

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-806-2022

Date of reserve:06.01.2023

Date of Pronouncement: 11.01.2023

Narcotic Control Bureau

....Appellant.

Versus

Dharampal Singh @ Dharma

...Respondent.

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Argued by: Mr. Rajiv Sharma, Advocate
for the appellant.

Sukhvinder Kaur, J.

The appellant-Narcotic Control Bureau has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 04.07.2022, passed by learned Judge, Special Court, Chandigarh, vide which respondent-accused Dharampal Singh @ Dharma has been acquitted.

The facts, as per record, are that on 16.07.2018, Ajit Pal Singh, Intelligence Officer received information that accused Manpreet Singh was coming to Chandigarh in Truck bearing No. HR-45C-3213 loaded with huge quantity of poppy husk and the said truck was likely to reach at Sabzi Mandi, Sector-26 at 2.30 A.M. on 17.07.2018. This information was reduced into writing and was placed before Kuldeep Sharma, Superintendent, NCB Chandigarh. A team comprising of Ajit Pal Singh and

others was constituted by the Superintendent for taking action and Kuldeep Sharma himself accompanied the team to supervise the seizure procedure. On 17.07.2018, at 0200 hours, NCB team reached at Transport Chowk, Chandigarh and tried to join some independent witness but none agreed. At 0300 hours, the NCB team noticed truck bearing No.HR-45C-3213 which matched with the secret information. The truck was stopped and besides the driver two persons were found seated in the said truck. The persons sitting in the truck disclosed their names as Gurjot and Neeraj and driver disclosed his name to be Manpreet Singh. Accused Manpreet Singh and Gurjot admitted that bags of poppy straw were lying concealed beneath union sacks in the truck. Since it was raining at that time, so it was not possible to unload the items on the road. NCB team brought the truck to NCB office along with all the accused at 0340 hours on 17.07.2018. At 0430 hours, Rajinder Singh, Investigating Officer brought the labour for unloading the truck and at 0500 hours unloading of truck started. The Tarpaulin was removed and plastic crates loaded with pomegranates were unloaded from the truck which were 156 in number. 413 cardboard boxes containing pomegranate were also unloaded. Underneath onion sacks plastic sacks of black and light black colour were noticed. Accused Manpreet and helper Gurjot told that these sacks contained poppy straw and then these 12 plastic sacks were unloaded from the truck. When the same were untied then these were found to contain poppy straw. These plastic sacks were thereafter sewed with white thread alongwith white markin clothes. Seal of NCB bearing impression Narcotics Control Bureau, Chandigarh 95 was affixed on each bag. These sacks were weighed on electronic weighing machine. Total weight of recovered sacks containing the poppy straw came to 299 kg

100 grams.

During the course of investigation, accused Manpreet Singh suffered statement under Section 67 of the NDPS Act disclosing that those 12 sacks containing poppy husk were got loaded by Dharampal at Rahul Punjabi Dhaba at Ratlam in M.P., in that truck and the said poppy husk was to be delivered to Dharampal at Chandigarh. Statements of accused Gurjot and Dharampal under Section 67 of the NDPS Act were also recorded.

After completion of the investigation, the complaint was filed by NCB against accused Manpreet Singh, Gurjot and Dharampal @ Dharma.

After concluding the trial, the trial Court acquitted accused/respondent-Dharampal @ Dharma while co-accused Manpreet Singh and Gurjot were convicted.

Aggrieved by the said decision, the NCB has preferred the present application for seeking leave to file an appeal against acquittal of accused Dharampal.

We have heard Mr. Rajiv Sharma, Advocate and have also perused the record.

Learned counsel for the appellant has strenuously contended that the trial Court has not properly appreciated the evidence on record and has wrongly acquitted the respondent. The case of the prosecution stands fully proved qua respondent also and the prosecution witnesses have fully proved on record that accused/respondent had committed the offence under Section 29 of the NDPS Act. The recovery of poppy husk from conscious possession of accused Manpreet Singh and Gurjot stands established and it also stands proved that the said poppy husk was supplied by accused/

respondent Dharampal @ Dharma. He has argued that the report of CRCL, Delhi shows that the contents of the sample were poppy husk. Pursuant to the secret information qua the accused, the recovery of poppy husk was effected by the NCB team. The link evidence has also been fully established. He has contended that the trial Court has ignored the fact that accused Manpreet Singh, Gurjot and Dharampal suffered statements under Section 67 of the NDPS Act, which clearly proved that those 12 sacks containing poppy husk were got loaded by accused Dharampal at Rahul Punjabi Dhaba at Ratlam in M.P., in that truck and the said poppy husk was to be delivered to Dharampal at Chandigarh.

