REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 580 OF 2020
(Arising out of S.L.P.(Criminal) No.4422/2019)

Rizwan Khan ...Appellant

Versus

The State of Chhattisgarh ...Respondent

J U D G M E N T

M.R. SHAH, J.

Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned Judgment and Order dated 01.10.2018 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 881/2012, by which the High Court has dismissed the said appeal preferred by the appellant herein – original accused No.1 and has confirmed the Judgment and Order of Conviction and Sentence passed by the learned Special Court convicting the accused – appellant no.1 for the offence under Section 20(b)(ii)(B) of Narcotic Drugs &

Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act') and sentencing him to undergo five years rigorous imprisonment and fine of Rs.25,000/-, in default, to undergo further one year's rigorous imprisonment, original accused no.1 has preferred the present appeal.

3. The facts leading to the present appeal are, that the appellant – accused no.1 and one another – Pukhraj were charged for the offence under Section 20(b)(ii)(B) of the NDPS Act, having in their possession 20 kg each prohibited Narcotic Substance – Ganja. As per the case of the prosecution, 20 kg of Ganja was recovered from the possession of the appellant from the motor cycle. Nothing objectionable was found from the person of the accused. Accused were informed about Section 50 of the NDPS Act through a notice and were also told about their legal rights that if they want their search was to be done either by a Gazetted Officer or Judicial Magistrate of First Class or any other investigating officer. After giving permission that the search can be conducted by any investigating officer, accused was asked to open the sack kept on his motor cycle and on opening the same, a bag of Ganja weighing 20kg was found. Panchnama was made of seizure. Samples of narcotics recovered

from the accused were tested by smelling, burning and tasting it and was found to be Ganja. An identification panchnama was prepared. The Ganja recovered from the accused was about 20 kg, out of which two packets each of about 100 gm were made for sampling and then the weight panchnama was made. The samples were sealed and an entry was made in the seizure list on which sample seal was marked. Samples were marked as 'B1' and 'B2' and rest of the seized substance was marked as 'B'. The accused was arrested along with the other accused from whom also the contraband narcotic substance was found. At this stage, it is required to be noted that ASI J.K. Sen (PW4) received the information and it was recorded by him in Dehati Nalsi and FIR in the police station. However, subsequently, all further investigation was carried out by Police Inspector Ashish Shukla – PW5, who investigated the matter after registration of the FIR and recorded statement of witnesses. The information of the complete investigation was given to Special Judge, NDPS and also the Municipal Police Officer. The packets of the narcotic substance made were sent to the laboratory for testing through constable. The substance seized was found to be Ganja. On completion of the investigation against the accused under the NDPS Act,

appellant and one another – Pukhraj were chargesheeted for the offence under Section 20(b)(ii)(B) of the NDPS Act and another co-accused Rakesh Kumar was charged for the offence under Section 20(b)(ii)(C) of the NDPS Act. All the accused pleaded not guilty and therefore they came to be tried for the aforesaid offences. In the present case, we are concerned with original accused no.1 – Rizwan Khan and therefore we shall consider the case against Rizwan Khan only;

3.1 To prove the case against the accused, the prosecution examined eight witnesses, out of which PW1 – Bholu and PW6 – Kanhaiya are the independent witnesses. PW3 – Sudeep Prasad Mishra is the constable who had taken the samples to FSL. PW4 was the police officer who recorded the information and thereafter the FIR. PW5 – Ashish Shukla investigated the case after registration of the FIR by J.K. Sen, PW4. The prosecution also produced on record the documentary evidence, such as, seizure memo, FSL report, etc. After closure of the evidence on behalf of the prosecution, further statement of the accused under Section 313, Cr.P.C. was recorded. The case on behalf of the appellant – original accused no.1 was of total denial.

4. After conclusion of the trial and on appreciation of the evidence on record, the learned Special Judge held the accused guilty for the offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo five years rigorous imprisonment with fine of Rs.25,000/-, in default, to undergo further one year's rigorous imprisonment.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, the appellant herein preferred an appeal before the High Court. Before the High Court, one of the main submissions on behalf of the appellant was that as ASI J.K.Sen (PW4), who seized the articles and lodged FIR also participated in investigation and therefore the complainant and the investigator being the same, in view of the decision of this Court in the case of *Mohan Lal v. State of Punjab reported in (2018) 17 SCC 627*, the accused is entitled to acquittal. Number of other submissions were also made before the High Court on behalf of the accused, as mentioned in paragraph 4 of the impugned judgment and order passed by the High Court.

