

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1972-MA-2015 (O&M)
Reserved on:17.04.2023
Date of Pronouncement:26.04.2023

State of Punjab ... Appellant

Vs.

Harpreet Singh @ Happy ... Respondents

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

Present: Mr. Sandeep Verma, Additional Advocate General, Punjab.

Mr. S.S. Swaich, Advocate for the respondent.

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SUKHVINDER KAUR, J.

Appellant-State of Punjab has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 05.05.2015, pertaining to FIR No.213 dated 26.12.2012, under Section 22/61/85 of the NDPS Act, registered at Police Station 'C' Division, Amritsar, passed by learned Judge, Special Court, Amritsar, vide which respondent/accused-Harpreet Singh @ Happy has been acquitted.

2. The factual scenario, as per the prosecution, is that on 26.12.2012, when ASI Gulwinder Singh along with police party was going to Sakatri Bagh, Nigam Colony in connection with routine patrolling and checking of bad elements, then the police party noticed that accused was coming from the side of Gian Ashram School. On seeing the police party, he got perplexed and tried to throw away a polythene bag, which he was

holding in his hand but the Investigating Officer apprehended him with the help of the police party on the basis of suspicion. Upon asking, he disclosed his name as Harpreet Singh @ Happy son of Mukhtiar Singh besides other particulars. Then Investigating Officer after disclosing his identity to the accused, told him that he had the suspicion that accused was having some contraband and showed his intention to conduct the search of the accused. The Investigating Officer apprised him regarding his legal right to get his search conducted in the presence of Gazetted Officer or Magistrate. However, accused reposed confidence in the Investigating Officer and the consent memo was prepared. The Investigating Officer also tried to join some independent witness in the police party, but none was willing to join the same. Thereafter, Investigating Officer conducted the search of the accused which led to recovery of a polythene bag containing intoxicant powder, out of which two samples of 10 grams each were separated and were put into two plastic containers and remaining bulk came to be 980 grams, which also put into a different plastic container. Accused failed to produce any permit or license for keeping the said intoxicant powder. Investigating Officer separated samples and converted the bulk into parcels. The Investigating Officer put his seal bearing impression 'GS' on all the parcels and sample seal chit and Form No.M-29 was prepared at the spot. Seal after use was handed over to HC Manohar Singh. Whole of the recovered contraband and seal chit were taken into police possession vide separate recovery memo and same was witnessed by official witnesses and attested by Investigating Officer. Ruqa was sent to the police station. FIR was registered by ASI Balwinder Singh against accused. Site-plan was

prepared at the spot. Accused was interrogated and arrested vide grounds of arrest cum intimation memo. Personal search memo of the accused was prepared, but nothing was recovered from his personal search. Form No. M-29 was also prepared. Statements of witnesses were recorded. Upon reaching the police station, the accused along with case property was produced before the officiating SHO Inspector Iqbal Singh. After the verification, Inspector Iqbal Singh affixed his seal bearing impression 'IS' on the case property and sample chit and thereafter, the case property was deposited in the police malkhana under double lock. On next day, Investigating Officer ASI Iqbal Singh took the case property from the police station and along with accused produced before the concerned Illaqa Magistrate who remanded the accused to judicial custody. Thereafter, case property was deposited in the Judicial Malkhana. After receiving report of Chemical Examiner and completion of investigation, Challan was presented in the Court.

3. Copies of the report under Section 173 Cr.P.C. along with relevant documents were supplied to the accused free of cost. Charge under Section 22 read with Section 8 of the Act was framed against accused to which accused pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution has examined PW1 HC Manohar Singh, who is one of the recovery witnesses. PW2, ASI Gulwinder Singh is the Investigating Officer in this case, who has deposed in detail regarding the entire proceedings of the investigation. PW3, Inspector Iqbal Singh was posted as SHO, Police Station 'C' Division, Amritsar at that time. After recovery, the case property along with accused

was produced before him. PW4, HC Sandeep Kumar No.1896/ASR has deposed that on 10.01.2013, he was posted as HC at Police Station 'C' Division and on that day, Inspector Iqbal Singh handed over to him one sealed parcel of samples having seals 'GS' and 'IS' for the purpose of depositing the same in the office of the Chemical Examiner at Kharar. He deposited the same there on the same day and handed over the receipt to SHO. Thereafter, he was again called for further examination and then he stated that he had not deposited the sample in the office of the Chemical Examiner in this case and as per official record, the sample parcel in this case was deposited by Constable Sandeep Singh No.2086, in the office of the Chemical Examiner, Kharar. PW5, Constable Sandeep Singh No.2086/ASR has deposed that on 10.01.2013 when he was posted as Constable at Police Station 'C' Division, Amritsar then Inspector Iqbal Singh handed over to him one sample parcel sealed with the seals bearing impressions 'GS' and 'IS', Form M-29, sample seal alongwith road certificate No.5/21 for depositing the same in the office of the Chemical Examiner, Punjab, Kharar. He had deposited the same there on the same day and handed over the receipt to Inspector Iqbal Singh. He also proved on record copy of register No.19 Ex.PW5/1 and copy of the road certificate Ex.PW5/2. Thereafter, the prosecution evidence was closed by the Additional Public Prosecutor.

