

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

CRA-S No.3315-SB of 2016 (O&M)

Date of decision: 8th February, 2023

Manpreet Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Sudeepti Sharma, Amicus Curiae and
Ms. Mehak Kanwar, Advocate for the appellant.

Mr. Amit Rana, Sr. Deputy Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred against the judgment and order dated 15.01.2016 passed by learned Special Judge, Fatehgarh Sahib whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹ 1.00 lakh and in default of payment of fine to undergo further rigorous imprisonment for one year under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as, 'the Act').

The prosecution case in brief may be noticed as thus:

A secret information was received by the police party headed by ASI Gurjit Singh against the appellant that he was selling intoxicant tablets. A ruqa was sent soon thereafter for registration of the FIR under Section 22/61/85 of the Act. On 25.08.2012, while traveling from Khanna to Fatehgarh Sahib on his motorcycle along with huge

quantity of intoxicant medicines, he was apprehended by the police party. FIR was registered against accused. ASI Gurjit Singh after disclosing his identity to the accused gave him an offer to search his bag from either Illaqa Magistrate or a Gazetted Police Officer. However, the appellant reposed confidence in ASI Gurjit Singh and opted to get himself searched from him. Consent memo qua the same was prepared at the spot which was signed by the appellant. On search of the bag, recovery of one strip of 10 capsules of Parvon Spas and 10 pouches each of 100 tablets of Phenotil was effected. Thereafter, challan was presented and charges framed under Section 22 of the Act. The learned Special Court on the basis of material and other evidence led, convicted the appellant by holding that the prosecution had proved the case against him beyond shadow of reasonable doubt.

Learned Amicus Curiae representing the appellant has vehemently argued that not even a single independent witness was joined by the investigating agency even though a secret information had been received against the appellant. It was further submitted that there had been non-compliance of the mandatory provisions of the Act inasmuch as the recovery of alleged contraband had not been effected in the presence of a Gazetted Police Official or Illaqa Magistrate. It was still further submitted that there was a delay in sending the case property to the FSL which created a serious dent in the case of the prosecution as the delay had been used by the investigating agency to tamper with the case property.

Learned State counsel on the other hand, has vehemently opposed the submissions made by the counsel opposite. He has submitted that all the mandatory provisions of the Act were complied with. He has submitted that an offer of being searched by a Gazetted Officer/Illaq Magistrate was given to the appellant but he himself declined the offer and instead signed the consent memo for getting his search carried out by ASI Gurjit Singh. Learned State counsel, still further has submitted that no doubt there was some delay in sending the case property to the FSL but once the case property had been received in an intact condition and there was no report from the FSL qua the seals having been tampered with, the slight delay in despatching the case property would not create any dent in the case of the prosecution. Qua the non-joining of independent witness, it was submitted that once the mandatory provisions stood complied with, it would not adversely affect the case of the prosecution.

I have heard learned counsel for the parties and perused the relevant material on record.

No sooner was the secret information received by the investigating agency, ruqa was sent to the Police Station concerned and FIR registered. This Court does not find any merit in the submissions made by the learned counsel for the appellant that there had been non-compliance of section 50 of the Act. It is a matter of record that an offer was indeed given to the appellant for getting his search carried out by a Gazetted Officer or Illaq Magistrate, however, he consented to

being searched by ASI Gurjit Singh, hence in the circumstances, the submissions made by the learned counsel for the appellant that there was non-compliance of Section 50 of the Act are without any force. No doubt, it was vehemently argued by the learned Amicus Curiae appearing on behalf of the appellant that no independent witness was joined at the time of search of the appellant, but that by itself would not be a ground to doubt the case of the prosecution as the testimony of the other examined witnesses comes across as reliable and trustworthy.

The Hon'ble Supreme Court in '**Jarnail Singh vs. State of Punjab**' (2011) 3 SCC 521, has held that merely because prosecution did not examine any independent witness, would not necessarily lead to a conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status. Still further, the Hon'ble Apex Court in '**Surinder Kumar vs. State of Punjab**' 2020(1) RCR (Criminal) 576, has held that the mere fact that the case of prosecution is based on the evidence of official witnesses, does not mean that the same should not be believed.

As a sequel to the above, there being no merit in the instant appeal the same stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

February 8, 2023

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No