

CRA-D-1218-2022 (O&M)

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

CRA-D-1218-2022 (O&M)
Reserved on: 24.01.2024
Date of decision: 19.02.2024

BHUPENDER SINGH

...Appellant

Versus

STATE OF HARYANA

...Respondent

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

Present: Mr. R.K. Kapoor, Advocate and
Mr. Shobit Phutela, Advocate with
Mr. Hunarveer Sharma, Advocate
for the appellant.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 14.11.2022, upon Sessions Case No.NDPS Case No.7 of 2020, by the learned Additional Sessions Judge, Charkhi Dadri, wherethrough he convicted the accused for a charge drawn qua an offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as “the Act”). Moreover, through a sentencing order drawn on 17.11.2022, he proceeded to impose upon the convict sentence of rigorous imprisonment extending upto a period of 15 years, besides imposed upon him, sentence of fine of Rs.1,50,000/-, besides in default of payment of fine amount, he sentenced the convict to undergo simple imprisonment extending upto a period of one year.

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, he instituted thereagainst the instant appeal bearing No.CRA-D-1218-2022.

FACTUAL BACKGROUND

3. The genesis of the prosecution case is that, on 28.07.2020, a police party headed by ASI Jeet Ram No.16/DDR was on patrolling duty in front of bus stand, Charkhi Dadri, where he received a secret information about the above-named accused that he is indulged in selling of sulfa (Charas) and at that time, the accused is now standing in front of Hathi Park, Dadri for waiting some vehicle. If a raid is conducted, he can be apprehended with contraband. On this information, a notice under Section 42 of NDPS Act was written by SI Jeet Ram and the same was handed over to Constable Amit and sent him Police Station for necessary information to senior Police Officers. They reached in front of Hathi Park, where a person with a turban was present. On suspicion, ASI Jeet Ram asked about his identity, on which, he disclosed his name as Bhupender, resident of Sampuran Nagar, District Lakhimpur (U.P.). He was having a back-bag. ASI Jeet Ram served him a notice under Section 50 NDPS Act to the effect that he has a legal right to be searched from a Magistrate or Gazetted Officer. Accused Bhupender gave reply to the notice under Section 50 of NDPS Act that he wants to get conducted his search before a Gazetted Officer. Notice and reply were attested by HC Suresh Kumar and HC Hari Om and accused also signed the same. Thereafter, ASI Jeet Ram contacted with DSP Ram Singh on his telephone. After some time, DSP along with his staff reached at the spot. On direction of DSP, HC Suresh Kumar conducted personal search of ASI Jeet Ram. Memo was attested by HC Suresh Kumar and HC Hari Om. Thereafter, ASI Jeet Ram searched the back-bag of accused Bhupender and 2 Kg 948 grams Charas was found in the bag. The recovered Charas was converted into the parcel and sealed with the seal of 'JR'. Total 5 seals were affixed on the parcel. DSP also

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affixed his seal of 'RS' on the residue and the same was taken into possession, vide recovery memo. A Tehrir was sent to Police Station through Constable Amit for registration the case. ASI Kuldeep, the Second Investigating Officer along with Constable Amit reached at the spot. ASI Jeet Ram handed over the case file, case property and accused to ASI Kuldeep.

4. Further investigation was conducted by ASI Kuldeep Singh. During the course of investigation, disclosure statement of accused was recorded. After certification of the inventory, statements of witnesses under Section 161 Cr. P. C. were recorded and the case property was deposited with the MHC. Samples were sent to Forensic Science Laboratory.

Trial Court Proceedings

5. On completion of investigations, challan was filed in the learned trial Court against the accused. On his appearance before the learned trial Court, he was charge sheeted for the commission of an offence punishable under Section 20 of the Act. The said charge was read over and explained to the accused in simple Hindi, to which he pleaded not guilty and claimed trial. Subsequently after the recordings of depositions of 10 witnesses, the learned public prosecutor closed the prosecution evidence but after tendering the report of the RFSL, to which Ex.PA 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 two witnesses in her defence evidence.

Submissions of learned counsel for the convict-appellant

6. (a) Learned counsel for the convict-appellant submits, before this Court that since the recovery, as become made from the back-bag concerned, and, as carried in Ex.PW-2/D, when thus became made in pursuance to prior

information. Consequently as required by Section 42 of the Act, the said prior information 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 and consequent thereto sentence 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.PW-2/D recovery of Charas was made from the back-bag, which were kept on the floor/ground of the crime site concerned. 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 five seal impressions, carrying thereons English alphabets 'JR'. The said seals along with the seal impressions 'RS', 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 PW5, the latter after receiving the seized contraband, at the police station concerned, thus proceeded to emboss thereons one seal impression 'TR'.

11. Furthermore, as revealed from a reading of the deposition of the in-charge of the malkhana concerned, who stepped into the witness box as PW-4, the said seizure became deposited in the malkhana concerned, vide DD No.37, dated 28.07.2020 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-4, the case property became sent by him to the FSL concerned. During the course of his carrying the case property to the FSL concerned, no material emerges, thus exemplifying qua thereons any tampering being made.

12. A reading of the report of the RFSL concerned, as becomes enclosed in Ex.PA, contents whereof are extracted hereinafter, thus vividly reveals, that one sealed cloth parcel became received there, thus through EASI Vijay Singh. The above made narrations in the report of the RFSL 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 RFSL 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.

