

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-4378-SB-2018 (O & M)

Date of decision: 25.01.2023

Darshan Singh

... Appellant

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. H.S. Randhawa, Advocate as Amicus Curiae,
for the appellant.

Mr. Maninder Singh Bajwa, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The present appeal has been filed against the impugned judgment of conviction and order of sentence dated 09.08.2018 passed by the Judge Special Court, Sangrur vide which the complainant was convicted under Section 15 of the NDPS Act, 1985 and was sentenced to undergo rigorous imprisonment for a period of 30 days (i.e. the period of custody already undergone) and to pay a fine of Rs.3,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.

2. The prosecution story in brief is that on 22.01.2017, ASI Sarabjit Singh alongwith Paramjit Singh SDO, BSNL, Dhuri and other police officials were present on Dhuri-Sherpur Road. At about 12.30 p.m., one Ambassador car bearing registration No.PB-65-5025 was seen coming from the side of village Kaheru and was signalled to stop. The driver of the car stopped at some distance and tried to turn back. On getting suspicious, ASI Sarabjit Singh apprehended him with the help of the other police

(appellant) son of Gurdev Singh. The investigating officer informed him of his identity and told him that he (investigating officer) suspected that some intoxicant substance was present in the vehicle or in his (accused-appellant) possession. He was apprised of his right to be searched in the presence of a Gazetted Officer or a Magistrate but the appellant reposed faith in the investigating officer. Pursuant to obtaining of his consent, a search was conducted and from the dicky of the car, 15 kgs. of poppy husk contained in a plastic bag was recovered. Thereafter, a *ruqa* was sent to the police station, on the basis of which, a formal FIR was registered.

On return to the police station, the investigating officer produced the accused, witnesses and the case property before the SHO, P.S. Sadar Dhuri, who verified the facts and sealed the case property with the seal impression "PS" and attested the sample seal. On the direction of the SHO, the case property was deposited by the investigation officer with the Malkhana Munshi H.C. Makhan Singh. On 23.01.2017, after following the property procedure, two samples of 250 grams each of poppy husk were drawn by the Magistrate. After completion of investigation, the challan was presented against the appellant.

3. On presentation of challan, copies of the same were supplied to the appellant. Pursuant thereto a charge under Section 15 of the NDPS Act was framed. The appellant pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined PW-1 Paramjit Singh SDO, BSNL Dhuri, recovery witness, PW-2 ASI Sarabjit Singh, Investigating Officer, PW-3 HC Makhan Singh, PW-4 Inspector Palwinder Singh and PW-5 C. Bhupinder Singh and after which the APP for

5. After closure of the prosecution evidence, the statement of the accused-appellant was recorded under Section 313 Cr.P.C. wherein the entire incriminating circumstances were put to him, which he denied and stated that he was picked up from his house alongwith an amount of Rs.96,000/-, which he had obtained from Manjit Singh from the sale of his buffaloes and a false recovery was planted upon him.

6. PW-1 Paramjit Singh SDO, BSNL Dhuri and PW-2 ASI Sarabjit Singh, investigating officer were examined. Both reiterated the prosecution version in their examination-in-chief that on 22.01.2017, the appellant was apprehended by the police party and from his conscious possession, 15 kgs. of poppy husk was recovered. They also provided elaborate details of the incident in their evidence referring to the procedure adopted for sampling of the substance while taking it in the police possession and duly preserving it under their seals. They also gave evidence of the manner and the procedure of search and seizure under the Act. Reference was also made in the evidence to the consent obtained vide Ex.P1 after which the search was conducted. The sample seals were Ex. PW-2/A to Ex.PW-2/C. Various documents were executed at the spot, such as recovery memo Ex.P2, ruqa Ex.P3, formal FIR Ex.PW2/D, site plan Ex.PW2/E, personal search memo of accused Ex.P4, arrest-cum-intimation memo Ex.P5, special report Ex.PW2/F, Endorsement of DSP Ex.PW2/G, application moved before the SDJM, Dhuri Ex.PW2/H, Inventory Ex.PW2/J, photographs Ex. PW2/K to Ex. PW2/M, sample seal prepared by the Magistrate Ex.PW2/N, order of the Court Ex. PW2/P, application moved before the CJM, Sangrur Ex.PW2/Q, report of Nazir Ex.PW2/R, report of

Malkhana Nazir Ex.PW2/S, order of the Court Ex.PW2/T, representative parcel Ex.MO1 and car Ex.MO2.

7. PW-4 Inspector Palwinder Singh deposed that he was posted as SHO, Police Station Dhuri on 22.01.2017. On the day of the receipt of ruqa, he had recorded the formal FIR Ex. P4. He also deposed that ASI Sarabjit Singh produced before him the official witnesses alongwith the appellant Darshan Singh and the case property i.e. bulk parcel, currency notes of Rs.96,000/- and one Ambassador car. The parcel was sealed by the investigating officer with the impression “SS”. The case property was further sealed by him with the seal impression of “PS”. He also appended his seal on the Form No.29 and thereafter, on his directions, the investigating officer deposited the case property with the Malkhana Munshi.

8. In order to prove the link evidence and the fact that the case property and the samples were not tampered with during the period it remained in the possession of the police authorities, the statements of H.C. Makhan Singh (PW-3) Malkhana Munshi and PW-5/Constable Bhupinder Singh were recorded.

9. The appellant in his defence did not examine any witness to substantiate his defence.

10. Based on the evidence led the appellant-Darshan Singh came to be convicted and sentenced vide judgment and order dated 09.08.2018 as under:-

Offence under Sections	Sentence RI/SI	Fine	RI/SI in default of payment of fine
15 NDPS Act	(RI) 30 days	Rs.3,000/-	(RI) 01 month

11. The learned Amicus Curiae for the appellant contends that Section 50 of the NDPS Act has not been complied with. No independent witness has been joined in the investigation as required under Section 100 Cr.P.C. The recovery was effected on 22.01.2017 whereas the samples were sent on 07.02.2017 and the delay of 16 days in sending these samples to the FSL is fatal to the prosecution case. There were a number of discrepancies in the statements of the prosecution witnesses and the link evidence was not proved. He, thus, contends that the judgment and order of sentence dated 09.08.2018 ought to be set aside and the appellant ought to be acquitted of the charges framed against him.

12. The learned counsel for the State, on the other hand, while supporting the case of the prosecution and the judgment and order of conviction dated 09.08.2018 contends that the grounds raised by the appellant have been duly considered by the Trial Court while convicting him. The discrepancies as pointed out are insignificant and minor and do not deserve any credence. Mere non-joining of independent witnesses would not be fatal to the case of the prosecution. Even otherwise, the appellant has not been able to establish any enmity with the investigating agency so as to falsely implicate him.

13. I have heard the learned counsel for the parties.

14. The recovery in the present case is from the dicky of the car and as such, since it would not amount to personal search, Section 50 of the NDPS Act would not apply to the case. Further, non-joining of independent witnesses would not be fatal to the case of the prosecution as there is no evidence to suggest that the official/prosecution witnesses were inimical to

insignificant. A perusal of the affidavit of H.C. Makhan Singh (PW-3) would reveal that he had kept the parcel in an intact condition and did not tamper with the seals while in the police custody. Further from a perusal of the report of the chemical examiner Ex.PX, it is apparent that the seals on the parcel were found intact and tallied with the specimen seal impression.

15. The oral and documentary evidence produced by the prosecution witnesses clearly point towards the guilt of the appellant and there is no violation of any mandatory provisions of search and seizure which would vitiate the Trial.

16. In view of the above, I find no merit in the present appeal. Therefore, the same is dismissed.

January 25, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

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