

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-284-2022 (O&M)
Reserved on: 26.02.2024
Date of decision: 06.03.2024

MANJU

...Appellant

Versus

STATE OF UT CHANDIGARH

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. R.H. Hooda, Advocate
for the appellant.

Mr. Amit Kumar Goyal, APP for U.T. Chandigarh.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 17.02.2022, upon Sessions Case No. NDPS Case No.72 of 2021, by the learned Additional Sessions Judge/Judge Special Court, Chandigarh, wherethrough he convicted the accused for a charge drawn *qua* an offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the Act”). Moreover, through a sentencing order of even date, he proceeded to impose upon the convict sentence of rigorous imprisonment extending upto a period of 15 years, besides imposed upon her, sentence of fine of Rs.1,50,000/-, besides in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment extending upto a period of three years.
2. The accused-convict became aggrieved from the above drawn verdict of conviction, and, also the consequent therewith sentence(s) (*supra*), as became imposed. Resultantly, she instituted thereagainst the instant appeal bearing No.CRA-D-284-2022.

FACTUAL BACKGROUND

3. The genesis of the prosecution case are that, on 15.03.2021, ASI Mohinder Singh No.1718/CHG along with other police officials including Senior Constable Rajbir Singh No. 1258/CP, Constable Ravinder No.1623/CP and Lady Constable Poonam No.4377/CP, was present on beat duty in the area of Police Station Mauli Jagran, Chandigarh. At about 08:55 pm, when they reached near cremation ground, village Mauli, main road, Chandigarh, he noticed that one lady was coming from the side of Vikas Nagar light point who, on seeing the police party, turned back and started walking briskly. On suspicion, she was chased with the help of Lady Constable and when she tried to throw away the white carry bag, which she was having in her right hand, was apprehended by said Lady Constable along with said carry bag. On checking of said carry bag, 35 injections of Pheniramine IP 10 ml each; 25 injections of Buprenorphine IP 2 ml each (total 60 injections) and 60 capsules of Dicyclomine Hydrochloride Tramadol were found. Efforts were made to join the persons passing through the spot in the investigation by disclosing them about the recovery of above said injections/capsules but they left the spot on one pretext or the other. On asking, the said person disclosed her name and particulars as Manju, aged 32 years, wife of Vijay Kumar, resident of H.No. 1163, Indira Colony, Sector 16, Panchkula, Haryana. The accused failed to produce any permit or licence for having possession of above said injections/capsules. The above said recovered 35 injections of Pheniramine IP 10 ml each; 25 injections of Buprenorphine IP 2 ml each (total 60 injections) and 60 capsules of Dicyclomine Hydrochloride Tramadol were put in same white colour carry bag and after that parcel was prepared in separate white cloth bag and sealed with the seal of 'RK'. Sample seal was also prepared on white cloth. Test memo form was also prepared at the

spot. The parcel was taken into police possession. The seal of 'RK' after use was handed over to Senior Constable Rajbir No.1258/CP.

4. Second investigating officer was called at the spot. SI Krishan Dev, being second investigating officer, reached at the spot and first investigating officer ASI Mohinder Singh handed over the accused along with parcels, sample seal and documents to the second investigating officer. Accordingly, on the basis of ruqa already sent, FIR under Section 22 of NDPS Act was registered against the accused and law was set into motion. Further investigation was carried out. The accused was arrested on same day i.e. 15.03.2021. After completion of investigation, report under Section 173 Cr.P.C was presented to the learned trial Court.

Trial Court Proceedings

5. On completion of investigations, challan was filed in the learned trial Court against the accused. On her appearance before the learned trial Court, she was charge-sheeted for the commission of an offence punishable under Section 22 of the said Act, to which she pleaded not guilty and claimed trial. Subsequently after the recordings of depositions of 11 witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the FSL, to which Ex.P-13 is assigned. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, she led 7 witnesses in her defence evidence.

Submissions of learned counsel for the convict-appellant

6. Learned counsel for the convict-appellant submits, before this Court that since the recovery, as become made at the crime site concerned, and, as carried in Ex.P2, when thus became made in pursuance to a chance recovery.

Consequently, as required by Section 42 of the Act, the said was required to be reduced into writing, and, was to be also thereafter transmitted to the superior officer concerned, whereas, with the above mandatory statutory provision, remaining uncomplied with. Therefore, it is argued that the charge drawn against the appellant rather remaining not cogently established.

Submissions of the learned State counsel

7. Learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is meritworthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

Analysis of the submissions of learned counsel for the convict-appellant and reasons for rejecting the same

8. Through Ex.P2 recovery of contraband was made from the carry bag, which the appellant was carrying in her right hand. Therefore, thereby there was no requirement for the investigating officer concerned, to beget compliance with the mandatory statutory provisions, as embodied in Section 50 of the Act.

