

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

CRA-S No.3972-SB of 2015
Date of decision: 3rd October, 2023

Surinder Kumar

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Shiv Kumar Rana, Advocate
Amicus Curiae for the appellant.

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

MANJARI NEHRU KAUL, J.

1. The appellant is challenging the judgment of conviction and order of sentence dated 07.08.2015 passed by Judge, Special Court, SAS Nagar, Mohali, whereby he was convicted under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as, 'the Act') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹ 1.00 lac, and in default of payment of fine to further undergo rigorous imprisonment for two years in case FIR No.38 dated 20.04.2013 under Section 22/61/85 of the NDPS Act registered at Police Station Naya Gaon, District Mohali.

2. As per the case of the prosecution, on 20.04.2013 when SI Harbans Singh (hereinafter referred to as, 'the SI') along with the police party was on a routine patrol, an informer came and informed him that

the accused Durvijay, Surinder Kumar and Anil Kumar, had been selling narcotic drugs, capsules, tablets, vials etc. without any license/permit in the area of Naya Gaon and if a naka was laid, they could be apprehended along with narcotic substance. Resultantly, the SI along with his police party raised a barricade at the spot. Soon thereafter, three persons holding one bag each were seen coming on foot. On seeing the police party, the three persons tried to beat a hasty retreat but were apprehended by the police. After disclosing his identity to the three persons i.e. the accused, SI expressed his desire to search their bags as he suspected that they could be carrying some narcotic substance with them. The three accused were also apprised of their right to get their search conducted from some Gazetted Officer or a Magistrate. However, all the three persons reposed confidence in the SI. Accordingly, their separate consent memos in the said regard were prepared. On search of accused Durvijay's bag, recovery of 11 strips of 10 tablets each of Carisoma, 4 packets of 100 tablets each of Microlit, 5 vials of 100 tablets each of Lomotil, 15 strips of 10 tablets each of Parvon Spas, 17 strips of 8 tablets each of Proxixon, 15 vials of Corex was effected. From the search of accused Surinder's bag, recovery of 8 strips having 10 tablets each of Carisoma, 7 packets of 100 tablets each of Microlit, 8 vials each having 100 tablets of Lomotil, 17 strips of 10 tablets each of Parvon Spas, 15 strips containing 8 tablets each of Proxyvon & 17 vials of Rexcof was effected and on the search of accused Anil Kumar's bag, recovery of 9 strips of 10 tablets each of Carisoma, 5 packets containing 100 tablets each of Microlit, 7 vials each containing

100 tablets each of Lomotil, 17 strips of 10 tablets each of Parvon Spas, 13 strips each of 8 tablets of Proxyvon & 14 vials of Rexcof was effected. Thereafter, as per the procedure prescribed, the samples were drawn, converted into parcels and sealed with the impression 'HS'. Sample seal was prepared separately and the case property was handed over to HC Ajit Singh. Since the accused did not have any permit/license for the recovered drugs, they were arrested. On a ruqa being sent to the Police Station, a formal FIR was then registered against the above three persons/accused. The accused along with the case property, were produced before the SHO, Police Station Naya Gaon, who also affixed his seal on the parcels. On 21.04.2013, inventory was prepared before the Illaqa Magistrate. On completion of investigation, challan was presented against the accused, who were then chargesheeted for offences punishable under Section 22 of the Act, to which they pleaded not guilty and claimed trial.

3. The prosecution, in support of their case, examined as many as 05 witnesses including Investigating Officer i.e. PW-3 SI Harbans Singh. When the statements of the accused were recorded under Section 313 Cr.P.C. and all incriminating circumstances appearing against them were put to them, they denied and pleaded innocence. Accused Durvijay, though, admitted to carrying some medicines, however, he stated that he was unaware about the ingredients of those medicines/drugs. He also stated that his search had been carried out without apprising him of his right to be searched by a Gazetted Officer or a Magistrate. Accused Anil

Kumar stated that he was a rickshaw puller and had been plying his rickshaw to ferry children to and fro from their school. Accused Surinder Kumar stated that he was a labourer and was plying an auto rickshaw and no recovery had been effected from him.

