

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

386

CRA-S-2209-SB-2004 (O&M)

Reserved on: 19.01.2023

Date of Decision: 20.01.2023

Tarlochan Singh

...Appellant

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Kamal Kumar Yogi, Advocate
as Legal Aid Counsel
for the appellant.

Ms. Prabhjot Kaur, Advocate for
Mr. Karamjit Singh, Advocate
for the appellant.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction 28.10.2004 and order of sentence dated 28.10.2004 passed by the learned Additional Sessions Judge-cum-Special Judge, Amritsar, whereby, the present appellant was convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1000/- alongwith default stipulation.

The brief facts of the case are that on 14.06.2002, SI/SHO Dalbir Singh alongwith other police officials was present and when the police party reached on the link road, Sandhra, a person was

seen coming on foot from the side of village Sandhra. On seeing the police party, he got perplexed and tried to run away. The police party got suspicious and SI/SHO Dalbir Singh with the help of his companions apprehended the said person and asked his name and address. On inquiry, he disclosed his name and address to be Tarlochan Singh son of Hazara Singh Caste Jatt, resident of village Gehri Mandi, Police Station Jandiala. The SI/SHO informed him that there was a suspicion that he was carrying some narcotic substance and his search was to be conducted. He was asked as to whether he wanted to get his search conducted in his presence or in the presence of some gazetted officer. The accused expressed his intention to get his search conducted in the presence of a gazetted officer and the memo was prepared in this regard, which was duly attested by the witnesses. On getting a wireless message, Major Singh, the Deputy Superintendent of Police reached at the spot and disclosed his identity and told that he wanted to get his search conducted. He asked the accused as to whether he wanted to get the search conducted in his presence or in the presence of a Magistrate. The accused reposed confidence in him and at the instance of the Deputy Superintendent of Police, the search was conducted by the SI/SHO Dalbir Singh, which led to the recovery of opium wrapped in a glazed paper, which was kept by the accused in a cloth bag in his right hand. 10 gms of opium was separated as a parcel and was kept in a very small plastic bag. The total quantity of opium weighed to 1 kgs and 200 gms including the weight of the sample. The sample parcel as well as the sample

residue were sealed with the seal impression 'DS' of SI/SHO and 'MS' of the the Deputy Superintendent of Police. The incriminating articles were taken into possession vide separate recovery memo. The *ruka* was sent to the police station and the case was ordered to be registered on the basis of the same. The sample was sent to the office of chemical examiner and it was found to be opium as per the report of the chemical examiner. On completion of the investigation, challan under Section 18 of the NDPS Act was presented in the competent Court by the police.

After presentation of the challan, the accused was ordered to be charge sheeted under Section 18 of the NDPS Act, to which, the accused pleaded not guilty and claimed trial.

In support of the prosecution case, the prosecution examined three witnesses.

Major Singh, the Deputy Superintendent of Police, (D) Majitha was examined as PW1, who had reached the spot on getting the wireless message. He stated that he verified the facts and introduced himself to the accused. He also apprised the accused about his right to be searched in the presence of a gazetted officer or a Magistrate. The accused reposed confidence in him and on his direction, the search was conducted and the same led to the recovery of 1.200 kgs of opium from the accused. He supported the case of the prosecution in totality. The prosecution further examined PW2 Dalbir Singh, who was heading the police team on the said day. He was posted as SI/SHO, Police Station Bhikhiwind on 14.06.2002 and after

following due procedure of law, he had recovered 1.200 kgs of opium from the accused. He supported the allegations, as enumerated in the FIR. Apart from that, the prosecution examined PW3 Sukhdev Singh, who had taken the contraband from the Police Station Bhikhiwind and deposited the same with the chemical examiner.

After the prosecution evidence was over, the statement of the accused was recorded under Section 313 Cr.P.C., and he pleaded his false implication. He stated that nothing was recovered from him and he was taken by the police from his house.

