

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

636

CRA-S-1120-SB-2006(O&M)

Reserved on:16.02.2024

Pronounced on: 23.02.2024

Naresh Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:-. Mr. Sailender Singh, Advocate for the appellant.

Mr. Anant Kataria, Deputy Advocate General, Haryana.

KIRTI SINGH, J.

The present appeal has been preferred against the judgment of conviction and order of sentence dated 29/30.05.2006 passed by the learned Special Court, Panipat, whereby, the appellant has been convicted under Section 20 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short 'the NDPS Act') and was sentenced to undergo rigorous imprisonment for period of 01 year and to pay a fine of Rs.10,000/- with default stipulation.

Factual Matrix

2. The facts in brief are that on 26.02.2003 Assistant Sub Inspector Chander Singh along with other police officials were present near Jaurasi Road Hanuman Temple for patrolling duty. The appellant was seen coming from the side of village Bhapra on foot and on seeing the police he looked nervous and was apprehended on suspicion. During

interrogation the appellant disclosed his name and address. The police party suspected that he was carrying some contraband in the bag and notice under Section 50 of the NDPS Act was served upon him. He was given option to get his search conducted in the presence of a Gazetted Officer or a Magistrate. He, however, exercised his option of search in the presence of a Gazetted Officer and accordingly his consent statement was prepared. Assistant Sub Inspector Chander Singh telephonically contacted Badan Singh DSP Samalkha who reached the spot and ordered to conduct search. On search, one polythene, containing charas was recovered from right pocket of his pant. Ten grams charas was separated as sample and was put in plastic dibbi (container). Remaining charas was weighed which was found to be 140 grams which was put in a plastic dibba (container). Plastic dibbi containing sample and plastic dibba containing remainder were converted into parcels and sealed with seal 'CS' and 'BS' and were taken into police possession. The appellant-accused could not produce any license or permit for keeping the above said charas in his possession and accordingly a ruqa was sent to the police station on the basis of which FIR No.56 dated 26.02.2003 was registered. The police investigated the case and ASI Chander Singh prepared rough site plan of the place of recovery and recorded the statements of the witnesses and produced the case property along with samples before MHC and locked up the accused. The sample was sent to Forensic Science Laboratory Haryana Madhuban and as per FSL report subsequently received, the sample was found as charas cannabis. On completion of usual steps of investigation the evidence was found to be sufficient against the accused.

3. From the perusal of the report under Section 173 Cr.P.C. a prima facie case punishable under Section 20 of the NDPS Act was made out against the appellant-accused and he was charge-sheeted thereunder to which he pleaded not guilty and claimed trial.

4. Learned trial court held the appellant-accused guilty of the offence vide judgment dated 29.05.2006 and he was sentenced as under:-

Under Section(s)	Imprisonment	Fine	In default of payment of fine
20 of NDPS Act.	Rigorous imprisonment for 1 year.	Rs.10,000/-	SI for 03 months.

5. Feeling aggrieved with the said judgment of conviction and order of sentence, the accused has approached this Court by way of filing the present appeal which was admitted vide order dated 07.07.2006 and sentence of the appellant was suspended during the pendency of the present appeal.

6. I have heard the submissions made by the learned counsel for the parties and find that in the instant case the prosecution has examined eight witnesses and closed its evidence.

7. When the accused was examined under Section 313 Cr.P.C. entire incriminating evidence available against him was put to him, wherein he once again exonerated himself and pleaded his false implication. However, the appellant did not produce any defence evidence and the defence evidence was closed as per his statement.

8. Learned counsel appearing for the appellant has raised the following arguments:

- (i) That the mandatory provisions of Section 50 of the NDPS Act have not been complied with.
- (ii) That at the time of recovery, no independent witness has been joined by the prosecution and only official witnesses were examined and the recovery in question is shrouded with suspicious circumstances.
- (iii) That the complainant and the investigating officer cannot be the same person as the same proves fatal to the case of prosecution.
- (iv) There has been delay in sending the sample.