5. Thereafter, statement of the accused under Section 313 Cr.P.C. was recorded in which the incriminating circumstances appearing against him in the prosecution evidence were put to him, to which he denied and pleaded innocence and closed his defence evidence, without leading any

evidence.

6. After concluding the trial, the trial Court acquitted the accused Harpreet Singh @ Happy and aggrieved by the said decision, the appellant-State has filed the present application for leave to appeal against acquittal of accused Harpreet Singh @ Happy.

7. We have heard Mr. Sandeep Vermani, Additional Advocate General, Punjab and Mr. S.S. Swaich, Advocate for the respondent and have also perused the record.

8. Learned counsel for the State has contended that the trial Court has given undue weightage to the minor contradictions existing in the statements of the prosecution witnesses. He has contended that recovery of the contraband from the accused in the present case has been duly proved on record from the statement of Investigating Officer PW2, ASI Gulwinder Singh and he has been duly corroborated by the other recovery witness PW1 HC Manohar Singh. He has contended that the case of the prosecution cannot be thrown out merely on the basis of the minor contradictions when there is recovery of 1 kilogram of intoxicant powder containing dextropropoxyphene from the respondent/accused, which falls under the commercial quantity. He has further urged that the link evidence is also complete in the present case and PW5, Constable Sandeep Singh No.2086 has duly proved that the sample remained intact till depositing of the same in the office of the Chemical Examiner and there was no tampering with the same. He has argued that the delay in sending of the sample to the office of the Chemical Examiner is not fatal in the present case as seals upon the

samples were intact when the same was received in the office of the Chemical Examiner, Kharar. He has prayed that present appeal may be allowed and the judgment of acquittal dated 05.05.2015 passed by the learned Trial Court may be set aside and accused may be convicted as per law.

9. On the other hand, it has been contended by learned counsel for the respondent/accused that there are major contradictions in the statements of the prosecution witnesses which has rendered the case of the prosecution doubtful. He has contended that the link evidence is also missing in the present case. Earlier prosecution examined PW4 HC Sandeep Kumar No.1896/ASR, who deposed regarding depositing of the sample in the office of the Chemical Examiner, Kharar in the intact condition but when he was again called for further examination then he stated that he had not deposited the said sample in the office of the Chemical Examiner, Kharar. He has vehemently contended that as such the link evidence is missing regarding intactness of the samples which had been sent to the office of the Chemical Examiner, Kharar for testing. He has also argued that the seal after use was again kept by ASI Gulwinder Singh Investigating Officer so the possibility of tampering with the sample cannot be ruled out and there is also delay of one month in sending the samples to the laboratory which has not been explained by the prosecution. He has contended that as such the accused has been rightly acquitted by the trial Court and the impugned judgment does not call for any interference.

10. It is well settled proposition of law that the Appellate Court is to interfere with the order of acquittal only when there is perversity of facts

and law. The NDPS Act provides for very stringent punishment in case the accused is found to have committed an offence under the same and, therefore, it is all the more important and imperative for the prosecution to prove its case beyond the reasonable doubt. It is for this reason that several safeguards have been provided under the Act and it is obligatory upon the investigating agency and then the prosecution to comply with these provisions.

11. Now adverting to the present case, after having heard learned counsel for the appellant and learned counsel for the respondent and having perused the judgment as well as the other relevant record, we are of the considered opinion that the prosecution was not able to prove its case against the accused beyond the shadow of the reasonable doubt.

12. From the perusal of the prosecution evidence on record, it transpires that there are some glaring major contradictions in the statements of the prosecution witnesses which go to the roots of the case of the prosecution. The Perusal of statement of Investigating Officer, PW2, ASI Gulwinder Singh reveals that while stepping into the witness box, he has deposed that on 26.12.2012 when he along with other police officials were on patrolling duty in the area of Sakatri Bagh, Nigam Colony and when police party had reached near bridge drain, Sakatri Bagh, then a person was seen coming from the side of Gian Ashram School, who on seeing the police party got perplexed and tried to throw away a polythene bag, which he was holding in his hand. But he was apprehended by him with the help of the other police officials and he disclosed his name as Harpreet Singh @ Happy. Before conducting his search, efforts were made to join independent witness

