

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-3259-SB-2014
Date of decision: 02.02.2024

Ram Chander

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present: None for the appellant
 Mr. Surender Singh Pannu, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal is preferred against judgment dated 28.05.2014 passed by learned Additional Sessions Judge, Jind whereby the appellant was convicted in FIR No. 221 dated 16.09.2013 registered under section 20 of the Narcotic Drugs and Psychotropic Substance, 1985 (hereinafter referred to as ‘NDPS Act’) at Police Station Julana. The appellant was sentenced as under:

Offence	Sentence
Section 20 NDPS Act	RI 10 years and a fine of Rs. 1,00,000/-, in default of which RI 6 months

FACTUAL BACKGROUND

2. Briefly, the facts are that on 16.09.2013 the appellant-accused was coming on foot, holding a polythene bag in his right hand. The patrolling police party, headed by ASI Ranbir Singh, apprehended him on suspicion. He was informed of his right under Section 50 of the NDPS Act to get searched by a Gazetted Officer or Magistrate. The appellant opted to be searched by a Gazetted Officer or Magistrate and Krishna Kumar, Naib Tehsildar was called to the spot. The search was conducted and 1 kg of charas was recovered from the polythene

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bag carried by the appellant. Two samples of 50g each were drawn and the remaining contraband was weighed at 900g. The samples were sealed by the investigating officer with his seal bearing initials 'RS' and by the Naib Tensildar with his seal bearing initials 'KK.' All samples were taken into possession vide separate recovery memos. A ruqa was sent to the Police Station for registration of FIR. The samples were sent to the FSL on 01.10.2013.

3. On 16.11.2013, the accused was charged with commission of offence under Section 20 of the NDPS Act to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined 10 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C where he pleaded false implication and claimed innocence, however, he did not lead any evidence in his defence. After assessing all material available on record, the learned trial Court convicted the accused vide impugned judgment dated 28.05.2014. The appellant has undergone actual custody of 3 years 4 months and 3 days and his sentence was suspended by this Court vide order dated 14.02.2017.

CONTENTIONS

4. The perusal of the record reveals that appellant assails the judgment of conviction on the ground that the prosecution case is not supported by PW9-Krishan Kumar, Naib Tehsildar (Gazetted Officer) in whose presence the alleged recovery was effected. The entire case of the prosecution is based on testimonies of official witnesses and no effort was made to join an independent witness. Further, the alleged recovery was effected on 16.09.2013 but the sample was deposited with the FSL on 01.10.2013 i.e. after an unexplained delay of 15 days.

5. Per contra learned State counsel has supported the case of the

prosecution by arguing that all the procedural safeguards provided under the NDPS Act were duly complied with. The appellant was found in possession of 1 kg of charas which falls within the 'commercial quantity' and the prosecution has proved its case beyond reasonable shadow of doubt.

OBSERVATIONS AND ANALYSIS

6. Having heard the learned State counsel and after perusing the record of the case with his able assistance, it transpires that the alleged recovery of 1 kg of charas was made on 16.09.2013 from the polythene bag carried by the appellant-accused in his right hand. The accused was informed of his right under Section 50 of the NDPS Act and he chose to be searched before a Magistrate or a Gazetted Officer. In furtherance of the same, the Investigating Officer telephonically called PW9-Krishan Kumar, Naib Tehsildar who came to the spot and directed the Investigating Officer to search the polythene bag. The Naib Tehsildar also affixed his seal bearing impression 'KK' on the samples and the bulk parcel. However, in his testimony, PW9 categorically states that on 16.09.2013, he was called to Police Station Julana by a police official and made to sit in the office of the Station House Officer, where his signatures were obtained on certain papers. He maintains nothing was recovered from the accused in his presence and denies that his signature on the recovery memo (Ex. PH) were taken at the time of the recovery from the spot. He specifically denied that he was requested to reach at the spot (Malvi Railways crossing) by the Investigating Officer. He denied having fixed his seal bearing impression 'KK' on any parcel as well. On request of the learned Public Prosecutor, PW9-Krishna Kumar was declared hostile.

7. In *Mousam Singha Roy v. State of West Bengal, (2003) 12 SCC 377*, the Hon'ble Supreme Court has observed that it is a settled principle of

criminal jurisprudence that more serious the offence, stricter the degree of proof, since a higher degree of assurance is required to convict the accused. Section 50 of the NDPS Act is not an empty formality. The procedure prescribed by the NDPS Act needs to be strictly complied with especially in view of the stringent punishments envisaged by the Act. Allegedly, PW9 was called to the spot as a Gazetted Officer in pursuance of Section 50 of the NDPS Act. In his testimony, he has categorically denied the alleged recovery, which creates a serious dent on the prosecution case.

8. As per the prescribed procedure, representative sample of any contraband after seizure and deposit in the Malkhana or with the concerned SHO is required to be sent to the FSL within 72 hours as per instructions issued vide Standing Order No. 1 of 1988 dated 15.03.1988 by the Narcotics Control Bureau. The sanctity of the instructions contained in Standing Order No.1 of 1988 came up for consideration before the Hon'ble Supreme Court in **Noor Aga v. State of Punjab and another, 2008 (16) SCC 417** and it was held that these statutory instructions are mandatory in nature. A perusal of the record indicates that the alleged recovery was effected on 16.09.2013 but the same were deposited with the FSL on 01.10.2013 by PW4 EASI Narender Singh. There is an unexplained delay of 15 days in sending the samples of the alleged recovered contraband to the FSL, which further weakens the prosecution case. The case of the appellant is also covered by the ratio of law laid down in **Union of India v. Bal Mukund and others, 2009(2) RCR (Criminal) 574** and **State of Rajasthan v. Gurmail Singh, 2005 (2) RCR (Criminal) 58** on account of the sample being sent after the stipulated period of 72 hours.

9. Finally, it is settled law that non-examination of an independent

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witness is not fatal for the case of the prosecution but in the instant case neither any effort was made to associate any independent witness nor any explanation is forthcoming for not doing so. In his cross-examination, PW7 Kuldeep Singh, ASI has specifically admitted that the Investigating Officer did not send any police officials to call a public witness. The Hon'ble Supreme Court in *Krishan Chand v. State of H.P. AIR 2017 (SC) 3751* has laid down the ratio that the failure of the investigating officer to associate an independent witness at the time of recovery creates a dent in the case of the prosecution. A two Judge Bench of the Hon'ble Supreme Court in *Gorakh Nath Prasad v. State of Bihar, 2018(1) RCR (Criminal) 108* has acquitted the accused holding that the case of the prosecution cannot be entirely based upon the statements of the official witnesses when no independent witness has been joined in the investigation.

CONCLUSION

10. In view of the discussion above, the instant appeal is allowed. Appellant- Ram Chander is acquitted of the charges framed against him and his bail bonds and surety bonds stand discharged.
11. Pending miscellaneous application(s), if any, shall also stand disposed of.
12. The case property, if any, may be dealt with as per rules after the expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

(HARPREET SINGH BRAR)
JUDGE

February 02, 2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No