

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

368

CRA-S-3418-SB-2016

Date of decision: 02.05.2023

Ravi Singh alias Panni alias Pawan

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sparsh Chhiber, Advocate as Amicus Curiae
for the appellant.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant appeal has been preferred to impugn the judgment of conviction and order of sentence dated 06.08.2016 passed by learned Judge, Special Court, Ludhiana vide which the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of ₹10,000/- under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') and in default of payment of fine to further undergo rigorous imprisonment for a period of 01 month.

2. As per the case of the prosecution on 24.02.2013, the police party headed by ASI Davinder Singh (PW1) chanced upon the appellant while the latter was riding his motorcycle with a plastic bag tied on the rear seat. On the basis of suspicion, the appellant was stopped by the police party. Efforts were made to join independent witness, however, nobody in the vicinity expressed his willingness to join. The investigating officer ASI Davinder Singh (PW1) duly gave an

offer to the appellant to get his search effected by a Gazetted Officer or a Magistrate, however, the appellant reposed confidence in him and also got his consent statement (Ex.PA) recorded and signed. Thereafter, the plastic bag which the appellant was carrying on his motorcycle, was searched and recovery of 35 kgs 500 gms of poppy husk effected from it. As per the provisions of NDPS Act, two samples of 250 gms each of the recovered contraband, were drawn by the police. The samples after being drawn were duly sealed as per the procedure prescribed under the NDPS Act by ASI Davinder Singh (PW1). Sample seal (Ex.P1), after being prepared was also handed over by ASI Davinder Singh (PW1) to Head Constable Om Parkash. Case property was taken into possession vide recovery memo (Ex.PB) along with the motorcycle. Thereafter, *ruqa* (Ex.PC) was sent to the police station concerned on the basis of which FIR (Ex.PC/1) came to be registered against the appellant by ASI Kewal Singh. Accused was arrested and the information about his arrest was duly communicated vide arrest memo (Ex.PE). On return to the police station, ASI Davinder Singh (PW1) deposited the entire case property with Head Constable Rakesh Kumar (PW2) in an intact condition. On the following day i.e. 25.02.2013, the case property was produced before the Court which passed order Ex.PG/1. On 28.02.2013, sample weighing 250 gms, bearing seal impression DS/KS, was sent to the Chemical Examiner, Kharar through HC Satinder Pal Singh (PW4). On completion of investigation, final report under Section 173 of the Cr.P.C. was presented against the appellant and the trial commenced. After closure of the prosecution evidence, all incriminating circumstances were put to the appellant under Section

313 of the Cr.P.C. to which he pleaded false implication. The appellant did not examine any witness in his defence. On the basis of the evidence led, the appellant was convicted and sentenced to undergo imprisonment which already stands detailed in the opening para of this order.

3. Learned amicus curiae appearing for the appellant has challenged the impugned judgment of conviction and order of sentence primarily on the following grounds:-

(i) that since the case of the prosecution rests solely on the testimony of official witnesses, on this ground itself, the impugned judgment deserves to be set aside;

(ii) that no independent witness was joined by the police party when the alleged recovery of 35 kgs 500 gms of poppy husk was effected from the appellant;

(iii) that there was an inordinate delay in the dispatch of the samples to the Forensic Science Laboratory;

(iv) that there was non-compliance of Section 50 of the NDPS Act as the accused was not apprised of his “legal right” of get searched before a Gazetted Officer; and

(v) that ownership of the motorcycle from which the recovery was allegedly effected was neither proved nor produced in the Court much less exhibited.

(vi) that there were contradictions in the statements of the prosecution witnesses with respect to the arrest of the accused, recovery effected and sending of *ruqa* as also the measuring weights, which created a major dent in the case of the prosecution.

4. Per contra, learned State counsel has opposed the submissions made by the counsel opposite. He submits that it was a case of chance recovery. The recovery of 35 kgs 500 gms of poppy husk was effected from a plastic bag which the accused was carrying on the back of the motorcycle, which he was riding. He further submits that the provisions of Section 50 of the NDPS Act were fully complied with, which fact is evident from the consent memo (Ex.PA) which bears the signatures of the appellant.

Qua the non-joining of independent witness, learned State counsel contends that once the testimony of official witnesses comes across as being cogent and trustworthy, mere non-joining of an independent witness would not in any manner create a dent in the case of the prosecution. He thus, vehemently argues that the impugned judgment being a well reasoned one cannot be faulted with and hence deserves to be upheld.

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

6. This Court after perusing the impugned judgment and the evidence led, does not find any merit in the instant appeal. This Court has no hesitation in observing that the impugned judgment does not suffer from any illegality much less infirmity for the reasons to follow.

7. Admittedly, the recovery of 35 kgs 500 gms of poppy husk was a chance recovery. A perusal of the consent memo (Ex.PA) leaves no manner of doubt that the provisions of Section 50 of the NDPS Act were indeed complied with, and an opportunity was afforded to the appellant to get his search effected from a Gazetted Officer or a

Magistrate. However, the appellant himself reposed confidence in ASI Davinder Singh (PW1) and consented to be searched by him. It needs to be also observed here that the consent memo (Ex.PA) bears the signatures of the accused.

8. This Court also does not find any merit in the submissions made by the counsel for the appellant that since the case rests solely on the testimony of official witnesses, it creates a question mark about the authenticity of the prosecution version. It needs to be reiterated that if the testimonies of official witnesses come across as being trustworthy and cogent, the same can be kept at the same pedestal as that of an independent witness. Mere non-joining of an independent witness also cannot be a ground to throwaway the case of the prosecution. The appellant failed to point out any material on record to show as to why the police would have zeroed on to him and involve him in a false case.

9. As a sequel to the above, this Court has no hesitation in upholding the impugned judgment of conviction and order of sentence. Accordingly, the instant appeal being devoid of any merit stands dismissed.

02.05.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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