

Neutral Citation No.2023:PHHC:164111

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRA-S-709 of 2019 (O&M)
Date of decision : 15.12.2023
...
Sandeep Singh @ SeepaAppellant

vs.

State of PunjabRespondent

2) CRA-S-712 of 2019 (O&M)
...
Sandeep Singh @ SonuAppellant

vs.

State of PunjabRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Jashandeep Singh Sandhu, Advocate for the appellant.

Mr. Jaiteshwar S. Sandhu, Assistant Advocate General,
Punjab

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MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of abovesaid appeals, as both of them have arisen out of the same judgment. For brevity, the facts are taken from CRA-S-709 of 2019.

The present appeals have been filed by the appellants praying for setting aside of the impugned judgment and order dated 13.2.2019, passed by the Additional Sessions Judge, Special Court, Bathinda, whereby the appellants have been convicted for offence

under Section 411 of the Indian Penal Code and Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as 'the NDPS Act') and sentenced to undergo imprisonment as under :-

<i>Name of accused</i>	<i>Offence U/s</i>	<i>Sentence</i>
Sandeep Singh @ Seepa and Sandeep Singh @ Sonu	411 IPC	Rigorous imprisonment for a period of one year each and to pay a fine of Rs.2,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one month each.
Sandeep Singh @ Sonu	21 NDPS Act	Rigorous imprisonment for a period of ten years and to pay a fine of Rs.one lac and in default thereof, to further undergo rigorous imprisonment for a period of one one year.
Sandeep Singh @ Seepa	21 NDPS Act	Rigorous imprisonment for a period of ten years and to pay a fine of Rs.one lac and in default thereof, to further undergo rigorous imprisonment for a period of one one year.
Sandeep Singh @ Seepa	21 NDPS Act (Smack)	Rigorous imprisonment for a period of six months and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for a period of one one month.

All the sentences were ordered to run concurrently.

2. Learned counsel for the appellants-accused has asserted that the impugned judgment, on the face of it, is perverse and deserves to be set aside as the trial Court has erred in overlooking crucial evidence on record. Learned counsel for the appellants has inter alia, further contended as follows :-

- i) That the only independent witness Sukhwinder Singh, Ex-Panch, who could have corroborated the case of prosecution was not examined during trial, which significantly created a serious dent in the case of the prosecution;

ii) That there was a violation of the mandatory provisions of Section 50 of the NDPS Act as neither the personal search of the accused was carried out nor the alleged recovery of 14 vials of Rexcof, 4 gms of smack, 200 strips of Tranex-0,25 containing 10 tablets each and 150 strips of Tranex-0.25 containing 10 tablets each, was done in the presence of a Magistrate or Gazetted Officer. Rather, the manner in which the entire recovery proceedings were conducted, raised a doubt about the authenticity of the prosecution version. Moreover, the samples were not drawn from all the alleged recoveries, nor were the other necessary details like batch number, manufacturing dates, Lot Numbers, which would have been crucial for authentication, mentioned;

iii) That in the testimony of PW-5 SI Gurinder Singh, he admitted that only one vial out of the 14 seized vials of Rexcof (100 ml) had been drawn as a sample parcel, while the remaining vials, allegedly recovered were destroyed. Further more, only one vial out of the 14 allegedly recovered, was sent to the FSL for examination. Not only this, even qua the other alleged recovery of strips of Tranax tablets, neither any batch number or name of the manufacturers was mentioned coupled with the fact that all those recovered tablets were not even sent to the FSL, much less their details

mentioned in the FIR;

iv) That despite the alleged recovery having been effected on 24.6.2014, there was a significant delay in sending the samples to the FSL. During this period, the samples were not even deposited in the Malkhana, as per rules but were instead retained by PW-9 ASI Gurjant Singh and PW-1 Constable Sandeep Singh;

v) That furthermore, a perusal of the testimony of PW-9 ASI Gurjant Singh, revealed that on 30.6.2014, he had directed PW-1 Constable Sandeep Singh to deposit the samples with the FSL however, due to some objections they could not be deposited and were returned. On 8.7.2014, PW-9 ASI Gurjant Singh again handed the sample parcel to PW-1 C. Sandeep Singh, and it was only then that they were deposited. Moreover, some material discrepancies came to the fore in the testimony of PW-9 ASI Gurjant Singh, with respect to the handling of the samples, raising serious concerns about them being tampered with;

vi) That additionally, material discrepancies also came to the fore in the deposition of PW-1 Constable Sandeep Singh regarding the handling of the samples as in his affidavits he stated that the samples were not handed over to him by SHO Jasveer Singh. However, in his cross-examination, he stated to the contrary.

Learned counsel has vehemently argued that in the above facts and

circumstances a serious doubt is indeed cast upon the case set up by the prosecution; even if, for the sake of arguments, it is accepted that some narcotic substance was recovered from the appellants, only the contents of the single vial sent to the FSL conforming the recovered substance to be narcotic substance, the recovery allegedly effected from the appellants would at best fall under non-commercial quantity, due to the percentage of the narcotic substance contained in that single vial. Consequently, a prayer has been made for acceptance of the appeal and setting aside the impugned judgment and order.