5.1 After having noted that ASI J.K. Sen (PW4) only seized the articles and lodged the FIR and thereafter no further investigation

was carried out by him and the further investigation was carried out by PW5 – Ashish Shukla, the decision of this Court in the case of *Mohan Lal (supra)* shall not be applicable. After considering the submissions made on behalf of the respective parties, by the impugned judgment and order, the High Court has dismissed the said appeal preferred by accused no.1 and has confirmed the judgment and order of conviction and sentence passed by the learned Special Judge. Hence, the present appeal.

6. Learned counsel appearing for the appellant – original accused no.1 has made the following submissions:

i) that mandatory provisions of Section 42 of the NDPS Act has not been complied with;

ii) that both the learned Special Court and the High Court have committed a grave error in convicting the appellant on the sole testimony of the police officers;

iii) that panchnama witnesses have not supported the version of the prosecution and the person who weighed the quantity of Ganja is also not supported the case of the prosecution;

iv) that out of the eight witnesses examined, the independent witnesses have not supported the prosecution story and were declared hostile;

v) that alleged seizure of contraband from the appellant/accused from his motor cycle is also doubtful as its number on the different documents is not same; that in Ex. P/10 its number is mentioned as 8499 while in Ex. P/16 and P/37 its number is mentioned as 4489; that samples seized from the appellant/accused were marked as 'B1' and 'B2', whereas the letter sent to Senior Superintendent of Police as per Ex. P/33 shows article 'A1' was seized from the accused and therefore it is not proved that the contraband which is seized from the appellant/accused was sent for examination; that the sample was not deposited in safe custody and it is not mentioned in malkhana register;

vi) that non-recovery of the motor cycle is also fatal to the case of the prosecution;

vii) that the seal was not kept in safe custody as PW7 has stated that he did not made any entry of seal in the register of malkhana;

vii) that no sample of the seal was sent along with the samples to the FSL for the purpose of comparing with the seal appearing on the samples of contraband allegedly recovered from the appellant/accused;

viii) that non-examination of constables who accompanied PW4 at the time of recovery also creates serious doubt on the prosecution case.

6.1 Learned counsel appearing for the appellant/accused has further submitted that there are such a large number of discrepancies, if a cumulative effect thereto is taken into consideration on the basis of the permissive inference would be that serious doubts are created with respect to the prosecution's endeavour to prove the fact of possession of contraband by the appellant/accused;

6.2 Learned counsel appearing for the appellant/accused has further submitted that by now the appellant/accused has already undergone three years of sentence out of five years awarded to him. It is prayed that as Section 20(b)(ii)(B) of the NDPS Act does not provide for any minimum sentence and if this Court is not satisfied with the submissions of the appellant on merits, then in that case, a lenient view may be taken and

sentence of five years may be reduced to the period already undergone by the appellant/accused.

7. The present appeal is vehemently opposed by the learned counsel appearing on behalf of the respondent – State of Chhattisgarh. It is vehemently submitted by the learned counsel appearing on behalf of the respondent – State that in the present case on appreciation of evidence and after considering the fact that the investigating officer has taken all precautions and measures which are required to be taken under the provisions of the NDPS Act, both the courts below have rightly convicted the accused for the offence under Section 20(b)(ii)(B) of the NDPS Act;

7.1 It is further submitted that in the present case the prosecution has established and proved beyond doubt, compliance of the procedure prescribed under the NDPS Act, more particularly, Sections 42, 50 and 55 of the NDPS Act. It is submitted that the compliance of the aforesaid provisions has been established and proved by the prosecution by examining the witnesses, PW3, PW4, PW5, PW7 and PW8;

7.2 It is further submitted that though in the present case the independent witnesses (Panchnama witnesses) have turned hostile, that does not adversely affect the case of the prosecution.