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Description of Parcel and condition of seals.

One sealed cloth parcel with barcode. The seals were intact and tallied with the specimen seal as per Forwarding Authority's letter.

Description of article contained in parcel.

Parcel No.	No. & seal impression	Description of article /sample
1	1-AS 2-KS	Bearing barcode -15319-200810-609299 Sample marked here as -SU/N- 237/2020 Physical appearance -Greenish brown solid substance Weight of sample received -100 gram

Analytical Techniques Applied:-

Colour tests, Microscopic and TLC.

Observations:-

- The tests were positive for the presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol in the sample.
- Characteristics trichomes of Charas were present in the sample.
- The tests were positive for the presence of Charas in the sample.

Opinion:- The sample was identified as **CHARAS**.

Notes: -

1. Weight of sample returned – 48 gm.
2. The opinion relates to the analyzed sample only.
3. After examination the remnants of the sample along with its original wrapper were sealed with the seal of SSO/NDPS RFSL Sunaria, RTK(H).

Sd/- 29/9/2020 KARISHMA

SENIOR SCIENTIFIC OFFICER

NDPS RFSL SUNARIA, ROHTAK”

13. Even no contest became raised by the learned defence counsel that the FSL report Ex.PA, thus was not made in respect of contents enclosed in the sealed cloth parcel (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 RFSL (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 RFSL concerned, on the sealed cloth parcel, 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 parcel, thus such examinations unfolding, that thereins became enclosed remains of Charas. Conspicuously, the report of the RFSL concerned, also recites that after examination of the stuff inside the sealed cloth parcel, the said examined stuff, became re-enclosed in sealed cloth parcels, and, thereons became affixed seals of the RFSL concerned.

16. The said above recitals, as occur in the report of the RFSL concerned, also did not become contested by the learned defence 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 RFSL 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 RFSL concerned, whereons became affixed the seals of the RFSL 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 RFSL concerned, besides when it also acquiesces to the conclusivity of the opinion, as, made thereons by the RFSL 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 RFSL concerned. Resultantly, thereby the report of the RFSL 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 RFSL after the latter re-enclosing therein, the stuff examined at the RFSL.

19. Learned counsel for the convict-appellant has also submitted, that since it was a chance 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, 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.PW-3/A, which is a report of drawn under Section 42 of the Act, thus makes vivid disclosures, that the investigating officer concerned, has therein elucidated, the factum of his receiving prior information, besides has scribed therein the reasons for his believing, that the present appellant is handling contraband. Moreover, a reading of Annexure PW-3/A also discloses, that the same became transmitted to the DSP, Headquarters, Kurukshetra. Resultantly, thereby compliance became meted to the hereinabove extracted provisions, and, thereby the above made argument also loses its sheen.

21. Conspicuously also, when the provisions of Section 42 of the Act, may require employments thereof, but only when in the interregnum inter se sunset and sunrise, thus the empowered officer, but without search warrants

makes an entry or ingress into the building, conveyance or place. However, when in the instant case the recovery of the contraband was not made from a building, conveyance or place nor was made in the interregnum inter se sunset and sunrise rather was made at an open place during day time, therebys too, the breach if any, to the mandatory statutory provisions as contained under Section 42 of the Act, does become completely inconsequential, especially when therein becomes embodied the necessity of a prior information being recorded in writing.

22. However, this Court has noticed that the investigations in respect of NDPS matters both in the State of Punjab, and, in the State of Haryana is extremely faulty. Therefore, this Court had made directions respectively, upon the Director General of Police, Punjab, and, of Haryana to ensure that the investigating officers in the States of Punjab and Haryana are mentored by an expert. However, there is no input/statistic in respect of the said directions. Therefore, inputs/statistics in respect of the previously made directions be furnished to this Court.

23. Since the investigations into NDPS matters, in the State of Himachal Pradesh, is far superior to the investigation thereintos, by the investigating officers in the States of Punjab and Haryana. Therefore, this Court makes a direction, upon the Directors Generals of Police, of the State of Punjab and of the State of Haryana to, within a fortnight from today ensure, that batches of investigating officers are deputed to take mentorings at PTC, Daroh Dharamshala. The trainings thus shall be imparted to them by the subject expert, at the PTC, Daroh Dharamshala, and, shall be ensured to be completed within 3 months from today, and, a compliance affidavit in respect thereof be furnished respectively by the Director General of Police, Punjab, and, of Haryana, besides by the Principal of PTC, Daroh Dharamshala.

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24. The Registry of this Court is directed to forthwith transmit a copy of this verdict to the Directors Generals of Police, Punjab, and, of Haryana, and, to the Principal of PTC, Daroh Dharamshala, besides to the Secretary, Home, Government of Himachal Pradesh for requisite compliance.

25. It is clarified that all the expenses towards the board, and, lodging of the said police officers shall be borne respectively by the State of Punjab, and, by the State of Haryana. Home departments respectively of the States of Punjab and Haryana are directed that the said expenses become forthwith deposited with the Secretary, Department of Home to the Government of Himachal Pradesh.

26. For the compliance affidavit being furnished by all the afore, list on 22.05.2024.

Final Order

27. 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 he 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.

28. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

19.02.2024

(LALIT BATRA)
JUDGE

Ithlesh

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No