

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

CRA-S-1570-SB-2004

Date of decision: 06.10.2015

Narinder 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. Navmohit Singh, Advocate for appellant.

Mr. Gaurav Jindal, Addl. A.G. Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 23.07.2004 passed by learned Judge, Special Court, Kurukshetra, vide which accused-appellant Narinder Singh has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and the order on the quantum of sentence of the even dated, vide which the accused-appellant has been sentenced to undergo rigorous imprisonment for a period of 03 months and to pay a

fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of 02 months.

2- In nutshell, the allegations of the prosecution are that on 26.03.2002, ASI Om Parkash the Investigating Officer of the case, on receiving the secret information, conducted the raid on the Dhaba of the accused-appellant under the name and style 'Karan Dhaba', situated at G.T. Road in the area of village Samani, Distt. Kurukshertra. From the search of the store of the Dhaba, a plastic canny, suspected to be containing the narcotic substance, was recovered. The Investigating Officer gave option to the accused-appellant for conducting his search in the presence of any magistrate or a gazetted officer by serving the notice under Section 50 of the Act Ex.PG. The accused-appellant opted for his search to be conducted in the presence of a gazetted officer vide reply Ex.PG/1. Anil Kumar Dhawan DSP, Headquarter, Kurukshertra was telephonically informed and he reached at the spot. The contents of the plastic canny was checked in the presence of Anil Kumar Dhawan, DSP and the witnesses, which led to the recovery of 1 kilogram and 500 grams of poppy husk. 250 grams poppy husk was separated as sample. The residue poppy husk was put in the same plastic canny. The separate sealed parcels of the sample parcel and residue were prepared and were sealed with the seals bearing impressions 'OP' and 'AK' by the Investigating Officer and DSP Anil Kumar Dhawan, respectively. The contraband was taken into possession vide memo Ex.PC. Investigating Officer sent the ruqqa Ex.PF, on the basis of which formal FIR Ex.PF/1

was registered. The accused-appellant was arrested.

3- On return to the police station, the accused-appellant along with the case property and the witnesses were produced before SI Paras Kumar SHO Police Station, Thanesar. The case property in intact condition was deposited with the Mohrir Head Constable. The sample parcel was sent to the Forensic Science Laboratory, Madhuban for examination. On receipt of the report of the FSL and on completion of formalities of investigation, 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 15 of the Act vide order dated 08.10.2002, to which he pleaded not guilty and claimed trial.

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

6- When examined under Section 313 Cr.P.C., the accused-appellant pleaded that on 25.03.2002, he was taking meals at Karan Dhaba. An altercation took place between him and one drunkard person. On account of that he has been falsely implicated in this case.

7- Accused-appellant did not lead any defence evidence.

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 15 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. Navmohit Singh, Advocate, learned counsel for the appellant, Mr. Gaurav Jindal, learned Additional Advocate General for the State of Haryana and have meticulously examined the record of the case.

11- Initiating the arguments, learned counsel for the appellant contended that he does not challenge the conviction of the appellant. He only wants to pursue the present appeal with respect to the quantum of sentence. He contended that as per the prosecution version, 1 kilogram and 500 grams poppy husk has been recovered from the possession of the appellant. The appellant was sentenced to undergo rigorous imprisonment for a period of 03 months. Out of that, he has already undergone 01 month and 09 days. He has already deposited the fine with the trial Court. He pleaded that the appellant is facing agony of this trial for the last more than 13 years. He had never indulged in any such activity. Thus, he pleaded that the sentence of the appellant should be reduced to the period already undergone by him in jail.

12- On the other hand, learned State counsel pleaded that 1 kilogram and 500 grams poppy husk has been recovered from the possession of the appellant. The sentence awarded by the learned trial Court is just and appropriate. The further reduction in the sentence is not called for.

13- I have duly considered the aforesaid contentions.

14- Learned counsel for the appellant has not challenged the conviction of the appellant. He has 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, 1 kilogram and 500 grams poppy husk was recovered from the possession of the accused-appellant on 26.03.2002. In order to establish its case, prosecution has examined ASI Om Parkash, the Investigating Officer of the case as PW9. He has narrated in detail about the apprehension of the appellant, his search and seizure in the presence of Anil Kumar Dhawan, Deputy Commissioner of Police, which led to the recovery of 1 kilogram and 500 grams poppy husk from the possession of the appellant. The testimony of PW9 ASI Om Parkash is fully corroborated from the statements of PW8 HC Bhim Singh, the witness of recovery and PW3 Anil Kumar Dhawan, DSP, under whose supervision the search and seizure was conducted. The case of the prosecution is further corroborated from the testimony of PW6 SI Paras Kumar, the then SHO, Police Station, Sadar Thanesar, 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 in the quantum of

sentence. 1 kilogram and 500 grams poppy husk has been recorded from the possession of the appellant. He was sentenced to undergo rigorous imprisonment for a period of 3 months and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of 2 months by the learned trial Court. The certified copy of the order dated 23.07.2004 passed by learned trial Court shows that accused-appellant has already deposited the amount of the fine. As per the affidavit dated 06.10.2015, filed by Ms. Bimla Devi, Deputy Superintendent, District Jail, Kurukshetra the accused-appellant has already undergone 01 month and 09 days in jail out of the sentence of 03 months. The custody certificate further shows that he is not involved in any other criminal case, which shows that accused-appellant was the first offender. He has faced the agony of this proceeding for the last more than 13 years. During this period he has not indulged in any such criminal activity. Thus, the facts and circumstances of the case and the antecedents of the appellant deserves the leniency in the matter of sentence. The accused-appellant has already undergone 01 month and 09 days in custody during the pendency of the case. If the sentence of the appellant is reduced to that of already undergone that will suffice the ends of justice.

17- Thus, keeping in view my aforesaid discussion, the conviction of the appellant recorded by learned trial Court is hereby maintained. However, the sentence awarded to the appellant by the learned trial Court is hereby modified. The accused-appellant is

sentenced to the imprisonment already undergone by him i.e. 01 month and 09 days during the pendency of the case. The amount of fine has already been paid by the appellant.

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

Dated: 06.10.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**