9. A reading of the deposition of the investigating officer concerned, reveals that after recovery of the said contraband being made, thus thereons becoming embossed seal impressions, carrying thereons English alphabets 'RK'. The said seals along with the two seal impressions 'RK' thus became made on the seized contraband, rather at the crime site.

10. However, as further revealed by the deposition of the SHO, of the police station concerned, who stepped into the witness box as PW9, the latter

after receiving the seized contraband, at the police station concerned, thus proceeded to emboss thereons seal impression ‘J’.

11. Furthermore, as revealed from a reading of the in-charge of the malkhana concerned, who stepped into the witness box as PW-3, the said seizure became deposited in the malkhana concerned, vide DDR No.03, through Entry No.463, being made in register No.19. He has also categorically spelt in his deposition, that so long as it remained in his custody, thereupto the case property remained untampered. Subsequently, as deposed by PW-10, the case property became sent through him (Constable Ravinder No.1623/CP) to the CFSL concerned. During the course of his carrying the case property to the CFSL concerned, no material emerges, thus exemplifying *qua* thereons any tampering being made.

12. A reading of the report of the CFSL concerned, as becomes enclosed in Ex.P13, contents whereof are extracted hereinafter, thus vividly reveals, that two sealed cloth parcels became received there thus through Constable Ravinder No.1623/CP. The above made narrations in the report of the CFSL concerned, do completely tally with the speakings, as made by the prosecution witnesses concerned, both in respect of the numbers of the seal impressions, as became made on the seizure, besides also tally with the English alphabets, as became embossed thereons. Therefore, but obviously it has to be concluded, that the enclosed residue in cloth parcels, which became removed from the bulk, for examinations thereons being made, by the CFSL concerned, becoming completely related or being compatible, to the numbers of the seal impression, as made thereons, besides with the English alphabets, as became embossed thereon.

Xxx

<i>Parcel Identity</i>	<i>Description including details of their seals/sealings and exhibits contained therein</i>
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I. One sealed cloth parcel sealed with seals of “IJS” with case details and signed by Ld. JMIC, Chandigarh. On opening the parcel, it was found to contain plastic container containing following exhibits marked as 1 to 120 respectively in the laboratory.

Exhibit-1 to 35	35 injection vials labeled as “Pheniramine Maleate Injection I.P Avil”. Each injection vials were found to contain colourless solution. Total weight of solution in 35 injections: 357.3 gms.
Exhibit-36 to 60	25 injection ampoules labeled as “Buprenorphine Injection I.P, LEEGESTIC”. Each injection ampoules were found to contain some colourless solution. Total weight of solution in 25 injections: 50.5 gms
Exhibit-61 to 120	Three strips containing 60 capsules labeled as “Dicyclomine Hydrochloride, Tramadol Hydrochloride & Acetaminophen capsules, Parvion-Spas” each strip containing 20 capsules with white colour powder inside (Total 60 capsules) Total weight of the capsules: 36.0 gms, Total weight of powder inside: 30 gms)

9. Purpose of Reference: For Chemical analysis.

10. Date(s) of Examination Completed: 24.05.2021

11. RESULTS OF THE EXAMINATION

Various laboratory tests such as chemical tests and Chromatographic analysis were carried out with the exhibit(s): 1 to 120. The results thus obtained have been alaysed as given below:

- (i) Pheniramine has been detected in exhibits 1 to 35.
- (ii) Buprenorphine has been detected in exhibits 36 to 60.
- (iii) Tramadol, Acetaminophen & Dicyclomine have been detected in exhibits-61 to 120.

12. After the examination, the parcel(s) containing remnants of the exhibit(s) has/have been sealed with the seal impression as per specimen provided below:-

Specimen Seal

- Note:** 1. Results related only to the exhibits/samples/documents tested.
2. If evidence is required, correspondence may be made with the examiner.
3. This Examination Report Number must be quoted in all correspondence and summons.
4. Reference to procedures used: 1. Working Procedure manual, Narcotics, CFSL, DFSS, MHA, Chandigarh.

