

**IN THE COURT OF SAURABH GUPTA, JUDICIAL
MAGISTRATE, Ist Class, Panchkula (UID No.HR0284)**

Case Type	NDPS
Filing No.	2133/2018 Filing Date : 06.03.2018
Case No.	2/2018 Registration Date: 28.02.2018
Case Code	HRPK03002135-2018
Date of Order	29.11.2019

State of Haryana

Versus

Guru Parsad son of Sh. Badri Parsad, resident of Village Jaman Nagar, P.S
Safipur, Distt. Unav, U.P.

...Accused.

**FIR No.146 dated 09.08.2016.
U/S : 20,61,85 of NDPS Act
Police Station, Sector-14, Panchkula.**

Present: Shri Surender Singh, APP for the State.
Accused Guru Parsad on bail with Shri Amit Dudeja,
Advocate.

JUDGMENT:

Accused above named has been sent up to face trial by virtue
of FIR No.146 dated 09.08.2016 registered at P.S Sector 14, Panchkula
for having committed under Section 20 NDPS Act.

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2. As per the brief facts of story of prosecution, it has been stated that on 09.08.2016 when SI Amarjeet Singh along with HC Ombir, C1 Sanjeev Kumar was on patrolling duty in official vehicle being driven by SPO Sukhdeep Singh, he saw a young boy who was walking on the road. The boy upon seeing the police party turned around and started moving swiftly. Upon suspicion, SI Amarjeet Singh caught hold of the boy along with his police officials. The boy suddenly threw a polythene bag of black colour from his pocket. SI Amarjeet Singh checked the same and from his experience he came to know that the said polythene bag was containing contraband "Charas". The accused told his name to the Investigating Officer as Guru Parsad. The accused could not produce any license entitling him to keep the contraband in his possession. The contraband was got weighted on electronic scale and was found out to be 250 grams. Two samples of 10 gram each were taken out and marked A1 and A2 and the remaining contraband of 230 grams was placed back in the polythene bag. All three samples were sealed with seal OP and the seal was handed over to HC Ombir. It has been stated by the prosecution that since a chance recovery was effected, there was no occasion available for calling a Gazetted Officer or Magistrate on the spot. Upon finding a prima facie case endorsement was written and matter was reported to the police station for registration of the FIR.

3. Upon finding a prima-facie case FIR under Section 20 of NDPS Act was lodged. Site map was prepared, accused was arrested,

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recovered contraband was got tested from FSL Madhuban, statement of the witnesses under Section 161 CrPC were recorded. Upon completion of all necessary formalities of the Investigation, challan in the present case was filed before the learned Special Court on 15.09.2016.

4. Thereafter, FSL report was received from which it transpired that the recovered contraband was not “charas”, but it was “Ganja” because of which the matter was sent back to the court of learned Chief Judicial Magistrate, Panchkula for further trial and was accordingly was entrusted to this court.

5. Copies of challan were supplied to the accused free of costs as envisaged in Cr.P.C and the case was fixed for arguments on the point of charge.

6. Upon finding a prima facie case, accused was charge-sheeted for having committed offence under Section 20 of NDPS Act and the case was fixed for prosecution evidence.

7. In order to prove its case, the prosecution has got examined the complainant and Investigation Officer of the case, SI Amarjeet Singh as PW1, who supported the case of prosecution in his examination-in-chief. He further proved recovery memo Ex.PW1/A, sample seal Ex.PW1/B to Ex.PW1/D, tehrir Ex.PW1/E, case property Mark A and Mark B. He was duly cross-examined and in his cross-examination he stated to the effect that log book of the official vehicle is being maintained by the driver of the vehicle. He further stated that DDR was recorded

regarding constitution of patrolling team. He further stated that accused came to the spot at around 09.25 PM. He further stated that no independent witness was joined in course of investigation and no Magistrate or Gazetted Officer conducted the search of the accused and the case property was not videographed at the spot. He further stated that he had sealed the case property prior to the arrival of independent Investigating Officer and had handed over the case property to independent Investigation Officer when he came to the spot.