4. In defence, the accused examined Narinder Singh as DW1 who deposed that he was working at Park Grand Hotel, Sector 43, Chandigarh and his children were studying in Govt. School, Sector 10, Chandigarh. On the date of the alleged recovery, accused Anil Kumar had taken his children on rickshaw to the school and brought them back after school. In his cross-examination, however, he stated that he could not produce any evidence regarding the accused having taken his children to school on 20.04.2013, which was a Saturday.

5. On the basis of the material on record and the other evidence led during trial, the trial Court convicted the accused by holding that the prosecution had succeeded in establishing its case beyond shadow of reasonable doubt. The accused were sentenced to undergo imprisonment, as already reproduced in the earlier part of this judgment.

6. Learned Amicus Curiae appearing on behalf of the appellant has challenged the impugned judgment primarily on the following grounds:

- (i) That a number of persons were present in the vicinity, when the police allegedly intercepted and searched the accused.

However, even though it was incumbent upon the police to

join some independent witness, none from the public was joined.

- (ii) That the investigating agency faulted by not sending the entire recovered contraband for chemical analysis. Rather only a part of the allegedly recovered contraband was sent to the Forensic Science Laboratory.
- (iii) That there was no proper compliance of the provisions of Section 42 of the Act, even though, as per the case of the prosecution, a secret information had been received qua the accused carrying contraband with them, however, still it was not reduced into writing nor sent to the higher officials.
- (iv) That the mandatory provisions of Section 50 of the Act were also not properly complied with, which in turn created a serious dent in the case of the prosecution.
- (v) That there were material discrepancies in the deposition of the prosecution witnesses which were erroneously ignored by the trial Court while passing the impugned judgment.
- (vi) That there was a considerable delay in the samples being sent to the FSL, which also created a big question mark about the authenticity of the prosecution version.

7. Learned State counsel on the other hand, while vehemently opposing the submissions made by the counsel opposite, submitted that mere non-joining of the independent witness could not be a ground to throw out the case of the prosecution, since the testimony of the

prosecution witnesses came across as being trustworthy. It was further argued that the sampling of the recovered contraband could not be said to be faulty as the capsules, tablets and vials of syrup were similar in appearance. The capsules and tablets were in strips. Instead of sending all the recovered contraband to the FSL, the universally accepted process of sending representative samples as per procedure provided was done, since the recovered capsules were not in loose form. Learned State counsel while controverting the submissions made by the learned counsel for the appellant qua the non-compliance of Section 42 of the Act, asserted that a secret information was received, pursuant to which a ruqa was sent to the Police Station. He submitted that even otherwise, the conduct of the accused on seeing the police party, i.e. trying to make a hasty retreat, was also one of the reasons why everything was carried out in a hurry, else the accused could have fled from the spot. The information had been reduced into writing, thus, there was substantial compliance of Section 42 of the Act. Qua the non-compliance of Section 50 of the Act by the Investigating Agency, learned State counsel submitted that there had been proper compliance; an offer of search by Gazetted Officer and Magistrate was made to all the accused, who vide their separate consent memos, instead reposed confidence in the Investigating Officer for getting themselves searched.

8. Learned State counsel, therefore, vehemently argued that the trial Court had not erred while passing the impugned judgment; the

prosecution had successfully proved the case against the accused. A prayer was, therefore, made for dismissal of the instant appeal.

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

10. This Court does not find any merit in the instant appeal for the reasons to follow:

- (i) The absence of an independent witness alone cannot be considered detrimental to the case of the prosecution and it would not in any manner invalidate the trial. The testimony of police witnesses should not always be viewed with suspicion. In fact, an ordinary person on the street is often hesitant to participate in police proceedings on behalf of the prosecution due to the potential repercussions.
- (ii) If the prosecution is able to successfully establish the recovery of the contraband and there is no evidence or material to show that there was a history of any grudge/enmity between the police officials and the accused, mere non joining of an independent witness would not in any manner harm the case of the prosecution.
- (iii) In the case in hand, the recoveries were effected during the search of the bags, which were carried by the three accused. The following recoveries were effected:

