

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-583-SB-2005 (O&M)

Reserved on:08.02.2023

Date of Pronouncement:10.02.2023

Shalinder Singh @ Sindhi

...Appellant

vs.

State of Haryana

...Respondent

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

Present : Mr. G.S.Gorya, Advocate
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.Shekhawat J.

Feeling aggrieved and dis-satisfied with the judgment of conviction and order of sentence dated 17.03.2005, passed by the learned Additional Sessions Judge, (Special Court under the Narcotic Drugs and Psychotropic Substances Act, 1985), Kurukshetra, whereby the present appellant has been convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of one month and 15 days and to pay a fine of Rs.1,500/- alongwith default stipulation, the appellant has preferred the instant appeal before this Court.

The brief facts of the case are that on 19.06.2003, ASI Roshan Lal along with other police officials was present in an official jeep at the turning point, Ishargarh Road and had set up a nakka on the main road. In the

meantime, Nishan Singh came there and started talking to ASI Roshan Lal and other police officials. Meanwhile, Shalinder Singh @ Sindhi, the accused was seen coming with a bag in his right hand from the side of village Ishangarh, and on seeing the police party, he became perplexed. Noticing his suspicious movements, he was apprehended by ASI Roshan Lal with the help of other police officials and the search of the bag of the accused was carried out, which led to the recovery of one shirt of yellow colour and one *parna* of white and black colour. A polythene packet was also found under the said shirt and *parna*, which contained poppy husk. Two samples of 100 grams each were separated from the contraband and the remaining quantity on weighment was found to be 1 kg of poppy husk. The samples and the residue quantity of contraband were sealed with the seal of 'RL' and vide a separate recovery memo, the samples as well as the parcels containing the remaining contraband of poppy husk along with shirt and *parna* were also taken into possession by the police, which was signed by HC Ashwani Kumar and Nishan Singh. A ruqqa was sent to the police station for registration of the FIR and on the basis of which, FIR was recorded by ASI Amar Singh. The accused was apprised of the grounds of arrest vide a memo and was formally arrested. ASI Roshan Lal conducted the preliminary investigation at the spot and after doing the same, ASI Roshan Lal produced the accused, witnesses and the case property before the SHO of the police station and a report under Section 57 was also submitted. Baljit Singh, SI/SHO also affixed his own seal 'BS' on both the sample parcels, case property and the specimen seal impressions and thereafter on the direction made by Baljit Singh, SI/SHO, the case property etc. were deposited by ASI Roshan Lal with the MHC of the police station.

The samples so collected, were sent to the Forensic Science Laboratory, Madhuban for analysis and vide a report (Ex.PX), the samples were found to be containing poppy husk (*choora post*).

After completing the necessary investigation, a report under Section 173 Cr.P.C. was prepared and was presented before the learned Special Court under the Act.

After finding sufficient evidence to charge-sheet the accused, the learned trial Court vide order dated 04.07.2003, ordered framing of charge under Section 15 of the Act against the accused for keeping in his conscious possession 1 kg and 200 grams of poppy husk without any permit or licence. The charges were read over and explained to the accused in vernacular, to which he pleaded not guilty and claimed trial.

To support the case of the prosecution, eight witnesses were examined and a brief account of such witnesses is mentioned hereinafter.

C. Krishan Singh, No.463 was examined as PW-1, who had delivered the copies of the FIR to the learned Illaqa Magistrate and the higher officers without any delay. HC Ashwani Kumar was examined as PW-2, who was a part of the raiding team with ASI Roshal Lal. He supported the case of the prosecution in totality and was a witness to the various memos executed at the time of preliminary investigation. The prosecution examined Constable Sanjay Kumar and HC Balwinder Singh as PW-3 and PW-4 respectively, who tendered their affidavits Ex.PD and Ex.PE respectively and their testimonies are formal in nature. The prosecution examined PW-5 ASI Amar Singh, who had recorded the formal FIR Ex.PF/1 on the basis of the ruqqa Ex.PF. HC Shamsher Singh, who was posted as Naib Reader to the then S.P. Kurukshetra

was examined as PW-6, who had received the special report Ex.PG from the police station. He had put up the said report before S.P. Kurushetra on the same day and made him aware of the facts of the case in compliance of the Section 57 of the Act. ASI Roshan Lal was the most material witness of the prosecution to prove the charge against the accused and was examined as PW-7. He had mentioned the facts in detail with regard to the preliminary investigation conducted at the spot and supported the case of the prosecution. He also recorded the statements of various prosecution witnesses and had prepared the memos with regard to the recovery of the contraband and other articles. Baljit Singh, SI/SHO was examined as PW-8, before whom the accused, two sample parcels, one residue parcel, specimen seal impressions, witnesses and the seal of 'RL' were produced and after verifying the facts, he had affixed his own seal 'BS' on the articles. A report under Section 57 of the Act Ex.PG was submitted to him by ASI Roshan Lal and he had made his endorsement on the same. After completion of the investigation, a report under Section 173 Cr.P.C. was prepared by him.

After the prosecution led its evidence, the statement of the accused was recorded under Section 313 Cr.P.C and he pleaded that he was innocent and had been falsely implicated in the present case and opted to lead defence evidence. To prove his defence, Nishan Singh was examined as DW-1, who stated that he was the co-villager of the accused. He and his family members were in the profession of wood cutting in the nearby villages. Two years ago, there was a dispute between Shalinder Singh, accused and his family on one side, and Balkar Singh and Karam Singh on the other side. The matter was reported to the police and DW-1 Nishan Singh was called to solve the dispute.

