

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**  
**SR. No.402**

**CRA-S-2390-SB-2004 (O&M)**  
**Reserved on:09.02.2023**  
**Pronounced on:10.03.2023**

**Number Ram**

**...Appellant**

**Versus**

**State of Punjab**

**...Respondent**

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

Present: Mr. Nayandeep Rana, Advocate/Amicus Curiae  
for the appellant.

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

**N.S. SHEKHAWAT, J.**

The present appeal is directed against the judgment of conviction and order of sentence dated 10.11.2004 passed by the learned Special Judge, Patiala, whereby the appellant was convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced to undergo rigorous imprisonment for a period of 2½ years and to pay a fine of Rs.3000/- with default stipulation.

The facts, which are necessary for adjudication of the instant appeal, are that on 12.12.2000 ASI Gurdev Singh along with other police officials was present in the official vehicle being driven by Constable Parveen Kumar. In the meantime, Nirbhai Singh also joined the police party as an independent witness on the road leading from Patran to Dugal Khurd. When the police party reached near the bridge of Choe near Dugal Khurd, a person was spotted coming on foot and

was holding a small bag in his right hand. On noticing the police party, he got perplexed and sat on the ground on the pretext of discharging urine. However on suspicion, he was apprehended and he disclosed his name and address to be Number Ram son of Sardara Ram. ASI Gurdev Singh expressed suspicion qua the possession of the contraband by the accused in the bag held by him. He was apprised of his right of being searched in the presence of a gazetted officer or a Magistrate. However, the accused opted to get his search conducted in the presence of a gazetted officer. On getting the information, Ashwani Kumar, DSP, Samana, reached at the spot and disclosed his identity to the accused as gazetted officer. He also enquired from the accused as to whether he wanted to get the search conducted in the presence of a gazetted officer or a Magistrate and the accused reposed confidence in the DSP. The memos with regard to the above proceedings were prepared separately. Thereafter, at the instance of the DSP, the bag was checked and it was found containing opium wrapped in a glazed paper. Two samples of 10 grams each were separated and the remaining quantity of opium weighed to be 1.480 kilogram. The remaining opium was again put in the tin container and the two sample parcels were also packed separately and all three parcels were sealed separately with the seal impression 'GS' of the Investigating Officer. The specimen of the sample seal was also prepared. The DSP had also affixed his seal bearing impression 'AK' on all the parcels. Ultimately, the case property was taken into possession by the police. Apart from that, the personal search of the accused was also conducted and a ruqa was sent to the police station. On the basis of the ruqa, a formal FIR was recorded. ASI Gurdev Singh conducted the initial investigation at the spot. On return to the police station, the case property, the witnesses and the accused were produced before SHO Krishan

Kumar, who also verified the facts from the accused as well as the witnesses. He had also affixed his seal impression 'KK' on all the parcels and the sample seal chit. The SHO directed the Investigating Officer to deposit the case property with Surinder Pal, MHC. Thereafter, the case property was taken from the MHC and was produced before the Area Magistrate. After production of the case property in the court, the case property was re-deposited with the MHC. The samples were sent in intact condition to the office of Forensic Science Laboratory, Chandigarh. After receipt of the report of the Forensic Science Laboratory and completion of the investigation, the challan was presented against the accused-appellant.

After due appreciation of the incriminating evidence collected during the course of investigation, the learned trial Court ordered framing charge under Section 18 of the Act against the accused-appellant, to which he pleaded not guilty and claimed trial.

