

CRA-S-632-SB-2005
Reserved on: 15.03.2023
Date of Pronouncement: 11.04.2023

VS.

As per the prosecution story, on 12.12.2003, one police party headed by ASI Lachhman Dass was going from village Gidhriani to village Fategarh; Suba Singh son of Surja Ram Ramdasia, resident of Village Lehra met the police party. While the policemen were talking to him, a person was seen coming from the side of bank of canal and was carrying a plastic bag on

his shoulder. On seeing the police party, he got perplexed and turned back; however, he was apprehended on suspicion. On enquiry, he disclosed his name and address as Inder Singh alias kala son of Chanda Singh, caste Sainsi resident of Hariau Police Station, Lehra. The police party raised a suspicion that he was carrying some contraband in his bag and the search was to be conducted. He was informed of his right of getting the search conducted in the presence of a Gazetted Officer or the Magistrate. However, Inder Singh reposed confidence in the ASI and his statement was recorded to this effect. When the bag of the accused was searched, 4 kg of poppy husk was found in the same. Two samples of 250 grams each were separated and the remaining poppy husk weighed to be 3 kgs 500 grams. The poppy husk was again kept in the same bag and it was converted into parcel. The abovesaid three parcels were sealed by ASI Lachhman Dass and the same were taken by the police into possession vide the separate memos. The three sealed parcels were duly sealed and the seal after use was handed over to HC Baljit Singh. A ruqa was sent to the police station, on the basis of which a formal FIR was recorded in the police station. After returning to the police station, the accused, witnesses and the case property were produced before the SHO of the police station, who verified the facts of the case from the accused as well as the witnesses and had put his seal on the case property and the sample seal chit as well. On the directions of the SHO, the case property was deposited with the MHC. One part of the sample was sent to the Chemical Examiner for analysis. After receipt of the report of the Chemical Examiner and necessary investigation, the challan was presented in the Court.

Finding a prima facie case, the learned Trial Court ordered for framing of charge under Section 15 of the NDPS Act, to which the appellant/accused pleaded not guilty and claimed trial.

In order to substantiate the charge, five witnesses were examined by the prosecution and Suba Singh was given up by the learned State counsel, as having been won over by the accused. The prosecution examined PW-1 SI Kamikar Singh, who was posted as SHO Police Station Lehra on 12.12.2003. The accused along with the case property and the witnesses were produced before him by the police party and he verified the facts of the case and had sealed the three parcels again with his seal "KS". On his directions, the case property was deposited with MHC Mehar Singh. After completion of the investigation and receipt of the Chemical Examiner's report Ex.PA, the challan was prepared by SI Sukhram Singh. The prosecution examined MHC Mehar Singh as PW2, who tendered his affidavit Ex.PB in evidence. Similarly, C.Malkiat Ram was examined as PW-3, who tendered his affidavit Ex.PC in evidence. PW-4 ASI Lachhman Dass was examined as PW-4, who was the main witness of the prosecution and he supported the case of the prosecution, as mentioned in the FIR. He had also conducted the initial investigation at the spot. The prosecution further examined PW5 HC Ranjit Singh, who was part of the police team on 12.12.2003, which apprehended the accused and he also supported the version of PW-4 ASI Lachhman Dass.

After the examination of the prosecution witnesses was over, the entire incriminating evidence was put to the appellant/accused in the shape of his statement under Section 313 Cr.PC and he pleaded his false implication.

He stated that he was innocent and nothing was recovered from him. He was arrested from his home and the case was planted on him. However, he assigned no reasons for false implication in the said statement. In his defence, the appellant examined DW-1 Suba Ram, who was initially joined as an independent witness by the police party. While appearing as DW-1, Suba Ram son of Surja Ram stated that he did not know any person namely Inder Singh nor he was joined by the police on 12.12.2003. The police had taken his signatures on Ex.PD to Ex.PF/1 in the police station. He could not tell as to what was written in the paper. The defence examined MHC Jagseer Singh as DW-2, who stated that Suba Singh was not their employee not he was their cook as per the record. After examination of two defence witnesses, the accused opted to close the defence evidence.

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

Learned counsel for the appellant vehemently argued that in the instant case, Suba Singh son of Surja Ram was joined as an independent witness. However, during, the course of the trial, he was not examined by the prosecution and the entire prosecution case is based on the testimonies of official witnesses only. During the course of trial, Suba Ram appeared as DW-1 and clearly stated that he did not know any person named as Inder Singh nor he was joined by the police on 12.12.2003. He went on to depose that the police had taken his signatures on Ex.PD to Ex. PF/1 in police station and he could not tell as to what was written on the said papers. Consequently, the prosecution case has rendered doubtful and the appellant is liable to be acquitted. The

submissions have been opposed by the learned State counsel by urging that Suba Singh was won over by the accused and as a consequence, the prosecution had given him up. However, the testimonies of official witnesses have been correctly relied upon by the learned Trial Court.