- 11 strips of 10 tablets each of Carisoma, 4 packets of 100 tablets each of Microlit, 5 vials of 100 tablets each of Lomotil, 15 strips of 10 tablets each of Parvon Spas, 17 strips of 8 tablets each of Proxivon, 15 vials of Corex from accused Durvijay.
- 8 strips having 10 tablets each of Carisoma, 7 packets of 100 tablets each of Microlit, 8 vials each having 100 tablets of Lomotil, 17 strips of 10 tablets each of Parvon Spas, 15 strips containing 8 tablets each of Proxyvon & 17 vials of Rexcof from accused Surinder.
- 9 strips of 10 tablets each of Carisoma, 5 packets containing 100 tablets each of Microlit, 7 vials each containing 100 tablets each of Lomotil, 17 strips of 10 tablets each of Parvon Spas, 13 strips each of 8 tablets of Proxyvon & 14 vials of Rexcof from accused Anil Kumar.

(iv) It would be worth noticing that the recoveries of the above medicines/drugs were not in loose form. Since the drugs were found packed in strips and vials, the police was perfectly justified in sending only representative samples in accordance with the universally accepted sampling process. After following due procedure, the police sealed the recovered contraband and sent it to the Forensic Science Laboratory for

analysis. As per the report received from the Laboratory, Ex.PW2/F, it confirmed the presence of Dextropropoxyphene along with Dicyclomine hydrochloride and paracetamol in Parvon Spas, Diphenoxylate hydrochloride along with Atropine sulphate in the tablets of Microlit and Lomoti, Dextropropoxyphene Napsylate in Spanso Proxivon along with Paracetamol and Dicyclomine hydrochloride, whereas Codeine phosphate along with Chlorpheniramine Maleate were found in syrup RexCof and Corex.

- (v) Learned Amicus Curiae vehemently argued that the discrepancies in the testimonies of the prosecution witnesses were ignored by the trial Court which in turn, cast a serious doubt about the veracity of the prosecution version. However, this Court does not find any merit in the said submissions. No doubt, there were some discrepancies, but those discrepancies were with regard to the number of the individuals on the motorcycle, timing when the barricade was put up, timing when the secret information was received and the colours of the bags in which the accused were carrying contraband. These discrepancies cannot be said to be major, rather they are insignificant discrepancies and would not undermine the case of the prosecution. Once, the prosecution has effectively led evidence beyond a reasonable doubt, slight variation in the statements of the prosecution witnesses would not cast a

doubt on their case. A perusal of the deposition of the prosecution witnesses shows that they were extensively examined on all material aspects of the case and they stood their ground.

- (vi) This Court also does not find any merit in the submission made by the learned counsel qua the non-compliance of Section 42 of the Act. Upon receipt of secret information, the police promptly intimated the Police Station after completing all necessary procedures relating to the documentation of recoveries etc. It is essential to notice that when the three accused noticed the presence of the police at the Naka which had been raised, they attempted a hasty retreat. This clearly indicates that had the police awaited to complete all the necessary formalities and tried to adhere fully to the requirement of Section 42 of the Act, the accused would have successfully managed to flee. It is important to notice that when a secret information is received qua the involvement of some person carrying narcotic substances and there is a risk of such persons escaping or destroying the contraband, immediate action is crucial and necessitated by the police.

Hence, if the police did not strictly follow every aspect of Section 42 of the Act, in the facts and circumstances, it could still be considered as substantial compliance of the provisions of Section 42 of the Act.

(vii) Qua the contention of the learned Amicus Curiae in respect of the delay in sending the samples to the Laboratory, the same is yet again devoid of any merit. As long as the samples of the recovered contraband were received by the Laboratory in a sealed and intact condition, any delay in their dispatch will not enure to the benefit of the accused in any manner.

As a sequel to the above discussion, this Court has no hesitation in upholding the impugned judgment, whereby the appellant was convicted along with his co-accused for offence punishable under Section 22 of the Act.

Dismissed.

(MANJARI NEHRU KAUL)
JUDGE

October 3, 2023
rps

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