
(2002) 09 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 1213-SB of 2001 (O and M)

Channa Ram @ Maiya

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 50, 52, 52A, 55

Citation : (2002) 4 CriminalCC 283 : (2002) 4 RCR(Criminal) 440

Hon'ble Judges : A.K. Goel, J

Bench : Single Bench

Advocate : Hemant Bassi, for the Appellant; Amar Singh, AAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred against the conviction and sentence of the appellant u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the Act). The appellant has been sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.One lac and in default of payment of fine, to further undergo rigorous imprisonment for one year for keeping in his possession eighty and half Kgs. of poppy husk without any permit.

2. The case of the prosecution is that on 28.4.1997 ASI Ajaib Singh along with HC Prem Singh and other police officials was present at T-point on the road leading to village Lalpura for patrol duty. One Fajal Ram met him and they started talking with each other. After some time, the accused was seen coming from the side of village Lalpura. He was catching the string of a mare and two bags were loaded on the mare. On seeing the police party, the accused took a turn and started walking briskly along with the mare. On suspicion, he was apprehended. ASI Ajaib Singh told him that he could opt for being searched

before a Gazetted Officer or a Magistrate. Notice u/s 50 of the Act was served on him and in reply thereto, he made a statement that he wanted to be searched before a Magistrate. Accordingly, Shri Ram Kumar, Naib Tehsildar, Guhla was called at the spot and under his directions, the search of the bags was taken and poppy husk was found contained in the bags. Sample of 250 grams was separated from each bag and the residue, on weighment was found to be 40 Kgs in each bag. The sample parcels and the residue were sealed separately and were taken into possession. Rukka Ex.PG was sent to the police station, on the basis of which the FIR Ex.PG/1 was recorded. Site plan Ex.PH was prepared. On return to the police station, the accused, the witnesses and the case property were produced before SHO Swaran Singh inspector, who verified the investigation and affixed his own seal on the case property. The accused was arrested and the case property was deposited with the MHC.

3. In support of its case, the prosecution inter alia examined PW-4 SI Ajaib Singh, whose evidence is corroborated by PW-7 Fazal Ram, an independent witness and PW-3 Ram Kumar, Naib Tehsildar, apart from PW-1 HC Prem Singh, PW-2 Inspector Swaran Singh, PW-5 S.K.Nagpal, Senior Scientific Officer, FSL, Madhuban and PW-6 HC Jasmer Singh.

4. In his statement u/s 313 Cr.P.C, the accused denied the case of the prosecution and stated that on 27.4.1997, he was illegally taken into custody by the CIA staff and on 28.4.1997, he had sent a written message to the higher police officers, which annoyed the police and he was implicated in the false case. In defence, he examined DW-1 Walayati Ram and DW-2 Ram Piara.

5. On the basis of the evidence on record, the trial Court held the case of the prosecution to be proved, and convicted and sentenced the appellant as aforesaid.

6. Counsel for the appellant submitted that there was doubt of identification of the case property which creates doubt about the prosecution story. Reference was made to the statement of ASI Ajaib Singh PW-4 wherein he stated that though when the case property was recovered, F.I.R. number and other particulars were written on the bags, but on the case property produced in the Court, no particulars were found. Explanation was given that contents of the bags recovered from the appellant were poured in new bags. It was submitted on behalf of the appellant that the prosecution has not proved when and how the old bags were damaged and the case property was shifted to new bags. It was submitted that u/s 55 of the Act, the officer in charge of the police station is required to keep in safe custody all articles seized under the Act and u/s 52-A of the Act, a direction of the Magistrate can be taken for disposal of the case property even at the pre-trial stage, by keeping photographs and inventory of the seized articles which is treated as primary evidence in respect of the offence.

7. Counsel for the State submitted that absence of case property or damage of the case property is not fatal to the case of the prosecution having regard to the

recovery of contraband from the appellant and since the recovery was fully proved from the evidence of ASI Ajaib Singh PW-4 HC Prem Singh PW-1 and Ram Kumar Naib Tehsildar PW-3, which is corroborated by evidence of Inspector Swaran Singh PW-2, before whom the case property was produced after seizure, mere absence of original bags containing particulars of the case does not cast doubt on the recovery which is an ingredient of the offence.

8. I have heard learned counsel for the parties and perused the record of the case.

9. No doubt, provisions of sections 52 and 57 of the Act are directory and violation of the said provisions does not vitiate the trial, if the prosecution evidence on the record proves the case against the accused beyond reasonable doubt and no prejudice is shown to have been caused to the accused. Whether or not the right of the accused is prejudiced, depends on case to case. Where the prosecution does not get direction of the Magistrate and dispose of the case property u/s 52-A of the Act, the prosecution has to take responsibility for safe custody of the case property u/s 55 of the Act. The object of keeping the case property in safe custody is to ensure identification of the property recovered. Having regard to the facts of the present case where veracity of the prosecution case is challenged by the accused, a prejudice can be assumed to have been caused in the case of the defence. I am of the view that conviction of the accused cannot be sustained and the accused is entitled to be given the benefit of doubt.

In view of the above, the appeal is allowed, conviction and sentence of the accused is set aside and he is acquitted of the charge.