

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

CRA-S No.1649-SB of 2004

Date of decision: 14th October, 2015

Harish Kumar

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. R.K. Dahiya, Advocate
for the appellant.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondent.

FATEH DEEP SINGH, J.

Appellant Harish Kumar was found guilty by the Court of learned Additional Sessions Judge, Sonapat for commission of offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act') and through impugned judgment of conviction and order of sentence dated 13.08.2004 was sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of ₹2,000 in default whereof to further undergo rigorous imprisonment for 6 months for being in illegal possession of 4 kg of poppy husk.

Heard Mr. R.K. Dahiya, Advocate for the appellant, Mr. Munish Sharma, Asstt. Advocate General, Haryana on behalf of the respondent and on perusal of the records.

Brief allegations are that on 30.07.2002, a police party headed by ASI Surinder Singh, Police Station Civil Lines, Sonapat apprehended the accused who was coming on foot holding a red coloured bag in his hand and on seeing the police he tried to slip away. On apprehension under suspicion, he was served with a legal notice Ex.PB and the accused exercised his option of search in the presence of a gazetted officer at which Sh. Maman Chand, ETO, Sonapat was called. After necessary formalities of drawing 250 gms sample, different parcels of the contraband by way of samples as well as residual were prepared and sealed with seal bearing impression **KC** and the articles were taken into police possession through memo. Ex.PC. On the basis of ruqa Ex.PH, FIR Ex.PH/1 was got registered. The Investigating Officer recorded statements of the witnesses and prepared rough sight plan Ex.PJ of the place of recovery and after necessary formalities and completion of the investigations and on receipt of report of the analyst Ex.PG opining it to be poppy husk, challan was presented and accused was chargesheeted.

Prosecution had examined ten witnesses comprising of Constable Inderpal PW1; Nanak Chand PW2; HC Karan Singh PW3; Constable Sarwan Singh PW4, SI Hari Singh PW5; Maman Singh PW6; HC Daya Nand PW7; ASI Surender Singh PW8; Inspector

Ashok Kumar PW9 and SI Rahul Dev PW10. The accused denied the allegations leading to his conviction.

Though at the very onset of his submissions, learned counsel for the appellant Mr.R.K. Dahiya, Advocate has sought to attack the prosecution story on the grounds that there has been violation of the provisions of Section 50 of the Act, has been well controverted on behalf of the State by Mr. Munish Sharma, Asstt. Advocate General, Haryana who has rightly argued that being search of a baggage carried by the accused in his hand, provisions of Section 50 of the Act are inapplicable. Similar is the proposition of law that has been laid down by the Hon'ble Supreme Court of India in the case of **'Kalema Tumba v. State of Maharastra' 2000 Cri. LJ 507 (SC)**, where it has been held that it is only in the cases of personal search of the person, same was applicable and thus, the arguments so put forth are highly ill-conceived. Moreover, the recovery in this case has been effected in the very presence of a gazetted officer who too has testified as PW6 and nothing has come in the cross-examination of these material witnesses comprising of Investigating Officer ASI Surender Singh PW8, Maman Singh PW6 and HC Daya Nand PW7, which could be a distressing feature for the prosecution.

The premise of submissions that are sought to be adduced by learned counsel for the appellant that no independent witness has been examined, are matters which do not have any ill-effect on the prosecution story. Firstly, as there is nothing in law that testimonies of

the official witnesses cannot be accepted. Moreover, nothing animus has been brought out in the stands of the defence and the entire cross-examination of these material witnesses does not reveal anything which could be of any beneficial help to the prosecution. The accused has not led any evidence in his defence. Testimonies of these witnesses and the fact that even the SHO PW-10 SI Rahul Dev has proved due production of the articles and the accused before him and due despatch of the contraband in an intact state to the laboratory and its report Ex.PG clearly shows that the sample was identified to be poppy straw and the seals were found intact at the time of deposit of the parcel. Thus, in the totality of evidence which has been rightly upheld by the trial Court to be credible and impeccable and the utter failure of the defence to controvert the same and the fact that the prosecution has duly proved the recovery of the contraband from the conscious possession of the accused and therefore, in terms of Section 54 of the Act it was the defence which was to controvert and rebut the case of the prosecution which has failed to do so.

The last fervent appeal that has been made by learned counsel for the appellant is that the appellant has been found to be in possession of 4 kg of poppy husk and has been sentenced to undergo rigorous imprisonment for two years and he has already undergone incarceration for a period of six months and the fact that wife of the appellant Mrs. Vinod Pathak is suffering from Cancer and has drawn attention of the Court to the medical record placed on the trial Court

file to hammer home the point that being a sole bread-earner and liability that has been cast upon the appellant to maintain his family which also finds mention in the order of bail dated 22.03.2004 passed by this Court, are matters which certainly are compelling circumstances for due sympathetic consideration of the case of the appellant.

Keeping in view the quantity of contraband and its nature recovered, the incarceration already undergone by the appellant and the fact that he has faced ignominy of trial for more than 13 years and in view of the special circumstances of the appellant, impels this Court to take a sympathetic and lenient view into the matter. Thus, the present appeal stands disposed off holding and modifying the sentence of the appellant to already undergone. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

October 14, 2015

rps