

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2256-SB-2004(O&M)
Reserved on:16.01.2023
Date of Pronouncement:01.03.2023

Joginder Ram ...Appellant

vs.

State of Punjab ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Dhirinder Chopra, Advocate
for the appellant.

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

N.S.Shekhawat J.

The present appeal has been preferred by the appellant against the judgment of conviction and order of sentence dated 05.11.2004, passed by the learned Judge, Special Court, Sangrur, whereby, the present appellant has been convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and has been sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- alongwith default stipulation.

The case of the prosecution in brief is that on 17.06.2002, ASI Kewal Singh along with other police officials was going on the katcha path from village Khanpur Fakira to village Khanal Kalan. When the police party reached near the village Khanpur Fakira, a person was seen coming from the

opposite side on LML Vespa scooter. When he saw the police party, he got perplexed and tried to go back on the scooter. However, he was apprehended by the police party, on finding his movements suspicious. In the meantime, Jagroop Singh alias Leela S/o Bant Singh, Jat, resident of village Khanal Kalan came at the spot and was associated by the police party with them. The person, who was apprehended at the spot, told his name and address to be Joginder Ram S/o Buta Ram, caste Bajigar, resident of Bajigar Basti, Dirbha. Joginder Ram had kept something in the plastic bag on the foot rest of his scooter bearing registration No. CH01-B-2256. ASI Kewal Singh told Joginder Ram, accused that there was a suspicion that the accused was carrying some contraband in the bag kept by him on the foot rest of the scooter and the search of the bag was to be conducted. He also apprised him of his right to get the search conducted either in the presence of a Gazetted Officer or a Magistrate and a memo was prepared in this regard. However, Joginder Ram reposed confidence in ASI Kewal Singh and asked him to conduct the search himself and a consent memo was prepared in this regard. When the bag was searched, poppy husk was found in the same. Two samples of 250 grams each of poppy husk were separated from the bag and the remaining poppy husk weighed to be 9 kgs 500 grams. The poppy husk, so recovered, was again kept in the same bag and it was sealed and converted into a parcel. Even the sample seals as well as the main parcel were sealed by ASI Kewal Singh with his seal bearing impressions 'KS'. The sealed parcels, sample seal chit, RC of the scooter, affidavit of sale of the scooter were taken into possession vide separate recovery memo and the seal after use was handed over to Jagroop Singh by ASI Kewal Singh. The ruqa was

sent separately to the police station and a formal FIR was recorded in this regard. On returning to the police station, the accused, witnesses and the case property were produced before the SHO, who verified the facts of the case and had also put his seal on the case property etc. On the directions of the SHO, the case property was deposited with the MHC of the police station. One part of the sample was sent to the Chemical Examiner and as per report of the Chemical Examiner, the sample was found to be containing poppy head. After completion of the investigation and formalities, the final report under Section 173 Cr.P.C. was presented against the accused.

After due consideration of the material placed before the Court in the shape of the report under Section 173 Cr.P.C., the learned trial Court found that a *prima facie* case was made out against the accused under Section 15 of the NDPS Act and the charge was ordered to be framed against the accused, to which, he pleaded not guilty and claimed trial.

In support of the prosecution case, the prosecution examined five witnesses. Gurjeet Singh, Constable was examined as PW-1, who tendered his affidavit Ex.PA in evidence. Similarly, PW-2 HC Gulshan Singh tendered his affidavit Ex.PB in his evidence. The prosecution further examined PW-3 ASI Kashmir Singh, who was part of the raiding team and supported the case of the prosecution as narrated in the FIR. He was cross-examined at length by the learned defence counsel. SI Ravinder Singh was posted as SHO, Police Station, Sadar on 17.06.2002 and was examined as PW-4. On the said day, ASI Kewal Singh produced before him two samples of 250 grams each and the remaining bulk parcel containing 9.5 kgs alongwith other case property duly sealed with

seal 'KS' along with the witnesses and the accused. The prosecution further examined PW-5 ASI Kewal Singh, who was the main witness of the prosecution. He supported the case of the prosecution in all material particulars.