8. ASI Sham Lal, who reached the spot and investigated the case has been examined as PW2 and has proved formal FIR Ex.PW2/A, endorsement Ex.PW2/B, Site map Ex.PW2/C, notice under Section 52 NDPS Act as Ex.PW2/E, arrest form Ex.PW2/F, inventory report Ex.PW2/G, application moved to the Magistrate Ex.PW2/H, court order Ex.PW2/I, docket sent to FSL Ex.PW2/J, disclosure statement Ex.PW2/K and Ex.PW2/L, photographs Ex.P1 to Ex.P5. He was duly cross examined and in his cross-examination he stated to the effect that recovery memo had already been prepared by the complainant Investigation Officer prior to his arrival at the spot and case property had also been sealed prior to his arrival at the spot. He further cross examined that no independent witness was joined in course of investigation.

9. Constable Chander Pal has been examined as PW3 and he happens to be a formal witness, who has stated to effect that he has taken the samples for forensic examination to FSL, Madhuban.

10. HC Kaptan Singh, has been examined as PW4 and he has stated to the effect that case property was deposited with him by ASI Yogdhyan on 09.08.2016.

11. HC Sanjeev Kumar has been examined as PW5 and being an associated witness he has supported the case of prosecution. In his cross-examination he stated to the effect that he told the FIR number of the incident to the Investigating Officer and before he had reached the spot, the Investigation Officer never knew the FIR number of the case.

12. SI Kirpal Singh has been examined as PW6 and he has proved notice under Section 57 of NDPS Act as Ex.PW6/A.

13. Nitin, criminal Ahlmad has been recorded as PW7 and he has proved court order Ex.PW2/I. Thereafter learned APP for the State got the FSL report exhibited as Ex.P6 and closed the prosecution evidence.

14. Thereafter, statement of the accused under Section 313 Cr.P.C was recorded and entire incriminating material was put to the accused, who stated to the effect that he has been falsely implicated and witnesses have deposed falsely.

15. Thereafter, the case was fixed for defence evidence. However, no defence evidence was produced by the accused and he preferred to argue the case on merits.

16. I have carefully heard learned APP for the State as well as learned counsel for accused and have gone through the entire material on record.

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17. In course of arguments learned APP for the State has argued to the effect that all material ingredients of the offence in question are being fulfilled in the present case and identity of the accused is being established beyond all reasonable doubts. Accordingly, prayer has been made that the accused should be acquitted.

18. On the other hand, learned counsel for the accused has argued to the effect that prosecution has miserably failed to prove its case and the accused has been falsely implicated. Accordingly, prayer has been made that the accused should be acquitted.

19. A perusal of the case file reveals that as per the story of the prosecution, it has been stated that a police patrolling party on 09.08.2016 at about 6/6.30 PM arrested that accused upon suspicion and he was found to be in conscious possession of 250 grams of contraband which as per the FSL report was discovered to be “ganja”. In order to prove its case, the prosecution has got examined the above stated witnesses.

20. At the outset it would be pertinent to note that recovery from the accused has been stated to have been effected from a public place i.e. a road. However, through out the course of investigation no independent witness has been examined by the prosecution to support its case that the accused was arrested upon suspicion on a road and contraband was recovered from his possession. The said fact gains importance since the search of the accused has not been made by a Gazetted Officer or by a

