

CRA-S-471-2024 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-471-2024

Reserved on: 03.04.2024

Date of Pronouncement : 15.04.2024

Pritpal SinghAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Raghav Chadha, Advocate for the appellant

Mr. Siddharath Sandhu, Assistant Advocate General, Punjab

HARKESH MANUJA, J

Present appeal has been preferred against the judgment dated 20.01.2024 passed by Judge Special Court, Shaheed Bhagat Singh Nagar, vide which appellant has been convicted u/s 21 of The Narcotic Drugs And Psychotropic Substances, Act, 1985 (hereinafter referred as 'the Act') and sentenced to undergo rigorous imprisonment for a period of two months and to pay a fine of Rs. 2,000/- and in default of payment of fine, to further undergo rigorous imprisonment of 15 days.

2. Brief facts of the case are that on 02.07.2019, main accused, Sunny, was arrested by Police during patrolling from whom recovery of 20 injections of Buprenorphine, 20 injections of Avil and 20g of Heroin was effected from him. On 03.07.2019, Sunny made a disclosure statement and named co-accused Paramjit Kaur followed by his another disclosure statement made on 04.07.2019, wherein he named the present appellant, Pritpal Singh and accordingly, on 06.07.2019, appellant was also nominated as accused. Appellant was arrested from Delhi Airport on

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09.07.2019 and made a disclosure that 6/7 grams of Heroin was lying concealed in the motor-room of his fields and he can get the same recovered.

2.1 On 10.07.2019, appellant Pritpal Singh got recovered the said Heroin and on the directions of the DSP, ASI Jarnail Singh weighed the same with weighing kanda, which came out to be 5 grams including envelope. The parcel of the same was prepared, which was sealed by ASI Jarnail Singh with his seal bearing impression "JS". The sample seal impression was separately prepared in triplicate and seal after use was handed over to ASI Jasvir Singh. The DSP also sealed the same with his seal bearing impression "HS". Thereafter, the case property parcel of said Heroin and accused Pritpal Singh was produced before Addl. SHO Mahinder Singh, who verified the facts from the accused and sealed the same with his seal bearing impression "MS". On 11.07.2019, the case property parcel of Heroin along with accused Pritpal Singh was produced before Ms. Harpreet Kaur Nafra, Duty Magistrate, SBS Nagar. Parcel of the case property was seen by learned Magistrate and after break open the seals affixed on the same, resealed it with her seal bearing impression "HKN". On 12.07.2019, the sample parcel of Heroin was sent to the office of Chemical Examiner, Ludhiana by MHC through Ct. Rajinder Singh. It was alleged by the prosecution that all the accused connived with each other to indulge in the business of contraband. On receipt of the report of Chemical Examiner and after completion of all other formalities of investigation, the challan against all the accused was presented in the Court.

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2.2 Finding a prima-facie case for the offence under Sections 21, 22, 25 and 29 of the NDPS Act, charge sheet was served upon the accused accordingly, to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined the following witnesses:-

- PW-1 HC-Naresh Kumar, with whom case property was deposited.
- PW-2 Ct-Iqbal Singh, who deposited the sample parcels in the laboratory.
- PW-3 Ct-Rajinder Singh, who also deposited the sample parcel of Heroin in the laboratory.
- PW-4 Rajan Bhatia, Jr.Assistant from the office of SDM, Nawanshahr.
- PW-5 Sub Inspector Jarnail Singh, who apprehended accused Sunny and conducted part investigation in this case.
- PW-6 ASI Resham Lal (Retired) member of the police party headed by ASI Jarnail Singh.
- PW-7 Sukhpreet Singh Deputy Branch Manager of Yes Bank
- PW-8 ASI Parshotam Lal, who arrested accused Pritpal Singh.
- PW-9 ASI Jasvir Singh to whom seal after use was handed over by ASI Jarnail Singh.
- PW-10 ASI-Manjit Singh, attesting witness of recovery memo of mobile phones and confessional statement of accused Sunny.
- PW-11 Pankaj official from HDFC Bank, Nawanshahr.
- PW-12 Ct. Baljinder Singh, who produced the record of posting of accused HC Pritpal Singh.
- PW-13 Jagbir Singh Nodal Officer, Reliance JIO Info Com Ltd, who produced the record of Mobile No.7888548562.
- PW-14 SI Balvir Singh, Investigating officer of this case.
- PW-15 Gobind Ram, Nodal Officer Bharti Airtel Ltd.
- PW-16 DSP Harjit Singh in whose presence recovery of 05 grams of Heroin was effected in pursuance of confessional statement of accused Pritpal Singh.
- PW-17 SI Mahinder Singh, who was posted as Addl. SHO at the relevant time.

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PW-18 Gurdit Singh, Assistant Nodal Officer Vodafone Idea Ltd.

2.3 The accused were examined u/S 313 of Cr.P.C., whereby they denied all the incriminating evidence and pleaded their innocence.

3. After appraisal of the evidence, Ld. Judge, Special Court, Shaheed Bhagat Singh Nagar, vide judgment dated 20.01.2024 held that while charges under Section 29 of NDPS Act were not found to be proved, however, charges framed against main accused Sunny under Section 21, 22 and 25 of NDPS Act were found to be proved. Whereas, appellant Pritpal Singh was held guilty for offence punishable under Section 21 of NDPS Act and sentenced to undergo rigorous imprisonment for a period of two months and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment of 15 days. It is this judgment dated 20.01.2024 which has been challenged by way of present appeal

4. Learned Counsel for the appellant contended that no independent witness was joined at the time of alleged recovery of the contraband from the appellant. He further submitted that if this fact was seen in light with the fact that alleged recovery was from an open place, i.e. the tubewell motor, which is a place accessible to all, alleged recovery in the present case was doubtful and could not be attributed to the appellant. He also submitted that there was material contradiction in the version of prosecution as PW-5/SHO stated during his testimony that nothing was recovered from the motor. He also submitted that alleged recovery was also vitiated on account of non compliance of mandatory provisions of NDPS Act and in this regard he drew attention of the court towards the fact

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that neither section 57 was complied nor Form no. 29/ inventory report was filled at the spot, rather it was filled in the presence of magistrate. In support of his contentions, he placed reliance upon the following judgments:

- i. **"Bachittar Singh v. State of Punjab"**, reported as 2006 (4) RCR (Criminal) 213
- ii. **"Darshan Ram @Kala v. State of Punjab"**, reported as 2008 (8) RCR (Criminal) 474
- iii. **"Sahab Singh @ Sabu v. State of Punjab"**, reported as 1999 (1) RCR (Criminal) 443
- iv. **"Mohan Lal v. State of Punjab"**, reported as AIR 2018 (SC) 3853
- v. **"Arjun Singh @ Marra and Anr. v. State of Punjab"**, bearing case no CRA-S-1830-SB-2014 decided on 28.07.2023
- vi. **"Ranjit Singh @ Jeeta v. State of Punjab"**, reported as 2003 (2) RCR (Criminal) 280
- vii. **"Gurjant Singh v. State of Punjab"**, reported as 2007 (4) RCR (Criminal) 226
- viii. **"Gannu v. State of Punjab"**, reported as 2017 (3) RCR (Criminal) 566
- ix. **"Sarabjeet Singh v. State of Punjab"**, reported as 1998 (1) RCR (Criminal) 348
- x. **"Pehalwan Singh v. State of Punjab"**, reported as 2006 (3) RCR (Criminal) 755

6. Per contra, learned State counsel submitted that if the version of police officials inspired confidence, then recovery could not be vitiated merely on account of the fact that no independent witness was joined. He further submitted that in present case, the testimony of all police officials was largely on the similar line and there was no material contradiction in their deposition as noted by learned trial Court as well. He further submitted

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that there was substantial compliance of provisions of NDPS Act. He concluded his arguments by submitting that there was no infirmity in the judgment passed by the learned Judge, Special Court and therefore prayed for dismissal of the appeal.

7. I have heard learned counsel for the parties and gone through the records of the case. I find substance in the arguments made by the learned counsel for the appellant.

