

Gurmail Chand vs State Of Punjab on 23 January, 2020

Bench: Ashok Bhushan, Navin Sinha

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.149 OF 2020
(Arising out of SLP(Criminal) No.9226 of 2016)

GURMAIL CHAND

APPELLANT (

VERSUS

STATE OF PUNJAB

RESPONDENT

O R D E R

Leave granted.

Heard learned counsel for the parties.

This appeal has been filed against the judgment of the High Court dated 13.01.2016 in CRA No.S-764-SB of 2003 by which judgment the appeal of the appellant challenging his conviction and sentence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred as the 'NDPS Act') has been dismissed.

The prosecution case as noticed by the High Court is that on 16.10.1998, S.I. Gurcharan Singh accompanied by ASI Teja Singh, H.C. Major Singh and other police officials was present on the bridge canal minor in the Reason: Lal r/o village Raikot arrived there. It was about 8.30 a.m., accused-appellant Gurmail Chand was seen coming from the side of village Khanjarwal on scooter bearing registration No.PB-04F-2642. As he tried to slip away, he was stopped on the basis of suspicion. On being enquired about the name and parentage etc., a polythene bag was found lying on the foot mat of the scooter. As the police party got suspected that there is some contraband in the polythene bag, the accused-appellant was given the option of getting the search done before the Magistrate or the Gazetted Officer. The accused-appellant desired the search to be conducted in the presence of some senior police officer. The statement of the accused-appellant was recorded as Ex.PA. Harjit Singh Pannu, DSP, Dakha was called at the spot through wireless message. The DSP arrived at the spot at 9.15 a.m. and he disclosed his identity to the accused-appellant and also apprised him of his rights of search before some other Gazetted Officer or Magistrate. The

accused-appellant reposed confidence in the DSP and consent statement of the accused-appellant in this regard was recorded as Ex.PB. On direction of the DSP, Harjit Singh Pannu, SI Gurcharan Singh conducted the search of the polythene bag, from which 10 Kgs. opium was recovered. Two samples of 10 gms. each were separated. Then the samples of the bulk case property were sealed with the seal bearing impression 'GS' pertaining to SI Gurcharan Singh and 'HSP' pertaining to DSP Harjit Singh Pannu. The specimen seal impression was also prepared. The case property was also taken into possession vide recovery memo (Ex.PC). These samples were got tested from the Forensic Sciences Laboratory, Punjab, Chandigarh. Vide report (Ex.PJ), the Forensic Sciences Laboratory, Punjab, Chandigarh, declared that the contents of the samples were of opium.

The appellant was charge-sheeted and faced the trial. In support of his case the prosecution examined ASI Teja Singh as PW1, DSP Harjit Singh Pannu as PW2, SI Gurcharan Singh as PW3, Constable Gurpreet Singh as PW4, H.C. Pargat Singh as PW5, Rajesh Kumar as PW6, Amarjit Singh, Registration Clerk in the office of D.T.O., Faridkot as PW7 and R.K. Garg, JMFC, Mansa as PW8. Hari Krishan, who was witness of seizure, had appeared on behalf of the accused as DW1. Appellant's statement under Section 313 Cr.P.C. was recorded.

The Trial Court after considering the evidence on record convicted and sentenced the accused vide judgment dated 20.02.2003 under Section 18 of the NDPS Act and he was to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/-, in default thereof to further undergo rigorous imprisonment for two years.

Learned counsel for the appellant questioning the judgment of High Court contends that Hari Krishan, who was claimed to be independent witness of the seizure, had appeared as DW1 and had stated that in his presence no seizure was made and he had signed on the blank papers. He further submits that seizure having not been proved in accordance with law, Courts below have committed error in convicting the appellant. He further submits that there is violation of Section 57 of the NDPS Act, since the report was not sent to the Higher Official within the period as prescribed, which has vitiated the entire proceeding. He further submitted that case property was not produced in the Court which itself was sufficient to disbelieve the entire prosecution story. He submitted that what was produced in the Court, the seal was illegible.

We have considered the submissions of learned counsel for the parties and perused the record.

The mere fact that the witness of seizure Hari Krishan has appeared as DW1 does not led to the conclusion that the entire prosecution story has to be disbelieved. There are signatures of Hari Krishan in the seizure memo along with other police officers. The Trial Court as well as the High Court has rightly accepted the seizure, which was held to be in accordance with law. DW1 has not denied his signatures on the seizure memo rather his excuse was that it was taken on the blank paper which was rightly disbelieved by the Courts below. In so far as production of the case property, the Judicial Magistrate himself has appeared in the witness box and deposed that it was produced in the Court. The mere fact that one seal was illegible does not vitiate the proceeding. In so far as submissions on the basis of Section 57 of NDPS Act is concerned, it has been held that the said provision is not to be interpreted to mean that in event the report is not sent within two days, the

entire proceeding shall be vitiated. The provision has been held to be directory and to be complied with but mere not sending the report within the said period cannot have such consequence as to vitiate the entire proceeding. A three-Judge Bench of this Court in *Sajan Abraham vs. State of Kerala*¹ has held that non-compliance of Section 57 would not vitiate the prosecution case. In paragraph 12 following was laid down:

"The last submission for the appellant is, there is non-compliance with Section 57 of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. Hence the entire case vitiates. It is true that the communication to the immediate superior has not been made in the form of a report, but we find, which is also recorded by the High Court, that PW5 has sent copies of FIR and other documents to his superior officer, which is not in dispute. Ext.P-9 shows that the copies of the FIR along with other records regarding the arrest of the appellant and seizure of the contraband articles were sent by PW5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said to have prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case, it would not vitiate the prosecution case. In the present case, we find

1. (2001) 6 SCC 692 PW5 has sent all the relevant material to his superior officer immediately. Thus we do not find any violation of Section 57 of the Act."

We do not find any merit in the submissions of the appellant. The appeal is dismissed.

.....J. (ASHOK BHUSHAN)J. (NAVIN SINHA) New Delhi;

January 23, 2020

ITEM NO.6

COURT NO.9

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).9226/2016 (Arising out of impugned final judgment and order dated 13-01-2016 in CRLA No.764/2003 passed by the High Court Of Punjab & Haryana At Chandigarh) GURMAIL CHAND Petitioner(s) VERSUS STATE OF PUNJAB Respondent(s) (IA No.70538/2019 - GRANT OF BAIL) Date : 23-01-2020 This matter was called on

for hearing today. CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN HON'BLE MR. JUSTICE NAVIN
SINHA For Petitioner(s) Mr. Pawan, Adv.

Mr. Akashdeep Verma, Adv.

Mr. Pramod Kumar Bhagat, Adv.

Mr. Akshay Verma, AOR For Respondent(s) Ms. Jaspreet Gogia, AOR UPON hearing
the counsel the Court made the following O R D E R Leave granted.

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

(signed order is placed on the file)