

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

492

**CRA-S-770-SB-2005 (O&M)
Date of Decision: 10.03.2023**

Prem Chand

...Appellant

Versus

State of Haryana

... Respondent

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

Present : Mr. Rajesh Lamba, Advocate
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

Challenging the legality and correctness of the impugned judgment of conviction dated 07.04.2005 and order of sentence dated 08.04.2005 passed by the Court of learned Additional Sessions Judge Judge, Fatehabad, whereby, the appellant was convicted under Section 15 of Narcotics Drugs and Psychotropic Substance Act, 1985 (in short, '**the NDPS Act**') and was sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.30,000/- alongwith default stipulation, the appellant has preferred the instant appeal before this Court.

The brief facts of the prosecution case are that on 12.08.2001 ASI Ram Chander was present near Jallopur Dhani situated on the road leading from Ratia to Hanspur. In the meantime, Bhira son of Jeet Singh, caste Jat Sikh, resident of Jallopur met ASI Ram Chander and they started talking to each other. The police party alongwith Bhira started going towards the T-point Jallopur and the accused was seen sitting on a bag at the right side of the road, which leads to village Jallopur. When he saw the police party, he got nervous and on suspicion, he was apprehended by the police party. ASI Ram

name to be Prem son of Mohri Ram Kamboj resident of Jallopur Dhani. The police party raised suspicion that he was getting some narcotic substance and a notice under Section 50 of the NDPS Act was issued to him and he was apprised of his statutory right to get his search conducted either in the presence of Magistrate or a gazetted officer of police, excise and revenue etc., and he could be produced before any such officers for the search. The accused and other witnesses had appended their signatures on the memo in this regard. In reply, the accused stated that he had full faith in the police party and he did not want to get his bag searched in the presence of some Magistrate or a gazetted officer and they could search his bag. Again a memo regarding reply to the notice was prepared and the accused as well as the witnesses appended their signatures. On this ASI Ram Chander checked the bag and poppy husk was found in the same. Two separate parcels of poppy husk weighing 100 gms each were separated from the remaining quantity and later on the residue weighed to be 35 kgs 600 gms. Two samples as well as the remaining quantity of poppy husk were kept in separate parcels and were duly sealed with the seals. The witnesses signed the form regarding recovery at the spot. The seal after use was handed over to HC Ram Kumar. Apart from that, the initial investigation was conducted at the spot. A *rukka* was sent to the police station and formal FIR was registered.

On returning to the police station, the accused, witnesses and the case property were produced before SI/SHO Shamsheer Singh, who verified the facts from the accused and the witnesses and had

also put his seal on the case property. He also directed the case property to be deposited in the Malkhana. ASI Ram Chander, the Investigating Officer took into possession the case property, conducted the initial investigation, prepared a report under Section 57 of the NDPS Act and forwarded the same to the higher police officers. After completion of the necessary investigation, the challan was filed against the accused.

Finding a prima facie case, the charge under Section 15 of the NDPS Act was framed by the learned trial Court against the accused, to which, he pleaded not guilty and claimed trial.

In support of the prosecution case, seven witnesses were examined. Constable Gurmit Singh was examined as PW1, who tendered his affidavit Ex.P1 in evidence. MHC Gopal Ram was examined as PW2, who tendered his affidavit Ex.P2 in evidence. ASI Madan Lal was examined as PW3, who had recorded formal FIR Ex.P4 on receipt of *rukka* Ex.P3. The prosecution further examined Shamsher Singh SI/SHO as PW4, who was posted as SHO in the Police Station Ratia on 12.08.2001. On that day, ASI Ram Chander produced before him the accused, witnesses and the case property alongwith a report Ex.P6. He verified the facts from the accused, witnesses and after verifying the facts, he affixed his seal “SSD” on all the three parcels as well as sample seal. He also made his endorsement Ex.P7 on the report Ex.P6. He also directed the ASI to deposit the case property with the MHC and to arrest the accused. He prepared report under Section 173 Cr.P.C. on 04.11.2001, after completion of the investigation. HC Bhaga Ram was examined as

PW5, who was posted as a Reader to the DSP Ashok Sheoran. He produced report Ex.P6 before the DSP and identified the signatures of the DSP on point-A. ASI Ram Kumar was examined as PW6. On 12.08.2001, he was posted as HC in Police Station Ratia. He was part of the raiding team, which had effected the recovery of the contraband from the accused and supported the case of the prosecution in all material particulars. Still further, the prosecution examined PW7 ASI Ram Chander, who was the star witness of the prosecution and supported the case of the prosecution as narrated in the FIR. He also conducted the initial investigation at the spot.

After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and he pleaded his innocence. He stated that he had been falsely implicated in the instant case at the instance of Mahender Singh resident of village Rattakhera and nothing was recovered from him.

To prove his defence, the accused examined Bhira Singh, independent witness at the time of search and seizure as DW1. He stated that on 12.08.2001, no recovery of poppy husk was effected from Prem Chand accused in his presence. He was called in the police station and his signatures were obtained on blank papers. He was never joined in the investigation of any case against Prem Chand regarding the recovery of the poppy husk. He never made any statement to the police. However, in his cross-examination, he stated that Prem Chand belonged to his village.

I have heard the learned counsel for the parties and have carefully gone through the trial Court record.

