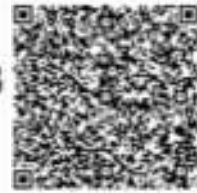


2024.PHHC:144623-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1893-2019 (O & M)

Date of decision: 04.11.2024

State of Haryana

..... Appellant(s)

V/s

Sachin

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Ravish Kaushik, Addl.A.G., Haryana,
for the applicant.

Mr. Munish Kumar Garg, Advocate,
with Mr. Rakesh Kumar Jangra, Advocate,
Ms. Bhawna Thakur, Advocate and
Mr. Tanuj Goyal Tohana, Advocate, for the respondent.

JASJIT SINGH BEDI, J.

The present application under Section 378(3) of Cr.P.C. has been filed for grant of leave to appeal against the judgment of acquittal dated 11.03.2019 passed by the Additional Sessions Judge, Fatehabad.

2. The instant FIR came to be registered on 24.01.2015. The accused came to be acquitted vide judgment dated 11.03.2019. The present application for grant of leave to appeal is dated 24.07.2019. The matter has come up for final hearing now after more than 09 years of the registration of

the FIR.

3. In brief, the case of the prosecution is that on 24.1.2015, SI Karam Singh alongwith other police officials was present at Killa Mohalla, Tohana for crime checking and patrolling duty. Then E/ASI Baldev Singh met them near Balmiki Mandir and when they were going in a street towards Killa Mohalla for patrolling and crime checking duty, then one person having a plastic bag in his right hand, was seen coming out of a house, who on seeing the police party, turned back and started entering into the house. On suspicion, he was apprehended by the said SI with the help of other police officials and on interrogation, he disclosed his name as Sachin son of Naresh Kumar, resident of near Balmiki Mandir, Killa Mohalla, Tohana. On having suspicion of some narcotic substance in the plastic bag, a notice under Section 50 of the Narcotics Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') was served on him apprising him of his right to be searched before a Magistrate or Gazetted Officer as it was his legal right. The accused filed his reply reposing full faith in the police party. On seeing the police party, one-two persons came at the spot and they were asked to become witnesses, but they showed their inability. The notice and reply were signed by the accused and witnesses. On checking of the plastic bag, 20 bottles of Rexcof 100/100 ML, three strips of 60 tablets each, two strips of 50 tablets each and one strip of 20 tablets total 300 tablets of Alprazom 0.50 mg. were recovered. On demand, Sachin Kumar could not produce any medical slip, bill and licence of the recovered bottles and tablets. Thereafter, SI Karam Singh gave information to Sh.Dinesh Kumar, Drug Inspector, to reach at the spot. He reached the spot and an application

was produced before him for seeking opinion regarding the recovered bottles and tablets, upon which the Drug Inspector gave his opinion. Thereafter, two samples from the recovered bottles of Rexcof and two strips of tablets Alprazom were separated and all the samples and parcels were sealed with the seal of 'KS' and the seal after use was handed over to E/ASI Amarnath. The case property was taken into police possession as per separate seizure memo, which was signed by the accused and witnesses. Since accused Sachin Kumar kept 20 bottles of Rexcof and 300 tablets of Alprazom in his possession without any medical slip, bill and licence, offence under Section 21-A & 22-B of the NDPS Act was found to have been committed by him. A ruqa was sent to the police station through E/ASI Shamser Singh, on the basis of which, formal FIR was registered. Investigation was commenced. Place of occurrence was inspected. Statements of witnesses were recorded. Accused Sachin was arrested. The accused, case property and witnesses were produced before the SHO, who verified the facts of the case and affixed his seal of 'PK' on the parcels. After medical examination, the accused was put in the police lock up and the case property was deposited with the Mohrar Malkhana. The accused suffered his disclosure statement admitting his guilt and he disclosed the name of Amrik Singh from whom he purchased the recovered narcotic drugs. The accused alongwith the case property was produced in the court of the Area Magistrate where inventory of the case property was got done. During police remand of the accused, he identified the place of purchase of the recovered narcotic drugs from Amrik Singh. However, Amrik Singh could not be arrested in this case for want of

his complete address. After completion of investigation, final report under Section 173 Cr.P.C. against the accused was prepared and submitted in the court for trial.

4. On presentation of challan and on finding a prima-facie case against the accused, he was charge sheeted for the offences punishable under Section 21 of Narcotic Drugs & Psychotropic Substances Act, 1985 to which the accused pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined E/ASI Amarnath as PW1 and thereafter, the case was committed to the court of Sessions.