8. It has consistently come out from the statements of police officials that during the recovery proceeding conducted on the basis of disclosure statement of the appellant, from the tubewell motor, no independent witness from the village was joined. Sub Inspector Jarnail Singh while deposing as PW-5, admitted in his cross examination that no independent witness was joined during the raid, relevant part of which is reproduced hereunder:-

"I accompanied with DSP Harjit Singh left towards village Suni, Tehsil Garshankar, District Hoshiarpur for raiding the alleged tube—well motor in the fields as disclosed by accused Pritpal in confessional statement during police custody. No independent witness/any Lambardar, Panch, Sarpanch was called by us nor joined in the investigation-at the time of raiding at the alleged place i.e. tube—well but nothing was recovered from the alleged tube—well."

Similar deposition was also made by DSP Harjit Singh during his cross examination as PW-16, relevant part of which is reproduced hereunder:-

"Confessional statement was recorded by ASI Jarnail Singh. I and IO started from CIA Staff together. The said recovery was effected

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from a room where a motor was Situated. No panch, sarpanch of that village was joined during the recovery. I have not taken into the ownership proof of the said motor. I cannot'comment upon that who is the owner of the said motor. No videography/photography was done. It is incorrect to suggest that I have deposed falsely. "

8.1 It is not the case of the prosecution that recovery was made at odd hours and no one was available at that time to be joined as independent witness or that the villagers denied despite of their request to join them. Rather, it is apparent that no effort at all was made to join any independent witness from the village. Additionally, PW-5/Sub Inspector Jarnail Singh in his cross examination stated that nothing was recovered from the alleged tubewell, which goes completely in contradiction with the case of the prosecution.

8.2 A Division Bench of Himachal Pradesh High Court in "**Karam Singh vs State Of Himachal Pradesh**" (Cr. Appeal No. 305 of 2011 decided on 07.08.2019), relying upon "**Zahira Habibulla H. Sheikh v. State of Gujarat**", reported as (2004) 4 SCC 158, held that:-

"...On the facts of each case, if the explanation of the police officials that independent witnesses could not be associated does not inspire confidence, then, coupled with other contradictions, it would lead to the inference that the prosecution did not come up with clean hands....."

8.2 Though, it is well settled law that the testimony of a witness is not to be doubted or looked up with suspicion merely because he happens to be a Police official, but, at the same time, a very well recognised rule of caution, adopted by the Courts is to look for corroboration to the testimony of such witnesses by independent witnesses, particularly, when the time,

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place and circumstances, are such that independent witnesses are easily available. In the present circumstances, the absence of corroboration from independent witnesses residing in the village during the recovery proceeding significantly undermines the case of the prosecution. This is particularly significant given that the testimony of PW-5, SI Jarnail Singh, diverges entirely from the prosecution's narrative.

9. There is also substance in the argument raised by learned Counsel for the appellant that the place of recovery is an open space which is accessible to all and the prosecution has failed to prove exclusive possession, usage or ownership of appellant over the fields or the tubewell. In **Darshan Ram's** case (supra), a coordinate bench of this Court held that in such circumstances, it cannot be stated that recovery was from the conscious possession of the accused. Relevant para from the same is reproduced hereunder:-

“15. After going through the evidence, once it has come in evidence that the place of recovery was a thoroughfare and accessible to all, in that case ASI Gurnam Dass was already having a secret information could have spotted the contraband at the place of recovery and there was no need for recording disclosure statement Exhibit PA. It seems that Exhibit PA is a crude padding and handiwork of the Investigating Officer. That, if the bags were stacked on the land which was accessible to every one, the Investigating Officer ought to have made efforts to find out from where these bags came, who transported and placed them in the fields. Therefore, it cannot be said that the bags, which were lying in a land, which is a thoroughfare, open and accessible to all and sundry, the appellant had a special knowledge of the same or was in conscious possession thereof. Hon'ble the Apex Court in a judgment rendered in State of Punjab v. Balkar Singh, 2004 SCC (Cri.) 838 has made

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observations, which are significant to the extent that the Investigating Officer in order to establish the possession of the accused must make all out efforts to gather evidence to connect the accused with the recovery. Where the recovery is made from a shamlat land, it is all the more important to gather evidence to show that the bags placed at such place belonged only to the appellant and to none else. From the statement read out under Section 313 Criminal Procedure Code, it has nowhere been put to appellant that he was in conscious possession of the same.”