Learned counsel for the appellant vehemently argued that in the instant case, the prosecution had associated Bhira Singh son of Jeet Singh as an independent witness during the course of investigation. However, he was not examined by the prosecution and rather he appeared as defence witness. He clearly stated that no recovery was effected from the present appellant and he had been falsely implicated in the instant case. Consequently, the case of the prosecution now only rested on the testimonies of the official witnesses and there was no independent corroboration and the appellant was liable to be acquitted. The said submission has been opposed by the learned State counsel by contending that Bhira Singh son of Jeet Singh was won over by the accused being a co-villager and has been examined as defence witness. However, this would not affect the credibility of the prosecution evidence as all the official witnesses had no reason to falsely involve the present appellant in a criminal case. I have considered the rival submissions made by the learned counsel for the parties and find that there is no merit in the submissions made by the learned defence counsel. A police official is always a competent witness and his testimony cannot be rejected only on the ground of his official status. It is not a judicial approach to distrust and suspect an official witness, without any good ground thereof. Such a disbelief can only run down the prestige of police force. Still further, as a rule of caution and depending on the circumstances of each case, normally Courts look for independent corroboration. However, it does not mean that the testimony of an official witness is looked upon with suspicion. If the official witnesses

have made depositions truthfully and have withstood the test of cross-examination, such testimonies can always be utilized for conviction of an accused. In the instant case, the independent witness turned hostile and did not support the case of the prosecution being co-villager of the present appellant/accused. He is an average ordinary human, quite vulnerable to the human feelings of yielding, browbeating, threats etc. Consequently, the said independent witness appeared as a defence witness and made a futile effort to held the accused. However, the learned trial Court has rightly passed the judgment on the basis of official witnesses and findings are upheld.

The learned counsel for the appellant further submitted that the link evidence was missing in the instant case. The sample was taken from Malkhana on 22.08.2001 whereas the sample parcel reached the FSL after two days and it was tampered with. In fact, Gopal Ram was examined as PW2, who clearly stated that he had handed over the sample parcels to Constable Gurmit Singh on 22.08.2001 and the samples were duly sealed. He further stated that so long as the sample parcels remained in his possession, he did not tamper with the same. Apart from that, Constable Gurmit Singh was examined as PW1, who stated that MHC Gopal Ram had handed over the parcels to him for taking the same to the FSL and he had deposited the same in intact condition with the FSL. He also placed on record his affidavit Ex.P1 and stated on oath that so long as the parcels remained in his possession, neither he nor anybody else tampered with the same. The testimonies of PW1 Constable Gurmit Singh and PW2 MHC Gopal Ram are duly supported by the FSL report Ex.P13

wherein it is specifically mentioned that the seals were intact and tallied with the specimen seal as per the Forwarding Authority's letter. Thus, it is apparent that the link evidence was complete in all respects. The learned trial Court has recorded well reasoned findings in this regard and are liable to be upheld by this Court.

The learned counsel for the appellant has also referred to minor contradictions regarding number of seals, which were affixed on the sample parcels by the Investigating Officers. In fact, the learned trial Court has already recorded detailed findings in this regard. I have gone through the trial Court record carefully in this regard and the learned trial court has recorded valid reasons for rejecting the said submissions and the same are upheld.

Apart from that, the learned counsel for the appellant has referred to the mentioning of the FIR number on the notice Ex.P8, as the same was prepared before sending *rukka* and the FIR number could not have appeared on the same. The said submission has been opposed by the learned State counsel by submitting that after registration of the case, when the constable carrying the *rukka*, returned to the spot, the Investigating Officer normally filled the number of the FIR in the document prepared by him during the course of initial investigation. The learned trial Court has correctly recorded that the Investigating Officer had not been cross-examined by the defence in this respect. No other submission had been raised by the learned defence counsel.

Even otherwise, I have carefully perused the judgment passed by the learned trial Court and valid reasons have been

recorded for convicting the present appellant for the offence punishable under Section 15 of the NDPS Act. Even the impugned judgement is based on the testimonies of seven official witnesses who have been subjected to incisive cross-examination and their testimonies could not be shattered in any manner. Thus, the impugned judgment of conviction dated 07.04.2005 passed by the Court of learned Additional Sessions Judge, Fatehabad, is upheld and affirmed.

Now reverting to the order of sentence, it is apparent from the record that the accused has been sentenced to rigorous imprisonment for a period of six years and to pay a fine of Rs. 30,000/- for commission of offence punishable under Section 15 of the NDPS Act. During the course of hearing, the learned State counsel has placed on record the custody certificate. As per the custody certificate, the age of the convict Prem Chand at the time of conviction, i.e. on 07.04.2005 was about 42 years. Consequently, at present, the age of the appellant is about 60 years. The custody certificate further reveals that he is on bail since 12.07.2006, i.e., for the last 17 years and no other criminal case was registered against him in the last about 16 years. He is not a previous conviction and no other criminal case was registered against him except the present one. The custody certificate further shows that he has undergone one year, six months and twenty two days of actual sentence and no further purpose shall be served by sending him behind the bars after such a long period. Apart from that he is facing the agony of trial/appeal since last 22 years and the appellant deserves leniency in the matter of imposing the sentence upon him.

Consequently, the sentence imposed upon the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs. 30,000/- to Rs. 50,000/- 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. In case, the appellant does not deposit the said fine, as indicated above, he shall undergo rigorous imprisonment for a period of six months, as observed by the learned trial Court.

With the above modifications, the appeal is partly allowed and the impugned judgment of conviction is 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. However, the amount of fine is enhanced to Rs. 50,000/- as observed, which shall be deposited by him within a period of three months from today.

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

10.03.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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