

In the High Court of Punjab and Haryana at Chandigarh

CRA-S-2808-2019 (O&M)
Reserved on: 26.5.2023
Date of Decision: 01.6.2023

Gurjinder Singh @ Ginda

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Saurav Bhatia, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 1.8.2019, upon NDPS Case No. 28 of 2018, by the learned Judge (Special Court), Shaheed Bhagat Singh Nagar, wherethrough in respect of a charge drawn against the accused qua an offence punishable under Section 22(c) of the NDPS Act, the learned trial Judge concerned, proceeded to record a finding of conviction against the accused. Moreover, through a separate sentencing order, drawn on 7.8.2019, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment for a period of ten years, for an offence punishable under Section 22(c) of the NDPS Act, besides also imposed, upon the convict sentence of fine, comprised in a sum of Rs. 100,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment for a period of three years.

2. The period of detention undergone by the convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the

Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment.

3. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PW-4/C is assigned. The narrations carried in Ex. PW-4/C, are that on 10.10.2017, ASI Nirmal Singh, who was posted at PS Balachaur, District SBS Nagar, along with other police officials, were on patrolling duty in connection with checking of unscrupulous elements from Village Majaari to the direction of Village Mehndpur. When they reached near cremation ground of Village Mehndpur, the police party spotted four persons coming out of motor of tube well in the fields of Jarnail Singh. On the very sight of police party, they got panicked and tried to run away. The police party also chased them, and, one of them fell on the ground in the fields, and, he was apprehended by the police party. The person, who was apprehended threw a polythene bag from his pocket in the fields. The said bag was picked up by the investigating officer concerned, and, it was in torn condition. The said bag contained some intoxicating material including intoxicating powder, three injections and four syringes mark Dispovan. When asked, he revealed his name as Gurjinder Singh @ Ginda and his address. He further disclosed that all the three persons, who succeeded in fleeing away were namely Jatinder Singh @Jeeti, Amarjit Singh s/o Jarnail Singh, residents of Village Mehndpur and Pardeep Kumar@ Pappi s/o Ram

Kumar, resident of Village Saroya. Thereafter, he weighed the intoxicating polythene bag, which Gurjinder Singh had thrown in the fields and was picked up by him, and, it came out to be 372 gms. He put the aforesaid intoxicating powder into a separate parcel and three injections and four syringes were also put into other parcel. Both the parcels were sealed by him with his seal bearing impression 'NS'. The accused was arrested and personally searched. The Investigating Officer prepared ruqa, on the basis of which formal FIR was registered.

Investigation proceedings

5. During investigation, the accused was arrested. The investigating officer concerned, inspected the spot of recovery, and, prepared rough site plan. Statements of the witnesses were recorded. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Trial Proceedings

6. The learned trial Judge concerned, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charge against the accused, for an offence punishable under Section 22(c) of the NDPS Act. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

7. In proof of its case, the prosecution examined five witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused also chose to adduce defence evidence, but did not lead any

defence witness into the witness box.

8. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

9. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

10. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Analysis of the case

11. Through recovery memo Ex. PW-3/A, the recovery of the contraband became allegedly effected from a polythene bag, which though was seen by the police party, to be held by the accused, but yet on the accused sighting the police officials, he thus threw the said polythene bag in the fields.

12. In proof of the prosecution case, ASI Nirmal Singh stepped into the witness box as PW-4, and, in his examination-in-chief, he made speakings therein, which concur with the contents of the appeal FIR, to

which Ex. PW-4/C is assigned.

13. The prosecution though has been able to lead cogent evidence, in proof of the recovery of the seizure, thus being effected at the crime site, and, the same thus being sealed with the relevant seal impressions. Moreover, though the prosecution has also been able to cogently establish, that the sealed cloth parcels, became deposited in the malkhana concerned. In addition, though the prosecution has been able to establish, that the case property travelled in an untampered condition to the FSL concerned.

14. A reading of the report (Ex. PW-1/J), as made by the FSL concerned, whereto the relevant seizure became sent for an examination being made of the stuff inside the sealed cloth parcels, though reveals, that the examined stuff inside the sealed cloth parcels, as became sent to it for examination, thus being heroin. The said report is *ad verbatim* extracted hereinafter.

