
(2010) 11 P&H CK 0669
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 277-SB of 2001

Amarjit Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15

Citation : (2011) 2 RCR(Criminal) 471(1)

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—The sole accused was convicted for an offence punishable u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of rupees one lakh, in default to undergo further period of one year rigorous imprisonment. Hence, he has preferred the present appeal.

2. The case in brief of the prosecution as spoken to by the witnesses examined on its side is as follow:

a) A police party headed by ASI Amrik Singh (PW1) proceeded to village Bhojowali from the village Saron in a Government vehicle on 17.05.1996. Near the village Bhojowali, the accused was found coming from the village Bhojowali. He was apprehended on suspicion. PW1 informed him that he suspected some contraband article in the gunny bag he was carrying. As he reposed faith in the search that could be conducted by PW1, PW1 conducted search of the gunny bag. PW1 found 25 kilograms of poppy husk in the gunny bag carried by the accused. Two samples weighing 250 grams each was drawn. The samples and the remaining poppy husk were converted into three separate parcels and those parcels were sealed. The entire case property was recovered under memo Ex. PB. The accused on search was also found in possession of Rs. 150/- and the

same was recovered under memo Ex.PC. Formal First Information Report Ex. PD/A was registered against the accused. The accused alongwith the case property was produced before the Sub Inspector Swaran Singh (PW5). He also affixed his seal on sample seal chit Ex.P/1. PW1 deposited the case property with the Head Constable Ajmer Singh (PW4). The sample of poppy husk was sent to the Chemical Examiner through PW3 Constable Bhagwan Singh. The Chemical Examiner returned a finding that the contents of the sample were found to be poppy head. Investigation was completed by PW1 and final report was filed as against the accused for an offence u/s 15 of the NDPS Act.

b) On the side of the defence, DW1 was examined to speak about the previous case launched as against the father-in-law of the accused which ended in acquittal.

3. The trial Court relying upon the evidence of PW1, PW2 and PW5 in the background of the Chemical Examiner's report returned a finding that the prosecution established beyond reasonable doubt that the accused was found in possession of 25 kilograms of poppy husk.

4. The learned senior counsel appearing for the accused/Appellant would submit there is no evidence on record to show that the material objects recovered from the accused were entrusted to the custody of the Court. There is evidence to show that those material objects were shown for the first time to the witness PW1 for the purpose of marking the same in the Court during the course of trial. It is his further submission that PW1 would admit that the seal entrusted to one of the police officials was returned to him next day itself. Referring to the evidence of PW3, he would submit that the sample was deposited with the Chemical Examiner only on 22.05.1996. There is an inordinate unexplained delay on the part of the prosecution, he would further submit. Even as per the evidence of the witnesses examined on the side of the prosecution, the case property which was exhibited before the Court was not that of the case property which was recovered and sealed by PW1. Therefore, he would submit that the accused/Appellant is entitled to acquittal.

5. The learned Deputy Advocate General Shri T.S. Salana appearing for the State would submit that the trial Court has returned a verdict of conviction as PW1, PW2 and PW5 have spoken to the fact that poppy husk was recovered from the accused and the same was entrusted to PW5, the Station House Officer of Police Station Dhuri. He would further submit that all the mandatory provisions under Sections 52 and 55 of the NDPS Act were complied with by PW1.

6. The police party headed by PW1 had apprehended the accused at about 5:00 AM on 17.5.1996. The recovery of the material objects were allegedly effected the moment the accused was apprehended. But the evidence of PW3 would go to show that the samples drawn from the poppy husk found in possession of the accused were entrusted to the Chemical Examiner only on 22.05.1996. No explanation has been offered by the prosecution as to why there had been an

inordinate delay of five days in dispatching the sample to the Chemical Examiner.

7. Of course, every delay in dispatching the sample to the Chemical Examiner would not go to the root of the prosecution case. But in the instant case, it is found that PW1 had produced the accused alongwith the material objects including the samples drawn therefrom to PW5 on 17.05.1996 itself. PW1 speaks nothing about the entrustment of material objects to judicial custody. PW5 would state that he in fact instructed PW1 to deposit the material objects with PW4. It appears from the evidence of PW4 that he handed over the sample to PW3. It is to be noted that PW4 does not speak about the fate of the remaining material object. As per the testimony of PW4, he straight away took the sample to the Chemical Examiner bypassing judicial scrutiny.

8. The sample collected shall be sent to the Chemical Examiner only with the directions of the Court, of course, on a request made by the investigating official. Otherwise, a concocted sample can be sent straight away by a police sleuth to the Chemical Examiner to foist a case against an innocent person. But in the instant case, it is found that the seal which was used for affixing on the sample collected was handed over by PW1 to yet another police official, who handed over the same to PW1 next day itself, even before the sample reached the custody of the Chemical Examiner. As rightly pointed out by the learned senior counsel appearing for the accused/Appellant, there is every possibility in the aforesaid facts and circumstances of this case, for concocting a sample to suit the prosecution. In all fairness, in order to avoid any type of concoction, the seal should have been received back by PW1 only after the sample reached at the portal of the Chemical Examiner.

9. The testimony of PW1 and PW5 would give an indication that the material objects in fact marked during the course of evidence of PW3 were not exactly that of the same material objects recovered from the accused.

10. Under such circumstances, a doubt arises in the mind of this Court whether the material object marked in this case was really the one that was recovered from the accused. The trial Court has not seriously adverted to the above material lacuna found in the case of the prosecution which goes to the very root of the matter.

11. In view of the above, bestowing the benefit of doubt to accused/Appellant, he is acquitted of the offence punishable u/s 15 of the NDPS Act. The bail bond, if any, executed by him shall stand annulled. Consequently, the judgment of conviction recorded by the trial Court and the sentence imposed upon him stands set aside. The appeal is accordingly allowed.