

SURINDER KUMAR

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v.

STATE OF PUNJAB

(Criminal Appeal No. 512 of 2009)

JANUARY 06, 2020

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**[N. V. RAMANA, R. SUBHASH REDDY AND
B. R. GAVAI, JJ.]**

Narcotic Drugs and Psychotropic Substances Act, 1985:

s. 50 – Recovery of opium – Trial – Conviction – Confirmed in appeal by High Court – Appeal to Supreme Court – Held: No violation of s. 50 – Chain of evidence was complete – Non-examination of ASI, ASP and independent witnesses was not fatal in the facts of the case.

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Dismissing the appeal, the Court

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HELD : 1. The ASI after producing the case property before the Court, returned the case property to PW-3 with the seals intact. ASI was not in possession of seals of either of the investigating officer or of PW-3. Therefore, the question of tampering with the case property by him did not arise at all. Further he has returned the case property, after production of the same, before the *Illaga* Magistrate, with the seals intact, to PW3. In that view of the matter, the Trial Court and the High Court have rightly held that non-examination of the ASI did not, in any way, affect the case of prosecution. Further, it is evident from the report of the Chemical Examiner, Ex.P-10, that the sample was received with seals intact and that the seals on the sample, tallied with the sample seals. In that view of the matter, the chain of evidence was complete. [Paras 10 and 11] [312-A, C, D-E]

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2. The Trial Court as well as the High Court, has recorded a finding that the perusal of the record reveals the ASP was summoned number of times but either service was not effected or as and when he was served, he sent a request for exemption from personal attendance stating valid reasons. Further, it appears that the High Court has issued directions to the Trial Court to

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A decide the case before 30.04.1999. As much as the ASP was not examined by 30.04.1999, a request for an extension was sought by the Special Judge, and it was adjourned to 17.05.1999. Even by 17.05.1999, the ASP could not be served as he was on leave. In view of such reasoning assigned by the Trial Court, as well as the High Court, merely because the ASP was not examined, it cannot be said that prosecution has failed to prove its case. It is clear from the evidence on record that he was summoned at the time of search and seizure and only in his presence search was conducted, as such, there is no violation of Section 50 of the NDPS Act. [Para 13] [313-A-C]

C 3. PW-1, during the course of cross-examination, has stated that efforts were made to join independent witnesses, but none were available. Mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed. [Para 14] [313-E]

D 4. From the evidence on record in the present case, the prosecution has proved the guilt of the appellant beyond reasonable doubt. The conviction recorded and the sentence imposed is in conformity with the provisions of law and evidence on record, thus no interference is called for. [Para 17] [314-D]

E *Trimukh Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681 : [2006] 7 Suppl. SCR 156 ; *Noor Aga v. State of Punjab & Anr.* (2008) 16 SCC 417 : [2008] 10 SCR 379 ; *Mohan Lal v. State of Punjab* (2018) 17 SCC 627 : [2018] 9 SCR 1006 ; *Jarnail Singh v. State of Punjab* (2011) 3 SCC 521 : [2011] 2 SCR 888 ;
F *Varinder Kumar v. State of Himachal Pradesh*, (2019) SCC Online SC 170 ; *State, Govt. of NCT of Delhi v. Sunil & Anr.* (2001) 1 SCC 652 : [2000] 5 Suppl. SCR 144 – referred to.

G Case Law Reference

[2006] 7 Suppl. SCR 156	referred to.	Para 8
[2008] 10 SCR 379	referred to.	Para 8

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[2018] 9 SCR 1006	referred to.	Para 8	A
[2011] 2 SCR 888	referred to.	Para 9	
[2000] 5 Suppl. SCR 144	referred to.	Para 15	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 512 of 2009.

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From the Judgment and Order dated 22.04.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 706-SB of 1999.

Mahabir Singh, Sr. Adv., Ms. Preeti Singh, D. Mahesh Babu, Gagan Deep Sharma, Ms. Swati Jindal, Amit K. Nair, Advs. for the Appellant.

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Ms. Ranjeeta Rohatgi, Adv. for the Respondent.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. This Criminal Appeal is filed by the sole accused, aggrieved by the judgment dated 22.04.2008 passed in Criminal Appeal No. 706-SB of 1999 passed by the High Court of Punjab and Haryana at Chandigarh.

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2. The appellant herein was convicted for the offence punishable under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act, 1985'), vide the judgment dated 20.05.1999, passed by the Special Judge, Ferozepur, for offence under Section 18 of NDPS, 1985 and was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh) in default of payment of the same, to undergo rigorous imprisonment for another period of one year.

