

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

CRA-S-1449-SB-2004

Date of decision: 01.10.2015

Chanchala Devi

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

Present: Mr. Deepak Aggarwal, Advocate for appellant.

Mr. Manjit Singh Naryal, Addl. A.G. Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment dated 23.07.2004 passed by the learned Judge, Special Court, Amritsar, vide which accused-appellant Chanchala Devi has been held guilty and convicted for the offences punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and the order on quantum of sentence of the even dated, vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/-, in

default of payment of fine to further undergo rigorous imprisonment for 15 months.

2- As per the prosecution case, on 09.05.2002 PW1 Sub Inspector Baldev Singh (the Investigating Officer of the case) along with other police employees was present at Chowk Islamabad in connection with patrolling. He received a secret information against the accused-appellant that she was indulging in selling smack in the area and a vigil on and around her house could lead to her apprehension and recovery of the contraband. Ruqqa Ex.PA was sent to the police station and on the basis of which, formal FIR Ex.PA/1 was recorded. A surveillance was kept around the house of the accused. On 14.5.2002, the Investigating Officer along with other police officials including lady Constable Amarjit Kaur was present near chowk Naiyanwala Turning. The accused-appellant was seen coming on foot. On seeing the police party, she tried to retreat. She was apprehended on suspicion. The Investigating Officer apprised her that she has a legal right of her search in the presence of a magistrate or a gazetted officer. Vide consent memo Ex.PB, she opted to get her search conducted in the presence of some gazetted officer. PW6 DSP Ashwani Kapoor was called at the spot. In his presence search of the accused-appellant was conducted. From the brassiere worn by the accused-appellant smack wrapped in polythene paper was recovered. One sample of 5 grams was separated. On weighment, the residue also came to be 5 grams. The sample and the residue were made into separate parcels and sealed with the seals bearing impression 'BS'

and 'AK' and taken into possession vide recovery memo Ex.PD. Accused was arrested vide memo Ex.PF.

3- On return to the police station, the accused and case property were produced before the PW5 SHO Mandip Singh. He affixed his seal bearing impression 'MS' on the parcels. On the next day, the accused and case property were produced before the Area Magistrate vide application Ex.PK. Sample parcel was sent to the Forensic Science Laboratory, Punjab, Chandigarh for examination. On receipt of the report of the FSL Ex.PH and completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') was presented in the Court.

4- The accused appellant was charge sheeted for the offence punishable under Section 21 of the Act vide order dated 20.07.2004 by the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

5- In order to substantiate its case, prosecution examined as many as six witnesses.

6- When examined under Section 313 Cr.P.C., accused pleaded false implication and pleaded that the witnesses are police officials and procured one.

7- No evidence in her defence was adduced by the accused-appellant.

8- Appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused appellant was held

guilty for the offence punishable under Section 21 of the Act and was awarded the sentence as mentioned in the upper part of the judgment.

9- Aggrieved with the aforesaid judgment of conviction and order of sentence the present appeal has been preferred.

10- I have heard Mr. Deepak Aggarwal, Advocate, learned counsel for the appellant, Mr. Manjit Singh Naryal, learned Additional Advocate General for the State of Punjab and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellant pleaded that he does not challenge the conviction of the appellant as recorded by the learned trial Court and pursues the present appeal only with respect to the quantum of sentence. He stated that the appellant is a widow lady having three children. As per the prosecution allegations, only 10 grams smack was recovered from her possession. She has faced the agony of these proceedings for about 13 years. She has already undergone about one and a half month in custody out of the sentence of six months awarded by the learned trial Court. Thus, he pleaded that the sentence of the appellant should be reduced to the imprisonment already undergone by her.

12- On the other hand, learned State counsel pleaded that the appellant had been indulging in these activities. Two other cases are also registered against her. In one of them, she was convicted. So, she does not deserve any concession in the matter of sentence.

13- I have duly considered the aforesaid contentions.