It is submitted that the prosecution has been successful in proving the case against the accused by examining the reliable witnesses, i.e., PW3, PW4, PW5, PW7 and PW8. It is submitted that merely because the independent witnesses who have signed the seizure documents turned hostile, the evidence of other witnesses, may be police officials, cannot be discarded. It is submitted that only on the independent witnesses turning hostile, the entire case of the prosecution cannot be disregarded;

7.3 It is further submitted that in the present case the prosecution witnesses fully supported the case of the prosecution and they are found to be trustworthy and no question of enmity came up between them and the accused persons. Reliance is placed upon the decision of this Court in the case of *P.P. Fathima v. State of Kerala, (2003) 8 SCC 726; Baldev Singh v. State of Haryana, (2015) 17 SCC 554; and State of Himachal Pradesh v. Pradeep Kumar, (2018) 13 SCC 808*;

7.4 Now so far as the submission on behalf of the accused that the complainant and the investigating officer was the same and therefore the trial is vitiated is concerned, it is submitted that in the present case, as such, the said question does not arise as in the present case the investigation has been carried out by police

inspector Ashish Shukla, PW5 and Shri J.K. Sen, PW4 only recorded the FIR. It is submitted that even otherwise in view of the recent decision of this Court in the case of *Mukesh Singh v. State (Narcotic Branch) (Special Leave Petition (Criminal) Diary No.39528/2018, decided on 31.08.2020)* under the NDPS Act, the decision of this Court in the case of *Mohan Lal (supra)* is not a good law;

7.5 It is further submitted that in the present case finding of guilt of the accused is based upon corroborative statements of PW4 (J.K. Sen) with PW3(Sudeep Prasad Mishra), PW5 (Ashish Shukla), PW7 (Nagender Singh), PW8 (Ishwar Prasad Verma) coupled with the forensic report. It is submitted that in the present case the prosecution case does not rest solely on the testimony of PW4 as is submitted on behalf of the accused;

7.6 Now so far as the submission on behalf of the accused that as in the memorandum of Superintendent of Police the sample is written as 'A1', whereas recovery from the appellant – Rizwan Khan was marked as 'B1' and 'B2' and therefore there are material contradictions and therefore it is doubtful whether the samples which were seized from the appellant – accused were sent to the FSL, it is vehemently submitted that in fact there was

a clerical error in numbering of sample in memorandum of Superintendent of Police. It is submitted that otherwise the records clearly established that recovery from Rizwan Khan was marked as 'B1' and 'B2' and the treasury record also established that narcotic substances recovered from Rizwan Khan were 'B1' and 'B2' and the said samples were sent to the FSL;

7.7 It is further submitted that the prosecution having failed to prove the ownership of the motor cycle (vehicle) and/or failed to recover the motor cycle subsequently, does not vitiate the prosecution case as the accused persons were found on the spot with the contraband articles in the vehicle. It is submitted that therefore the commission of an offence under the NDPS Act is proved against them. It is submitted that it is not a case where ownership of the vehicle is to be determined but commission of an offence under the NDPS Act was to be ascertained;

7.8 Making the above submissions and relying upon the aforesaid decisions of this Court, it is prayed to dismiss the present appeal.

8. We have heard the learned counsel for the respective parties at length.

8.1 We have scanned and re-appreciated the entire evidence on record. We have also considered the findings recorded by the learned Special Court, confirmed by the High Court.

8.2 Having gone through the entire evidence on record and the findings recorded by the courts below, we are of the opinion that in the present case the prosecution has been successful in proving the case against the accused by examining the witnesses PW3, PW4, PW5, PW7 and PW8. It is true that all the aforesaid witnesses are police officials and two independent witnesses who were panchnama witnesses had turned hostile. However, all the aforesaid police witnesses are found to be reliable and trustworthy. All of them have been thoroughly cross-examined by the defence. There is no allegation of any enmity between the police witnesses and the accused. No such defence has been taken in the statement under Section 313, Cr.P.C. There is no law that the evidence of police officials, unless supported by independent evidence, is to be discarded and/or unworthy of acceptance.

It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness. As observed and held by this Court in

catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case, [see *Pardeep Kumar (supra)].*

In the recent decision in the case of *Surinder Kumar v. State of Punjab, (2020) 2 SCC 563*, while considering somewhat similar submission of non-examination of independent witnesses, while dealing with the offence under the NDPS Act, in paragraphs 15 and 16, this Court observed and held as under:

> *"15. The judgment in Jarnail Singh v. State of Punjab (2011) 3 SCC 521, 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 the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status.*
>
> *16.* In State (NCT of Delhi) v. Sunil, (2011) 1 SCC 652, it was held as under: (SCC p. 655)
>
> > "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 court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature."