In support of the case of the prosecution, five witnesses were examined. The prosecution examined PW-1 C. Karanbir Singh, whose evidence was of formal character and he tendered his Affidavit Ex.PA into evidence. The prosecution further examined PW-2 ASI Gurdev Singh, who was leading the police party on 12.12.2000. He supported the case of the prosecution as narrated in the FIR. Sill further, MHC Surinder Pal was examined as PW-3, who tendered his affidavit Ex.PL in evidence. Inspector Krishan Kumar, SHO was examined as PW-4, who was posted as SHO in Police Station, Patra on 12.12.2000. ASI Gurdev Singh produced the accused-appellant, the case property and the witnesses before him and he had verified the facts from the witnesses and the accused-appellant. He had also fixed his seal bearing impression 'KK' on all the parcels as well as on

EX.P1. The prosecution further examined HC Ram Sarup as PW-5, who was

joined with the police party, which was headed by ASI Gurdev Singh. He also supported the averments made in the FIR as well as during the course of initial investigation.

After the evidence by the prosecution was concluded, the statement of the accused-appellant under Section 313 Cr.P.C. was recorded by the learned trial Court. In the said statement, the accused-appellant pleaded his false implication. He stated that he was innocent and had not committed any offence nor any recovery was effected from him. The accused-appellant examined two witnesses to prove his defence. Nirbhai Singh, who had initially joined as an independent witness, was examined as DW-1. He did not support the case of the prosecution and stated that nothing incriminating was ever recovered from accused-appellant in his presence and he did not know the accused-appellant. However in his cross-examination, he admitted that Ex.PB to Ex.PE were bearing his signatures. He further admitted that he had no relations with any police official. The accused-appellant further examined DW-2 Chhanku Ram. On 12.12.2000, the accused-appellant had visited his house. Two police officials came there and told him that the accused-appellant was required to be taken to the police station, as he was wanted by the SHO. No recovery was effected from the accused-appellant in his presence and he was falsely implicated in the present case. On the same day, he along with 4-7 persons went to the police station and enquired about the detaining of the accused, but the police officials told them that opium was planted on the accused-appellant. The said witness was the brother-in-law of the accused-appellant.

The learned trial court after appreciation of the facts and evidence brought on record concluded that the prosecution has successfully proved its case,

bringing home the guilt against the accused/appellant. Consequently, the appellant was convicted and sentenced as noted above.

Hence, the present appeal.

Learned counsel for the appellant vehemently argued that in the instant case Nirbhai Singh was associated by the police party as an independent witness. However, he was not examined by the prosecution. Rather the said person appeared as a defence witness and clearly stated that no recovery was effected from the accused in his presence and he did not know the accused. The said submission has been opposed by the learned State counsel by contending that even though the said witness made a futile attempt to support the case of the defence, still he had admitted his signatures on Ex.PB to Ex.PE, which clearly prove that the recovery was effected from the present appellant.

I have considered the rival submissions made by the learned counsel of both the sides and find sufficient force in the submissions made by learned State counsel. It is evident that Nirbhai Singh, independent witness, was won over by the accused and he appeared as a defence witness. He tried to support the defence, however, in the opening line of his cross-examination, he admitted that he had signed the documents Ex.PB to Ex.PE, which clearly show that he was part of the initial investigation conducted by ASI Gurdev Singh. He admitted his signatures on the documents, which conclusively proved the recovery of the contraband from the present appellant. Had he signed on blank papers, nothing prevented him from approaching the higher police officers by raising the grievance that his signatures had been obtained on blank papers. However, the defence evidence was completely lacking in this regard and the submissions made by learned counsel for the appellant are rejected.

Still further, the learned counsel for the appellant vehemently argued that the defence witnesses are to be treated at par with the prosecution witnesses. The testimony of defence witnesses cannot be rejected on the ground that they had supported the case of the defence and further no reasons have been recorded by the learned trial Court in discarding the testimonies of the said witnesses, which unerringly pointed towards the innocence of the accused-appellant in the instant case. There was ample evidence on record to substantiate the plea that in fact no recovery was effected from the present appellant. The submissions made by the learned counsel for the appellant have been opposed by the learned State counsel by contending that both the witnesses produced by the accused were interested witnesses. DW-1 Nirbhai Singh was won over by the accused and was made to appear as a defence witness.