In his defence, DW1 Kashmir Singh was examined, who was member of Panchayat from village Gehri Mandi twice. He stated that about 2/3 months back, the police had come to the house of the accused and son of the accused called Kashmir Singh at about 6.00 a.m. The police took him away at about 6.00 a.m. from his house. They signalled the police to stop the vehicle, but it was not stopped by the police officials. Kashmir Singh, Sarpanch of the village went to CIA office, and enquired about the accused, but to no effect. They also represented the the Senior Superintendent of Police, Tarn Taran and they came to know about the arrest of the accused in the present case. However, in his cross-examination he admitted that no application/complaint was given in writing to the the Senior Superintendent of Police, or any other higher officer.

I have heard learned counsel for the parties and with their able assistance, I have examined the trial Court record carefully.

Learned counsel for the appellant argued that in the instant case, the appellant/accused was simply asked as to whether he wanted to get his search conducted in the presence of a gazetted officer or SI/SHO Dalbir Singh. Thus, there was non-compliance of Section 50 of the NDPS Act, which is mandatory. Even, the mere asking the accused as to whether he was required to be produced before a Magistrate or a gazetted officer will not amount to communicating him that he had a right under the law to be searched so. The said submission has been opposed by the learned State counsel by submitting that the mandatory provisions of Section 50 of the NDPS Act would not apply to the facts of the instant case. I find no force in the argument raised by the learned counsel for the appellant. In fact, from a perusal of the evidence of the present case, it is apparent that the opium was wrapped in a glazed paper, which was kept in a cloth bag by the appellant/accused and the said bag was held by the appellant in his right hand. Thus, the recovery was not effected from his personal search and the recovery was made from the cloth bag. Thus, the mandatory provisions of Section 50 of the NDPS Act would not be applicable to the facts of the instant case.

Still further, the learned counsel for the appellant further submitted that the accused was apprehended and the recovery of the contraband was allegedly made on a *pucca* road near a Gurudwara, where several independent and respectable persons were available. Even, the DSP came after one hour and it was easy and convenient for the police to have called some respectables and independent person

from the Gurudwara itself. Still further, non joining the independent witnesses raises a serious doubt about the genuineness of the prosecution case. The said submission has been opposed by the learned State counsel by submitting that the appellant/accused has not attributed any motive for false implication by the police officials. Again, I find that the argument raised by the learned counsel for the State of Punjab carried weight. The testimonies of official witnesses have to be scrutinized carefully, but said statements of the official witnesses cannot be thrown out only on the ground of their official status. No doubt, as a rule of prudence, the Courts look for independent corroboration, but the statements of the official witnesses cannot be thrown out, if such statements inspire confidence. I have carefully perused the statements made by the official witnesses and all the witnesses had withstood the test of cross-examination. Thus, the learned trial Court has rightly placed reliance on the testimonies of the official witnesses.

Still further, the learned counsel appearing for the appellant prayed that as per the record, appellant was aged about 47 years at the time of framing of charge, i.e. on 23.08.2002 and is aged about 68 years at present. Still further, he is facing the agony of trial/appeal for the last more than 21 years and even recovery made from him is non-commercial in nature and prayed that a lenient view may be taken in the matter of sentence. I find sufficient force in the submission made by the learned counsel for the appellant. A

perusal of the record reveals that as on 23.08.2002, the appellant was aged about 47 years and he must be aged about 68 years as of now.

As per the custody certificate produced by the learned State counsel, he has undergone about 05 months and 07 days of actual sentence out of total sentence of 2 years. Still further, as per the custody certificate, no other case under NDPS Act was registered against him ever. He has only shown to be involved in a case FIR No. 48/2003 under Section 399, 402 of IPC and Section 25 of Arms Act, Police Station Kotwali, Amritsar, in which, he is stated to be on bail. Apart from that, the recovery of the opium from present appellant was non-commercial in nature and he has faced the agony of trial/appeal for the last about 21 years.

Consequently, the impugned judgment of conviction 28.10.2004 passed by the learned Additional Sessions Judge-cum-Special Judge, Amritsar, is ordered to be upheld. The sentence awarded to the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs. 1000/- to Rs. 20,000/- and the same shall be deposited by the appellant/accused in the Punjab and Haryana High Court Bar Association Lawyer's Family Welfare, Fund, within a period of two months, failing which, the appellant shall undergo rigorous imprisonment for a period of 02 months in default of fine, as ordered by the trial Court.

All pending applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

20.01.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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