

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

359

CRA-S-5305-SB-2015

Date of decision: 12.04.2023

Rajdev Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Amaninder Preet, Advocate  
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

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**MANJARI NEHRU KAUL, J. (ORAL)**

1. The instant appeal has been preferred to impugn the judgment of conviction and order of sentence dated 16.10.2015 passed by learned Judge, Special Court, Barnala vide which the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of ₹10,000/- under Section 22(b) 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 05 months.

2. Learned counsel for the appellant has challenged his aforesaid conviction primarily on the following grounds that:-

(i) 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 as no attempt was made by the police party to join any independent witness. A false recovery of 500 intoxicant tablets containing diphenoxylate hydrochloride and 800 ml

intoxicant liquid containing amphetamine and codeine phosphate having been planted upon the appellant is thus evident;

(ii) there was non-compliance of Section 50 of the NDPS Act coupled with the fact that even provisions of Section 55 of the NDPS Act were not complied with;

(iii) only one sample was drawn from the contraband as against two samples;

(iv) there was an inordinate delay in the dispatch of the samples to the FSL;

(v) as per FSL report one of the samples sent was received in a torn condition which further corroborated a false recovery of contraband having been planted upon the appellant.

3. Learned counsel submits that besides the above, there were other material discrepancies in the statements of the official witnesses which created a serious dent in the case of the prosecution.

4. Per contra, learned State counsel has vehemently opposed the prayer and submissions made by the counsel opposite. He submits that recovery of 500 intoxicant tablets containing diphenoxylate hydrochloride and 800 ml intoxicant liquid containing amphetamine and codeine phosphate was effected from a polythene bag which was being carried by the petitioner. It was on the basis of suspicion that the appellant was nabbed by the police party. He has contended that the compliance of Section 50 of the NDPS Act would not be attracted in the case in hand because the recovery of the contraband was not effected from the personal search of the appellant but from a bag which he was carrying in his hand. While drawing the attention of this Court

to the deposition of both the investigating officer as well as the recovery officer, PW3 SI Bhupinder Singh and PW4 ASI Darshan Singh, respectively, learned State counsel has submitted that they both had been consistent in their deposition that the mouth of the bag from which the alleged recovery was effected was open, hence, in the circumstances once the contraband was visible to the naked eye, compliance of Section 50 of the NDPS Act would also not be attracted. It has also been submitted that there was no force in the submissions made by the learned counsel for the appellant qua the non-compliance of Section 55 of the NDPS Act because firstly the said provisions are not mandatory in nature but are directory, and secondly it was a matter of record that on the day of recovery i.e. 19.04.2013, PW3 SI Bhupinder Singh, himself was the Station House Officer (hereinafter referred to as 'SHO') of Police Station Bhadaur. Hence, in the circumstances, once the SHO himself was present at the spot at the time of recovery, there was no occasion for the case property being again produced before the SHO, after the recovery. Learned State counsel has vehemently disputed the submissions made by the counsel opposite qua the inordinate delay in sending the recovered samples to the FSL. While drawing the attention of this Court to Ex.PK i.e. report of the Forensic Science Laboratory, Mohali, he has submitted that it had been reported therein that the case property sent to the laboratory had arrived in an intact condition and the seal on those exhibits tallied with the specimen seal sent along with it. He has submitted that the alleged delay, if any, and that too of only 05 days, in sending the samples to the FSL, would not come to the rescue of the appellant much less create any dent in the

case of the prosecution. Learned State counsel has also submitted that since it was a case of chance recovery, non-joining of independent witness would also not in any manner adversely affect the case of the prosecution. It has also been contended that more often than not, people are most reluctant to join as witnesses in such like cases. Learned State counsel has lastly submitted that once the deposition of the prosecution witnesses come across as being trustworthy, conviction of an accused can be safely recorded in the light of the other convincing and cogent evidence brought on record by the prosecution qua the involvement of the appellant in the case in hand, during trial.

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

6. As per the case of the prosecution on 19.04.2013, when SI Bhupinder Singh along with other police officials were going from Bhadaur to Alkara in connection with routine patrolling, they chanced upon the appellant who was seen sitting on one side of the road along with a plastic bag in his hand, in suspicious circumstances and nabbed him. Efforts were made to join an independent witness, however, nobody was found in the vicinity. On checking of the plastic bag, whose mouth was open, the police party recovered one plastic can containing intoxicant liquid and 500 intoxicant tablets make Phenotil. Out of the liquid measuring 800 ml, a sample of 180 ml was drawn by the police and another 20 intoxicant tablets drawn out of the 500 intoxicant tablets recovered. The above drawn samples after being separated were duly sealed as per the prescribed procedure under the NDPS Act by PW3 SI Bhupinder Singh. Specimen seal Ex.P1 after

