

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

CRA-S-1522-SB-2004

Date of decision: 02.11.2015

Gursewak Singh

..... Appellant

Versus

State of Haryana

..... 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. R. S. Mamli, Advocate for the appellant.

Mr. Ashok Muthreja, Deputy Advocate General
for the State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 13.07.2004, passed by learned Additional Sessions Judge, Fatehabad, vide which accused-appellant Gursewak Singh alias Chhalli has been held guilty and convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as 'the Act') and the order on the quantum

of sentence dated 14.07.2004 vide which he has been sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 10,000/-, in default of payment of fine he was further ordered to undergo simple imprisonment for a period of six months.

2- As per the prosecution allegations on 04.08.2002 PW8 ASI Jagdish Prasad intercepted the accused-appellant at Bus Stand Nimri having a plastic bag in his hand, on the basis of suspicion. He was informed of his right of search before any gazetted officer or magistrate and was served with a legal notice under Section 50 of the Act. He opted to get his search conducted before a gazetted officer. PW4 Hari Chand Bhatia, Naib Tehsildar, Ratia was called at the spot. The search and seizure was carried out in his presence, which led to the recovery of 500 grams opium from the plastic bag in the possession of the accused-appellant. Two samples of 10 grams each were separated. Sealed parcels of the samples and residue opium were prepared. These parcels were sealed by the Investigating Officer and PW4 Hari Chand, Bhatia, Naib Tehsildar with their seals. The formalities at the spot were completed and on return to the police station, the accused along with the case property and witnesses was produced before PW2 SI Shamsher Singh, the then SHO, Police Station - Ratia, who also verified the facts of the case and affixed his seal on the parcels of the case property. The sample parcel was sent to the Forensic Science Laboratory, Madhuban, Karnal for examination, which was found to be of opium vide report Ex.P15 and on

completion of formalities of investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (here-in-after referred to as 'Cr.P.C.') was presented in the Court.

3- The accused-appellant was charge-sheeted for the offence punishable under Section 18 of the Act vide order dated 20.01.2003 by the learned trial Court, to which the appellant pleaded not guilty and claimed trial.

4- In order to substantiate its case, prosecution examined as many as nine witnesses.

5- When examined under Section 313 Cr.P.C., the accused-appellant pleaded that he is innocent. Nothing was recovered from him and a false recovery has been planted.

6- However, the accused-appellant did not lead any evidence in his defence.

7- On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused-appellant was held guilty and convicted for the offence punishable under Section 18 of the Act and 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. R. S. Mamli, Advocate, learned counsel for the appellant, Mr. Ashok Muthreja, learned Deputy Advocate General

for the State of Haryana and have meticulously examined the record of the case.

10- Initiating the arguments, learned counsel for the appellant contended that he does not challenge the conviction, however, he has assailed the order passed by learned trial Court on quantum of sentence. He pleaded that the appellant has already undergone about six months out of the sentence awarded by the learned trial Court. He has absolutely no criminal background. As per the custody certificate filed by the learned State counsel, he was not involved in any other criminal case. So, he is a first offender. He has faced the agony of these proceedings for the last more than 13 years. So, the sentence awarded to the appellant should be reduced to the already undergone.

11- On the other hand, learned State counsel contended that 500 grams opium has been recovered from the possession of the appellant. The sentence awarded by the learned trial Court is just and appropriate in view of the offence committed by him, which does not call for any reduction.

12- I have duly considered the aforesaid contentions.

13- Learned counsel for the appellant has not challenged the conviction of the appellant. He has only assailed the order on the quantum of sentence passed by the learned trial Court. Even otherwise from the statements of PW4 Hari Chand Bhatia, Naib Tehsildar, under whose supervision the search and seizure has been carried out, PW7 HC

Foza Singh, the witness of recovery and PW8 ASI Jagdish Parsad, the Investigating Officer of the case, it is established that 500 grams opium was recovered from the possession of the appellant. The case of the prosecution is further corroborated from the testimony of PW2 SI Shamsheer Singh, the then SHO, Police Station - Ratia, before whom the accused along with case property and witnesses was produced immediately after recovery and he had also sealed the case property after verifying the facts of the case. The provision of Section 50 of the Act were not applicable in this case as the recovery has been effected from the bag and not out of the personal search of the appellant. As the accused-appellant has not alleged any animus or motive for his false implication by the police officials and moreover the search and seizure has been supervised by the senior revenue officer, so, the non-joining of the independent witnesses is no ground to discredit the statements of the prosecution witnesses. Thus, there is no escape from the conclusion that the accused-appellant was found in conscious possession of 500 grams opium. Consequently, the conviction of the appellant does not suffer from any legal infirmity.

14- However, I find the substance in the contentions raised by learned counsel for the appellant qua the quantum of sentence. The accused-appellant has been sentenced to undergo rigorous imprisonment for a period of 02 years. He has also been ordered to pay a fine of ₹ 10,000/- and in default of payment of fine, he was further ordered to

undergo simple imprisonment for a period of six months. Learned State counsel has placed on file the custody certificate, which shows that the appellant has already undergone the actual sentence of 05 months and 20 days. The custody certificate shows that he was not involved in any other criminal case. So, he is a first offender. The present recovery was effected on 04.08.2002. So, the appellant has faced the agony of these proceedings for the last more than 13 years. His sentence was suspended on 11.10.2004 i.e. 11 years back. As already mentioned, he is a first offender and was not involved in any other criminal case, so, it will not be proper to send him in the company of hardened criminals in the jail at this juncture as he is on bail for the last 11 years. The respondent-State has not come forward with any material to show that after he has admitted to bail, he was involved in any other criminal activity. So, even the reduction in the substantive sentence will suffice the ends of justice. However, the fine can be suitably enhanced.

15- Thus, keeping in view my aforesaid discussion, the conviction of the appellant as recorded by the learned trial Court does not suffer from any legal infirmity. So, the same is hereby maintained and confirmed. However, the sentence awarded to the appellant is hereby modified. He is sentenced to the imprisonment already undergone by him i.e. 05 months and 20 days. However, the fine is enhanced from ₹10,000/- to ₹30,000/-. As per the interim order dated 14.07.2004, passed by learned trial Court, the appellant has already paid the fine of ₹10,000/-.

He will deposit the enhanced amount of fine i.e. ₹20,000/- within a period of one month from today, in default thereof, he will undergo rigorous imprisonment for a period of one and a half month.

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

Dated: 02.11.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**