

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

CRA No.1417-SB of 2005
Date of decision: 14.09.2012

Hatte Singh

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: - Mr. Baljinder Singh, Advocate, for the appellant.
Mr. Deepak Girotra, AAG, Haryana.

PARAMJEET SINGH, J.

The challenge in the present appeal is to the order dated 10.06.2005/14.06.2005 passed by learned Sessions Judge, Fatehabad, whereby the appellant has been convicted and sentenced in a case FIR No.533 dated 17.09.2001, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') at Police Station Sadar Fatehabad.

Brief facts of the case are that on 17.09.2001 a police party headed by Vijay Kumar Inspector was present at bus stand Dhangar. Constables Lal Singh and Gidhian Singh met him there. While Inspector was talking with them, a truck came from the side of Hisar and stopped. The accused alighted from the truck and on seeing the police personnel went towards a corner and sat down pretending to urinate. The appellant did not get up for sufficient long time which created suspicion in the

mind of the Inspector Vijay Kumar. The appellant was apprehended and he was having a bag in his right hand. Inspector Vijay Kumar suspected some contraband in the bag and expressed his suspicion and informed the appellant that he has a right to be searched in the presence of a Gazetted officer or a Magistrate. Statement of appellant-accused Ex.P-18 was recorded to that effect. Inspector Vijay Kumar sent a message to the police station to arrange the presence of a Gazetted officer. Thereafter, DSP Sh. Ram Kumar reached at the spot. He disclosed his identity to the accused. On the direction of the DSP search was carried out by Vijay Kumar. Five packets containing 1 kg. of opium each were found in the bag. Vijay Kumar drew two samples of 25 grams each from each packet and made them into separate parcels. The packets containing 950 grams of opium each were also made into parcels. All the above parcels were sealed with the seals having impressions VK and RK. The seal of Vikay Kumar, after use, was handed over to the DSP. All the parcels were taken into possession vide memo Ex.P6. Thereafter, the case property was deposited with the MHC and the accused was put in the lock up. Vijay Kumar recorded the statement of the witness and also prepared rough site plan of the place of recovery. After completion of investigation, report under Section 173 Cr.P.C. was prepared and the case was committed to the Court of learned Sessions Judge.

The appellant was supplied the copies of document and thereafter special court framed charge under section 18 of NDPS Act .

The prosecution to substantiate the charge examined, PW 1 HC Om Parkash, PW-2 Constable Chanan Ram, PW3 DSP Ram Kumar PW 4, Inspector Vijay Kumar and PW 5 Inspector Surat Singh.

The statement of the accused under section 313 Cr.P.C. was recorded. All the incriminating circumstances were put to him. He denied the same and pleaded his false implication. Accused-appellant was afforded opportunity to lead defence but he failed to lead any evidence.

The trial Court having analyzed the entire material on record held that the accused had committed the offence punishable under Section 18 of the NDPS Act and sentenced him accordingly.

I have heard the learned counsel for the appellant and learned State counsel and with their assistance have perused the record.

The learned counsel for the appellant vehemently argued that recovery of 5 kg of opium was not proved against the petitioner and further submitted that Section 52 of the NDPS Act was not complied with, as the contraband seized from the appellant was not handed over to the incharge of the nearest police station.

The learned counsel for the appellant further argued that recovery had been effected from public place and no independent witness was joined.

Lastly, counsel for the appellant argued that there is non-compliance of Section 57 of the NDPS Act.

The contentions raised by the learned counsel for the appellant have been vehemently opposed by the learned State counsel.

It is submitted by the learned State counsel that recovery has been effected by the SHO i.e. Incharge of the police station as such there was no requirement that such property should have been deposited with any other person. When the Incharge of the police station

himself/herself effects recovery then the compliance of Section 57 of the NDPS Act stands complied with.

The learned counsel for the State further submitted that it was a chance recovery and efforts were made by the Inspector to join independent witness but nobody joined. It is common that no one is ready to depose against the person who is from the neighbouring village or from the same village. The recovery has been effected by the Inspector by calling the Gazetted officer i.e. the DSP and as such the provisions of Section 52 of the NDPS Act also stand complied with. The link is not missing in sending the samples to the chemical laboratory for examination.

I have considered the rival contentions of the learned counsel for the parties and perused the record.

In the present case, recovery was effected by an Inspector who happened to be the Incharge of the police station concerned, so the question of forwarding the person arrested and articles seized without unnecessary delay to the officer incharge of the nearest police station does not arise. This is sufficient compliance of Section 57 of the NDPS Act. Hence the contention of the learned counsel for the appellant is rejected.

So far as the contention of non-joining of independent witness is concerned, the recovery was a chance recovery. There was no occasion for the Investigating Officer to join independent witness. Though, attempt was made to join independent witness in investigation but nobody came forward. So the non-joining of independent witness does not entail serious consequences which may result into acquittal of

the appellant.

The last contention of the learned counsel for the appellant is also not sustainable. As per Section 57 of the NDPS Act, report of arrest and seizure is to be given to immediate official superior to the person making arrest or seizure. In the present case the immediate superior officer of the Inspector incharge of the police station was Deputy Superintendent of Police, a Gazetted officer, who was immediately called at the spot and search was also carried in his presence as desired by the appellant. Since the recovery has been effected in the presence of the immediate superior of the arresting officer so this is also a sufficient compliance of Section 57 of the NDPS Act.

The Hon'ble Apex Court in ***Gurbax Singh vs. State of Haryana, 2001(1) RCR (Criminal) 702*** held that provisions of Sections 52 and 57 of the NDPS Act are not mandatory provisions and they are only directory. Violation of these provisions would not ipso facto violate the trial or conviction. In the present case, I do not find any serious violation of these provisions. The prosecution adduced evidence to prove that these provisions have been substantially complied with and the Sessions Judge discussed these provisions in detail and accepted the prosecution case. In the above circumstances, I am of the view that even non-compliance of Sections 52 and 57 of the NDPS Act is not fatal to the case of the prosecution and in the present case substantial compliance of these provisions has been made. Further, in the present case, the evidence of PWs 1 to 5 clearly proved that the material objects seized from the appellant are opium and it was found to be positive on being tested. Furthermore, the samples have been prepared, sealed and

sent for chemical analysis in accordance with law.

No other point has been argued by the learned counsel for the appellant.

In view of this, present criminal appeal fails and is dismissed. Since appellant is on bail, the authorities may take appropriate measures for arrest of the appellant to serve the remaining part of sentence.

(Paramjeet Singh)
Judge

September 14, 2012
R.S.