6. Thereafter, finding a prima-facie case against the accused, he was charge sheeted for the offence punishable under Section 21 of Narcotic Drugs & Psychotropic Substances Act, 1985 to which the accused pleaded not guilty and claimed trial.

7. In order to substantiate its case, the prosecution examined seven witnesses. The gist of their testimony is as under:-

PW1 Dinesh Kumar deposed that on 24.1.2015, he was posted as Drug Control Officer at Fatehabad and on that day, on receiving a telephonic message from Pardeep Kumar, SHO, Tohana, he reached near Balmiki Mandir, Killa Mohalla, Tohana where Karam Singh SI met him and he handed over to him an application Ex.P1 for getting opinion regarding the recovered drugs from accused Sachin. He deposed that after examining the recovered drugs, he prepared report Ex.P2 containing four pages of 20

bottles of Rexcof syrup 100 ML and 300 tablets of Alprozolam and both these drugs fell within the purview of the NDPS Act.

PW2 E/ASI Om Parkash deposed that on 24.1.2015, he was posted as a MHC in Police Station, City Tohana. He tendered his affidavit Ex.P3 regarding depositing of case property with him in the Malkhana by SI Karam Singh on 24.1.2015, which he handed over to SI Karam Singh on 25.1.2015 for inventory and after inventory the case property was deposited with him on the same day. He deposed by way of his affidavit Ex.P3 that on 27.1.2015, he gave the sample parcels to Constable Balwinder Singh for depositing the same with the Forensic Science Laboratory, Madhuban, for analysis, who after depositing the same, handed over the receipt thereof to him.

PW3 Inspector Pardeep Kumar deposed that on 24.1.2015, he was posted as SHO in Police Station, City Tohana and on that day, SI Karam Singh produced the case property, witnesses and accused Sachin alongwith report u/s 55 of NDPS Act Ex.P4 before him and he verified the facts from the witnesses as well as accused and affixed his seal 'PK' on all the parcels. He further deposed that he made his endorsement Ex.P5 on the report and thereafter, he directed the Investigating Officer to deposit the case property with the MHC and confined the accused in custody. He deposed that on 21.3.2015, after completion of the investigation, he prepared the report u/s 173 Cr.P.C. against the accused Sachin.

PW4 EHC Amardeep deposed that on 27.1.2015, he was posted

as a Reader to DSP Kaushal Singh and on that day, reports u/s 55 & 57 of

NDPS Act Ex.P4 and Ex.P5 were produced before the said DSP and after verifying the fact, the said DSP put his signature at point 'A' and he (PW4) identified his signatures.

PW5 Constable Balwinder Singh tendered his affidavit Ex.P6 regarding handing over sample parcels to him by MHC Om Parkash E/ASI and depositing the same at Forensic Science Laboratory, Madhuban by him and giving of receipt thereof to MHC, P.S. City Tohana.

PW6 SI Karam Singh deposed that on 24.1.2015, he alongwith E/SI Shamsher Singh, E/SI Amarnath was present in the area of Balmiki Mandir, Killa Mohalla, Tohana and in the mean time, SI Karam Singh met him and when they all were going to Killa Mohalla, Tohana. At that time, one person came out from a house having a plastic bag and on seeing the police party, he turned back and tried to enter that house. He further deposed that on suspicion, the said person was apprehended and on enquiry, he disclosed his name as Sachin. He further deposed that he served a notice u/s 50 of NDPS Act Ex.P7 upon the accused, which was signed by the accused and attested by E/SI Amarnath and E/SI Shamsher Singh. He deposed that the accused filed his reply Ex.P8 reposing full faith on the police party and the said reply was signed by the accused and attested by E/SI Amarnath and E/SI Shamsher Singh. Thereafter, he conducted the search of the bag and on search, 300 tablets of Alprazom and 20 bottles of Rexcof were found. He informed the Drug Control Officer to reach at the spot and after some time, the Drug Control Officer reached at the spot and he told him about the recovered medicines and made application Ex.P1 for an opinion. Upon this,

the Drug Control Officer gave his opinion Ex.P2. Two samples from the recovered bottles of Rexcof and two strips of tablets Alprazom were separated as samples and converted into sealed parcels, sealed with the seal of 'KS'. The remaining residue was also converted into a sealed parcel and sealed with the seal of 'KS' and all the parcels were taken into police possession vide seizure memo Ex.P9, which was signed by the accused and attested by witnesses. He deposed that the seal after use was handed over to E/ASI Amarnath. Thereafter, he sent ruqa Ex.P10 to the police station through E/ASI Shamsheer Singh for registration of the case, upon which FIR Ex.P11 was registered by Inspector Pardeep Kumar, who made his endorsement Ex.P12 on the ruqa Ex.P10. Thereafter, he prepared a rough site plan Ex.P13 in the presence of E/ASI Amarnath and E/ASI Shamsheer Singh. He deposed that he arrested accused Sachin vide arrest memo Ex.P14 and he also took a mobile into his possession from the house of accused u/s 102 Cr.P.C. vide memo Ex.P15, which was signed by the accused, attested by E/ASI Amarnath and E/ASI Shamsheer Singh. On reaching the police station, he produced the accused, case property and witnesses alongwith the report u/s 55 of NDPS Act Ex.P4 before SHO Pardeep Kumar, who after verification from the accused and witnesses, made his endorsement Ex.P5 after affixing the seal of 'PK' and thereafter, on the direction of SHO Pardeep Kumar, he (PW6) deposited the case property with the MHC.

PW6 SI Karam Singh further deposed that on 25.1.2015, he took the accused from the lock-up and on interrogation, the accused suffered a disclosure statement Ex.P16, which was signed by him and attested by

witnesses and thereafter, the accused was produced before the Illaqa Magistrate alongwith application Ex.P17 for inventory alongwith case property and one day police remand of the accused was obtained. He proved the details of case property Ex.P18 and inventory order Ex.P19 passed by the Illaqa Magistrate. He further deposed that thereafter, the accused got demarcated the place from where he purchased medicines and he (PW6) prepared a demarcation memo Ex.P20, which was signed by the accused and attested by witnesses. Thereafter, two sample parcels with residue were deposited with M.M. Fatehabad and two with the MHC and the accused was confined in the police lock up. On 26.1.2015, the accused was taken out from the police lock up and was produced before the court from where he was sent to judicial custody and he recorded the statements of witnesses.

PW7 E/ASI Amarnath was accompanying SI Karam Singh (PW6) on 24.1.2015 and 25.1.2015 and he deposed about the mode of investigation conducted by him alongwith Investigating Officer Karam Singh SI and proved various documents.

The report of Forensic Science Laboratory Ex.P21 was tendered in evidence and thereafter, the Public Prosecutor closed the prosecution evidence.

8. After closure of the prosecution evidence, all the incriminating evidence/material appearing on record was put to the accused, in order to afford him an opportunity to render the explanation thereof, by recording his statement under Sections 313 Cr.P.C. in which he claimed himself to be innocent. The accused stated that nothing had been recovered from him and

his signatures were obtained by the Investigating Officer on blank papers in the police station. He stated that he had been falsely implicated in this case and recovery had been falsely planted upon him.

9. Based on the evidence led, the respondent-accused came to be acquitted vide judgment dated 11.03.2019 passed by the Additional Sessions Judge, Fatehabad.

10. The aforementioned judgment is under challenge before this Court.

11. The learned counsel for the applicant-State contends that the impugned judgment of acquittal has been recorded on the basis of conjectures and surmises. The offence stood established beyond reasonable doubt. All the prosecution witnesses had duly supported the prosecution case in material particulars. Minor discrepancies had been given undue weightage. He, therefore, contends that leave to appeal be granted and impugned judgment dated 11.03.2019 be set aside and the accused be convicted for the offences for which he has been charge-sheeted.

12. On the other hand, the learned counsel for the acquitted accused-respondent contends that no fault could be found with the well-reasoned judgment of the Trial Court whereby the accused had been acquitted. The prosecution witnesses were discrepant in material particulars. The documents regarding search and seizure appeared to have been fabricated/interpolated to affix the guilt of the accused. No independent witness was joined during the course of search and seizure. He, therefore,

contends that application seeking grant of leave to appeal was liable to be dismissed.

13. We have heard the learned counsel for the parties and examined the record.

14. Though, Section 50 of the NDPS Act would not apply in the instant case since the recovery is from a polythene bag, however, there is a discrepancy in the statements of witnesses as to who wrote the notice under Section 50 and the reply thereof. As per the I.O./PW-6 Karam Singh, the notice was written by him but the reply was written by the accused-Sachin. On the other hand, PW-7-E/ASI Amarnath stated that the notice and the reply both were written by SI Karam Singh. A perusal of the notice Ex.P-6 and reply Ex.P-7 would show that they were, in fact, written by the same person. This discrepancy creates a doubt in the case of the prosecution.

