

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Appeal S-2397-SB of 2003
Date of Decision: September 4, 2015**

Mohammad Ramzan

.....Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Jagdeep Singh Virk, Advocate
for the appellant.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

T.P.S.MANN, J. (Oral)

The appellant was tried for committing offence punishable under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act'), for being found in possession of 800 grams of charas .

Vide judgment and order dated 6.8.2003, the Special Judge, Amritsar, convicted the appellant for the aforementioned offence and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month. The period already spent by him during the investigation/trial was ordered to be set off against the

substantive sentence of imprisonment imposed upon him.

The case of the prosecution, in nutshell, is that on 22.9.2002, SI Kashmiri Lal, alongwith his fellow officials, was present at Chowk Gol Bagh, Amritsar, in connection with patrolling and detection of bad elements. One Manjit Singh came there and he was joined in the police party. In the meantime, the appellant came there from the side of Railway Station and he was stopped on suspicion. He was informed that he was suspected to be carrying some narcotic substance with him and whether he wanted to be searched in the presence of SI Kashmiri Lal or in the presence of a Gazetted Officer or Magistrate. The appellant expressed willingness to be searched in the presence of a Gazetted Officer. Accordingly, DSP Jagdish Singh Khehra was contacted and requested to reach the spot. After his arrival at the spot, the appellant was, once again, given an offer of being searched either by DSP Jagdish Singh Khehra himself or in the presence of any other Gazetted Officer or Magistrate. The appellant reposed confidence in DSP Jagdish Singh Khehra. Under his directions, SI Kashmiri Lal conducted the search of the appellant and from the bag/envelope carried by the appellant in his hand charas weighing 800 grams was recovered. 10 grams out of the same was separated as sample. The remaining charas as well as sample thereof were taken into possession. Grounds

of arrest were intimated to the appellant. From the personal search of the appellant, one wrist watch, currency notes worth Rs.250/- and one counter-feit currency note of Rs.100/- besides identity card and two bills of NITCO Roadways were recovered, which were taken into possession. Ruqa Ex.PH was, thereafter, sent to Police Station "D" Division, Amritsar and on its basis FIR No. 102 dated 22.9.2002 under Section 20 of the Act was registered. After receipt of the report from the Chemical Examiner, wherein, it was mentioned that the contents of the sample were that of charas as it contained resin to the extent of 42.3%, final report under Section 173 Cr.P.C. was submitted against the appellant.

After framing of charge under Section 20 of the Act, to which the appellant pleaded not guilty, the prosecution examined PW1 Constable Aroor Singh, PW2 SI Kashmiri Lal and PW3 DSP Jagdish Singh Khehra in support of its case.

When examined under Section 313 Cr.P.C., the appellant denied the allegations of the prosecution and pleaded false implication.

The trial Court believed the prosecution case and, accordingly, convicted and sentenced the appellant, as mentioned above.

Having heard learned counsel for the parties and on

going through the impugned judgment as well as record of the trial Court, it is made out that the prosecution has been successful in establishing the guilt of the appellant. In this regard, reference can be made to the testimony of DSP Jagdish Singh Khehra, whom the prosecution had examined as PW3. He testified that on being summoned to the spot, he had offered to the appellant that he could be searched either by him or in the presence of some other Gazetted Officer or a Magistrate but the appellant reposed confidence in him. Search of the appellant led to recovery of an envelope in which 800 grams of charas was found. The sample of 10 grams drawn out of the same was later on analyzed by the Chemical Examiner and as it was found to contain resin to the extent of 42.3%, it was opined to be that of charas. The testimony of PW3 DSP Jagdish Singh Khehra is duly corroborated by PW2 SI Kashmiri Lal. The defence could not point out any inherent defect in the investigation of the case. Even no enmity was suggested to any of the PWs for which reason the police could have falsely implicated the appellant.

In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the trial Court.

Coming to the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for

the last thirteen years. He remained in custody throughout the trial of the case. Even after his conviction and sentence he remained behind the bars for one year. These facts are mentioned in the custody certificate produced by the State counsel. It is not mentioned therein that the appellant is involved in any other criminal case, much less under the provisions of the Act. Learned counsel for the appellant has submitted that the appellant is a poor person. He has already undergone imprisonment for a period of one year, ten months and eleven days out of the sentence of imprisonment imposed upon him. He is now on bail for the last more than eleven years. There is no allegation that during this period, the appellant has misused the concession of bail in any manner. Therefore, remaining sentence of imprisonment of the appellant be set aside.

Learned State counsel has vehemently opposed the prayer by submitting that the appellant was found in possession of 800 grams of charas for which he did not possess any licence or permit. The menace of drugs is on the increase and, therefore, no concession be shown to the appellant in the matter of sentence of imprisonment.

After hearing learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the considered view that no useful purpose will be

served by sending the appellant behind the bars, once again, to undergo the remaining sentence of imprisonment imposed upon him. Ends of justice would be amply met in case the remaining substantive sentence of imprisonment of appellant is set aside. At the same time, the sentence of fine can be suitably enhanced.

Resultantly, the conviction of the appellant under Section 20 of the N.D.P.S. Act is upheld. His remaining substantive sentence of imprisonment is set aside. However, his sentence of fine is enhanced from Rs.1,000/- to Rs.5,000/- and in default of the same, the appellant shall undergo rigorous imprisonment for six months.

The appeal is, accordingly, disposed of.

September 4, 2015
amit rana

(T.P.S. MANN)
JUDGE