

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1492-SB of 2004

Date of decision: 21.09.2015

Manjit Singh

.....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

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

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Present: Mr. O.P. Kamboj , Advocate for the petitioner(s).

Mr. Manjit Singh Naryal, learned Additional Advocate General, Punjab.

Darshan Singh, J.

1. The present appeal has been preferred against the judgment dated 7.7.2004 vide which appellant-Manjit Singh has been held guilty and convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called 'the Act') and the order of sentence dated 8.7.2004 vide which he has been sentenced to undergo the rigorous imprisonment for a period of 4 years and to pay a fine of Rs.5,000/-, in default of payment of fine, he was further ordered to undergo rigorous imprisonment for a period of 6 months.

2. The brief facts of the case, in nutshell, are that on 13.1.1999, ASI Gursewak Singh, Incharge Police Post, Dodewala along with police officials was present at Defence road in the area of village Dodewal in connection with patrol duty and nakabandi. Truck No.PB-10E 9531 came from the side of petrol pump Dodewala which was signalled to be stopped by Head Constable Kuldeep Chand. The said truck was being driven by co-accused Balbir Singh (now deceased) and the second person present in the truck was appellant Manjit Singh @ Mita. The Investigating Officer told the accused that he suspected some intoxicating material in the truck and the search thereof is to be taken. He gave option to the accused for the search to him or in the presence of some Gazetted Officer or the Magistrate. The accused opted to give the search in the presence of some Gazetted Officer. The Investigating Officer prepared the consent memo Ex.P2 of co-accused Balbir Singh and Ex.P3 of the present appellant-Manjit Singh. Thereafter, he sent a wireless message to Police Station Sadar Abohar, requesting to send some Gazetted Officer or the Magistrate at the spot. After sometime, Mr. Gurmit Singh Randhawa, Deputy Superintendent of Police, arrived at the spot. He also sought the option of the accused for the search and prepared the consent memos Ex.P4 and Ex.P5. Thereafter, in the presence and on the direction of the DSP, the search of the truck was carried out which led to the recovery of the opium wrapped in the glazed paper from a bag (jhola) hanging on the back seat of the driver of the truck. Two samples weighing 10 grams each were

separated. Remaining opium came to 1 kg 980 grams. The sealed parcels of the samples and residue were prepared and were taken into possession vide memo Ex.P7. The Investigating Officer sent ruqa Ex.P18 to the police station on the basis of which FIR Ex.P1 was registered. The truck along with documents was also taken into possession. Accused were arrested. On reaching the police station, the Investigating Officer handed over the case property and the accused to SHO Nagore Singh who further sealed the parcels of the case property with his seal. He also produced the case property in the Court of learned Illaqa Magistrate vide application Ex.P14 on which the learned Illaqa Magistrate passed the order Ex.P16 and directed the case property to be kept in malkhana. One sample parcel was sent to the Chemical Examiner, Jalandhar for analysis which was found to be opium vide report Ex.P19. On completion of the formalities of investigation, the report under Section 173 of the Code of Criminal Procedure was presented in the Court.

3. The present appellant along with his co-accused Balbir Singh was charge-sheeted for the offence punishable under Section 18 of the Act vide order dated 4.5.1999 by the learned trial Court to which they pleaded not guilty and claimed trial.

4. During the pendency of the case, co-accused-Balbir Singh died and proceedings qua him were declared to have abated vide order dated 17.4.2001.

5. In order to substantiate its case, the prosecution examined as many as 6 witnesses.

6. When examined under Section 313 Cr.P.C., accused-appellant pleaded that he was picked up from his house about a day before the alleged date of recovery and was kept in illegal custody by the police. Later on, he was falsely implicated in this case though no recovery was effected from him. However, no evidence was led by the appellant in his defence.

7. On appreciating the evidence on record and the contentions raised by the learned counsel for the parties, the appellant was held guilty and convicted for the offence punishable under Section 18 of the Act. He was awarded the sentence as mentioned in the upper part of the judgment.

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

9. I have heard Mr.O.P. Kamboj, Advocate, counsel for the petitioner and Mr. Manjit Singh Naryal, learned Additional Advocate General, Punjab and have gone through the record carefully.

10. Initiating the arguments, learned counsel for the appellant pleaded that he does not challenge the conviction of the appellant recorded by the learned trial Court. He contended that the appellant is a poor person. He was never involved in any other case under the provisions of the Act. He is facing the proceedings for the last more than 16 years. He has already undergone the sentence for more than three years. He was just travelling in the truck. The truck was being driven by the co-accused. Thus, he pleaded for leniency in the matter of sentence.

11. On the other hand, learned State counsel pleaded that 2 kg opium has been recovered from the joint possession of the appellant and his co-accused Balbir Singh (now deceased). The sentence awarded by the learned trial Court is just and appropriate and does not call for any reduction.

12. I have duly considered the aforesaid contentions.

13. Though learned counsel for the appellant has not challenged the conviction of the appellant recorded by the learned trial Court even then it becomes the duty of this Court to see as to whether the conviction of the appellant has been rightly recorded by the learned trial Court or not. In order to establish the recovery of the opium from the possession of the appellant and his co-accused Balbir Singh, the prosecution has examined PW-2 ASI Kuldeep Singh, the witness of recovery. The seal after use was also entrusted to this witness. The prosecution also examined ASI Gursewak Singh, the Investigating Officer of the case as PW-4. Both these witnesses have deposed in detail about the manner of the apprehension of the appellant and his co-accused Balbir Singh, the search and seizure of the contraband from the joint possession of the appellant and his co-accused Balbir Singh and the steps taken during investigation. Both these witnesses have been cross-examined at length but even then their testimonies could not be shattered.

14. The aforesaid testimonies of PW-2 ASI Kuldeep Singh and PW-4 ASI Gursewak Singh are further corroborated from the testimony of PW-3 Nagaur Singh, the then SHO Police Station

Sadar Abohar before whom the accused along with the case property were produced immediately after the recovery.

15. The chain of the link evidence is also complete which rules out the tampering with the case property at any point of time.

16. No doubt DSP Gurmeet Singh Randhawa, who had supervised the search and seizure, has not been examined by the prosecution but the non-examination of DSP Gurmeet Singh Randhawa is no ground to discard the consistent, cogent and reliable testimonies of PW-2 ASI Kuldeep Singh and PW-4 ASI Gursewak Singh on the point of recovery. Thus, there is no escape from the conclusion that appellant-Manjit Singh @ Mita was found in conscious joint possession of 2 kgs opium. Thus, the conviction of the appellant is well founded.

17. However, I found substance in the contentions raised by the learned counsel for the appellant on the quantum of sentence. The accused-appellant has been sentenced to undergo rigorous imprisonment for a period of 4 years and a fine of ₹ 5,000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of 6 months. Admittedly, the quantity of the opium recovered from the appellant is non-commercial. The custody certificate brought on record by the learned State counsel shows that the appellant was not involved in any other case under the provisions of the Act. This case was registered on 13.01.1999. Thus, the appellant is facing the agony of these proceedings for the last more than 16 years. He has already undergone 3 years 1 month and 10

days of actual sentence. Thus, in these circumstances in my opinion he deserves leniency in the matter of sentence as well as the default clause.

18. Thus, keeping in view my aforesaid discussion, the conviction of the appellant, though not challenged, is otherwise well founded and is hereby maintained and affirmed. However, the sentence awarded to the appellant by the learned trial Court is hereby reduced. Now the appellant is sentenced to undergo rigorous imprisonment for a period of 3½ years and is also ordered to pay a fine of ₹ 5,000/-, in default of payment of fine, he will further undergo rigorous imprisonment for a period of 3 months instead of the sentence awarded by the learned trial Court.

19. With this modification in the quantum of sentence, there is no merit in the appeal and the same is hereby dismissed.

September 21, 2015
ps

(DARSHAN SINGH)
JUDGE