Magistrate or in their presence. The place of recovery happens to be a public place where many persons from society were available but have not been joined in course of investigation. This creates a doubt regarding the veracity of story of prosecution. This doubt regarding recovery having been made by the prosecution is aggravated considering the fact that as per endorsement Ex.PW1/E, it has been stated by the police that the entire proceedings had been completed by the police by 6.30 PM and a police official had also been sent to the police station for getting the FIR registered by then. FIR in the present case was lodged even before 7.00 PM, but PW1 on whose complaint the entire proceedings were lodged and who has stated to have arrested the accused and found him to be in possession of contraband has stated to the effect that accused came to the spot at around 09:25 PM. This discrepancy happens to be major discrepancy and demolishes the entire case of prosecution especially when recovery has not been effected in presence of any independent witness. The process of recovery was not photographed and videographed. No DDR or log book of official vehicle have been placed on record to prove the fact that police team was in fact present at the spot when recovery has been stated to have been effected. HC Ombir and SPO Sukhdeep Singh, who were also present at the spot with SI Amarjeet Singh have not been examined by the prosecution and thus a valuable right of the accused has been infringed by virtue of which the accused could have cross examined both these witnesses and could have pointed

out the discrepancies in the story of the prosecution. There is nothing on record that police officials had conducted inter-se personal search of each other to rule out possibility of case property being implanted.

21. The complainant himself happens to be the Investigating Officer of the major part of the case. If the complainant police official had found the accused to be in possession of the contraband and if he had reported the matter to the police station and had called up an independent Investigating Officer, the complainant was bound to have waited for independent IO before sealing the case property. However, PW2 who happens to be an independent Investigating Officer has stated to the effect that even before he had arrived at the spot the complainant Investigating Officer had already sealed the case property and sealed parcel was handed over to him. This being the case the possibility of case property having been implanted upon the accused can not be ruled out because the complainant, who himself happens to be an Investigating Officer is always interested in success of his case, rather, than in conducting an impartial investigation.

22. PW5 C1 Sanjeev has stated to the effect that he had gone from the spot for getting the FIR lodged and when he came back to the spot he had informed the complainant police official about the FIR number and before this the complainant police official never knew the FIR number of the case. He has further stated that before his arrival at the

spot the complainant police official had already prepared the recovery memo and had already sealed the parcels of the contraband. The perusal of the recovery memo and other documents reveal that complainant police official had mentioned the FIR number on the documents prepared by him but he has failed to explain as to how the same could have been done by him when he did not even know about the FIR number by them.

23. It is an established principle of law that in order to prove the guilt of the accused, the prosecution has to prove its case beyond all reasonable doubts and benefit of doubt, if any, has to be given to the accused.

24. In view of my aforesaid discussion, there are various shortcomings and discrepancies in the story of the prosecution and by extending benefit of doubt, the accused is hereby acquitted of the charges framed against her. His bail bonds and surety bonds shall remain intact for a further period of six months. Case property, if any, be disposed off as per rules, subject to the pendency of any appeal or revision. File be consigned to record room, after due compliance.

Pronounced in open Court:
Dated: 29.11.2019.

(Saurabh Gupta),
Judicial Magistrate Ist Class,
Panchkula
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Note : Each page of the Judgment has been checked and signed by me.

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Judicial Magistrate Ist Class,
Panchkula 29.11.2019.
(UID No.HR0284).

Meenu

CNR No.HRPK03002135-2018
Case No. NDPS-2/2018

Present: Shri Surender Singh, APP for the State.
Accused Guru Parsad on bail with Shri Amit Dudeja,
Advocate.

Today the case was fixed for defence evidence. No defence
evidence is present. The same is closed by court order.

Arguments heard. Judgment pronounced. Vide my separate
judgment of even date, accused is acquitted of the charges framed against
him by granting benefit of doubt. The accused is set at liberty in this case.
Case property, if any, be disposed of as per law/rules after the expiry of
the period of appeal/revision. Bail bond and surety bond of the accused
would continue for a period of six month from this date in view of the
provisions of section 437-A of the Code of Criminal Procedure, 1973, and
the accused would be liable to appear before Appellate Court and in case
of his default, he would be liable alongwith his surety under section 446
of the Code of Criminal Procedure, 1973. File be consigned to record
room after due compliance.

Pronounced in open court:
Dated: 29.11.2019

(Saurabh Gupta),
Judicial Magistrate Ist Class,
Panchkula
(UID No.HR0284)