being prepared separately was handed over to ASI Darshan Singh. Case property was taken into possession vide recovery memo Ex.PA. Ruqa Ex.PB was sent to the police station on the basis of which the FIR Ex.PC, came to be registered against the appellant by ASI Dilbar Singh. Accused was arrested and information about his arrest was sent vide memo Ex.PE. Site plan of the place of recovery, Ex.PF, was prepared along with special report Ex.PG. On return to the police station, PW3 SI Bhupinder Singh deposited the entire case property with MHC Ranjit Singh in an intact condition. Inventory report Ex.PH after being prepared was produced along with the appellant and the case property in the Court of ACJM, Barnala who then passed order Ex.PJ. Since there was some clerical mistake qua the quantity, it was immediately rectified on the same day, i.e. 20.04.2013, by the Court concerned vide order Ex.PJ/1. Samples were thereafter despatched to the office of Chemical Examiner along with samples of seal and CFSL form through Head Constable Baldev Singh, who deposited them in an intact condition in the office of Forensic Science Laboratory, SAS Nagar, Mohali. As per the report of the FSL Ex.PK, the contents of the tablets were found to be diphenoxylate hydrochloride and atropine sulphate and the intoxicant liquid were found to be chlorpheniramine maleate and codeine phosphate. On completion of investigation, final report under Section 173 of the Cr.P.C. was submitted against the accused and the trial against the appellant commenced. After close of prosecution evidence, all the incriminating circumstances were put to the accused 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.

7. On the basis of the evidence led, the appellant was convicted and sentenced to undergo imprisonment which already stands detailed in para 1 of this order.

8. This Court after perusing the impugned judgment and the evidence led, does not find any force in the submissions made by the learned counsel for the appellant. This Court has no hesitation in observing that the impugned judgement does not suffer from any illegality much less infirmity for the reasons to follow:-

(i) Admittedly, it was a case of chance recovery. Since the appellant was found fiddling with the plastic bag which he was carrying in his hand, he was nabbed on suspicion. No doubt, the provisions of Section 50 of the NDPS Act are mandatory in nature but only if the alleged recovery of contraband is effected from the 'person' of the accused. In the case in hand, the recovery was effected from a bag which was being carried by the appellant in his hand. It is nobody's case, that along with the search of the bag which the appellant was carrying, his personal search was also carried out and, then some more contraband other than the one found in the bag also recovered. The bag which the appellant was carrying at the relevant time, can under no circumstances, be treated as his 'person'. Hence, compliance of the provisions of Section 50 of the NDPS Act in the instant case was not required.

(ii) The contention of the learned counsel for the appellant that since the prosecution case rests solely on the testimony of the official witnesses, non-joining of any independent witness hinted towards his false implication, is wholly devoid of any merit. Mere non-joining of an

independent witness cannot be a ground to throw out the case of the prosecution, if on a close scrutiny of the evidence led including the deposition of the official witnesses, it comes across as being honest and trustworthy. It also needs to be noticed here that it had been categorically deposed by the prosecution witnesses that they made attempts but in vain, to join independent witness. The evidence tendered by the police officials in the instant case can be safely kept at the same pedestal as that of an independent witness as it comes across as being trustworthy. Moreover, no evidence was adduced by the appellant as to why the police would have falsely planted a huge recovery of 500 intoxicant tablets containing diphenoxylate hydrochloride and 800 ml intoxicant liquid containing amphetamine and codeine phosphate on him.

(iii) The contention of the learned counsel for the appellant qua non-compliance of Section 55 of the NDPS Act as well as the delay in sending the samples drawn to the FSL which as per him were found to be in a torn condition, too is devoid of any merit. It is a matter of record that on the day of recovery i.e. 19.04.2013, PW3 SI Bhupinder Singh was the SHO of Police Station Bhadaur. Once the SHO himself was present at the spot, when the recovery was effected from the appellant, there was no need for the case property being again produced before him. Even the delay of 5 days in sending the samples to the FSL would not benefit the appellant. The contents of the FSL report (Ex.PK) are reproduced as under:-

6. Articles received : One quarter sized glass bottle and one parcel each sealed with one seal of 'BS' alleged to contain intoxicating material.
- Seals on the bottle and parcel were found intact and tallied with the specimen seal impression.
- On opening:
- Parcel No.1-was found to contain twenty tablets of white colour in a torn packet labeled as Phenotil.
- Average wt.76mg/tablet.
- Bottle No.2-was found unlabelled and containing 180ml. of orange coloured liquid material.

Thus, a bare perusal of the FSL report reveals that though the packet labeled as 'Phenotil' was received as torn, yet the seals on the bottle and the parcel were found intact, when tallied with specimen seal impression. Therefore, in view of the aforesaid, the possibility of any tampering can be safely ruled out. Furthermore, it needs to be noticed that the provisions of Section 55 of the NDPS Act are directory in nature and not mandatory.

9. As a sequel to the above, the instant appeal being devoid of any merit is dismissed.

12.04.2023

Vinay

(MANJARI NEHRU KAUL)  
JUDGE

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