

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

545

**CRA-S-1258-SB-2005 (O&M)
Date of Decision: 10.05.2023**

Joginder Singh and another

...Appellants

Versus

State of Haryana

... Respondent

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

Present : Mr. B.S. Mamli, Advocate
for the appellants.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

1. The present appeal is directed against the impugned judgment of conviction and order of sentence dated 18.07.2005 passed by the learned Presiding Officer, Special Court, Kurukshetra, whereby, the appellants were convicted for the commission of offence under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') and were sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs. 10,000/- alongwith default stipulation.

2. As per the case of the case of the prosecution, a police party headed by ASI Siri Bhagwan was going towards Bus Stand Shahabad on 02.03.2003 and when they reached near bus stand, two persons were seen standing on the main gate of the bus stand. They were having bags with them and on seeing the police party, they tried to run inside the bus stand but the police party got suspicious and apprehended them. On questioning, they disclosed their names and

addresses as Joginder Singh son of Gopal Singh resident of Rajdhan, Police Station Mehta Chowk, District Amritsar and Sitar Singh son of Harbans Singh, resident of Chitta Kalan, P.S. Judialaguru, District Amritsar. The police party suspected that both of them were carrying some contraband in their bags and notice under Section 50 of the NDPS Act was issued to them and they were given the option of the search in the presence of the IO, or the Magistrate or a gazetted officer. They opted to get their search conducted in the presence of a gazetted officer and, accordingly, they were taken to the residence of the DSP, Headquarter, Kurukshetra. After reaching there, the DSP apprised them of their right and also verified the facts from the witnesses. On the directions of the DSP, ASI conducted search of the bags and poppy husk was recovered from the bag of Joginder Singh. Two samples of 250 gms each were separated and the remaining quantity was found to be 12.500 kgs. After that the search of the bag of Sitar Singh was conducted and poppy husk weighing 12 kgs was recovered. The ASI separated two samples of 250 gms each. All the four samples and residue were put into separate parcels and sealed with the seals bearing letters "SB" and "AKD". The specimen seal impressions were taken into possession vide separate recovery memos and were attested by DSP Anil Kumar Dhawan. On receipt of *rukka* a formal FIR was registered in the police station. Thereafter, the police party produced the case property, the witnesses and the accused before Paras Kumar SI/SHO who also verified the facts and affixed his seal bearing inscription "PK" on all the samples and the case property was ordered to be deposited with the MHC. After conducting

necessary investigation, a report under Section 173 Cr.P.C. was forwarded to the Court for holding the trial of the accused.

3. After finding sufficient evidence, the learned trial Court ordered framing of charge under Section 15 of the Act against the present appellants, to which, they pleaded not guilty and claimed trial.

4. In order to prove the case against the present appellants/accused, the prosecution examined Constable Mange Ram as PW1, Head Constable Amir as PW2, ASI Siri Bhagwan as PW3, Constable Gurdayal Singh as PW4, SI Paras Kumar as PW5, Head Constable Sunil Dutt as PW6 and DSP Anil Kumar Dhawan as PW7.

5. I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

6. Learned counsel for the appellants vehemently argued that in the present case, the mandatory provisions of Section 50 of the NDPS Act were not complied with and the appellants are liable to be acquitted on the said ground. The notice Ex.PB under Section 50 of the NDPS Act was defective as option was given to the accused that they could get their search conducted from the IO, Magistrate or a gazetted officer. Further, a joint notice was served upon both the accused and it can never be termed as a sufficient compliance of Section 50 of the NDPS Act. The said submissions have been opposed by the learned State counsel on the ground that the provisions of Section 50 of the NDPS Act are not attracted, in view of the peculiar facts of the present case and appeal is liable to be dismissed.

7. Having heard the learned counsel for both the parties and perusing the record, I am of the considered view that in the present case, the contraband was recovered from the bags held by the present appellants and not from the personal search of the accused. Consequently, there was no need of compliance of Section 50 of the NDPS Act and the said submission is liable to be rejected.

8. Learned counsel for the appellants submitted that in the instant case, no independent witness was examined, which is fatal to the case of the prosecution. Apart from that, the learned counsel also submitted that the investigation was conducted in the most unfair and partisan manner and the appellants deserve to be acquitted on this ground. The learned State counsel has opposed the said submission by contending that the appellants have failed to show any prejudice due to non joining of the independent witnesses and the testimonies of prosecution witnesses could not be rejected on the ground of their official status.

9. I have heard the learned counsel for the parties in detail and agree with the submissions made by the learned State counsel. The testimonies of the official witnesses could not be discarded or disbelieved on the ground of their official status. As a rule of prudence, the police is expected to associate the independent witnesses during the search and seizure procedure, their absence can never serve as sole ground for acquittal of the accused. The Court has to see as to whether the testimonies of the official witnesses inspires confidence and if the submissions of official witnesses are found worthy of credence, the same can be made the basis of verdict of

conviction. In the instant case, I have carefully perused the testimonies of various official witnesses, who have been subjected to incisive cross-examination and the learned defence counsel could not shake their credibility and the learned trial Court has correctly believed their testimonies.

10. The learned counsel for the appellants further pointed out that certain minor inconsistencies appearing in the statements of the various prosecution witnesses. However, the learned trial Court has dealt with such minor contradictions in detail, while referring to the case law on the said point. I find no reasons to deviate from the said findings and the same are liable to be upheld by this Court. Even otherwise, I have examined the detailed findings recorded by the learned trial Court and the learned trial Court has recorded valid reasons, while convicting the present appellants. There is no material irregularity or illegality in the impugned judgment, which may necessitate any interference by this Court. Sequel, the impugned judgment of conviction and order of sentence dated 18.07.2005 passed by the learned Presiding Officer, Special Court, Kurukshetra, are ordered to be upheld and the appeal is ordered to be dismissed.

11. At this stage, the learned State counsel has pointed out that the appellants have already undergone one year of actual sentence and have deposited the fine amount of Rs. 10,000/- and the custody certificates of both the appellants have been filed, which are taken on record.

12. In view of the same, the present appeal has otherwise rendered infructuous, and, is dismissed as such.

- 13. All pending applications, if any, are disposed off, accordingly.
- 14. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.
- 15. Records of the Court below be sent back.

10.05.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No