In the presence of Nishan Singh, DW-1 a dispute arose between the police and Shalinder Singh, accused, and the accused was taken to the police station and a false case was planted on him. Nothing was recovered from Shalinder Singh in his presence.

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 in the instant case, the mandatory provisions of Sections 50 and 57 of the Act were not complied by the prosecution and the present appellant was liable to be acquitted on this ground alone. The entire recovery proceedings as well as the trial stood vitiated on account of breach of mandatory provisions of the Act. The said submissions have been opposed by the learned State counsel on the ground that the provisions of Section 50 of the Act would not applied to the facts of the instant case and even from the evidence, it was apparent that there was no violation of the provisions of Section 57 of the Act.

I have heard learned counsel for the parties and find no substance in the submissions made by learned counsel for the appellant. Admittedly, the recovery of 1 kg and 200 grams of poppy husk had taken place from the bag held by the appellant in his right hand and no recovery was effected from the personal search of the accused. Consequently, the mandatory provisions of Section 50 of the Act would not be attracted in the instant case and it can never be stated that the provisions of Section 50 were not complied with. Still further, in the instant case, the prosecution examined PW-6, HC Shamsheer Singh, who was working as Naib Reader to the then S.P. Kurukshetra. He had received a special report Ex.PG from the concerned police station in this regard and he had

put up the same on the same day before S.P. Kurukshetra. Apart from that, even PW-8 Baljit Singh SI/SHO clearly stated that ASI Roshan Lal had submitted a report under Section 57 of the Act Ex.PG before him, upon which he made his endorsement. Thus, the provisions of Section 57 of the Act were duly complied with and the said submissions made by learned counsel for the appellant are liable to be rejected.

Learned counsel for the appellant further stated that the learned trial Court committed grave error in not appreciating the testimony of DW-1, Nishan Singh in the correct prospective. In fact, it was a case of false implication on account of a minor dispute over a trivial issue between the villagers. In fact as per the case of the prosecution, Nishan Singh was stated to be present at the time when the contraband was allegedly recovered from the present appellant and was the sole independent witness. However, while appearing as DW-1 Nishan Singh clearly stated that no recovery was effected from him. The learned State counsel opposed the said argument by contending that DW-1 Nishan Singh was won over by the present appellant, being his co-villager and there was no question of false implication in such a serious offence, when the police was admittedly not inimical towards the appellant.

I find that the submissions made by learned counsel for the appellant are meritless. DW-1 Nishan Singh had stated that the dispute arose between Shalinder Singh, accused on one side and Balkar Singh and Karam Singh on the other hand and the parties were taken to the police station. In the police station, a dispute arose between the police and Shalinder Singh, accused and he was falsely implicated in the instant case. In fact, the said submission is

without any basis or any other documentary evidence. DW-1 Nishan Singh, being the co-villager, tried to help the accused by projecting a false and imaginary story. Still further, the defence could not lead any evidence that they had made any representation/application to the higher officers regarding their false implication in such a serious matter. Apart from that, it is unbelievable that the police would falsely implicate the accused in such a serious crime over a dispute between two sides in the village.

Apart from that, I have gone through the evidence led by both the sides and the learned trial Court has correctly appreciated the same and recorded valid and well-reasoned findings. In the instant case, the FIR was registered without any unnecessary delay and even the conduct of the investigating officer has been very fair and above board. Before effecting the arrest, the accused was given notice Ex.PB under Section 52 of the Act and after making his arrest, his relative was informed about the circumstances and the details of all the facts. Even the accused was apprised of his grounds of arrest. Apart from that, a special report Ex.PG under Section 57 of the Act was also sent and the said process was witnessed by the official witnesses, who had no enmity with the accused. Further, the prosecution placed on record, the report Ex.PX of FSL Madhuban, which clearly showed that the contraband contained poppy husk (*Choora Post*). The learned trial Court has duly appreciated the evidence on record and the findings are liable to be upheld and are affirmed.

However, this Court cannot lose sight of the fact that the FIR in the instant case was registered on 19.06.2003 and the appellant/accused is facing the agony of trial/appeal since last about 20 years. Even as per the case

story of the prosecution, only 1kg and 200 grams of poppy husk was recovered from the appellant, which is non-commercial in nature. At the time of trial, he was aged about 28 years. Still further, the learned trial Court had awarded him one month and 15 days of sentence and out of the said sentence, he has undergone 18 days of actual sentence. Thus, no useful purpose will be served by sending him behind bars again after a period of about 20 years. Learned State counsel stated that one more case was registered against him on 05.08.2017 under Section 15 of the NDPS Act, however, he was ordered to be acquitted of the said charge long back and no other case is pending /registered against him. 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.1,500/- to Rs.10,000/-, 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 further undergo rigorous imprisonment for a period of 15 days, as observed by the learned trial Court.

With the above modifications, the appeal is partly allowed and the impugned judgment of conviction dated 17.03.2005 passed by the learned Additional Sessions Judge, (Special Court under the Narcotic Drugs and Psychotropic Substances Act, 1985), Kurukshetra is ordered to be 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 and the amount of fine is enhanced to Rs.10,000/- as observed, 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.

The appeal stands disposed off, accordingly.

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.

10.02.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes