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

CRA S-4364-SB of 2018

Date of Decision:29.04.2024

Joga Ram

...Appellant

 $V_S.$

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Rajat Mor, Advocate, for the appellant.

Mr. Gagandeep Singh Chinna, AAG, Haryana.

N.S.Shekhawat J. (Oral)

1. Challenging the correctness and legality of the impugned judgment of conviction and order of sentence dated 10.10.2018 passed by the Special Court, Kaithal, whereby, the appellant was convicted for the offence punishable under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, '**the NDPS Act**') and was sentenced to undergo for a period of fifteen months and to pay a fine of Rs. 20,000/- alongwith default stipulation, the appellant has preferred the present appeal before this Court.

2. As per the case of the prosecution on 26.9.2016, police party headed by Assistant Sub-Inspector Krishan Kumar (PW7), in charge of Police Post Ramthali and consisting of Head Constable

Surender Singh (PW4) and Constable Sunil Kumar, was present at Gujri Chowk, Kharkan, in private car make i-20, bearing registration No. HR08Q-6766, driven by Constable Anoop Singh, when from the side of Saagra (Punjab), appellant was spotted coming, who at the sight of the police party, after taking an about turn started running away and on the basis of suspicion, he was apprehended by Investigating Officer Assistant Sub-Inspector Krishan Kumar with the help of fellow police officials. The appellant after taking out from the right pocket of his trousers started throwing something when his hand was caught by Assistant Sub-Inspector Krishan Kumar and from the hand of the appellant, one white polythene, the mouth of which was tied with a white thread, was found. On checking the polythene, brownish material i.e. smack was found in the same and on weighing, smack was found 6 grams and it was put back in the polythene and after tying its mouth, it was put in a plastic vial which was put in a white cloth and parcel of the same was prepared which was sealed with one seal of monogram of 'MS'. The seal was handed over to Head Constable Surender Singh and smack and sample seal impression sheet were taken into possession of the police vide seizure memo 'Ex.P6'. The seizure memo was thumb marked by the appellant and it was also signed by the witnesses and written intimation 'Ex.P3' was sent to the Police Station through Constable Sunil Kumar for registration of First Information Report for the commission of an

offence punishable under section 21 of the Act and special report was sent to the senior officers.

3. Still further, during the course of investigation, Suresh Kumar, ASI, inspected the place of occurrence, prepared the site plan and arrested the accused after serving a notice under Section 52 of the NDPS Act. Suresh Kumar, ASI, produced the accused, witnesses and the case property before the SHO of Police Station Guhla, who also verified the facts of the case separately from the accused and the witnesses and the SHO also affixed his seal of monogram “JS” on the parcel of the smack and the sample seal impression sheet and attested seizure memo and the parcel of the case property were kept by him. On 27.09.2016, the accused and case property were produced before the Court of SDJM, Guhla, who affixed his one seal of monogram of “AKG” on each extracted sample of 1 gms each and also affixed his seal and parcel and case property and sample seal impression sheets. After completion of investigation, the challan was presented before the Court.

4. After considering the final report, charge under Section 21(b) of the NDPS Act was framed against the appellant, to which, he pleaded not guilty and claimed trial.

5. In support of the case of the prosecution, the prosecution examined Moharir Head Constable Himmat Singh, with whom, the case property was deposited in the Malkhana. PW2 Constable Sohan

Lal deposited the sample parcel with F.S.L. Madhuban. PW3 Assistant Sub-Inspector Satpal Singh, recorded the FIR Ex.P4 and made endorsement Ex.P6 regarding registration of the FIR. PW4 Head Constable Surender Singh who was a witness of recovery of smack from the accused. PW5 Inspector/SHO Manish Kumar, prepared report under Section 173(2) of the Code of Criminal Procedure and accused, case property and witnesses were produced before him by the Investigating Officer, who prepared report Ex.P8 under Section 55 of the NDPS Act and inventory Ex.P9. PW6 Assistant Sub-Inspector Suresh Kumar and PW7 were Investigating Officers of the present case.

6. The prosecution had also placed on record the following documentary evidence:-

Ex.P1	Certified copy of order dated 27.09.2016 passed by the Court of Amit Kumar Grover, learned Sub Divisional Judicial Magistrate, Guhla, under Section 52-A of the NDPS Act.
Ex.P2	Report of FSL Madhuban
Ex.P3	Written intimation sent from the place of occurrence to the Police Station containing the details of happenings on the spot, which led to registration of the FIR.
Ex.P4	Copy of the FIR
Ex.P5	Endorsement on written intimation Ex.P3, regarding registration of the FIR
Ex.P6	Seizure memo of case property and sample seal impression sheet, recovered from the accused.
Ex.P7	Report under Section 57 of the NDPS Act, prepared by the Investigating Officer, PW6.
Ex.P8	Report under Section 55 of the NDPS Act,

- prepared by S.H.O. (PW5.)
- Ex.P9 Inventory of Narcotic Drugs/Psychotropic Substance, prepared by S.H.O. and submitted before the Court of Shri Amit Kumar Grover, learned Sub Divisional Judicial Magistrate, Guhla, on 27.09.2016.
- Ex.P10 Site plan of the place of recovery.
- Ex.P11 Application under Section 52 of the NDPS Act, for certification of inventory.
- Ex.P12 to Ex.P14 Photographs of the case property and that of accused Joga Ram clicked in the Court of Shri Amit Kumar Grover, learned Sub Divisional Judicial Magistrate, Guhla.
- Ex.P15 Certificate issued by Inspector General of Polcie, Karnal, Range, Karnal, regarding destroying of the case property.

7. During the course of time, the statement of the appellant under Section 313 Cr.P.C. was recorded and he stated that he was watching TV at his residence alongwith Rukhi Ram his cousin and they were illegally taken to Police Post Ramthali and were beaten up with *lathies*. He had no concern with the contraband. His thumb impressions were obtained by the police on blank papers and were kept in the police lock up. About 4/5 months ago, Manish, MHC of Police Post Ramthali wanted to challan his vehicle for not possessing the required documents, but he had told him that he had left a conductor, which was also without any documents. The accused told him that the police himself left the conductor without seeing the documents. Even the vehicle of the appellant was not challaned but the police official threatened to see him in future. He further stated

that Manish, MHC of Police Post Ramthali was instrumental in his false implication in the present case. After recording the statement under Section 313 Cr.P.C., the accused was granted an opportunity to lead evidence in his defence, but he did not lead any defence evidence.

8. Learned counsel for the appellant vehemently argued that in the present case, despite availability, no independent witness was examined by the prosecution. Learned counsel referred to the cross-examination of PW6 Suresh Kumar ASI and PW7 Krishan Kumar ASI, both Investigating Officers to contend that they had the opportunity to associate the independent witnesses, but intentionally they did not do so, just to frame the appellant in a false case. Still further, the police had not complied with the mandatory provisions of Section 50 of the NDPS Act. As per the version of the prosecution, the appellant was having a polythene envelope in the pocket of his trouser and after seeing the police party, he took out the polythene envelope in his hand and tried to throw away. Thus, the mandatory provisions of Section 50 of the NDPS Act would be applicable to the facts of the instant case. However, admittedly, no Gazetted Officer or Magistrate was called at the spot nor the appellant was produced before any such Officer/Magistrate. Learned counsel for the appellant further contended that even no CFSL form was filled at the spot nor any such form was deposited with the MHC and the impugned

judgment is based on misappreciation of evidence and law. Learned counsel further contended that even in the present case, the polythene envelope was never separated and was not weighed separately and, thus, there was a doubt regarding the weight of the case property. Learned counsel also referred to various discrepancies appearing in the testimonies of prosecution witnesses and the appellant was liable to be acquitted in the present case.

9. On the other hand, learned State counsel submitted that in the present case, the defence could not lead any evidence to impeach the testimonies of the official witnesses and the statements of the official witnesses could not be discarded only on the ground of their official status. Even, the official witnesses were subjected to lengthy cross-examination, however, nothing material could be elicited from pointed cross-examination on the said witnesses. Apart from that, the entire process as provided by the NDPS Act was followed by the police at the time of effecting the search and seizure in the present case. Apart from that, the polythene envelope is almost weightless and there was no necessity of separating the contraband from a very small polythene envelope and weighing the case property separately rather the parcel was prepared in the said envelope itself.

10. I have heard learned counsel for the parties and perused the record carefully.

11. In the present case, the learned counsel for the appellant vehemently argued that the entire prosecution case is based on the testimonies of the official witnesses and the appellant wrongly farmed by Manish, MHC at Police Post Ramthali. In fact, the submissions made by learned counsel for the appellant do not carry any weight and are liable to be rejected by this Court. No doubt, the entire case hinges on the testimonies of the official witnesses, but the defence had led no evidence to impeach their testimonies in any manner. The Hon'ble Supreme Court has held in a plethora of judgments that independent corroboration is required as a rule of caution and the case of the prosecution cannot be thrown away only on the ground that the same is based on the testimonies of the official witnesses. If the testimonies of such official witnesses inspire confidence and the defence had failed to dislodge the same in any manner, such submissions can be relied upon to base the judgment of conviction. Thus, the findings recorded by the trial Court in this regard are upheld.

12. This Court finds no merit in the submissions made by the learned counsel for the appellant that the mandatory provisions of Section 50 of the NDPS Act were not complied by the prosecution in the instant case. In the present case, on seeing the police party, the accused took out a white polythene bag from the pocket of his trouser

and was carrying the polythene envelope in his hand, when he was apprehended by the police. Thus, it is apparent that it was a case of recovery from the polythene envelope, which was held by the appellant in his hand and no recovery has been effected from the personal search of the appellant. Thus, the mandatory provisions of Section 50 of the NDPS Act would not apply to the facts of the present case. Even, this Court as well as the Hon'ble Supreme Court have held that the compliance of the provisions of Section 50 of the NDPS Act, is required, when the contraband is recovered from the personal search of the accused and not otherwise. Thus, the said submission is liable to be rejected by this Court.

13. Apart from that, I have perused the trial Court record carefully. The appellant has failed to pin point the non-compliance of any mandatory provisions of the Act. The sample was duly sealed at the time of effecting the seizure and, thereafter, it remained in the safe custody of the official witnesses and was deposited to the FSL without any unreasonable delay. However, on examination by the FSL, the sample was found to be containing heroin (smack). Thus, the testimonies of official witnesses were duly corroborated by the FSL report. Apart from that, the accused failed to lead any evidence to impeach the testimonies of the various official witnesses examined by the prosecution. Still further, the appellant has failed to point out any material irregularity, illegality or perversity in the impugned

judgment passed by the trial Court and, thus, finding no merits in the present appeal, the same is ordered to be dismissed.

29.04.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No