9. *Per contra* the learned counsel for the State vehemently argued that in the instant case the official witnesses had no enmity with the accused and they had been extensively cross examined but no material had been brought on record which could discredit the testimony of the official witnesses. Thus, the findings recorded by the learned trial court are liable to be upheld.

Analysis of the arguments

10. Arguments advanced by the appellant regarding the non-compliance of Section 50 of the NDPS Act is devoid of merits as ASI Chander Singh served notice Section 50 of the NDPS Act that he had right to have his search conducted in the presence of a Gazetted Officer or a Magistrate to which the appellant-accused opted for his search by some

Gazetted Officer. Then he telephonically contacted Badan Singh Deputy Superintendent of Police Samalkha who reached the spot and ordered to conduct search. This clearly shows that the search was conducted in the presence of the Gazetted Officer and there has been due compliance of Section 50 of the NDPS Act.

11. With regard to the non-joining of independent witness, it has been held in a catena of judgments that merely because the prosecution has not examined any independent witness, it will not prove fatal to the case. The evidence of official witness cannot be distrusted and disbelieved merely on account of their official status.

12. The Hon'ble Supreme Court in *Surinder Kumar v. State of Punjab, 2020(1) SCC (Cri) 767* held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The relevant extract of the order is reproduced as below:-

“15. The judgment in the case of *Jarnail Singh v. State of Punjab, (2011) 3 SCC 521 : 2011(1) RCR (Criminal) 925*, relied on by the counsel for the respondent-State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status. In the case of *State, Govt. of NCT of Delhi v. Sunil & Anr., (2001) 1 SCC 652 : 2001(1) RCR (Criminal) 56* it was held as under:

"It is an archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Courts cannot start with the presumption that the police records are untrustworthy. AS a presumption of law, the presumption would be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature".

13. With regard to the third point of determination that the complainant cannot be the Investigating Officer, the learned counsel appearing for the appellant has placed reliance upon the judgment of Hon'ble Supreme Court in ***Mohan Lal vs. The State of Punjab, Criminal Appeal No.1880 of 2011 decided on 16.08.2018***, wherein it was held that the informant and the Investigating Officer cannot be the same person. However, this judgment has been overruled by the judgment laid down by Hon'ble Supreme Court in ***Mukesh Singh vs. State (Narcotic Branch of Delhi, 2021(1) SCC (Cri) 356***, in which it is held that the mere fact that the informant is also the investigator it does not automatically render the investigation unfair or biased and the accused is not entitled to acquittal solely on this ground.

The relevant para of the above said judgment reads as under:-

I. That the observations of this Court in the cases of ***Bhagwan Singh v. State of Rajasthan (1976) 1 SCC 15***; ***Megha Singh v. State of Haryana (1996) 11 SCC 709***; and ***State by Inspector of Police, NIB, Tamil Nadu v. Rajangam (2010) 15 SCC 369*** and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of ***Mohan Lal v. State of Punjab (2018) 17 SCC 627*** and any other decision taking a contrary view that the informant cannot be the

investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”

14. With regard to the delay in sending the samples, PW3 Head Constable Rajinder Singh has deposed that on 26.02.2003 he was posted as MHC Police Station, Samalkha Panipat and on that date Assistant Sub Inspector Chander Singh deposited with him one sample parcel, one remainder parcel and impression seal. On 03.03.2003 he handed over one sample parcel to EHC Krishan Pal for taking the same to Forensic Science Laboratory, Haryana, Madhuban. After depositing the same in Forensic Science Laboratory, Haryana, Madhuban he handed over the receipt to him. On the same day, PW2 EHC Krishan Pal has tendered in evidence his affidavit Ex.PC that on 03.03.2003 he was posted as Constable in Police Station Samalkha. On that day, PW6 MHC Rajinder Kumar handed over to him one sealed parcel along with impression seal for depositing the same in Forensic Science Laboratory, Haryana, Madhuban. He deposited the same in Forensic Science Laboratory, Haryana, Madhuban on the same day without any delay and handed over the receipt to MHC and he did not tamper with same nor allowed anybody else to tamper with the same during the period the sample remained in his custody.

