

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

244

CRR-843-2018 (O&M)

Date of decision: 17.08.2023

Manjinder Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Aman Bansal, Advocate for the petitioner

Ms. Himani Arora, AAG Punjab

AMAN CHAUDHARY. J.

1. The present revision petition has been preferred against the impugned judgment and order dated 03.07.2017 passed by Special Court, Patiala, whereby the petitioner was convicted and sentenced to undergo rigorous imprisonment to the period already undergone i.e. 36 days for the offence punishable under Section 15 of NDPS Act and to pay a fine of Rs.2000/-.

2. Summarily, the facts of the case are that on 16.04.2014, when a police party headed by ASI Jaspal Singh was present on the bridge of canal Mehs in connection with patrolling in the area, a person was seen coming from the side of Nabha carrying a plastic bag in his right hand. He got perplexed and tried to escape but was apprehended by the Investigation officer and other police officials. He disclosed his name as Manjinder Singh son Late Sadhu Singh. On search, 5 kg of poppy husk was recovered from the plastic bag carried by him. FIR No.38 dated 16.04.2014, under Section 15 of the NDPS Act was registered at Police Station Sadar, Nabha. After completing the investigation, challan against the

accused-petitioner was presented before the competent Court. Charges were framed against the accused to which he pleaded not guilty and claimed trial.

3. To prove its case, the prosecution had examined as many as 6 witnesses. On closing of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused, which he denied and alleged false implication and claimed himself to be innocent. In defence, HC Jodh Singh was examined as DW1.

4. After hearing the learned counsel for the parties and going through the evidence brought on record, the trial Court came to the conclusion that the prosecution has proved its case, bringing home guilt against the accused. Accordingly, the accused- petitioner was convicted and sentenced as mentioned above in para no.1.

5. Being aggrieved, the petitioner filed the present revision petition.

6. Learned counsel submits that the trial Court has committed a grave error while convicting the petitioner. No independent witness was joined in the recovery proceedings. There was a delay of 7 days in sending the sample to the office of Forensic Science Laboratory, therefore, the possibility of tampering the sample parcels cannot be ruled out.

7. On the other hand, learned State counsel submits that the trial Court after considering the evidence, has rightly convicted the petitioner. Therefore, the present petition deserves to be dismissed.

8. Heard learned counsel on either side.

9. Reference can also be profitably made to the judgment by Hon'ble The Supreme Court in **Kallu Khan vs. State of Rajasthan**, 2021 SCC OnLine SC

1223, upholding the conviction that was based on the testimonies of the official witnesses, by relying on **Surinder Kumar vs. State of Punjab**, (2020) 2 SCC 563 and observing that merely because the prosecution did not examine any independent witness, it would not necessarily lead to the conclusion that the accused was falsely implicated. In **State of Punjab vs. Balbir Singh**, (1994) 3 SCC 299, Hon'ble The Supreme Court while holding that there is no bar in recording the conviction by relying upon the statements of police officers, had observed that, "...It is well settled that the testimony of a witness is not to be doubted or discarded merely on the ground that he happens to be an official but as a rule of caution and depending upon the circumstances of the case, the Courts look for independent corroboration. This again depends on question whether the official has deliberately failed to comply with these provisions or failure was due to lack of time and opportunity to associate some independent witnesses with the search and strictly comply with these provisions..."

10. In the case at hand, though the recovery took place on the road, but none had come forward to witness the said proceedings, despite making of efforts. In a case where independent witness has not been joined, the safest course open to the Court is that it could carefully scrutinise the evidence of police witnesses, which in the instant matter has been done and if their evidence is otherwise trustworthy and inspires confidence and they also do not appear to have any motive to falsely implicate the accused, there is no reason for not to believe them or placed reliance on such testimonies.

11. The reluctance on the part of the villagers to not join as independent witnesses is neither strange nor unbelievable. Generally, people belonging to the

same village may not want to unnecessarily create bad relations/enmity with a co-villager, especially when such a person is being accused of committing a crime.