15. No independent witness was joined at any point of the investigation in this case, which makes the prosecution case doubtful. In the ruqqa Ex.P10 it has been mentioned by SI Karam Singh investigating officer that on seeing the police party at the spot one-two persons came there and they were asked to become witness, but they showed their inability and went away. It has come in the cross-examination of PW6 SI Karam Singh investigating officer that they reached at the spot at about 4:30 P.M. and they saw the accused and after some time, they rounded up the accused in his house. He has further deposed that he did not inquire about the ownership of that house and he did not know the name of neighbourers of that house. He admitted that no public witness was joined by him in the present case. He

stated that no other family person had come to the house of the accused except Mahender Singh who is the relative of accused but they did not record the statement of Mahender Singh nor did they make him a witness of any proceeding and only arrest information was given to Mahender Singh. On the other hand, PW7 EASI Amarnath member of the police party and witness of the alleged recovery in his cross-examination deposed that one lady was present in the house at that time when the DCO reached at the spot, but he did not know who she was. She was aged about 35-36 years but he did not remember whether the investigating officer enquired about her name and relation with the accused or not. He deposed that no M.C. or other respectable was called at the spot at the time of recovery to join the investigation. He deposed that some persons gathered at the spot but none of them came forward to become a witness in this case and that though their names were noted but no action was taken against those persons. Apparently, when the alleged recovery was effected, several persons gathered at the spot. It was the duty of the investigating officer to take action against such public persons who refused to join the investigation on his asking. Thus, non-joining in investigation of independent prosecution witnesses, Mahender Singh, relative of the accused or the lady referred to by PW-7 creates a doubt in the prosecution case.

16. As per the prosecution case, after conducting the search of the bag of the accused and recovering 300 tablets of Alprazom and 20 bottles of Rexcof, SI Karam Singh (PW6) gave telephonic information to Dinesh Kumar, Drugs Control Officer, Fatehabad, who reached at the spot and SI

Karam Singh moved application Ex.P1 before him who gave his opinion Ex.P2 and thereafter, two bottles of Rexcof 100 ML each and two strips of Alprazom 10 tablets each were separated as samples and residue i.e. 28 strips of Alprazom and 18 bottles of Rexcof 100 ML were taken into police possession vide recovery memo Ex.P9 and thereafter, SI Karam Singh investigating officer sent ruqa Ex.P10 to Police Station through EASI Shamsher, on the basis of which formal FIR Ex.P11 was recorded. However, a perusal of the recovery memo Ex.P9 shows that the number of the FIR, its section and date are mentioned therein. When the FIR was still not recorded till the time of preparing of the recovery memo Ex.P9 and sending ruqa Ex.P10 to police station, then the number, section and date of the FIR could have not been mentioned on the recovery memo Ex.P9. There is no evidence that the FIR number and its details were inserted later on by the investigating officer and if the number of the FIR, its section and date were added later on, then a separate memo should have been prepared in this regard. The presence of the FIR number, date and Section on the recovery memo Ex.P9 gives rise to two inferences that either the FIR Ex.P11 was recorded prior to the alleged recovery or the number, date and Sections were inserted in the recovery memo Ex.P9 after the FIR was registered. In both the situations, it casts a serious doubt upon the veracity of the prosecution case.

17. Besides this, in the recovery memo Ex.P9, the time of taking the case property into police possession has not been mentioned, which further goes on to indicate that it was left blank intentionally and the suitable

time was to be added later on therein to corroborate the recovery proceedings. However, SI Karam Singh the investigating officer had forgotten to mention the time in the recovery memo.

18. As per the prosecution case, on 24.01.2015 after making the recovery of narcotic medicines from accused Sachin, the case property, accused Sachin and the witnesses were produced before SHO Pardeep Kumar (PW3) for verification of the facts and after verification of the facts of the case, accused Sachin was put in the police lock up and the case property was deposited with MHC of Police Station. However, the statement under Section 161 Cr.P.C. of SHO Pardeep Kumar (PW3) has not been recorded by SI Karam Singh investigating officer as PW3 Inspector/SHO Pardeep Kumar in his cross-examination has specifically deposed that the investigating officer did not record his statement under Section 161 Cr.P.C. Thus, in the absence of the statement under Section 161 Cr.P.C. of Inspector/SHO Pardeep Kumar, his statement as PW3 whereby he proved reports under Section 55 and 57 of NDPS Act as Ex.P4 and Ex.P5 respectively cannot be read against the accused and compliance of Section 57 of NDPS Act cannot be said to be proved in this case.

19. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence.

However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

20. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment dated 11.03.2019 passed by the Additional Sessions Judge, Fatehabad has been acquitted. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

November 04, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No