3. Learned State counsel, while controverting the submissions and prayer made by the counsel for the appellants, has submitted that the FIR in question was registered pursuant to a secret information received by the police; on 21.6.2014 both the appellants were then apprehended and on their search the following substances were recovered from them :-

Sandeep Singh @ Sonu	200 tablets of Tranax 0.25 having 10 tables each containing 'Alprazolam'
Sandeep Singh @ Seepa	14 vials of Rexcoff 100 mls and 4 gams of smack

i) That the submission made by the appellants qua non-compliance of Section 50 of the NDPS Act, was devoid of any merit, as the contraband, which they both were carrying was recovered from a bag held by them and not from their personal search;

ii) That all the prosecution witnesses supported the case

of the prosecution; therefore in case the independent witness was not examined, it would not be fatal to the case of the prosecution, more so, when the said witness was given up as having been won over;

iii) That no doubt only one vial out of the 14 vials of Rexcof seized from the appellant was sent to forensic science laboratory, however, even if the details were not given with respect to the name of the manufacturer, batch number, etc., the FSL report had confirmed the presence of 'codeine phosphate' in the vial which had been sent to it. Consequently, the trial court could not be faulted with for drawing the correct inference that the remaining vials, though not sent to forensic Science Laboratory, also contained the same substance;

iv) That merely because the samples remained in the custody of PW-9 ASI Gurjant Singh, before being sent to the forensic laboratory, without any evidence of them being tampered with, having been brought forth by the appellants, would not amount to an adverse inference against the prosecution.

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

5. In the matter at hand, the prosecution examined PW-9 Gurjant Singh (officiating SHO, with whom the case property was deposited). From his testimony the following facts surfaced :-

- i) 4 sample parcels containing i.e. one parcel sample of one vial of Rexcof 100 ml, one sample parcel of one strip of Tranax 0.25 tablets, one sample of plastic box containing one gram of smack, were dispatched to the FSL.
- ii) Vide Exhibit PW-9/E the remaining case property was directed to be destroyed, while the remaining sample parcels were directed to be deposited.
- iii) On 30.6.2014, PW-9 ASI Gurjant Singh directed PW-1 Constable Sandeep Singh to deposit the samples parcels at the FSL Mohali. However, the FSL did not accept them and instead returned them with some objections.
- iv) On 8.7.2014, PW-9 ASI Gurjant Singh, again handed over the sample parcels to PW-1 Constable Sandeep Singh, directing him to deposit at the FSL, which was then carried out.
- v) PW-1 Constable Sandeep Singh in his deposition, initially stated that PW-9 ASI Gurjant Singh had handed him the samples on 30.6.2014, which were returned due to objections, however, later on, during his cross examination, he claimed that SHO Jasvir Singh had handed him the samples which were then returned to MHC Bahadur Singh on 1.7.2014.

6. With respect to the arguments raised by the counsel for the appellants qua the non-compliance of Section 50 of the NDPS

Act, this Court does not find any merit in the aforementioned contention. The contraband was recovered from a bag carried by the accused and not from their personal search. Further, as per the settled law, no adverse inference can be derived in case the independent witness is not examined and it would not be fatal to the case of the prosecution if the testimony of the official witnesses comes across as being credible.

7. However, it has not been disputed by PW-9 ASI Gurjant Singh and PW-5 that the entire recovered substances from the accused was not sent to the FSL, but only one vial out of the 14 vials of Rexcof of 100 ml, 10 strips of Tranax 0.25 having 10 tablets each and 200 strips and 4 grams of smack recovered, (1+1 strips, out of the 200 strips recovered), 1 gram of smack was sent for examination to the FSL, while the rest of the recovered substance was destroyed. It has also not been disputed that no batch numbers or other relevant details with respect to the recovered substances were recorded by the Investigating Agency in the documents prepared by them.

8. In the circumstances, this Court has no hesitation in observing that the State was unable to prove as to how the remaining recovered substances, which admittedly remained un-examined with respect to the ingredients contained in them, could be presumed to contain specific narcotic substances, i.e. codeine phosphate, etc. Furthermore, the manner of the storage of the recovered contraband which is very crucial in such like cases, also raises a big question mark in the instant case. In this case serious doubts come to the fore with respect to the storage, specially keeping in mind the

discrepancies surfacing in the testimonies of the witnesses. The retention of the sample by the SHO for an extended period of time despite there being specific orders on 25.6.2014 (Annexure PW-9/E) from the Court, does create a serious dent in the case of the prosecution. No plausible, much less convincing explanation was given by the prosecution witnesses, as to why the objections raised by the FSL remained un-addressed and were only removed on 8.7.2014 after more than a month; no satisfactory explanation was also offered as to why the samples remained in the custody of PW-9 ASI Gurjant Singh in his own trunk. It is also apparent that the provisions of the NDPS Act, qua the storage of the recovered contraband were not duly adhered to, by the Investigating Agency.

9. As a sequel of the above, this Court has no hesitation that the prosecution failed to prove the case against the appellants beyond a shadow of reasonable doubt, for which they deserve to be given the benefit of doubt.

11. Both the appeals are allowed as such and the appellants are acquitted of the charges framed against them. The accused are directed to be released forthwith, if not required in any other case.

(MANJARI NEHRU KAUL)
JUDGE

15.12.2023
chugh

Whether speaking / reasoned Yes / No

Whether reportable Yes / No