Applying the law laid down by this Court on the evidence of police officials/police witnesses to the facts of the case in hand, referred to hereinabove, we are of the opinion as the police witnesses are found to be reliable and trustworthy, no error has been committed by both the courts below in convicting the accused relying upon the deposition of the police officials.

9. Now so far as the submission on behalf of the accused with respect to non-compliance of the procedure prescribed under Section 42 of the NDPS Act is concerned, on considering the deposition of PW8 (Ishwar Prasad Verma), compliance of the procedure prescribed under Section 42 of the NDPS Act has been established and proved.

9.1 Similarly, compliance under Section 55 of the NDPS Act has also been established and proved by the prosecution by examining PW3 and PW7.

9.2 It has been established and proved that the samples which were seized and sealed were sent to the FSL. From the record, it establishes that the recovery from Rizwan Khan was marked as 'B1' and 'B2' and the treasury record also that the narcotic substances recovered from Rizwan Khan were shown as 'B1' and 'B2'. There seems to be some clerical error in numbering of

sample in memorandum of Superintendent of Police and the same was mentioned as 'A1'. However, it has been established and proved that the samples which were seized and sealed from Rizwan were sent to the FSL. The aforesaid aspect has been dealt with by the learned Special Court in its judgment in paragraphs 25 and 26.

10. Now so far as the submission on behalf of the accused that as PW4 – J.K. Sen who recorded the FIR, he himself was the investigating officer and therefore the trial is vitiated is concerned, it is required to be noted that initially learned counsel appearing on behalf of the accused made the above submission relying upon the decision of this Court in the case of *Mohan Lal (supra)*. However, in view of the recent decision of this Court in the case of *Mukesh Singh (supra)* overruling the decision of this Court in the case of *Mohan Lal (supra)*, learned counsel appearing for the accused has not pressed the above ground. Even otherwise, it is required to be noted that in the present case the aforesaid issue does not arise as after the FIR was recorded by Shri J.K. Sen, PW4, thereafter the case was investigated by

Ashish Shukla, PW5. Therefore, on facts, both the complainant and the investigating officer were different.

11. Now so far as the submission on behalf of the accused that the ownership of the motor cycle (vehicle) has not been established and proved and/or that the vehicle has not be recovered is concerned, it is required to be noted that in the present case the appellant and the other accused persons were found on the spot with the contraband articles in the vehicle. To prove the case under the NDPS Act, the ownership of the vehicle is not required to be established and proved. It is enough to establish and prove that the contraband articles were found from the accused from the vehicle purchased by the accused. Ownership of the vehicle is immaterial. What is required to be established and proved is the recovery of the contraband articles and the commission of an offence under the NDPS Act? Therefore, merely because of the ownership of the vehicle is not established and proved and/or the vehicle is not recovered subsequently, trial is not vitiated, while the prosecution has been successful in proving and establishing the recovery of the contraband articles from the accused on the spot.

12. Now so far as the prayer on behalf of the accused to take a lenient view and to impose the lesser punishment than the sentence imposed by the learned Special Court, confirmed by the High Court, is concerned, considering the object and purpose of the enactment of the NDPS Act and the fact that the sentence provided under the Act for the offence in question is rigorous imprisonment for a term which may extend to 10 years and with fine which may extend to one lakh rupees and the Court has imposed sentence of five years rigorous imprisonment only, the prayer to take a lenient view is rejected as the learned Special Court itself has taken a lenient view.

13. In view of the above and for the reasons stated above, we are of the firm view that both the courts below have rightly convicted the accused for the offence under Section 20(b)(ii)(B) of the NDPS Act. We are in complete agreement with the findings recorded by the learned Special Court and confirmed by the High Court and the conviction recorded by both the courts below. We see no reason to interfere with the conviction of the accused for the offence under Section 20(b)(ii)(B) of the NDPS Act. In the

circumstances, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed.

.....J.
[ASHOK BHUSHAN]

.....J.
[R. SUBHASH REDDY]

NEW DELHI;
SEPTEMBER 10, 2020.

.....J.
[M.R. SHAH]