14- Learned counsel for the appellant has not challenged the conviction of the appellant. He only pressed for the reduction of the sentence awarded to the appellant by the learned trial Court. Even then it becomes the duty of the Court to satisfy itself with respect to the legality of the conviction of the appellant recorded by the learned trial Court.

15- As per the prosecution allegations 10 grams smack was recovered from the possession of the accused-appellant on 14.05.2002. In order to establish its case, prosecution has examined SI Baldev Singh, the Investigating Officer of the case as PW1. He has narrated in detail about the apprehension of the appellant, her search and seizure through lady Constable Amarjit Kaur in the presence of Ashwani Kapoor, Deputy Commissioner of Police, which led to the recovery of 10 grams smack from the possession of the appellant. The testimony of SI Baldev Singh is fully corroborated from the statement of PW2 lady Constable Amarjit Kaur, the witness of recovery, who had taken the search of the appellant and PW6 Ashwani Kapoor, DSP under whose supervision, the search and seizure was conducted. The case of the prosecution is further corroborated from the testimonies of PW5 SI Manjit Singh the then SHO, Police Station, Islamabad before whom the appellant and the case property were produced. The statements of all these witnesses are consistent, cogent and reliable. Thus, I do not find any legal infirmity in the conviction of the appellant recorded by the learned trial court.

16- However, I find substance in the contentions raised by learned counsel for the appellant for reduction of sentence. This fact is

not disputed that appellant Chanchala Devi is a widow lady. She is having three children. At the time of registration of this case, her children were minor. She has faced the agony of these proceedings for the last more than 13 years. The learned State counsel has placed on file the affidavit of Shri Amandeep Singh Brar, ACP (Central), City Amritsar which shows that two more cases were registered against the appellant. The first case is the case bearing FIR No.164 dated 21.11.2001 under Sections 18, 21, 22, 61, 85 of the Act and Sections 411, 414 of IPC, Police Station, Islamabad but in that case she was discharged by the Court on 01.02.2003 as no recovery was effected from her. The second case is FIR No.150 dated 25.09.2003 under Sections 18, 21, 22, 61, 85 of the Act and Sections 411, 414 of IPC and in that case, she was sentenced to the imprisonment already undergone by the learned trial Court. The affidavit filed by Amandeep Singh Brar ACP shows that no criminal case has been registered against appellant Chanchala Devi after 25.09.2003 i.e. for the last 12 years. So, in the last 12 years, she has not indulged in any illegal activity, which shows that the reformation in her conduct, which is a valid ground to take the lenient view in the matter of sentence, so that the appellant may not again come into contact with the hardened criminal, if sent to jail. Moreover, she has already undergone 01 month and 12 days out of six months of the sentence awarded by the learned trial Court. Learned counsel for the appellant has no objection if the amount of fine is enhanced. Thus, keeping in view the facts and circumstances of the present case as the appellant is widow lady, she is

having three children, she is facing these proceedings for the last more than 13 years, she has not indulged in these activities for the last about 12 years which shows the reformative trend in her conduct, so, it will suffice the ends of justice if the appellant is sentenced to the imprisonment already undergone by her and the fine is enhanced to Rs.2000/- more Rs.500/- imposed by the learned trial Court, with no change in the default clause.

17- Thus, keeping in view my aforesaid discussion, the conviction of the appellant as recorded by the learned trial Court is hereby maintained and affirmed. However, the sentence awarded to the appellant by the learned trial Court is hereby modified. She is sentenced to undergo the imprisonment already undergone by her during the pendency of the case i.e. 01 month and 12 days. The fine imposed by the learned trial Court is enhanced to Rs.2000/- from Rs.500/- with the same default clause. The amount of fine of Rs.2000/- be deposited with the learned trial Court within one month from today. In default thereof, she will undergo rigorous imprisonment for a period of 15 days as awarded by the learned trial Court in the default clause.

18- With this modification in the matter of sentence, the present appeal having no merits is hereby dismissed.

Dated: 01.10.2015
sunil yadav

(DARSHAN SINGH)
JUDGE