sample parcels were produced before the learned Trial Court. Apart from that, the FSL report was received which was duly exhibited on the record and Choora Post (poppy straw) was found in the samples. Thus, the impugned judgment of conviction is liable to be upheld by this Court.

In the instant case, the present appellant was convicted under Section 15 of the Act by the learned Trial Court and was sentenced to undergo

rigorous imprisonment for a period of eight months and pay a fine of Rs.1000. From a perusal of the record, it is apparent that at the time of conviction i.e. on 01.03.2005, the present appellant was aged about 40 years and had three minor children at that time. Consequently, at this point of time, he is aged about 58 years old and is looking after his grown up children. Apart from that, he is not a previous convict. He was convicted in the instant case on 02.03.2005 and his sentence was suspended by this Court. He is out of jail for the last about 18 years and as per custody certificate he was not involved in any other criminal activity and no other case was registered against him and is no criminal antecedents. Even 10 Kilograms of poppy straw was recovered from him which is non-commercial quantity. Apart from that, the appellant was sentenced to undergo rigorous imprisonment for a period of eight months and he has undergone two months and 12 days of actual sentence. Further, he is facing the agony of trial/appeal since last 22 years and no purpose will be served by sending him behind the bars at this stage. Consequently, the sentence imposed on the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs.1000 to Rs.20,000/- which shall be deposited by the present 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 rigorous imprisonment for a period of two months, as observed by the learned Trial Court.

In view of the above discussion, the present appeal is partly allowed and the impugned judgment of conviction dated 01.03.2005 passed by the learned Special Court, Kaithal is upheld, whereas the period of sentence is

reduced to the period already undergone by him and the amount of fine is enhanced from Rs.1000/ to Rs.20,000/-, as mentioned above.

With these directions, the appeal stands disposed off.

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.

(N.S.SHEKHAWAT)
JUDGE

09.03.2023

Hitesh

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