

CRA-S-2017-2019 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2017-2019 (O & M)

Date of decision:14.03.2023

Rakesh Kumar

..... Appellant

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Kiranpreet Kaur, Amicus Curiae,
for the appellant.

Mr. Shubham Kaushik, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The present appeal has been filed against the judgment of conviction dated 24.05.2019 passed by the Judge, Special Court, Shaheed Bhagat Singh Nagar, whereby the appellant had been convicted to undergo rigorous imprisonment for a period of 15 months and to pay a fine of Rs.3,000/-, in default of which, he is to undergo further rigorous imprisonment for a period of two months for having committed an offence under Section 22 of the NDPS Act.

2. The brief facts of the prosecution case are that on 31.07.2017, ASI-Sodhi Singh was present in the police station alongwith Inspector Shahbaz Singh, Incharge, Economic Offences Wing and other police officials as well as Drug Inspector Tajinder Singh and Dr.Paramjit Lal. They got information about the clinic of a quack namely Rakesh Kumar, accused/appellant (hereinafter known as 'appellant') of Village Karaawar, PS, Sadar Balachaur. Thereafter, they went to the clinic of the alleged quack Rakesh Kumar, namely Rajindera Clinic. The police party spotted a car make Zen

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ting in the car and on seeing the police party, he started concealing a polythene bag below the car seat. He was apprehended by ASI-Sodhi Singh at the spot with the help of other officials. On enquiry, he disclosed his name, parentage and address. Meanwhile, the Drug Inspector Tajinder Singh alongwith Doctor Paramjit Lal and the team of EO Wing went inside the clinic. Before conducting the search, ASI-Sodhi Singh disclosed his name and designation to the accused and further told him that he had suspicion that there were intoxicating tablets in his car and search of his car was to be conducted. He was also apprised of his legal right to get his car searched in the presence of Gazetted Officer or a Magistrate. However, the appellant reposed confidence in him. Thereafter, the consent memo of the appellant was prepared and was also got signed from him. It was attested by the Investigating Officer and ASI-Ram Parkash as well as HC-Naresh Kumar. Thereafter, on search of the car of the appellant, one polythene bag was recovered containing 43 strips of 10 tablets each, 31 strips of 50 tablets each and 15 strips containing 5 tablets each of Alprex, total 2055 tablets. A parcel of all these tablets was prepared by putting the same into the same polythene bag. It was sealed by the Investigating Officer with his seal bearing impression 'SS'. The said parcel alongwith the aforesaid car was taken into police possession and recovery memo was prepared, which was got signed from the appellant and was attested by Inspector Tejinder Singh, ASI-Ram Parkash and Investigating Officer. Thereafter, motorcycle bearing registration No.PB-32-N-4419, make Discovery belonging to Rakesh Kumar, lying parked near the clinic was also searched and under the seat of the said motorcycle, one polythene bag was recovered. From the said polythene bag, 11 packets containing 1100 tablets of Momolit were recovered and a separate

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parcel of the same was also prepared by putting the same into same polythene bag, which was also sealed by the Investigating Officer with his seal bearing impression 'SS'. The recovery memo of the same alongwith the aforesaid motorcycle was also prepared, which was signed by the appellant and was attested by ASI-Ram Parkash, HC-Naresh Kumar and Investigating Officer. The seal after used was handed over by the Investigating Officer to ASI-Ram Parkash. The ruqa was prepared and on the basis of said ruqa, the FIR was registered. The Drug Inspector also recovered some Allopathic medicines from the aforesaid clinic and a list was prepared by him.

The Investigating Officer inspected the spot and prepared the rough site plan. The Investigating Officer produced the appellant alongwith the case property parcels, sample seals, investigation file, car and motorcycle before SHO Harjinder Singh, who was present in the police station. After verifying the facts of the case, the SHO affixed his seal bearing impression 'HS' on all the parcels. After using his seal, the SHO kept the same with him. The parcels of case property etc. were handed over to MHC for depositing in the police malkhana. Production-cum-entrustment memo was prepared by the SHO. On receipt of the report of the Forensic Science Laboratory, the challan was presented in the Court.

3. Finding a prima facie case for the offences under Section 22 of the NDPS Act and 420 of IPC, a charge sheet was served upon the appellant accordingly, to which he pleaded not guilty and claimed trial.

4. In order to bring home the guilt of the appellant, the prosecution examined Tejinder Singh, Drug Inspector as PW-1, Dr.Paramjit Lal as PW-2, HC-Surinder Pal as PW-3, HC-Sohan Lal as PW-4, SI-Sodhi Singh, Investigating Officer as PW-5, Inspector Harjinder Singh as PW-6,

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Rajan Bhatia, Clerk as PW-7, ASI-Ram Parkash as PW-8 and Mohinder Singh as PW-9. Thereafter, the Additional Public Prosecutor close the evidence on behalf of prosecution.

5. On closure of the prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.P.C., in which all the incriminating evidence appearing against him was put to him. He pleaded his innocence and false implication.

6. In defence, the appellant examined HC-Naresh Kumar as DW-1, Davinder Singh as DW-2 and Kulwinder Kumar @ Kulwinder Singh as DW-3. Thereafter, he closed his defence evidence.

7. Based on the evidence led, the appellant came to be convicted and sentenced as under:-

Offence under Sections	Sentence RI	Fine	RI in default of payment of fine
22 NDPS Act	15 Months	Rs.3,000/-	(RI) 02 Months

8. The learned Amicus Curiae for the appellant contends that no independent witness was associated during the course of search and seizure to prove the case of the prosecution. There is a violation of Section 50 of the NDPS Act inasmuch as no Gazetted Officer or a Magistrate was called to the spot. Therefore, the appellant was to be acquitted by giving him the benefit of doubt.

9. The learned counsel for the State, on the other hand, contends that the offence is well-established against the appellant. The grounds raised by the appellant have been comprehensively dealt with by the Court of

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Special Judge, Shaheed Bhagat Singh Nagar while convicting him. Therefore, there was no reason for interference by this Court.

10. I have heard the learned counsel for the parties.
11. As per the case of the prosecution, the recovery was from under the seat of the motorcycle and the car. Therefore, as no recovery was effected from the person of the appellant, Section 50 of the NDPS Act has no applicability. Secondly, merely because no independent witness was examined would not affect the case of the prosecution in the absence of any enmity between the appellant and the police officials. In fact, PW-1 Tejinder Singh deposed that efforts were made to call the Panch and Sarpanch of the village but they did not turn up. SI Sodhi Singh who was the Investigating Officer of the case while appearing as PW-5 deposed that he had asked public persons to join the investigation but they refused to do so. Similarly, PW-8ASI Ram Parkash has categorically deposed that the Lambardar, Panch and Sarpanch were available, the Investigating Officer tried to join them at the time of investigation but none came forward. Therefore, it is apparent that despite efforts, no independent witness has joined the proceedings. Be that as it may, as has been observed hereinabove, mere non-examination of independent witnesses would not be a ground to discard the prosecution case.
12. In view of the aforementioned discussion, I find no merit in the instant appeal, and therefore, the same is dismissed.

(JASJIT SINGH BEDI)
JUDGE

March 14, 2023
sukhpreet

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