

CRA-S-3070-2019

240 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-3070-2019

Reserved on: 20th March 2024

Pronounced on: 21st March, 2024

Gurjant Singh @ Janta

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. L.S. Sekhon, Advocate
for the appellant

Mr. Rishab Singla, AAG Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. The instant appeal is preferred against the judgment of conviction and order of sentence dated 27.09.2019 passed by learned Judge, Special Court, Moga in FIR No. 71 dated 22.09.2015 registered at Police Station Fatehgarh Panjtoor, Moga, under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act' for short), whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of six months with a fine of Rs. 2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days.

FACTUAL BACKGROUND

2. The facts of the prosecution case, tersely put, are that on 22.09.2015, a police party headed by PW1-SI Brij Mohan (Investigating Officer) was on patrolling duty at the Saide Shah bridge. The appellant-accused, who was on foot and walking towards the police party, upon spotting the police personnel, turned back and started walking briskly. Subsequently, he was prrehended on the basis of suspicion by PW1-SI Brij Mohan with the help of his subordinates. During enquiry

he disclosed his name as Gurjant Singh alias Janta, son of Bagicha Singh alias

Bagga, resident of Village Daule Wala. On suspicion that the appellant was in possession of some contraband, the police proceeded to conduct a search of the person of the appellant-accused. The Investigating Officer also apprised him of his legal right to get his search conducted in the presence of a Magistrate or a Gazetted Officer but he reposed confidence in SI Brij Mohan. Accordingly, the consent memo was prepared which was duly signed by the appellant-accused. Upon conducting a search of the accused, Heroin wrapped in a polythene paper was recovered from the pocket on the right side of the his pants. Out of the recovered Heroin, 5 grams was seperated as sample and converted into a parcel and the remaing quantity, which on being weighed came out to be 20 grams, was also converted into a parcel. Both the said parcels were sealed by SI Brij Mohan with his seal bearing impression 'BM'. Sample seal on form no. 29 was prepared and the seal after use was handed over to HC Jaswinder Singh. After completion of necessary formalities of investigation, Ruqa was sent to the police station on the basis of which formal FIR was registered against the appellant-accused.

3. On completing the investigation, challan was presented against the appellant. Copies of the challan was supplied to the appellant free of cost in compliance with the provisions of Section 207 Cr.P.C. On finding a *prima facie* case against the appellant, charge under Section 21 of the NDPS Act was framed against him to which he pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution examined as many as six witnesses. Statement of the appellant under Section 313 Cr.P.C. was recorded whereby all the incriminating evidence was put to him, to which he pleaded false implication. However, the appellant did not examine any witness in his defence.

5. Learned trial Court, on minutely scrutinising the evidence led by the prosecution and going through the record of the case, held the appellant guilty and convicted and sentenced him as discussed herein above.

CONTENTIONS

6. Learned counsel for the appellant assails the impugned judgment on the ground that the learned trial Court has failed to appreciate that there is an inordinate delay of 18 days in sending the sample to the FSL which remains unexplained. Moreover, no CFSL form was filled out at the time of the alleged recovery, nor the same was deposited with the MHC. As a result, possibility of tampering with the case property cannot be ruled out. It is further argued that the recovery was shown to be effected from the personal search of the accused, but the mandatory provision of Section 50 of the Act was not complied with. The appellant-accused is entitled to acquittal on this ground alone. Furthermore, the police party comprised of 4 police personnel, but on all the memos only HC Jaswinder Singh signed as a witness. This only goes to show that SI Brij Mohan and HC Jaswinder Singh have concocted a completely trumped-up case against the appellant-accused. Finally, no independent witness joined the police party when the recovery was effected, despite the recovery being effected in daylight and the place of seizure being a thoroughfare.

7. On the other hand, learned State counsel argues that merely because no independent witness was examined, it does not take away from the veracity of the depositions of the official witnesses, which do not suffer from any serious infirmities. He further contends that although there was a delay in sending the samples to the FSL, the samples were accounted for and not tampered with. The Investigating Officer had handed over the case property including the samples to the SHO for safekeeping. Hence, the question of non-compliance of Section 55 of

the NDPS Act does not arise. The link evidence is complete and the learned trial Court has arrived at a guilty verdict on correct appreciation of material on record.

OBSERVATIONS AND ANALYSIS

8. Having heard learned counsel for the parties and perused the paper-book with their able assistance, it transpires that the prosecution has made a glaring omission in the investigation of the case by not complying with Standing Order No. 1 of 1988 dated 15.03.1988. As per the Standing Order, 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. A perusal of the record indicates that the alleged recovery was effected on 22.09.2015 and the same was produced by the Investigating Officer (PW-1) before the SHO/ASI Kashmir Singh (PW-4). Thereafter, it was produced before the learned Magistrate on 23.09.2015, whereby the representative sample was drawn. Following this, the case property was deposited in the police Malkhana. Finally, on 09.10.2015 i.e. 18 days after the day of recovery, the sample was sent for chemical examination. Hence, the samples were deposited with the FSL after the lapse of 18 days from seizure, for which no reasonable explanation has been provided, in direct violation of the Standing Order No. 1 of 1988 dated 15.03.1988, which would tantamount to a serious flaw in the investigation and suffocate the prosecution case completely. 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 and the following was observed:

*“32. Recently, this Court in ***State of Kerala & Ors. v. Kurian Abraham (P) Ltd. & Anr. [(2008) 3 SCC 582]***, following the earlier decision of this Court in ***Union of India v. Azadi Bachao Andolan [(2004) 10 SCC 1]*** held that statutory instructions are mandatory in nature.*

Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly outed and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.”

9. On a careful reading of the deposition of the Investigating Officer, it is discovered that the Form no. 29 as well as the recovery memo were completed first. This was followed by the preparation of the ruqa which was sent through Constable Manjit Singh to the police station and it was recorded in the ruqa that the FIR be registered. However, a perusal of the recovery memo (Ex. P3) and Form no. 29 (Ex. P2) shows that they bear the FIR Number '71'. It is the case of the prosecution that ruqa was sent after preparing the consent memo and filling out Form no. 29 and the contraband was recovered from a polybag and the same was taken into possession vide the recovery memo (Ex. P3). The samples were drawn and other formalities were done at the spot. However, there is no explanation by any of the witnesses as to how the FIR number came to be reflected on the recovery memo and Form no. 29 when admittedly the FIR was lodged later in time. The above aspect raises a serious suspicion on the investigation conducted by the investigating officer. In the absence of any rational explanation by the prosecution with regard to the reflection of the FIR number on Form no. 29 as well as on the recovery memo, which, according to the case of the prosecution, was prepared at the first instance before registration of the FIR creates a serious dent in the story of the prosecution.

10. The Hon'ble Supreme Court in **Kamaljit Singh @ Pappu v. State of Punjab, 2020(14) SCC 9** dealt with a similar issue where the investigation was found to be suspicious on the ground that the FIR number was mentioned on the memos which were prepared much prior to the registration of FIR. Similarly, this

High Court has also discarded the investigation on the ground of mentioning of FIR number on the memos prepared during investigation prior to registration of the FIR. A reference is made to **Sunny alias Siti v. State of Punjab, Crl. Appeal No. 3730-SB of 2016** decided on 05.12.2022, **Netar Pal v. State of Haryana, 2010 (8) RCR (Criminal) 352** and **Kewal Singh v. State of Punjab 2018(4) RCR (Criminal) 580**.

11. The Investigating Officer SI Brij Mohan (PW-1) is also the complainant of the case. The Hon'ble Supreme Court in ***State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu v. Ranjangam 2010(15) SCC 369***, has opined that since the arrest and search is made by the complainant, he should not involve himself with the investigation of the case. Such an officer leading the investigation would forthrightly raise questions as to the fairness and impartiality of the said investigation process.

12. Another conspicuous omission on the part of the Investigating Officer was that the recovery memo (Ex.P3) did not bear the signature of the accused-appellant.

13. Furthermore, a perusal of the impugned judgment indicates that no independent witness was joined in the investigation when the recovery was effected from the accused. This lapse on the part of the investigation team becomes even more prominent, given that the place of recovery was a public place and it was day time. 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** had acquitted the accused and held 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

14. In view of the above discussion, the present appeal is allowed. The judgment of conviction and order of sentence dated 27.09.2019 passed by learned Judge, Special Court, Moga is set aside. The appellant, namely Gurjant Singh alias Janta, is acquitted of the charges framed against him. His bail bonds and surety bonds stand discharged.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

16. 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

March 21, 2024
Ajay Goswami

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No