

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

CRA-S-856-SB-2005

Reserved on: 22.02.2023

Date of Pronouncement: 09.03.2023

Pappu

...Appellant

vs.

State of Haryana

...Respondent

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

Present : Mr. P.R. Yadav, Advocate
for the appellant.

Ms. Sheenu Sura, Deputy Advocate General, Haryana,

N.S.Shekhawat J.

The present appeal has been preferred against the judgment of conviction and order of sentence dated 22.04.2005 passed by learned Special Judge, Rewari, whereby the present appellant had been convicted under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (herein after referred to as the NDPS Act) and was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/-, along with default stipulation.

The prosecution story in brief is that on 13.07.2004 at about 02:30 P.M., Sher Singh, ASI along with other police officials were present at Shajahpur, Rewari Road at T-point, Khandoda and in the meantime, they noticed a person coming from the side of Shajahpur side on foot. The said person was carrying a plastic bag on his head. When he noticed the police party, he turned back with fast steps. However, the I.O. with the help of the other police officials apprehended him and enquired about his name and

address. He disclosed his name and address as Pappu son of Sh. Hari Kishan, resident of Village Karotha, Police Station Sadar, Rohtak, Tehsil and District Rohtak. The Investigating Officer raised suspicion that he was carrying narcotic drugs in his possession and a notice under Section 50 of the Act was served upon the accused for obtaining his consent as to whether he wanted to get his search conducted by a Magistrate or a Gazetted Officer and a memo was prepared separately in this regard. The accused preferred to get his search conducted from a Gazetted Officer and Jag Parvesh Dahiya, DSP was called in this regard. Jag Parkash Dahiya, DSP, City, Rewari reached at the spot and questioned the accused. Even he was apprised of the facts of the case by the Investigating Officer. Even at the instance of Jag Parvesh Dahiya, DSP the search was conducted and Chooru Post was recovered from the possession of the accused. Two samples of poppy husk were taken by the police and the remaining quantity of poppy husk was kept in the same bag and was again sealed. The sealed case property, the accused as well as the witnesses were produced in the police station. Still further, a formal ruqa was also sent in the meantime to the police station for recording of the formal FIR and the same was recorded in the police station. Even the samples were sent to the FSL for analysis and the same were found containing poppy straw (Chooru Post).

After necessary investigation, a final report under Section 173 Cr.PC was presented in the competent Court by the police.

Finding a prima facie case, the accused was charge-sheeted for the offence under Section 15 of the Act and he pleaded not guilty and claimed trial. To bring whom the guilt against the accused, the prosecution examined PW-1 Manoj Kumar HC, who was part of the raiding team. He supported the case of

the prosecution relating to the initial investigation. Hawa Singh ASI was examined as PW-2 and on receipt of the original writing from Sher Singh ASI, he had registered the FIR. He also sent the special report to the learned Illaqua Magistrate and higher police officers and exhibited the copy of FIR as Ex. P-2. PW-3 Rajender Singh Head Constable tendered his affidavit Ex. PW-3/A in evidence. Jag Parvesh Dahiya, DSP, City Rewari was examined as PW-4, who had reached at the place of recovery, on receipt of the information from the raiding party. In his presence, 19 Kilo 500 grams of poppy husk was recovered from the accused and he had signed the proceedings relating to the seizure of narcotics from the present appellant. PW-5 Hari Kishan, SI/SHO had prepared the final report under Section 173 of Cr. P.C. PW-6 Sher Singh, ASI was the main witness of the prosecution, who was raiding the team and had also conducted the initial investigation at the spot. He served a notice Ex. PW-6/A under Section 50 of the Act to the accused. He also exhibited the memo regarding search (Jama Talashi) as Ex. PW-6/B and the scaled site plan as Ex. PW-6/C. He also produced the case property Ex. P-1 before the learned Trial Court. The prosecution further examined PW-7 Constable Rajesh Kumar, who had taken the samples to the FSL, Madhuban. He categorically stated that he did not tamper with the parcels, when the same remained in his custody.

After the evidence by the prosecution was closed, the statement of the accused was recorded under Section 313 Cr.P.C and he pleaded his false implication. He stated that he was innocent and nothing was recovered from him in the present case. He did not lead any defence evidence.

I have heard the 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, there was no strict compliance of Section-50 of the Act, which was mandatory in nature. He further submitted that even though a notice was issued under Section 50 of the Act, however, the said notice as well as the consent memo did not bear the signatures of any attesting witness, either official or independent. Still further, even the recovery memo was not attested by any independent witness. Since there was no strict compliance of the provisions of the Section 50 of the Act, the present appellant was liable to be acquitted by this Court. The said submission has been opposed by the learned State counsel on the ground that in the instant case, the recovery of the poppy husk was effected from a plastic bag and not in pursuance of the personal search of the accused. I find sufficient force in the submissions made by learned State counsel. On perusal of the evidence clearly proves that the recovery of the **poppy husk** had taken place from the bag, which was held by the present appellant. No contraband was recovered from the personal search of the present appellant and the prosecution was not obliged to follow the procedure, as enshrined in Section 50 of the Act. Further, Investigation Officer had issued a notice under Section 50 of the NDPS Act to the accused, which was duly signed by the accused. Apart from that, it was prepared by PW-6 Sher Singh ASI and he proved the same as Ex.PW-6/A which was not objected by the accused. Apart from that, the appellant has failed to show that any serious prejudice have been caused in this case due to non-signing of the said notice by official/independent witnesses. Thus, the argument raised on behalf of the present appellant was without any force and is liable to be rejected.

Still further, the learned counsel further submitted that in the instant case, neither the notice under Section 50 of the Act nor the consent memo were signed by independent witnesses and the recovery has been planted on the present appellant. It was further contended that no independent witness was joined at the time of recovery of the poppy husk from the present appellant and the official witnesses had ensured the false implication of the present appellant in the instant case. Again the said submission is without any basis. The case of the prosecution cannot be discarded only on the ground that the same is based on the testimonies of official witnesses. In fact, the official witnesses are to be treated at par with the independent witnesses, if in the firm opinion of the Court, the said testimonies inspired confidence. I have carefully perused the testimonies of seven official witnesses, who have been subjected to incisive cross-examination by the learned defence counsel, but their testimonies could not be shaken in any manner. The learned Trial Court has recorded valid reasons for relying upon the testimonies of the said witnesses and the findings recorded in this regard are liable to be upheld by this Court.

Apart from that, in the instant case, the learned counsel only pointed out that certain minor contradictions appearing in the testimonies of various official witnesses. However, such minor variations are bound to appear in the testimonies of official witnesses, who got a chance to appear as witnesses after a long gap. Apart from that, in the meantime, the official witnesses must have conducted the investigations in other cases as well and such minor variations/contradictions have been correctly ignored by the learned Trial Court.

Learned Trial Court has recorded good and valid reasons for convicting the present appellants and the findings are liable to be upheld and affirmed.

Now, advertent to the order of sentence, it is apparent that the appellant was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- for having committed the offence punishable under Section-15 of the Act. However, from the impugned judgment, it is apparent that the appellant was aged 33 years at the time of his conviction and at present he must be aged more than 51 years. Apart from that, he is facing the agony of trial/appeal for the last about 19 years. He was on bail for the last 18 years and was not involved in any other case. The custody certificate has been placed on the file by the learned State counsel and it has been shown that the appellant has undergone about 29 days of actual sentence. Even it has been found that the appellant was in conscious possession of 19.500 Kilograms of Choori Post (poppy straw) without any permit or licence, which is a non-commercial quantity. Thus, the ends of justice will be suitably met, if 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.10,000/- to Rs.30,000/-, 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 imprisonment for a period of six months as observed by the learned Trial Court.

In view of the above, the appeal is partly allowed and the impugned judgment of conviction is upheld and 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 from Rs.10,000/ to Rs.30,000/-, 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