I have considered the rival contentions made by learned counsel for the parties and find no substance in the arguments raised by the learned counsel for the appellant. No doubt, as a rule of prudence, the Courts normally look for independent corroboration from a private witness to lend credence to the entire recovery proceedings in a case under NDPS Act. However, it is equally settled that the Courts cannot distrust and disbelieve a witness only on account of the fact that he is an official witness. If the testimonies of official witnesses inspire confidence, the same can always been relied upon by the Courts. In the instant case, no doubt Suba Ram, under the influence of the appellant/accused, appeared as defence witness, still there was ample incriminating evidence against the present appellant in the shape of the testimonies of five official witnesses. All the five witnesses were searchingly cross-examined and there was nothing on record to disbelieve their testimonies. Apart from that, even DW-1, Suba Ram had tacitly admitted the correctness of the prosecution case, as he admitted his signatures on Ex.PD to Ex.PF/1, even though he stated that his signatures were taken on blank papers. Thus, the findings recorded by the learned Trial Court in this regard are upheld. That the learned counsel for the appellant further vehemently argued that in the instant case, the mandatory provisions of Section-50 of the NDPS Act were not complied with by the prosecution and the appellant is liable to acquitted by this Court. However, the

said contention has been opposed by learned State counsel by contending that in the instant case, the mandatory provisions of Section 50 were not applicable as the recovery of the contraband had taken place from a plastic bag, which was hanging on the shoulder of the appellant and no recovery was effected from the personal search of the accused. Consequently, the prosecution was not obliged to comply with the mandatory provisions of Section 50 of the Act as no recovery of the contraband had taken place from the personal search of the accused.

Having considered the submissions by both the learned counsel, I have arrived at a conclusion that there is no force in the arguments raised by learned counsel for the appellant. In the instant case, the appellant/accused was apprised of his right to get his search conducted either from a Gazetted Officer or a Magistrate and a memo was recorded in this regard. However, the accused reposed confidence in the ASI Lachhman Dass and stated that he could get his search effected. Thus, there was sufficient compliance of the mandatory provisions of Section 50 of the Act. Apart from that, the learned Public Prosecutor has correctly submitted that the mandatory provisions of Section 50 of the Act were not applicable to the facts of the instant case. The recovery had taken place from the bag held by the accused and not from his personal search. Consequently, the provisions of Section 50 of the Act, would not be applicable. It has been held by the Hon'ble Supreme Court in the matter of ***“Kallu Khan Vs. State of Rajasthan, 2022 AIR (Supreme Court)50: 2022 (1) RCR (Criminal) 367 as follows:-***

“15. Simultaneously, the arguments advanced by the

appellant regarding non-compliance of Section 50 of NDPS Act is bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance of the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore, compliance of Section 50 does not attract in the present case. It is settled in the case of Vijaysinh(supra) that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of Surinder Kumar (supra) and Baljinder Singh (supra). Considering the facts of this Court, the argument of non-compliance of Section 50 NDPS Act advanced by the counsel is hereby repelled.”

No other submissions have been raised.

In view of the above discussion, it can be safely concluded that there is no illegality or perversity in the impugned judgment of conviction passed by the Court of Learned Judge, Special Court, Sangrur. Even otherwise I have gone through the findings recorded by the learned Trial Court and do not find any ground to interfere with the same. The Learned Trial Court has recorded valid reasons for convicting the appellant under Section 15 of the Act and the impugned judgment of conviction is ordered to be upheld.

However, now adverting to the order of sentence, the appellant was ordered to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- to the learned Trial Court. However, this Court cannot lose sight of the fact that the appellant was aged about 30 years on the date of framing of charge that is 21.02.2004. The appellant has suffered the agony of

trial/appeal for the last about 20 years. Even 4 kgs of poppy husk was recovered from him, which is non-commercial in nature. During the course of hearing, the learned State counsel has produced the custody certificate and as per the same, the appellant has undergone one month and ten days of actual sentence out of total sentence of one year. The custody certificate further reveals that no other criminal case was registered against the present appellant in the last 20 years and he should be given a chance to reform himself. Even he is the sole bread earner of the family and his case deserves sympathetic consideration by this Court. Taking into account the totality of the circumstances, the ends of justice will be suitably met, if the sentence imposed on the present appellant is reduced to the period undergone by him. However, the amount of fine is enhanced from Rs.1000/- to Rs. 30,000/- which shall be deposited by the present 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 undergo rigorous imprisonment for a period of one month, as observed by the learned Trial Court.

In view of the above discussion, the present appeal is partly allowed and the impugned judgment of conviction dated 29.03.2005 passed by the learned Judge, Special Court, Sangrur is upheld, whereas the period of sentence is reduced to the period already undergone by him and the amount of fine is enhanced from Rs.1000/ to Rs.30,000/-, as mentioned above.

With these directions, the appeal stands disposed off.

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.

11.04.2023
Hitesh

(N.S.SHEKHAWAT)
JUDGE

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