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3. The case of the prosecution, in brief, is that on 12.09.1996, Devi Lal, HC (PW-1), Darbara Singh, S.I. (PW-2), along with other police officials were going from Dalbir Khera towards Waryam Khera, in a private jeep, on patrol duty, and when they reached near the bridge of Canal minor, the appellant-accused was seen coming from the opposite direction, carrying a bag in his right hand. On seeing the police party, the appellant-accused turned towards the Southern bank of the canal, but was apprehended on suspicion. The search of the bag, carried by the accused, in the presence of ASP, Abohar, who was called to the spot, in

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A accordance with the provisions of the law, resulted into recovery of 1 kg 750 grams of opium. Upon seizure, 2 samples of 10 grams each, were separated and the remaining opium was put into the same bag. The samples were duly sealed and taken into possession. Thereafter, Ruqa was sent to the police station, on the basis whereof an FIR was registered.

B The accused was arrested and after completion of the investigation, he was challaned. On appearance in the court, the documents relied upon by the prosecution were supplied to the accused. A charge under Section 18 of the Act was framed against him, to which he pleaded not guilty and claimed trial.

C 4. To prove the charge against the appellant on behalf of the prosecution, four witnesses were examined i.e Devi Lal, HC, (PW-1), Darbara Singh, SI, (PW-2), SI (PW-3), and Sham Lal, Constable (PW-4). After closure of evidence, the statement of the accused under Section 313 of Cr.P.C. was recorded and he was explained of all incriminating circumstances appeared against him, in the prosecution evidence. He

D pleaded false implication, however, he did not lead any evidence in his defence. After appreciating the oral and documentary evidence on record, the learned Special Judge, Ferozepur, vide his judgment dated 20.05.1999, in Sessions Trial No.17/1999, by recording a finding that prosecution has proved the guilt of the accused for offence under Section

E 18 of the Act, in keeping in his possession 1 kg 750 grams of opium in the area of village Dalmir Khera, convicted the appellant, he was sentenced to rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/- (Rupees One Lakh) in default, to undergo rigorous imprisonment for one year.

F 5. Aggrieved by the aforesaid judgment of the Trial Court, the appellant herein has filed a criminal appeal No. 706-SB before High Court of Punjab and Haryana at Chandigarh. The High Court by impugned judgment dated 22.04.2008, dismissed the appeal filed by the appellant herein and confirmed the judgment and order of sentence dated 20.05.1999, passed by the Special Judge, Ferozepur.

G 6. We have heard Sri Mahabir Singh, learned senior counsel appearing for the appellant assisted by Mr. D.Mahesh Babu, advocate-on-record and Ms. Ranjeeta Rohatgi, learned counsel appearing for the respondent-State.

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7. In this appeal, it is mainly contended by learned senior counsel for the appellant that Sri Joginder Singh, ASI to whom Yogi Raj, SHO (PW-3) handed over the case property on 13.09.1996 was not examined thus link evidence was incomplete, in spite of the same Trial Court and High Court has committed error in convicting the appellant. Further it is submitted that though independent witnesses were there in the patrolling party, such witnesses were not examined and conviction was solely based on the official witnesses. Further it is submitted that S.K. Asthana, ASP who is claimed to have joined to the party by the police, was not even examined and in fact he was not there and opium was not recovered in his presence. It is also pleaded thus there is a violation of provision under Section 50 of NDPS Act, 1985.

8. Learned senior counsel appearing for the appellant, to buttress his submissions, placed reliance on the following judgments:

(i) *Trimukh Maroti Kirkan v. State of Maharashtra*¹.

(ii) *Noor Aga v. State of Punjab & Anr*².

(iii) *Mohan Lal v. State of Punjab*³.

9. On the other hand, learned counsel for the respondent-state has submitted that the prosecution has proved the case by leading cogent evidence, which proved guilt of the appellant beyond reasonable doubt and there are no grounds to interfere with the same. Learned counsel has submitted that merely because prosecution has not examined any independent witness, same would not necessarily lead to the conclusion that the appellant has been falsely implicated. He placed reliance on the judgment in the case of *Jarnail Singh v. State of Punjab*⁴. Further recent judgment of this Court in the case of *Varinder Kumar v. State of Himachal Pradesh*⁵, is also relied on wherein this Court has held that all pending criminal prosecutions, trials and appeals prior to the law led down in *Mohan Lal*³, shall continue to be governed by the individual facts of the case.

10. According to learned senior counsel for the appellant, Joginder Singh, ASI to whom Yogi Raj, SHO (PW-3) handed over the case property

¹ (2006) 10 SCC 681

² (2008) 16 SCC 417

³ (2018) 17 SCC 627.

⁴ (2011) 3 SCC 521.