12. In order to consider the next plank of submission regarding the delay in sending the samples to the FSL, it would be gainful to make a reference to **Jarnail Singh vs. State of Punjab**, (2011) 3 SCC 521, wherein Hon'ble The Supreme Court observed that there was sufficient independent evidence produced by the prosecution regarding the completion of link evidence. Therefore, the delay in sending the sample parcel to the office of Chemical Examiner pales into insignificance. The considered opinion was that mere delay in sending the sample of the narcotic to the office of the Chemical Examiner would not be sufficient to conclude that the sample has been tampered with. Hon'ble The Supreme Court in the case of **State of Orissa vs. Kanduri Sahoo**, 2004 (1) SCC 337, wherein the sample of cannabis (ganja) was sent for chemical examination after four days of recovery, observed that "The evidence of PW-1 was categorical to the effect that the articles were kept in the Excise Malkhana from where they were brought and sent for chemical examination. This relevant aspect appears to have been missed by the High Court. In Valasla's case (supra), it was not laid down that whenever there is delay in sending the samples, the prosecution version would become vulnerable. What was emphasised related to proper and safe custody of the seized articles. In the background to that particular case, when delay of 3 months was there and there was no clear evidence as to with whom the articles were lying, the decision was rendered. No evidence was led to show that the contraband articles were in proper custody and in proper form. But the factual situation is different here. That being so, the High Court's judgment does not stand scrutiny and is set

aside. The conviction as done by the trial Court was proper.” This Court in **Ganesh vs. State of Haryana**, 2009 (2) RCR (Criminal) 39, **Jaili vs. The State of Haryana**, 2008 (2) RCR (Criminal) 264, and **Motia Bai vs. State of Haryana**, 2005(3) RCR (Criminal) 56, upheld the conviction of the petitioners therein, by observing that a delay of 7 days, 1 month or 20 days respectively in those cases in sending the samples to the FSL, would not be fatal to the case of the prosecution, especially when there is no proof on record to conclude that the samples had been tampered with.

13. There is nothing brought out that the samples had been tampered with or that there was no link evidence available. As a matter of fact, PW-4, C.Gurwinder Singh had affirmed that the sample parcels when deposited in the office of the Chemical Examiner, Mohali was in proper condition, which PW-5, C.Raja Singh categorically confirmed on redeposit of the sample parcel with MHC. The trial Court has based on proper appreciation of evidence rightly concluded that there was complete link evidence in shape of affidavits of MHC Chamkaur Singh and Constable Gurvinder Singh, who appeared as prosecution witnesses regarding deposit of case property by investigating officer in Malkhana and of samples with FSL and that they remained intact while in custody till deposit with FSL as regards their seals were concerned, which was proved from the report Ex.PW-1/L by the FSL.

14. At this stage, a survey of certain authorities outlining the contours of revisional jurisdiction of the High Court in such matters may not be inapt. Hon’ble The Supreme Court in the case of **Malkeet Singh Gill vs. State of Chhattisgarh**, (2022) 8 SCC 204, as regards the exercise of powers by the High Court in a

revision filed against conviction, observed that, “Before advertent to the merits of the contention, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.”

15. This Court in **Ram Partap vs. Rajesh Kumar**, 2014 SCC OnLine P&H 8659, relied upon the dictum of **Jagannath Choudhary vs. Ramayan Singh**, (2002) 5 SCC 659, wherein while expounding on the scope of revisional jurisdiction of the High Court, Hon’ble The Supreme Court had held that, “Incidentally object of revisional jurisdiction of the High Court as envisaged under Section 401 CrPC, is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, aimed at correcting miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which result, on the one hand, in some injury to the due maintenance of law and order, or, on the other, in some

undeserved hardship to individuals.”

16. The trial Court has meticulously examined the evidence and arrived at the conclusion of the guilt having been established against the convict-petitioner. No glaring defect in the procedure or that a patent error has been committed by it in ignorance of law, has been pointed out by the counsel for the petitioner, which may have resulted in a flagrant miscarriage of justice. There is not even an iota of evidence that would lead to a conclusion that any other view was possible but for the conviction of the petitioner.

17. Having considered the matter in light of the afore-referred judgments, this Court is unable to find any perversity or illegality in the findings so recorded by the trial Court whereby the petitioner has been convicted.

18. Resultantly, the present revision petition is hereby dismissed being bereft of merit.

(AMAN CHAUDHARY)
JUDGE

August 17, 2023
M.Kamra

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