
(1999) 07 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal 232-SB of 1999

Nirvail Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-07-1999

Acts Referred:

Citation : (1999) 4 AICLR 142 : (1999) 4 RCR(Criminal) 138

Hon'ble Judges : R.L.Anand, J

Advocate : Ajai Lamba, Hemant Bassi, S.S. Randhawa, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. This is a criminal appeal filed by Nirvail Singh and has been directed against the judgment and order dated 7.1.1999 passed by the Court of Addl. Sessions Judge, Patiala, who convicted the appellant u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and sentenced him to undergo R.I. for a period of 10 years and to pay a fine of Rs. 1 lac; in default of payment of fine, the appellant was directed to undergo R.I. for two years.

2. The brief facts of the case are that on 30.4.1996 ASI Jarnail Singh along with ASI Jawinder Singh and other police officials was coming back to Samana in Government vehicle No. PB11/F9738 after patrolling Shartana and Badshahpur and other villages. When the police party reached near the Bus Stand of village Arai Majra, the appellant was seen coming on foot carrying a bag on his head from the side of village Arai Majra. On seeing the policy party, the accused at once turned back but was apprehended on the basis of suspicion. In the meanwhile, Nirmal Singh, PW, came there and he was associated in the police party. ASI Jarnail Singh disclosed to the appellant that he had a suspicion that there was poppy husk in his bag and whether he wanted to give the search before some Gazetted Officer or a Magistrate. In reply, the appellant stated that he did not want his search to be conducted before a gazetted officer or a

Magistrate. His statement, Ex. PC, was recorded, which was thumb marked by the accused and attested by the ASI and other witnesses. Thereafter, the search of the bag was taken and poppy husk weighing 10 Kgs. was recovered. The I.O. separated 250 grams of poppy husk and sealed the same with his own seal bearing inscription "JS". He also prepared the specimen seal. The seal after use was handed over to Nirmal Singh, PW. The entire case property was taken into possession vide recovery memo Ex. PD. Accused could not produce any licence or permit for the possession of poppy husk. Resultantly ruqa Ex. PF, was sent to the police station for the registration of the case, on the basis of which formal FIR, Ex. PF/1 was recorded. The I.O. also prepared the rough site plan of the place of recovery. He produced the case property and the accused before Inspector Rachhpal Singh, who resealed the case property with his own seal bearing inscription RS. Thereafter, the case property was deposited with the MHC and, later on, the sealed sample of the poppy husk was sent to the office of the Chemical Examiner on 6.5.1996 through constable Rattan Singh. It was declared by the chemical examiner that the sample contained poppy husk. On the completion of the investigation of the case, the appellant was challaned in the court of the Area Magistrate, who supplied the copies of the documents free of cost as required under the law and vide commitment order dated 17.9.1996 committed the accused to court of sessions to face trial u/s 15 of the Act.

3. Vide order dated 25.9.1996, the accused was chargesheeted u/s 15 of the Act. The charge was read over and explained to the accused, who pleaded not guilty and claimed a trial.

4. In order to substantiate the charge, the prosecution examined as many as seven witnesses including Inspector Rachhpal Singh and ASI Jarnail Singh, I.O., but the independent witness was given up as having been won over by the accused.

5. On the closure of the prosecution evidence, the statement of the accused was recorded under section 313, Cr.P.C. and all the incriminating circumstances appearing in the prosecution evidence were put to the appellant. The appellant denied those circumstances and stated that he has been falsely implicated. He was arrested from his village in the presence of members of the Panchayat, namely, Sukha Singh, Member Panchayat and Nazar Singh, Sarpanch and Battu Ram, Lambardar and no incriminating article was recovered from him.

6. When called upon to enter into defence, the accused examined Battu Ram, aforesaid as DW1, who supported the version of the appellant.

7. The learned trial court relied the story of the prosecution and rejected the defence version and convicted and sentenced the appellant in the manner as stated above and aggrieved by his conviction and order of sentence, the present appeal, which I am disposing of with the assistance rendered by Shri Ajai Lamba, Advocate, on behalf of the appellant and Shri S.S. Randhawa, DAG, Punjab, appearing on behalf of the State, and with their assistance have gone through

the record of this case.

8. The argument which has prevailed upon the mind of the court is that the case property has not been preserved in proper manner and its sanctity has been disturbed, prima facie. The counsel for the appellant submitted that as per the law, it is obligatory upon the prosecution to establish that right from the stage of seizure upto the production of the case property in court, its sanctity has been maintained at all costs. The counsel submitted that it appears that some other sample has been sent to the office of the chemical examiner. The counsel elaborated his argument by stating that as per the story of the prosecution the case property was earlier sealed by ASI Jarnail Singh by using his seal bearing inscription "JS" and thereafter, the case property and the accused were produced before Inspector Rachhpal Singh, who resealed the case property with his own seal bearing inscription "RS" but the affidavit, Ex.PD, of the Constable who took the case property for handing over the same to the chemical examiner for analysis is on different lines and that the prosecution has not been able to get any clarification from this witness. The counsel submitted that as per the affidavit, Ex.PD of Constable Rattan Singh, the case property was handed over to him with the seals bearing inscriptions "AS" and "JS" and not "JS" and "RS".

9. On the contrary, the learned State counsel submitted that there can be an honest slip of tongue or a clerical mistake in the affidavit, Ex. PD. In fact, the sample which was sent to the office of the chemical examiner had two seals bearing inscriptions "JS" and "RS". The learned State counsel also relied upon the report of the chemical examiner itself and the sample impression upon which the inscriptions "JS" and "RS" have been written.

10. Who should suffer on account of the negligence on the part of the prosecution or on the part of the Investigating Agency ? Constable Rattan Singh when he gave his statement on affidavit, Ex. PD, must have copie his statement from his earlier statement recorded u/s 161, Cr.P.C. wherein the words "AS" and "JS" must have been written. This affidavit, Ex. PD, was read over and explained to him when he appeared before the Magistrate at the time of attestation. He again went through this affidavit when it was produced before the trial court on 4.12.1996. No clarification has been obtained by the prosecution from Constable Rattan Singh about this material discrepancy.

11. Be that as it may even otherwise, I am of the opinion that the prosecution has not been able to prove the charge against the accused. Special report has not been issued to the higher authorities. The grounds of arrest have not been supplied to the accused. A reading of the Statement, Ex.PC, would show that the appellant was an illiterate person. He thumb marked the papers. I further feel that his thumb impressions must have been taken on some blank papers and, thereafter, the writing work was done above the thumb impressions. Nirmal Singh, independent witness, has not been examined by the prosecution and also by the defence. The statement of DW1 Battu Ram cannot be easily set aside. He is a Lambardar of the village. The assistance of such witnesses is invariably taken

by the police when the police wants to conduct raid upon a person. As per the statement of Battu Ram, the police took the search of the house of the accused in his presence but nothing was recovered. Thus, four factors have come in favour of the accused in this case. Firstly, there is a material discrepancy about the impressions of the seals used for the purpose of sealing the case property, secondly, the grounds of arrest were not supplied to the accused, thirdly, the special report has not been issued to the higher authorities and fourthly, the statement of Battu Ram, Lambardar, has not been rightly appreciated by the learned trial court. All these facts cumulatively cause a dent in the story of the prosecution.

12 Resultantly, I accept this appeal, set aside the judgment and order of the trial court and acquit the appellant of the charge framed against him. The case property stands confiscated to the State and shall be destroyed according to the rules. The information regarding the acceptance of this appeal be sent to the Superintendent, Central Jail, Patiala, so that the appellant should be set at large forthwith, if not required in any other case.

Appeal accepted