⁵ (2019) SCC Online SC 170

A for producing the same before the *Illaga* Magistrate and who returned the same to him after such production was not examined, as such, link evidence was incomplete. In this regard, it is to be noticed that Yogi Raj SHO handed over the case property to Joginder Singh, ASI, for production before the Court. After producing the case property before the Court, he returned the case property to Yogi Raj, SHO (PW-3) with the seals intact. It is also to be noticed that Joginder Singh, ASI was not in possession of seals of either of the investigating officer or of Yogi Raj, SHO. He produced the case property before the Court on 13.09.1996 vide application Ex.P-13, the concerned Judicial Magistrate of First Class, after verifying the seals on the case property, passed the order Ex.P-14 to the effect that since there was no judicial malkhana at Abohar, the case property was ordered to be kept in safe custody, in Police Station Khuian Sarwar till further orders. Since Joginder Singh, ASI was not in possession of the seals of either of the SHO or of the Investigating Officer, the question of tampering with the case property by him did not arise at all.

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11. Further he has returned the case property, after production of the same, before the *Illaga* Magistrate, with the seals intact, to Yogi Raj, SHO. In that view of the matter, the Trial Court and the High Court have rightly held that non-examination of Joginder Singh, did not, in any way, affect the case of prosecution. Further, it is evident from the report of the Chemical Examiner, Ex.P-10, that the sample was received with seals intact and that the seals on the sample, tallied with the sample seals. In that view of the matter, the chain of evidence was complete.

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12. The next contention of learned senior counsel Sri Mahabir Singh is that the ASP, who was summoned to the spot, in whose presence search and recovery was effected, was not examined. As such, it is submitted that the non-examination of ASP is fatal to the case of prosecution and it is in violation of Section 50 of NDPS Act, 1985.

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13. It is the specific case of the prosecution that on 12.09.1996, Darbara Singh, SI, (PW-2) along with other police officials were going from Dalbir Khera-2 towards Waryam Khera in a private jeep, when they reached near the bridge of Canal Minor, the appellant-accused was seen coming from opposite direction carrying a bag. It is alleged that on seeing the police party, he turned towards the Southern bank of the canal but was apprehended on suspicion. It is specifically pleaded that the ASP, Abhor who was called at the spot and in his presence his

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bag was searched which resulted into recovery of 1 kg 750 grams of opium. The Trial Court as well as the High Court, has recorded a finding that the perusal of the record reveals the ASP was summoned number of times but either service was not effected or as and when he was served, he sent a request for exemption from personal attendance stating valid reasons. Further, it appears that the High Court has issued directions to the Trial Court to decide the case before 30.04.1999. As much as S.K. Asthana, ASP was not examined by 30.04.1999, a request for an extension was sought by the Special Judge, Ferozepur and it was adjourned to 17.05.1999. Even by 17.05.1999, the ASP could not be served as he was on leave. In view of such reasoning assigned by the Trial Court, as well as the High Court, merely because S.K. Asthana, ASP was not examined, it cannot be said that prosecution has failed to prove its case. It is clear from the evidence on record that he was summoned at the time of search and seizure and only in his presence search was conducted, as such, there is no violation of Section 50 of the NDPS Act.

14. Further, it is contended by learned senior counsel appearing for the appellant that no independent witness was examined, despite the fact they were available. In this regard, it is to be noticed from the depositions of Devi Lal, Head Constable (PW-1), during the course of cross-examination, has stated that efforts were made to join independent witnesses, but none were available. The mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed.

15. The judgment in the case of *Jarnail Singh v. State of Punjab*⁴, relied on by the counsel for the respondent-State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status. In the case of *State, Govt. of NCT of Delhi v. Sunil & Anr.*⁶ it was held as under:

“It is an archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Courts cannot start with the presumption

⁶ (2001)1 SCC 652

A that the police records are untrustworthy. AS a presumption of law, the presumption would be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature”.

16. Learned counsel also placed reliance on the judgment of this Court in the case of *Mohan Lal*³ to support his argument that informant and investigator cannot be the same person. But in the subsequent judgment, in the case of *Varinder Kumar*⁵ this Court held that all pending criminal prosecutions, trials and appeals prior to law laid down in *Mohan Lal*³, shall continue to be governed by individual facts of the case.

C 17. Having regard to oral and documentary evidence placed on record, we are in agreement with the findings recorded by the Trial Court and High Court. From the evidence on record in this case the prosecution has proved the guilt of the appellant beyond reasonable doubt. The conviction recorded and the sentence imposed is in conformity with the provisions of law and evidence on record, thus no interference is called for. Accordingly, this appeal is devoid of merits, and the same is dismissed.

E 18. As the appellant-accused is on bail, the bail bonds are cancelled. He shall surrender within a period of four weeks from today, to serve remaining period of sentence, failing which, the Chief Judicial Magistrate, shall take necessary steps to take the appellant into custody to serve remaining period of sentence.