“x x x x

Report

The contents of the parcel No. 1 and 2 under reference have been analyzed by chemical analyst. On the basis of analysis, 28.88% Diacetylmorphine (Heroin) has been found present in the content of the parcel No. 1 and ingredient found present along with its quantity in parcel No. 2 has been given at serial No. 8 (identification and test) of this report.”

15. Be that as it may, though a reading of the report (supra) of the FSL also discloses, that the sealed cloth parcels, became received there, hence with the seal impressions thereons being intact. However, the chemical examiner at the FSL concerned, after making examinations of the stuff inside the sealed cloth parcels, and, thereafter his drawing the report (supra), yet omits to mention in the report Ex.PW-1/J, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

16. The above was required to be mandatorily done, as, thereupon the imperatively required to be proven, thus unbroken links in the chain of incriminatory evidence, commencing from the seizure being made from the crime site, through recovery memo Ex. PW-3/A, and, lasting upto the production of the case property in Court, thereby thus would become convincingly proven, rather to remain unsealed or unbroken. In the above event alone the charge drawn against the accused would be concluded to become cogently established. However, as above stated, for want of the chemical examiner concerned, after making examination(s) of the stuff inside, the sealed cloth parcels, thus re-enclosing the examined stuff inside the cloth parcels, and, his further failure to emboss thereons, rather the seals of the FSL concerned, whereafter the examined stuff was to be produced in Court, for its being shown to the investigating officer concerned, for thereby thus, on evident surging-forth of the above requisite primary evidence, rather the charge drawn against the accused, could be concluded to be convincingly proven.

17. Be that as it may, when the chemical examiner concerned, after examining the stuff inside the sealed cloth parcels, omitted to re-enclose the examined stuff inside the cloth parcels, and, also omitted to emboss thereons the seals of the FSL concerned. Therefore, it appears, that the stuff after becoming examined by the chemical examiner concerned, was thus enclosed in loose cloth parcels, and, thereafter the said loose cloth parcels, became sent in an unsealed condition, thus to the incharge of the malkhana concerned. Subsequently, it appears that such loose, and, unsealed cloth parcels, thus comprising the case property Ex. MO1 and Ex. MO2, rather became produced in Court, and, as revealed on a reading of the examination-in-chief of PW-4, also became identified, as such by PW-4. In the wake of

the above, it appears, that despite the identification of the case property Ex. MO1 and Ex. MO2, being made in Court by PW-4, and, also irrespective of the fact, that the said exhibit marks were made, during the makings of testifications by PW-4, thus on the said case property, upon its, becoming produced in Court, but since there is no recorded observation by the learned trial Judge concerned, about Ex. MO1 and Ex. MO2, thus occurring within sealed cloth parcels.

18. Therefore, when Ex. MO1 and Ex. MO2 obviously appertain to the relevant stuff, as became examined at the FSL concerned. In consequence, in the wake of no observations (*supra*), being made by the learned trial Judge concerned, at the time of production of Ex. MO1 and Ex. MO2 in Court, and, also in the wake of the report (*supra*) of the FSL concerned, omitting to specifically state therein, about the examined stuff, being re-enclosed in sealed cloth parcels, whereons became embossed the seals of the FSL concerned, thus leads to the hereinafter conclusion; (a) The prosecution has not been able to co-relate the report (*supra*) to Ex. MO1 and Ex. MO2; (b) the loose cloth parcels, Ex. MO1 and Ex. MO2, as became produced in Court, in support of the report (*supra*) of FSL concerned, do not become related to the said examined stuff. Resultantly, when scope is, thus left for an inference qua either the case property, thus not relating to the report (*supra*) of the FSL concerned, and/or to the enclosures inside Ex. MO1 and Ex. MO2, being introduced therein, thereby the report of the FSL (*supra*), rather loses its evidentiary vigour. A further scope is also left, that thereby the stuff, if any, existing inside Ex. MO1 and Ex. MO2, rather became introduced therein, and/or, that the case property, if any, became tampered with. Moreover, much scope is also left for the drawing of an inference, that the case property other than the one related to the charge

drawn against the accused, thus became produced in Court. As but a natural corollary, when the primary evidence for proving the charge drawn against the accused, does come under a cloud of deep suspicion. Resultantly, this Court is constrained to conclude, that the charge drawn against the accused did not come to be cogently established.

Final order

19. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment convicting, and, sentencing the appellant, and, as become recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellant is acquitted of the charge framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

20. Records be sent down forthwith.

21. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

June 01, 2023
Gurpreet

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