

SUPREME COURT OF INDIA

Radhey Sham

Vs.

State of Haryana

(M.B. Shah and S.N. Phukan JJ.)

13.12.2000

ORDER

1. This appeal is filed against the judgment and order dated 8.2.1999 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 159-SB/1996 whereby the High Court dismissed the appeal and confirmed the judgment and order dated 2.2.1996 passed by the Addl. Sessions Judge in Sessions Case No. 24/1995. By the impugned order Addl. Sessions Judge has convicted the appellant under the provisions of Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced him to suffer rigorous imprisonment for 10 years and also to pay a fine of Rs. 1,00,000/- and in the event of default in the payment of fine, to undergo rigorous imprisonment for one year.

2. The prosecution version is that on 18.2.1995 SI/SHO Baljit Singh along with ASI Subhash Chander, Head Constable, Om Prakash and other police personnel were present at village Talwani in connection with 'Nakabandi', a Maruti van of white colour came towards them and was signalled to stop but instead of stopping the same, was driven with speed. After going at some distance the van turned turtle and two persons from the said van alighted and started running away. After some distance the present appellant was caught and another person succeeded in running away. On checking the van, 8 bags were found in it. On suspicion, SI Baljit Singh served notice on the appellant to the effect that he wanted to take search of the bags and whether accused was interested to give search in presence of the gazetted officer or Magistrate. The appellant replied that he be searched in presence of a gazetted officer. Hence, PW-1 Lal Chand, DSP Siwani, Head Quarters at Hissar was called for through wireless message by the SHO Baljit Singh. When he came there, he saw the Marutivan. He found the van in a turtle position on the left side of the road and the accused was sitting near the van. In his presence, search was carried out and 8 bags of chura-post were found. Each bag was having 40 kgs of chura-post. After completing the necessary panchnama accused was arrested.

3. In order to prove the prosecution case, prosecution examined PW-1 Lal Chand, DSP, PW-2 ASI Subhash Chander, PW-3 SI Baljit Singh and PW-4 Head Constable Sudhinder Kumar, and also produced the chemical analyser report. Appellant denied the charge and submitted that nothing was recovered from him and that at the instance of Head Constable Om Prakash, who belongs to his village, he has been falsely implicated in the case. Accused was also got examined, defence witness Pawan Kumar, who was the owner of the Maruti van has stated that on 16.02.1995 SI Baljit Singh came to his shop and demanded the Maruti van for his personal use. Thereafter, on the next day Maruti van was given to him (SI Baljit Singh). On the following day a constable came and informed

him to take away Maruti van from the police station, Siwani. There he found that the Maruti van was damaged due to accident. It is his further say that he told Baljit Singh that he should get it repaired. Hearing this, he became furious and informed him that he should come there on the next day. On the next day i.e. on 19.02.1995 when he went to the police station, he was informed that the van was involved in a criminal case. He was also informed that if he argued further he would also be implicated in the case. He denied the acquaintance with the appellant.

4. The trial court as well as the Appellate Court after appreciating the entire evidence arrived at the conclusion that there is no substance in the defence raised by the appellant. Court relied upon the evidence of the DSP PW-1 in whose presence the van was searched and 8 bags of chura-post were found. PW-2 ASI Subhash Chander has also narrated the incident and has stated that during the 'Nakabandi' he signalled the van to stop but the driver did not stop it and tried to run away in full speed. After a short distance the van turned turtle and two persons alighted from the same and tried to run. But one was apprehended on the spot and the other succeeded in running away. Thereafter, necessary procedure for seizure of 8 bags of chura-post, was followed. Panchnama was prepared and samples were taken and sealed by affixing the necessary seals. In cross-examination he stated that weighing scale was brought by the Head Constable from the village which was at a distance of two furlongs. Same is the version of PW-3 SI Baljit Singh and in cross-examination a suggestion was made with regard to non-calling of independent witnesses from the village. To that, he stated that Head Constable Om Prakash was sent to the village to bring some respectable persons from the village but Om Prakash returned and informed that no villager was willing to join investigation. Recovery of memo is also produced on record which bears the signature of DSP Lal Chand, SI Baljit Singh, ASI Subhash Chander and Head Constable Om Prakash.

5. At the time of hearing of the appeal, learned Counsel for the appellant submitted that before carrying out search, notice required to be given under Section 50 of the Act, was not given, therefore, the search is illegal and accused is required to be acquitted. In our view, this submission is without any substance. No suggestion was made to any of the witnesses that first search was carried out and thereafter accused was informed whether he intended to be searched by a gazetted officer or a Magistrate. It is the prosecution version that on suspicion, accused was informed and notice was given whether he intended to be searched by a gazetted officer or a Magistrate.

6. Learned Counsel for the appellant further submitted that FIR number is mentioned on the recovery memo and therefore it is apparent that FIR was first registered and thereafter the recovery memo was prepared. He has also submitted that sealing of the seized article was also not proper. No independent witness was examined nor accused was having any injury even though the van turned turtle. In our view, the aforesaid submissions deserve no consideration because with regard to the FIR, FIR number is mentioned on the recovery memo but that would not vitiate the recording of FIR. For the independent witnesses, in cross-examination, it was explained that no villager was prepared to come and assist the investigation. For the seals used by the SHO also, there is no substance because as deposed by the witnesses all the seals were placed separately, one by Om Prakash and the other by DSP Lal Chand. There is nothing in cross-examination of the witnesses that procedure with regard to the seal was not followed. Further with regard to injury to the accused it is difficult to say that why he has not received injury even though the van turned turtle as it is not necessary that there would be injury in all cases. From that, inference can be drawn that the accused had not alighted from the van.

7. Lastly, learned Counsel appearing for the appellant submitted that in view of the evidence of

defence witness, Court ought to have considered that as there was some altercation between Pawan Kumar and SI Baljit Singh, accused has been falsely implicated in the crime. In our view, if there was any altercation or dispute between Pawan Kumar and SI Baljit Singh, there was no reason for the prosecution to involve the appellant. If they wanted to involve Pawan Kumar falsely who is the owner of the van, they could have done so easily because from the van owned by him 8 bags containing 320 kgs. of chura-post (poppy husk) were found. Further, it is to be stated that accused in his statement under Section 313 Cr.P.C. has stated that he was falsely implicated at the behest of Head Constable Om Prakash. As against this, witness Pawan Kumar has stated that there was dispute with Baljit Singh. In this view of the matter, no credence can be given to the defence.

8. In the result, we hold that there is no substance in the appeal. It is, therefore, dismissed.