and on checking the polythene bag, it was found to be containing intoxicant powder. PW1, HC Manohar Singh, the recovery witness has deposed on the similar lines in his examination-in-chief. But the cross-examination of both these witnesses is relevant. In his cross-examination, PW2 ASI Gulwinder Singh has stated that the packet was picked up from the ground, which was lying about 15 yards away from the accused. Whereas PW1 HC Manohar Singh has stated in his cross-examination that the packet which was picked up from the ground was lying at a distance of 5 feet away from the accused. The trial Court has rightly pointed out that both these witnesses have clearly stated in their cross-examination that the accused was apprehended when he had already thrown away the bag, which was picked up from the ground. But they are completely silent regarding this fact in their examination-in-chief that when the accused was apprehended, he had already thrown away the bag on the ground and rather they have stated in their examination-in-chief that the accused was apprehended when he was just trying to throw away the polythene bag which he was holding in his hand. So, it creates doubt regarding the manner of recovery, as alleged by the prosecution. Even if it is presumed for the sake of arguments that the accused had thrown the polythene bag in his hand, on the ground and it was lifted from there, but even then there remains wide contradiction in the statements of the above said prosecution witnesses. As per PW1 HC Manohar Singh, the said bag was lying at the distance of 5 feet away from the accused, while as per PW2 ASI Gulwinder Singh, the said bag was lying at a distance of 15 yards, which comes to about 45 feet. These glaring discrepancies in the statements of these witnesses have not been reconciled by the prosecution, which has

caused a dent in the prosecution case.

13. The trial Court has further rightly observed that the link evidence is missing in the present case. Perusal of the record reveals that earlier prosecution examined PW4 HC Sandeep Kumar No.1896/ASR on 02.04.2014. The perusal of his statement reveals that he has categorically stated in the opening line of his statement, that he is Head Constable and his belt number is 1896/ASR and he is not Constable Sandeep Singh No.2086/ASR. Though, as per prosecution case, it was Constable Sandeep Singh No.2086/ASR, who had taken the sample to the office of the Chemical Examiner Kharar, yet depste having been clearly stated by PW4 that he was not Constable Sandeep Singh No.2086/ASR, he was examined by the prosecution, in order to complete the link evidence that he had taken the sample in this case to the office of the Chemical Examiner, Kharar in the intact condition. The trial Court has rightly held that once it was clear to the prosecution when PW4 HC Sandeep Kumar No.1896/ASR appeared in the witness box that he was not Constable Sandeep Singh No.2086/ASR, then there was no occasion for the prosecution to examine him as a sample carrier. But when depste that, he had been examined by the prosecution, then it is obvious that he was examined just to complete the chain of link evidence and lateron the application was filed by the prosecution to examine Constable Sandeep Singh No.2086 to fill up this lacuna.

When PW4 HC Sandeep Kumar No.1896 was recalled for further examination then he clearly stated that he had not deposited the sample in the office of Chemical Examiner in this case. When he was examined by the learned defence counsel then he deposed in his cross-

examination that the earlier statement was given by him under pressure after going through the record. The trial Court has rightly observed that reliance upon such kind of prosecution evidence cannot be placed, in order to prove that the sample was deposited in the intact condition with the office of the Chemical Examiner, Kharar and the chain of link evidence becomes incomplete.

14. There are also some other contradictions in the statements of the prosecution witnesses, which makes the presence of the prosecution witnesses, at the place of the alleged recovery, at the same time, doubtful. PW1 HC Manohar Singh has stated that packing and sealing of the case property was done while sitting on the chairs, which were taken from the nearby shop. Whereas PW2 ASI Gulwinder Singh has stated that the entire exercise was done while sitting on the ground, which creates doubt that the packing and sealing of the case property was done at the spot in the manner as alleged by the prosecution.

PW1 HC Manohar Singh has stated that seal after use was handed over to him by the Investigating Officer but PW2 ASI Gulwinder Singh has stated that he had kept the seal with him. So if the seal was kept by the Investigating Officer with him then the possibility of tampering with the sample cannot be ruled out. It assumes more significance when there is a delay of one month in sending the samples to the laboratory and this long delay of one month in sending the sample to the laboratory has not been explained by the prosecution. So when admittedly the seal after use remained with the Investigating Officer for such a long period then it makes the intactness of the samples quite doubtful. In this respect, trial Court has

rightly relied upon **Baldev Singh @ Deba Vs. State of Punjab & others, 2013 (1) Law Herald (P&H) 186**, wherein it was held that -

“Sample – Delay in sending – Acquittal – Held ; There is a delay of about one month in sending the samples to the laboratory and possibility of tampering with the case property and the samples of parcels could not be ruled out, particularly when the seals, after use, remained with the police officials throughout-No explanation whatsoever has been furnished by the prosecution witnesses, with regard to delay of about one month in sending the samples to the office of Chemical Examiner.”

15. Therefore, keeping in view the above discussion, the trial Court has rightly reached at the conclusion that the prosecution witnesses were not successful in bringing home guilt to the accused and the recovery did not take place in the mode and manner as alleged by the prosecution. So, the accused has been rightly acquitted by giving him the benefit of doubt.

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

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

26.04.2023
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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |