

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CRA-S-940-SB-2005 (O&M)
Date of Decision: 11.04.2023

Vikram Singh ...Appellant
Versus
State of Haryana ... Respondent

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

Present : Mr. Hitesh Verma, Advocate
as Amicus Curiae for the appellant.

Mr. Sourabh Kandoi, Advocate for
Mr. Balkar Singh, Advocate
for the appellant.

Mr. Rajinder Kumar, DAG, Haryana.

N.S.SHEKHAWAT, J.

The present appeal has been preferred against the judgment of conviction dated 13.04.2005 and order of sentence dated 20.04.2005 passed by the Court of learned Judge, Special Court, Rohtak, whereby, the appellant was convicted under Section 20 of Narcotics Drugs and Psychotropic Substance Act, 1985 (in short, ‘**the NDPS Act**’) and was sentenced to undergo rigorous imprisonment for two and half years and to pay a fine of Rs.20,000/- alongwith default stipulation.

The brief facts of the case are that on 09.11.2001, ASI Shyam Narain alongwith other police officials was present in connection with patrolling and he had received a secret information that a young boy, having beard was sitting near the shadow of “Kabli Kikars” (thorny bushes) behind bus stand and was having an illegal pistol. If a raid was conducted, he could be apprehended. On getting

the information, the raid was conducted and during search, a country made pistol of .315 bore was recovered from the right side pocket of his pant. Further, search was conducted on the person of the said accused and 170 gms of *charas* wrapped in a polythene paper was recovered from the right side pocket of his pant. 20 gms *charas* was put in an empty tin. Two separate parcels were prepared and sealed with seal "SN" and were taken into possession vide memo Ex.PH, duly attested by the witnesses. After keeping the specimen impression of seal, it was handed over to ASI Surat Singh. *Rukka* Ex. PE was sent to Police Station Civil Lines Rohtak for registration of a case and a formal FIR was recorded by ASI Megh Raj. The initial investigation was conducted by ASI Shyam Narain at the spot. Finally, the accused, witnesses and the case property were produced before Jai Parkash, Inspector/SHO, who met them at Sonapat stand. He verified the facts from them and affixed his seal "JP" on the parcels. The specimen impressions of the seal were also separated and the memos were prepared regarding the arrest of the accused and the seizure of the articles and were sent to the Deputy Superintendent of Police. The statements of the witnesses were recorded and after necessary investigation, the report under Section 173 Cr.P.C. was prepared and presented to the Court for trial.

After going through the contents of the charge sheet under Section 173 Cr.P.C., the appellant was charged for commission of the offence punishable under Section 20 of the NDPS Act by the learned Judge, Special Court, Rohtak and the appellant/accused pleaded not guilty and claimed trial.

To bring home the guilt of the accused/appellant, the

prosecution examined seven witnesses in the instant case. The

prosecution examined PW1 HC Jag Ram, who tendered the affidavit Ex.PA in evidence. Constable Jagdish was examined as PW2 who tendered his affidavit Ex.PB, whereas PW3 Constable Sanjay Kumar tendered his affidavit Ex.PC in evidence. The prosecution examined ASI Megh Raj, who had recorded formal FIR Ex.PF on receipt of *rukka* Ex.PE from ASI Shyam Narain, CIA Staff. Inspector Jai Parkash was examined as PW5, who was posted as SHO, Police Station, Civil Lines Rohtak on 09.11.2001. On the said day, ASI Shyam Narain produced before him the accused, case property, sample and the witnesses. Even the specimen seal impressions were produced before him and he was apprised of the facts. He verified the facts of the case from the accused and the witnesses and found the seals of the samples intact. After the completion of the investigation, he prepared the report under Section 173 Cr.P.C. and submitted the same to the competent Court. In his cross-examination, he admitted that he did not feel the necessity of joining the independent witnesses, because as per the provisions of Section 57 of the NDPS Act, only he was to verify the correctness of the facts brought before him by the accused and the witnesses. ASI Shyam Narain was the main witness of the prosecution and was examined as PW6. He supported the case of the prosecution in totality as mentioned in the FIR. He admitted that he had not reduced into writing the secret information separately as required under Section 42 of the NDPS Act because the secret information was not in respect of any contravention of NDPS Act. He did not mention in *rukka* or in the case diary regarding the fact that the accused was having beard. He did not join independent witnesses in the proceedings of the case because none became ready. Had he

that time, the accused would have gone from that place. He admitted that two brothers of the accused were already confined in District Jail Rohtak in a murder case. The prosecution further examined PW7 ASI Surat Singh, who was part of the police team, which was headed by ASI Shyam Narain and they apprehended the accused. In his presence, the personal search of the accused was conducted and a poly bag containing *charas* was recovered from the right side pocket of the accused, which were found to be 170 gms on weightment. He also supported the case of the prosecution, as mentioned in the FIR.

After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and he pleaded his false implication. He stated that the case was false and the witnesses had deposed falsely against him. He stated that Dilbag Singh, Sarpanch of their village was murdered by certain persons a few years ago. His two brothers were involved in that murder case and he was the only person of the family to defend them, because his father had already died and his uncle was a mentally retarded person and his two younger brothers were students of a school. He further stated that he was falsely implicated in the present case at the instance of family members of Dilbag Singh in connivance with the police. He opted to lead evidence and tendered the copies of judgments Ex.DA and Ex.DB and closed his defence evidence.

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 on receipt of secret information, the IO had conducted the search of the appellant. A .314 pistol and 170 gms of *charas* were allegedly

recovered from the person of the appellant and the recoveries were

part of the same transaction. Learned counsel further argued that the FIR under the Arms Act was recorded and the prosecution was unable to prove the recovery of the pistol in the FIR and the recovery of *charas* had also become doubtful. The said submission has been opposed by the learned State counsel by contending that two separate FIRs were registered, i.e. under the Arms Act and NDPS Act and separate evidence was led in two separate trials. Consequently, the evidence and the findings recorded by the learned trial court in a case under Arms Act will have no bearing on the present case and the submissions made by both the learned counsel. I find sufficient force in the submissions made by learned counsel for the State. No doubt, in pursuance to the personal search of the appellant, one .314 bore pistol and 170 gms of *charas* were recovered from the appellant. However, two cases, i.e. under Arms Act and NDPS Act were separately registered and investigated. Further, the trial was held separately and separate set of evidence was led in both the independent trials. Consequently, the judgment Ex.DA in the Arms Act case will have no bearing on the trial under the NDPS Act.

Learned counsel for the appellant further argued that prior to the registration of the FIR, the search was conducted and recovery was effected. The *charas* was taken into possession by the police vide recovery memo Ex.PH and, thereafter, *rukka* Ex.PE was sent to the police station for registration of the case and the said fact was clearly mentioned in the *rukka* Ex.PE. Consequently, at the time of effecting the recovery of *charas*, there was no occasion for the IO to mention the details of the FIR and sections on the memo of recovery and this clearly creates a shadow of doubt on the entire

prosecution version. The said arguments have been vehemently

opposed by the learned State counsel by contending that a space was kept vacant and immediately after registration of the FIR, the details of the FIR were forwarded to ASI Shyam Narain at the spot and he had filled those details on the memo of recovery. Thus, this Court finds that the FIR number was mentioned by the IO in routine and during the course of investigation and no adverse inference can be drawn from the said fact.

Learned counsel for the appellant further vehemently argued that no independent witness was joined during the course of investigation by the police and the entire prosecution case hinges on the testimonies of the official witnesses. Even the police had sufficient time to join the independent witnesses, though chose not to join them for the reasons best known to them. The learned State counsel opposed the said submission by raising an argument that every possible effort was made to join the independent witnesses but they were not willing to join. I have heard the submissions made by the learned counsel for the parties and find no substance in the arguments raised by the learned counsel for the appellant. PW6 ASI Shyam Narain clearly stated that he did not join any independent witness in the proceedings because no one became ready. Further, had he taken steps to join the independent witnesses from the locality, by that time, the accused would have gone from that place. Consequently, it is apparent that since no one was willing to join the independent witnesses, they could not be associated during the course of investigation. Further, the testimonies of official witnesses cannot be rejected only on the ground of their official status. The Courts cannot disregard and distrust a competent witness only on the ground

wrongly stated in his statement under Section 313 Cr.P.C. that his brothers were involved in a murder case and he had been falsely implicated in the present case at the instance of the complainant side. However, the accused could not lead any evidence to show the collusion between the police and the complainant side and the said murder case. Apart from that, in the instant case, I have gone through the testimonies of various official witnesses and their testimonies inspire confidence and there is no reason to discard their testimonies. The learned trial court has rightly relied upon the testimonies of the said witnesses.

In view of the above discussion, the impugned judgment of conviction dated 13.04.2005 passed by the Court of learned Judge, Special Court, Rohtak, does not warrant any interference by this Court and ordered to be upheld and is affirmed.

Now advertng to the order of sentence, this Court cannot ignore the fact that the present appellant was aged about 28 years at the time of registration of the FIR, as per the custody certificate tendered by the learned State counsel. He was sentenced to undergo rigorous imprisonment for a period of two years and six months and to pay a fine of Rs. 20,000/- by the Court of learned Judge, Special Court, Rohtak. As per the custody certificate, he had undergone about 10 months and 28 days of actual sentence out of total sentence of two years and six months. Thus, it is apparent that the appellant has undergone a substantial period of sentence. Apart from that, it is evident that the present FIR was registered on 09.11.2001 and the appellant has suffered the agony of trial/appeal since last more than 21 years. Apart from that, only one FIR No. 591 dated 09.11.2001

was also registered against the present appellant, in pursuance of the search conducted in the present case only and in that case also, he has been acquitted. For the last 21 years, no other criminal case was registered against the present appellant. Even otherwise, the recovery of *charas* from the present appellant was non-commercial in nature. Thus, no purpose would be served by sending him behind the bars at this stage and the ends of justice would be suitably met, if his sentence is reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs. 20,000/- to Rs. 40,000/-, which shall be deposited by the appellant in Punjab and Haryana High Court Bar Association Lawyer's Fund within a period of three months from today, failing which, the appellant shall undergo further rigorous imprisonment for a period of six months, as observed by the learned trial Court.

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. 40,000/- as observed, which shall be deposited by him within a period of three months from today.

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.

In the end, I record my appreciation for Mr. Hitesh Verma, learned Amicus Curiae, who had rendered able assistance to this Court.

11.04.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No