15. The Hon’ble Supreme Court in ***Balbir Kaur vs. State of Punjab, 2009 (15) SCC 795*** has held that the delay in sending the sample has no consequence, not fatal to the prosecution. The relevant extract of the order is reproduced as below:-

“13. As far as delay in sending the samples are concerned, we find the said contention untenable in law. Reference in this regard may be made to the decision of this Court in Hardip Singh case

(supra), wherein there was a gap of 40 days between seizure and sending the sample to chemical examiner. Despite the said fact the Court held that in view of cogent evidence that opium was seized from the appellant and the seals put on the sample were intact till it was handed over to the chemical examiner, delay itself is not fatal to prosecution case. In the present appeal, the contraband goods were recovered from the possession of the appellant on 19.02.1998 and the same were sent to the chemical examiner for chemical examination on 23.02.1998, the aforesaid delay has no consequence for the fact that the recovery of the said sample from the possession of the appellant stands proved and established by cogent and reliable evidence led in the trial. Therefore, it cannot be said that there was any delay in sending the said sample for examination. Since the appellant was sitting on the two bags and her conduct on turning her face towards the village on seeing the police party and thereafter telling the police party on asking by the police that the said bags contained poppy husk clearly establishes that she was in conscious possession of the contraband goods. So far as examination of no independent witness is concerned, we find that there was only one independent witness at the time of recovery of the contraband goods, who was won over by the defence. It is established from the facts that the said independent witness was examined by the defence as her witness in the trial. It is not disclosed that any other independent person was present at the time of search and at the time of recovery of the contraband goods, and therefore, it cannot be said that the search and recovery are in any manner vitiated.”

16. After carefully examining the record as well as the findings recorded by the learned trial court it can be seen that no perversity has been committed by the trial Court while reaching to its conclusion as the entire evidence on record has been carefully perused. Thus, the impugned judgment of conviction is affirmed and upheld.

17. Now reverting to the order of sentence, this Court is conscious of the fact that at the time of passing of the sentence, the

present appellant was aged about 40 years. He was sentenced to undergo rigorous imprisonment for a period of 1 year and to pay a fine of Rs. 10,000/- with a default stipulation. As per the custody certificate produced by the learned State counsel, the appellant/accused has undergone actual sentence of 02 months and 15 days. Even, as per the prosecution, about 150 grams of charas was recovered from the possession of the accused which is a non-commercial quantity. The sentence imposed on the present appellant was suspended by this Court on 07.07.2006 and for the last about 17 years, the appellant has been suffering a protracted trial. The appellant has not indulged in any criminal activity. Even though, this court is of the considered view that the offences under the NDPS Act are very serious in nature and against the society at large and no discretion is to be exercised in favour of such accused who are indulged in such offences under the Act. It is a menace to the society, no leniency should be shown to the accused persons who are found guilty under the NDPS Act. But while upholding the same, this Court cannot be oblivious of the other facts and circumstances as projected in the present case that the appellant is a first time offender and is stated to be the sole bread earner of the family. Thus, no purpose will be served by sending the appellant behind the bars after such a long period. Consequently, the sentence imposed upon the present appellant is reduced to the period already undergone by him. However, the fine imposed upon the appellant i.e. Rs.10,000/- shall remain intact.

18. With the above modifications, the impugned judgment of conviction is upheld, however the order of sentence is modified to the extent that the sentence imposed on the present appellant is reduced to the period already undergone by him. However, the amount of fine i.e.

Rs.10,000/- is ordered to be intact, which shall be deposited by him within a period of three months from today and in default of payment of fine he shall undergo simple imprisonment for 03 months. The amount of fine, if deposited previously, shall be adjusted. His bail bonds stand discharged.

19. Accordingly, the appeal is partly allowed.
20. All pending applications, if any, are disposed of, accordingly.
21. Records of the Court below be sent back.

(KIRTI SINGH)

JUDGE

23.02.2024

Kapil

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