I have considered the rival submissions made by the learned counsel for both the parties and find that there is no substance in the argument raised by the learned counsel for the appellant as falsehood of DW-1 Nirbhai Singh was apparent from the fact that in cross-examination he admitted his signatures on Ex.PB to Ex.PE. Still further DW-2 Chhanku Ram was the brother-in-law of the accused. Even he had taken again a vague defence and was apparently an interested witness, being closely related to the accused. Even he could not place on record any representation made by him or any other person to the higher police officer and steps taken by them to show the innocence of the appellant. Consequently, the evidence led by the defence has not been discarded in routine by the learned trial Court. Rather cogent reasons have been recorded for believing the prosecution case and rejecting the testimonies of the defence witnesses.

Learned counsel for the appellant further submitted that there was non-compliance of provisions of Section 57 of the Act and since there was breach of the statutory provision of the Act, the appellant is liable to be acquitted by this Court. The said submission has been opposed by the learned State counsel by contending that the higher police officers were duly informed in the shape of the special reports and the facts were well within the knowledge of the higher officers. Even at the time of recovery, Ashwani Kumar, DSP was called at the spot and there was sufficient compliance of the said provision of the law.

I have considered the rival submissions and find that no serious prejudice has been caused to the case of the appellant. Above all, the law is well settled that the provisions of Section 57 of the Act are merely directory in nature and the accused cannot draw any advantage out of the said submission. Further, in the instant case, the special reports were also submitted to the higher officers and the facts were well within their knowledge. Thus, the submissions made by learned counsel for the appellant are liable to be rejected.

No other argument was raised.

I have carefully perused the findings recorded by the learned trial Court. The learned trial Court has recorded good and valid reasons for convicting the present appellant. Apart from that, the prosecution has complied with all the statutory provisions of the Act and thus, the impugned judgment of conviction is based on correct appreciation of evidence. Resultantly, the impugned judgment of conviction is ordered to be upheld.

Now reverting to the order of sentence, it is apparent that at the time of his conviction, the appellant was aged 29 years. He was sentenced to undergo

rigorous imprisonment for a period of 2-½ years and to pay a fine of Rs.3,000/- for commission of the offence under Section 18 of the Act. The learned State counsel has filed the custody certificate and it is apparent that he has undergone 1 year, 2 months and 4 days of actual sentence. The custody certificate further shows that one more FIR No.231 dated 08.11.1996 under Section 15 of the NDPS Act was also registered against the present appellant. However, it has not been shown as to what had happened finally in the trial, even though it is a very old case. However, from the custody certificate, it is evident that in the last more than 22 years, the present appellant has not indulged in any other criminal activity and no case was registered after the present case, i.e. after 12.12.2000. Even otherwise, the appellant has undergone a sufficiently long period, i.e. more than 1 year and 2 months. Even, around 1.5 kg opium was recovered from the present appellant, which is non-commercial in nature. The appellant is stated to be sole bread earner of the family. Consequently, the ends of justice would be suitably met, if his substantive sentence is reduced to the period already undergone by him.

In view of the above discussion, the impugned judgment of conviction dated 10.11.2004 passed by the learned Special Judge, Patiala, is upheld. However, the order of sentence of even date, i.e. 10.11.2004, is modified to the extent that the substantive sentence of imprisonment awarded by the learned trial Court is reduced to the period already undergone by the appellant. Further, the amount of fine is enhanced from Rs.3,000/- to Rs.30,000/- which shall be deposited by the appellant with Punjab and Haryana High Court Bar Association Lawyers' Family Welfare Fund within a period of 03 months; failing which, the appellant shall undergo rigorous imprisonment for a period of 06

months as observed by the learned trial Court in its order of sentence dated 10.11.2004.

Resultantly, the present appeal is partly allowed.

Pending application(s), if any, is also disposed off.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back forthwith.

In the end, I record my appreciation for Mr. Nayandeep Rana, learned Amicus Curiae, who had rendered his able assistance to this Court.

10.03.2023  
mks

(N.S. SHEKHAWAT)  
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO