



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRM-M-30961 AND 30960-2018 in/and
CRA-S-3454-SB-2018
Date of Decision: 05.08.2024

PALWINDER SINGH @ PANNU

.....APPELLANT

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S.Hundal, Advocate
for the Petitioner

Mr. J.S.Rattu, DAG, Punjab

SANDEEP MOUDGIL, J

CRM-30960-2018

Allowed as prayed.

CRM-30961-2018

For the reasons mentioned in the application, the application is
allowed and the delay of 955 days in filing the appeal is hereby condoned.

CRA-S-3454-SB-2018

This appeal has been preferred by appellant - Palwinder Singh @
Pannu, who has been convicted alongwith another co-accused, for the
commission of offence under Section 22 of the Narcotic Drugs & Psychotropic
Substances Act, 1985 (for short – ‘Act’), in FIR No.166 of 08.09.2013



registered at Police Station Sultanpur Lodhi, Kapurthala, under Sections 22/61/85 of the Act and has been sentenced to the term already undergone, i.e., w.e.f. 08.09.2013 to 03.04.2014 and to pay a fine of Rs.500/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of 07 days for the offence under Section 22/61/85 of the Act.

The prosecution case as is enumerated from the final report filed by the police under Section 173 Cr.P.C. is that on 08.09.2013 ASI Manjit Singh alongwith police party was going to village Maniala from Police Post Dalla and when the police party reached in the area of the said village, two persons, riding on a motorcycle bearing registration No.PB-41A-7057, were intercepted who on seeing the police party tried to turn back. On suspicion, they were apprehended and on enquiry about their identities, the person driving the motorcycle disclosed his name as Dharamveer Singh @ Vicky son of Balwinder Singh, resident of village Tanwandi Chaudhrian, P.S. Talwandi Chaudhrian, Kapurthala whereas the pillion rider disclosed his name as Palwinder Singh @ Pannu son of Kulwant Singh, resident of village Dhunda, P.S. Goindwal Sahib, District Tarn Taran. Thereafter, ASI Manjit Singh apprised both the persons of the fact that he has suspicion of having some narcotic substance in their possession so they have got right to have their search conducted either before Magistrate or a Gazetted Officer. However, both the persons reposed confidence in ASI Manjit Singh. A separate consent memo was recorded. Efforts were made to join person from the public but in vain. On search, intoxicant powder duly wrapped in a polythene bag was recovered from the trouser worn by accused Dharamveer Singh @ Vicky. Two samples of 05 grams each of intoxicant powder were separated from the



intoxicant powder recovered from the accused Dharamveer Singh @ Vicky and were converted into parcels. The remaining intoxicant powder on weighing came to be 40 grams which was also concerned into a parcel. However, nothing was recovered from the pillion rider – Palwinder Singh @ Pannu. Accordingly, both the sample parcels and parcel of case property were taken in police possession vide separate recovery memo after sealing the same with seals bearing impression “MS”. Specimen seal impression was separately prepared. Form No.29-M was filled on the spot and seal after its use was handed over to HC Surinder Singh. A ruqa was sent to the Police Station for recording of FIR. Accused were arrested and investigation was initiated. Rough site plan was prepared and statements of PWs were recorded.

During the course of interrogation, both the accused confessed that they had purchased the alleged contraband by contributing the amount for the same. After completion of investigation and on receipt of the Chemical Examiner report, challan/final report under Section 173 Cr.P.C. against the accused was presented before the Court. Copies of the challan were supplied to the accused, under the relevant provision of the Code, free of cost. Thereafter, both the accused were charge-sheeted for the offence under Section 22 of the Act to which they pleaded not guilty and claimed trial.

Thereafter, the prosecution examined PW1 MHC Puran Chand and PW2 ASI Manjit Singh, Investigating Officer of the case (partly examined in chief). However, during the course of trial, both the accused desired to confess their guilt and accordingly, got recorded their confessional statements before the learned trial Court. The learned trial Court after recording the confessional statements of both the accused which was appeared to be



voluntary, without any inducement and threat or promise, considered the same to be genuine, accepted the confessional statements of both the accused and held them guilty for the offence under Section 22/61/85 of the Act and convicted them for the said offence and sentenced them to the period already undergone by them with a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for 07 days. The appellant was sentenced to undergo for the term already undergone by him mentioned at the very outset of this order.

Learned counsel for the appellant has contended that the appellant was illegally convicted in this case wherein he was allured to confess his guilt before the learned trial Court despite the law laid down by the Hon'ble High Court of Sikkim in *State of Sikkim Vs. Suren Rai 2018(2) RCR CrL 739 (F.B.)* wherein it has been held that "Administration of Oath of an accused while recording his confession is not only prohibited, unlawful and illegal but also cannot be cured under Section 463 Cr.P.C. Administration of oath of an accused while recording confession has a direct bearing on the voluntariness of the confession and voluntariness is sacrosanct."

Learned counsel for the appellant has further placed reliance on the Hon'ble Apex Court judgements rendered in Criminal Appeal Nos. 1005-06 of 2011 titled "*Sorabhkhan Gandhkhan Pathan and another Vs. State of Gujarat*" reported as 2004(13) SCC 608 and Criminal Appeal No.1366 of 2005 titled "*Rabindra Kumar Pal @ Dara Singh Vs. Republic of India*" reported as 2011(2) SCC 490 to contend that non-compliance of Section 164 Criminal Procedure Code goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.



Moreso, the recovery of contraband is from Dharamveer Singh @ Vicky and there is no recovery from the appellant and as such he did not have the knowledge of contraband being carried by co-accused Dharamveer Singh @ Vicky and on this basis prays that the appellant be acquitted from the charge against him.

Per contra, learned counsel for the State, by producing a copy of the custody certificate of the appellant, has submitted that the guilt of the appellant is prima facie proved on record from his own confessional statement which he got recorded before the learned trial Court. The order of the learned trial Court which is being impugned herein specifically records that the appellant was represented by his counsel therefore it cannot be said that the appellant made confessional statement of his own without having the legal advice of his counsel. As such, there cannot be seen any ambiguity in the order of the learned trial Court and accordingly, the present appeal is liable to be dismissed.

Heard learned counsel for the respective parties at length and gone through the record meticulously.

The present appeal pertains to confessional statement of the appellant which would be apposite to reproduce herein below:-

State Vs. Dharamvir

Statement of accused Palwinder Singh @ Pannu son of Kulwa Singh son of Joginder Singh, aged about 27 years, agriculturist resident of village Dhunda, P.S. Goindwal Sahib, District Taran Taran.

On SA

Stated that I am a poor youngman. I am married have small children. I have my old aged parents who al dependent upon me. I am only breadwinner of my



family. I am ne a smuggler. I am an addict. I fell into bad company. Now I have ceased to take drugs. I may be given chance to reform myself have not committed any offence earlier. I remained in custody i the present case w.e.f. 08.09.2013 to 03.04.2014. Lenient view may kindly be taken.

RO&AC
Dt.21.08.2015

(L.K. Singla)
Judge Special Court
Kapurthala

From perusal of the confessional statement of the appellant—Palwinder Singh @ Pannu son of Kulwant Singh it can be culled out that his statement is not under any pressure or any undue influence. Apart this, it also finds recorded in the judgment of the learned trial Court that the accused were desirous of making confessional statement which also shows that such confessional statement made by the appellant-accused was with their own sweet will and wish.

As regards the judgments on which the reliance has been putforth by the learned counsel for the appellant, it is seen that the judgments relied upon have no bearing on the facts and circumstances of the present case in as much as the confessional statement got recorded by the appellant is during the course of trial and not under Section 164 Cr.P.C. viz. during the course investigation and also that the appellant has himself admitted his guilt before the police during the course of interrogation. Meaning thereby, it was well within his knowledge that his accomplice Dharamveer Singh @ Vicky was carrying the alleged contraband.

In view of the above facts and circumstances, this Court is of the considered view that the appellant, from whom there was no recovery of contraband and in this view of the matter, he might secure his acquittal but he



chose not to contest the case of prosecution, therefore, he has himself taken a decision to get record a confessional statement to get rid of the case at the earliest possible although he had earlier pleaded not guilty while framing of charge against him by the learned trial Court. Further, the learned trial Court while accepting the prayer of the appellant for taking a lenient view has already sentenced for imprisonment to the appellant for a term already undergone by him whereafter the appellant cannot have any conflict against the judgment of the learned trial Court, which had been passed after getting record his confessional statement on his own wishes.

Accordingly, this appeal fails being devoid of any merit.

Dismissed.

05.08.2024
Anuradha

(SANDEEP MOUDGIL)
JUDGE

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