(2010) 04 P&H CK 0114

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Hans Raj		APPELLANT
	Vs	
State of Haryana		RESPONDENT

Date of Decision: April 30, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 50

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

A.N. Jindal, J.
This appeal is directed against the judgment dated 18.5.2005 passed by the learned Additional Sessions Judge, Hisar, vide which the accused-appellant Hans Raj (herein referred as "the accused") was tried, convicted and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs. 1 lac u/s 15 of the Narcotic Drugs & Psychotropic Substances Act (herein referred as "the Act") for keeping in his possession five bags of poppy husk without any licence or permit.

2. In nutshell, the prosecution case is that on 22.10.2003, Jai Kishan Inspector along with other police officials was going from village Arya Nagar to Balasmand in a Government vehicle bearing registration No. HR 20E-4390 and when they reached near T-Point at Rawalwas Kalan, they came across another police party headed by ASI Balbir Singh. They held a picket and in the meantime, the accused came while driving esteem car bearing registration No. DL-2CD-4353 from the side of Balasmand. The accused tried to flee away and did not stop the car despite he was signalled to stop. However, when he was chased up to some distance, the accused after alighting from the car started running. He was apprehended by the police party. On asking the accused, he disclosed his identity. On giving option of search through notice if wanted to get himself searched by

any Gazetted Officer or a Magistrate, he showed his willingness to be searched by a Gazetted Officer, then on receipt of a wireless message, DSP Mann Singh reached the spot in his Government vehicle with his staff. Investigating Officer apprised him about the facts of the case, then on the asking of the DSP Mann Singh, the car was searched by the Investigating Officer. On search, 5 bags of poppy husk, each containing 39.600 kgs were recovered, out of which 200 grams each was separated as sample. The samples so drawn were converted into parcels and thereafter, parcels were sealed with the seal bearing impression "JK". DSP Mann Singh also affixed his seal bearing impression "MS". Thereafter samples, bags, sample seals and esteem car were taken into possession vide memo Ex.PG. Ruqa was sent to the police station on the basis of which FIR was registered. Statements of the witnesses were recorded, site plan was prepared and completion of the investigation was followed by presentation of the report u/s 173 Cr.P.C.

3. Charge u/s 15 of the Act was framed against the accused to which he pleaded not guilty and claimed trial.

4. In order to substantiate the charges, the prosecution examined six witnesses in all. HC Ram Chander (PW1) had recorded the formal FIR Ex.PB on receipt of the ruqa Ex.PA. HC Jagdish Parshad (PW2) tendered his affidavit Ex.PG disclosing that Investigating Officer Inspector/SHO Jai Kishan deposited the samples and bags of poppy husk along with seals intact with him and on 22.10.2003 he handed over the samples to C. Labh Singh for depositing the same in Forensic Science Laboratory Madhuban. C. Labh Singh (PW3) has also been examined to complete the link evidence. He has supported the testimony of HC Jagdish Parshad (PW2) and has further stated that he deposited the sample and seal with the Forensic Science Laboratory, Madhuban on 17.11.2003 intact. ASI Karan Singh (PW4) is a witness to the recovery. Inspector Jai Kishan (PW5) Investigating Officer proved the notice u/s 50 of the Act Ex.PE, reply Ex.PF, recovery memo Ex.PG, ruqa Ex.PA, rough site plan Ex.PK/1, report Ex.PJ and endorsement Ex.PK and other documents. SI/SHO Hawa Singh (PW6) had partly investigated the case.

5. When examined u/s 313 Cr.P.C. the accused denied all the allegations and pleaded his false implication in the case. However, no evidence was led in defence.

6. The trial ended in conviction.

7. Arguments heard. Record perused.

8. Learned Counsel for the appellant while assailing the judgment and in order to make an abortive bid to get verdict of innocence in favour of the accused, has contended that there are numerous discrepancies in the statements of the witnesses. The legal formalities have not been completed. No independent witness has been joined, therefore, benefit of doubt deserves to be extended to the accused.

9. As regards the first contention, learned Counsel has pointed out that Ram Chander (PW1) who had recorded the formal FIR Ex.PB in the present case had received ruqa Ex.PA through C. Ram Kumar at 8.30 p.m., whereas Inspector Jai Kishan (PW5) has disclosed that he had sent ruqa at 7.30 p.m. through Constable Ram Kumar who had come back at the place of recovery at 8.30 p.m. The discrepancy appears to be out of slip of tongue. No further cross examination was conducted over the Investigating Officer while clarifying the belt number of the witness who had taken the ruqa.

10. As regards the discrepancy with regard time, some time could be consumed in the transit and the some time must have been spent in recording the FIR, therefore, the time discrepancy as come in this case is immaterial. Some other discrepancies have also been pointed out by the appellant so as to belie the prosecution version but the same are bound to occur with the passage of time. Such discrepancies have also been discussed by the trial court, it would be suffice to say that such discrepancies being immaterial in nature do not effect the prosecution case and the same could occur with the passage of time.

11. I also do not find merit in the contention that esteem car could not accommodate five bags. The poppy husk is not a hard mass which was difficult to adjust. While taking judicial notice this Court observes that the esteem car is big enough to accommodate five bags of poppy husk.

12. As regards the non-joining of the independent witness, there is no hard and fast rule that the Investigating Officer is bound to join any independent witness at the time of effecting recovery. The testimonies of the official witnesses is at par with the independent witnesses. The only safeguard in case of the official witnesses is that the court should examine their testimonies with more care and caution so as to rule out any false implication. On scrutiny of the witnesses it transpires that both the witnesses namely ASI Karan Singh (PW4) and Inspector Jai Kishan (PW5) are quite consistent in their statements with regard to time, place and manner in which recovery of few bags poppy husk was effected. No enmity, animus, bias or prejudice against the accused has been levelled and proved against the accused for falsely implicating him in this case. The presence of the accused is also proved from the various documents i.e. Ex.PE and Ex.PF. It has also been observed in case Balkar Singh v. State of Haryana 1995 (2) RCR 505 that non-joining of independent witness is immaterial when the testimonies of other witnesses is reliable. Here in this case, the testimony of two official witnesses cannot be thrown away merely for the reason that they are police officers. Their testimonies, on scrutiny, are found to be quite reliable and trustworthy. No allegations of enmity against these witnesses has been levelled for falsely implicating the accused. Such a heavy recovery cannot be planted against the accused by the Investigating Officer from his own source. The link evidence is complete. No merit could be detected in the contention that the accused is neither owner nor driver of the car. The criminals in this part of the country are intelligent enough to save themselves from legal punishment when they move with the contraband take vehicles without number plate, fake number plate, wrong or fictitious

name of the owner in the registration book. They intentionally do not get recorded their names in the Registration Book of the vehicle in which they do any such act relating to narcotic or other serious offences. Some times, the vehicles are hired for transacting such business.

13. As regards the arguments with regard to conscious possession, the accused was alone in the car when he was driving the same. On seeing the police party the accused felt disturbed, refused to honour the signal and virtually ran away to some distance, however, he was over powered by making a chase. Thus, such conduct of the accused goes to show that he was in conscious possession of the contraband which was recovered from the dicky of the car. Had he not been in the knowledge of the contents of the bags, then he would not moved with the contraband in the esteem car at such odd hours and would have surrendered before the police immediately and responded to their queries. As such, it cannot be said that the accused had failed to shift the onus, consequently, inference would be drawn that the accused was in conscious possession of the five bags of the contraband when he was apprehended at the spot.

14. For the foregoing reasons, I do not find any merit in the appeal and the same is hereby dismissed.