While referring to the testimony of PW-1 IO Rajneesh, learned counsel for appellant has contended that he has proved the Customer Application Form and Call Details Record for the mobile phone of accused Dharampal as Ex.P99 and Ex.P100 and Customer Application Form and Location Chart Ex.P104 and Ex.P105 for mobile phone of Ganga Ram son of Ram Pal and also Customer Application Form Ex.P110, CDR Ex.P109 for the mobile phone of Manpreet Singh son of Balbir Singh and CAF Ex.P123, CDR Ex.P122 pertaining to mobile phone of Balbir Singh and summary chart of calls made from mobile phone of accused Dharampal to Babli, Sher Khan and wife of Dharampal, co-accused Manpreet Singh as well as Call Details Record between Balbir and Sher Khan i.e. Ex.P126 and Tower location of the mobile phone of Dharam Pal on 15.07.2018 to be at Ratlam in M.P. By relying upon above said evidence, he has argued that when Call Detail Record is seen juxtaposed, with the confessional statement of co-accused and statement of accused Dharampal himself, it establishes that the poppy husk was delivered by accused Dharampal to co-accused

Manpreet Singh and Gurjot for transportation to Chandigarh. He has also argued that when accused Dharampal in his statement under Section 313 Cr.P.C. has stated that he was not having good relations with co-accused Manpreet Singh and Gurjot then there was no occasion for telephonic conversation between them. He has contended that thus sufficient evidence is on record to prove the guilt of the respondent and he has been wrongly acquitted by the learned trial Court and has prayed that appellant may be granted on leave to appeal against this judgment of acquittal qua the respondent.

As in the instant case, NCB is relying upon the statements of co-accused recorded under Section 67 of the NDPS Act, so it would be appropriate to examine the legal position regarding the confessional statements made by co-accused. In this context, the learned trial Court has rightly relied upon **Union of India Vs. Bal Mukund and others, 2009 (12) SCC 161; Surinder Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence, AIR 2018 (SC) 3574** and Divisional Bench of this high Court in case titled **Nek Chand @ Neka and another Vs. State of Haryana, 2015 (1) PLJ (Criminal) 487.** In the cases (supra), it has been observed that accused cannot be convicted on the basis of the confessional statement of co-accused and the maker of the confession may be bound with the statements but not those who had been implicated therein and that such confessional statements recorded under Section 67 of the NDPS Act, cannot be treated as a substantive piece of evidence and at best can be used or utilised to lend assurance to the Court and in absence of any substantive evidence, it is inappropriate to convict purely on the statement of co-accused.

By relying upon the ratio of law laid down in the cases (supra) the trial Court has rightly come to the conclusion that statements of co-accused Manpreet Singh and Gurjot is inadmissible piece of evidence and it is not a substantive piece of evidence to return the order of conviction on the basis of said statements.

The trial Court has further rightly placed reliance upon Apex Court judgment of **Tofan Singh Vs. State of Tamil Nadu, Criminal Appeal No.152 of 2013**. The relevant para No.148, 152 and 155 of this judgment are reproduced as under :-

“148. Even a cursory look at the provisions of these statutes would show that there is no parallel whatsoever between section 67 of the NDPS Act and these provisions. In fact, section 108 of the Customs Act, 1962 expressly states that the statements made therein are evidence, as opposed to section 67 which is only a section which enables an officer notified under section 42 to gather information in an enquiry in which persons are “examined”.

152. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under section 42 or section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

155(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

Thus it is clear that the statement of co-accused Manpreet Singh and Gurjot is an inadmissible piece of evidence and similarly statement of accused Dharampal recorded under Section 67 of the NDPS Act, cannot be used as a confessional statement.

So far as the Call Detail Record placed on record is concerned, from it only it is established that all the accused were in conversation with one another. But when no conversation detail has been placed on record, then the nature of the conversation which took place between all the accused persons, cannot be ascertained. So from the Call Detail Record, it is not proved that Dharampal-respondent had delivered contraband to the other co-accused for transporting the same to him at Chandigarh. Similarly just from, the tower location of the accused/respondent on 15.07.2018 at Ratlam in M.P., it is not proved that he had delivered poppy husk in question to the co-accused for transporting the same at Chandigarh. If accused Dharampal had stated in his statement under Section 313 Cr.P.C., that accused Manpreet Singh and Gurjot had made false statement to implicate him as a quarrel had taken place between them on account of some money transaction many years ago, then in the absence of any such evidence it cannot be concluded that they were not on speaking terms to rule out the possibility of any telephonic conversation between them. The trial Court has also rightly observed that even persons at logger head may make phone calls to resolve their disputes.

This fact also cannot be brushed aside that even as per the prosecution version, no secret information had been received against the respondent and the secret information had been received only qua accused Manpreet Singh. Admittedly, no recovery of poppy husk had been effected from the respondent. There is absolutely no evidence on record that when and by whom the poppy husk was purchased. As offence under NDPS Act is punishable with severe punishment so the strict burden is casted upon the prosecution to prove its case beyond the reasonable doubt. When there is no substantive evidence on record to connect accused Dharampal with the offence in the present case then he has been rightly acquitted by the trial Court.

In view of the above, no case is made out for grant of leave to appeal against acquittal of Dharampal @ Dharma. The application without having any merits stands dismissed and the leave to appeal is declined.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

11.01.2023

Komal

Whether speaking/reasoned? : Yes/ No

Whether reportable? : Yes/ No