Learned counsel for the appellant vehemently contended that in the instant case, the mandatory provisions of Section 50 of the NDPS Act were not complied with and only on this ground, the appellant was liable to be acquitted. It was further stated that the search was conducted by ASI Kewal Singh alongwith other police officials. However, the said submission has been opposed by the learned State counsel on the ground that the provisions of Section 50 of the NDPS Act would not be attracted in the instant case.

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

It is apparent from the testimonies of PW-3 ASI Kashmir Singh and PW-5 ASI Kewal Singh that the recovery had taken place from the plastic bag, which was kept by the accused/appellant on the foot rest of the scooter. Even no recovery was effected from the personal search of the accused. Consequently, the learned State counsel was right in contending that Section 50 of the Act would not be applicable to the facts of the instant case. Still further, from the prosecution evidence, it is apparent that the option was given to the present appellant by PW-5 ASI Kewal Singh to get his search conducted either in the presence of a Magistrate or a Gazetted Officer and the consent statement of the accused Ex.PC was recorded in this regard. However, the accused reposed confidence in PW-5 ASI Kewal Singh and accordingly, he conducted

the search, which finally led to the recovery of the contraband. Thus, the findings recorded by the learned trial Court in this regard are upheld.

Still further, learned counsel for the appellant vehemently contended that the entire prosecution case is based on the testimonies of the official witnesses and Jagroop Singh @ Leela, who was initially joined as an independent witness, was not examined by the prosecution. Since there was no independent corroboration of the prosecution evidence, the evidence led by the prosecution is liable to be discarded by this Court. The said submission has been opposed by the learned State counsel on the ground that the official witnesses are competent witnesses and the offence stood proved against the present appellant.

I have considered the rival submissions made by learned counsel for the parties and I am of considered opinion that in the instant case, the prosecution had led overwhelming evidence in the shape of statements of official witnesses to prove the complicity of the accused in the instant crime. The law is well settled that the testimonies of official witnesses cannot be discarded only on the ground of their official status. However, as a rule of caution, the Courts must look for independent corroboration. In the instant case also Jagroop Singh @ Leela was initially joined as a public witness. However, he was won over by the accused and the prosecution chose not to take him to the Court as a witness. Consequently, the non-examination of Jagroop Singh @ Leela in the instant case would have no adverse effect on the case of the prosecution.

I have considered the evidence led by the prosecution. The prosecution complied with all the mandatory provisions of the act and led sufficient evidence to prove the involvement of the present appellant in the instant crime. Even the trial Court has recorded valid and good reasons for convicting the present appellant/accused and I find no reasons to deviate from the findings recorded by the Learned trial Court and the same are upheld.

In view of the above, the impugned judgment of the conviction is affirmed and the appellant/accused has been rightly convicted under Section 15 of the NDPS Act.

Coming to the order of sentence, the appellant/accused was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- with a default stipulation in this case. However, the custody certificate shows that the appellant had undergone one month and six days of actual sentence. Apart from that, even at the time of his conviction i.e. in the year 2004, the appellant was aged about 26 years and was stated to be the sole bread earner of the family. Even the recovery, which has been effected from the present appellant/accused, is non-commercial in nature. Apart from that, no other criminal case was registered against the present appellant in the last about 19 years and no purpose would be served by sending him behind bars, at the stage. Thus, the impugned order of sentence is modified to the extent that the sentence awarded to the present appellant is ordered to be reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs.2,000/- to Rs.20,000/-, which shall be deposited by the appellant in the Punjab and Haryana High Court Bar Association Lawyer's Family Welfare

Fund within a period of three months from today, failing which, the appellant shall further undergo rigorous imprisonment for a period of 15 days, as observed by the learned trial Court.

With the above modifications, the appeal is partly allowed and the impugned judgment of conviction dated 05.11.2004 passed by the learned Special Court, Sangrur is ordered to be upheld, whereas the order of sentence is modified to the extent that the sentence imposed on the present appellant is reduced to the period already undergone by him and the amount of fine is enhanced to Rs.20,000/- as observed, which shall be deposited by the appellant in the Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund within a period of three months from today.

The appeal stands disposed off, accordingly.

All pending applications, if any, are also disposed off, accordingly.

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.

01.03.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

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