Sd/- 25/5/2021 MEENU
JSO (Explosive)
Central Forensic Science Laboratory
Directorate of Forensic Science Services

M.H.A. Govt. of India, Chandigarh”

13. Even no contest became raised by the learned counsel defence that the CFSL report Ex.P13, thus was not made in respect of contents enclosed in the sealed cloth parcels (supra), nor any contest became raised by the learned defence counsel, that the thereons embossed number(s) of seal impressions, besides the embossed thereons, thus English alphabets, rather not tallying either with the number(s) of the seal impressions or with the English alphabets, as became embossed thereons, and, as became depicted in the road certificate. In consequence, any argument as becomes raised before this Court by the learned counsel for the convict-appellant, that the report of CFSL (supra), as made on the stuff retrieved, from the sealed cloth parcels, rather not relating to the residue enclosed therein, after separating the same from the bulk, thus after seizure thereof being made at the crime site, rather is a pretextually raised argument before this Court. In consequence, the same warrants its rejection, and, is rejected as such.

14. In addition, whatsoever argument is raised before this Court, by the learned counsel for the convict-appellant, that the report, as became made by the CFSL concerned, on the sealed cloth parcels, thus is not related to the stuff inside them, and, as became purportedly separated from the bulk, at the crime site, but necessarily is also a pretextual argument.

15. Importantly, the result of the apposite examinations, as becomes extracted hereinabove, makes vivid echoing that after examinations of the stuff, as was enveloped in the sealed cloth parcels, thus such examinations unfolding, that therein became enclosed remains of contraband. Conspicuously, the report of the CFSL concerned, also recites that after examination of the stuff inside the

sealed cloth parcels, the said examined stuff, became re-enclosed in sealed cloth parcels, and, thereons became affixed seals of the CFSL concerned.

16. The said above recitals, as occur in the report of the CFSL concerned, also do not become contested by the learned counsel. The sequel of no contest being raised to the above recitals, is that, the learned defence counsel, neither asking nor was required to be given any opportunity, thus for production of the cloth parcel enclosing therein, the stuff examined by the CFSL concerned, and, in respect whereof an affirmative opinion was made.

17. The effect of the above opportunity neither being asked nor being granted to the learned defence counsel, during the course of cross-examination, of the prosecution witnesses concerned, is naturally that, the above opportunity has been waived or abandoned by the learned defence counsel. In consequence, the further effect thereof, is that, the presumption of truth as attachable through attracting theretos, the mandate existing in Section 292 of the Cr.P.C., does thereby rather acquire conclusivity. Therefore, for non-production of the parcel containing the residue, as became separated from the bulk, at the crime site, rather before the learned trial Court concerned, does not yet snap the link, *inter se* the residue becoming separated from the bulk, at the time of recovery of the contraband, being made at the crime site, vis-à-vis, the production of the said residue, which after its examination became re-enclosed in a cloth parcel by the CFSL concerned.

18. The reason being that when the defence for reasons (*supra*), acquiesces, to the residue traveling in an untampered, and, unspoiled condition to the CFSL concerned, besides when it also acquiesces to the conclusivity of the opinion, as, made thereons by the CFSL concerned, thus reiteratedly for want of the defence, rather asking for production, in Court, hence of the parcel

containing the residue, as became separated from the bulk at the crime site, especially, at the time of the adduction into evidence of the report (supra) of the CFSL concerned. Resultantly, thereby the report of the CFSL concerned, acquires conclusivity, irrespective of non-production, in Court, vis-à-vis relevant sample cloth parcels, whereons, became affixed the uncontested seal impressions of the CFSL after the latter re-enclosing therein, the stuff examined at the CFSL.

19. Learned counsel for the convict-appellant has also submitted, that since it was a prior information recovery, and, thereby the investigating officer concerned, was required to, in terms of Section 42 of the Act, provisions whereof become extracted hereinafter, thus draw the reasons to believe, and, to thereafter transmit, the said scribed reasons to believe, to the superior officer, whereas, he has omitted to do so, thereby the mandatory statutory provisions as contained under Section 42 of the Act, on becoming evidently not complied, as such, the appellant is entitled to a verdict of acquittal.

“[42. Power of entry, search, seizure and arrest without warrant or authorisation.-- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other

article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.]”

20. The said argument becomes repelled, on the ground that a reading of Ex.P-11, which is a report drawn under Section 42 of the Act, thus makes vivid disclosures, that the investigating officer concerned, has therein elucidated, the factum of his rather not receiving prior information. Contrarily, when the recovery, as became made through the recovery memo (Ex.P2) was a chance recovery. Consequently, thereby the provisions of Section 42 of the Act, which became attracted only in respect of prior information, and, do not become attracted in respect of any chance recovery, therefore, there was no necessity of compliance being made to the provisions of Section 42 of the Act.

Final Order

21. In consequence, the impugned verdict of conviction, and, also the consequent thereto order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant is on bail, thereupon she is ordered to be forthwith taken into custody, through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

22. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

6.03.2024

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(LALIT BATRA)
JUDGE