9.1 Similarly, in **Sahab Singh's** case (supra), It was held by this court that if recovery is effected from a place which is open and accessible to all and there was an opportunity on the part of the Investigating Officer to associate an independent witness, non-joining of an independent witness would cast reasonable doubt about the factum of recovery. Relevant para from the same is reproduced here under:

“9. After hearing learned counsel for the parties, I am not impressed with the reasons adopted by the trial Court when it recorded conviction of the appellant. After scanning through the evidence of this case, I am of the opinion that since recovery has been effected from a place which is open and accessible to all and there was an opportunity on the part of the Investigating Officer to associate an independent witness and that his non-joining of an independent witness casts reasonable doubt in the mind of the court about the factum of recovery. It has been proved on the record that against this very appellant, this very S.H.O. registered F.I.R. No. 92 under Section 356 Indian Penal Code on 7.3.1986. The possibility cannot be ruled out that this man might have been taken into custody in that very F.I.R. just after its registration. Since this man was irksome to

the police and the complainant of the said F.I.R., another case might have been planted upon him so as to keep him busy in the criminal proceedings. The present recovery has been shown dated 10.3.1986 and in this regard F.I.R. No. 103 dated 10.3.1986 has been registered but the recovery memo Ex.PA would indicate that no. F.I.R. number has been given in this document. Even ruqa Ex.PB indicates that the Special Report of this case was sent to the learned Magistrate. In all probabilities the Special Report ought to have been received by the Judicial Magistrate either on 10.3.1986 on 11.3.86 but strange enough it has been received on 12.3.1986 at 10.30 A.M. The counsel for the appellant has also invited my attention to the certified copy of the remand paper of accused in F.I.R. No. 92 dated 7.3.1986 in which it has been stated that the appellant has been arrested on 11.3.86 which again belies the story of the prosecution with regard to the arrest of the appellant in the present F.I.R. on 10.3.1986. Be that as it may be, there is discrepant evidence with regard to the actual date of arrest of the appellant, but established fact is that the present recovery has been effected from an open and accessible place. The police party must have remained at the spot for sufficient long time in order to complete the documents but strange enough the police has not associated any independent witness so as to give confidence in the mind of the court about the recovery. There is no document on record to indicate that the grounds of arrest were ever supplied to the appellant. Also investigation of Sub Inspector Darshan Kumar has not been verified by any Gazetted Officer so as to infuse confidence about the genuineness of the recovery. Even no

special report has been issued to the higher authorities about the detection. Though provisions of Sections 52 of 57 in this case are directory in nature if this court finds that the prejudice has been caused to the appellant on account of non-compliance, the appellant is entitled to acquittal."

9.3 In present case as well, there is no evidence to establish that the alleged place of recovery i.e. room where a motor was situated, was under exclusive possession, usage, or ownership of the appellant. Neither there is any documentary evidence supporting such a claim, nor any witness was presented to establish this contention. The prosecution's failure to address this issue gains further significance due to the lack of explanation from police officials regarding the absence of independent witnesses during the operation. Furthermore, during cross-examination, PW-16, the DSP, conceded that no efforts were made to establish a direct connection between the appellant and the recovered contraband material. Relevant part of his cross examination is reproduced here under:

*"*** I have not taken into the ownership proof of the motor.....I cannot comment who is the owner of the said motor. ***"*

9.4 There is no discussion by the Special court regarding the fact that the place, from where the contraband was recovered, was an open space in exclusive possession of appellant. There is also no discussion regarding any independent witness being not joined in case of appellant as in his case it was not a chance recovery, rather it was a recovery on the basis of a disclosure statement. Once this connection is not established, it

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creates reasonable doubt in the mind of this Court about the genuineness of the recovery.

9.5 No explanation provided by the prosecution in this regard put further restraints in its way to prove case beyond reasonable doubt against the appellant.

10. In view of the discussion made above and on the basis of conjoint consideration of all aspects, in humble opinion of this Court, prosecution has failed to prove its case against the appellant beyond reasonable doubts, therefore, present appeal is allowed and the appellant is thus acquitted of the charges leveled against him.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

April 15, 2024
sanjay

[HARKESH MANUJA]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no