

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No.S-720-SB of 2001

Date of Decision: *September 16, 2015*

Balbir Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

PRESENT: Mr. D.S. Pheruman, Advocate, for the appellant.

Mr. R.S. Randhawa, Addl. AG, Punjab.

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Jaspal Singh, J

The instant appeal has been preferred by accused - Balbir Singh challenging judgment dated April 9, 2001 rendered by the Additional Sessions Judge –cum- Special Judge, Amritsar, in case FIR No.241 of 1995 under Section 22 of the Narcotics Drugs & Psychotropic Substances Act, 1985 (for short, 'Act'), registered at Police Station Lopoke, whereby he has been held guilty, convicted and sentenced to undergo RI for a period of ten years with Rs.1 lac as fine and in default of payment of fine, to further undergo RI for one year.

Brief facts of the case are that FIR (Ex.PH/1) was registered on December 16, 1995 against the accused on the basis of ruqa (Ex.PH) sent to Police Station by SHO Jasdip Singh on receipt of secret information regarding illegal trading of narcotics. Thereafter, shop of accused – Balbir Singh in village

Bachiwind, was raided by the police party. On being asked, accused consented his search to be conducted by the Investigating Officer, regarding which, consent memo Ex.PB was reduced into writing. Search of shop yielded recovery of 200 tablets of Diazepam, 47 tablets/capsules of Nitrox, 50 capsules of Hyponex and 22 capsules of Dioninddon besides ₹ 1134/-.

After completion of necessary formalities and on receipt of report of Chemical Examiner, appellant – accused alongwith co-accused Gurpal Singh was challaned. Vide order dated October 09, 1996, the case was committed to the court of Sessions. Both the accused were charged under Section 22 of the Act to which they pleaded not guilty and claimed trial.

In order to substantiate its case, prosecution examined as many as eight witnesses.

During pendency of trial, co-accused Gurpal Singh died and proceedings against him were directed to be abated.

Incriminating circumstances appearing in the prosecution evidence were put to accused – Balbir Singh in his statement under Section 313 Cr.P.C. Appellant – accused pleaded innocence and false implication, however, no evidence was led in defence.

After hearing learned counsel for the parties and appreciating the evidence led in the case, oral as well as documentary, the appellant – accused was convicted and sentenced as detailed above, vide judgment/order of sentence dated April 09, 2001.

Aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant – accused has approached this Court by way of instant appeal.

At the very outset of arguments, it has been submitted by learned counsel for the appellant that as per the case of prosecution when Balbir Singh-appellant was subjected to search it led to recovery of 200 tablets of Diazpem, 47 tables/capsules of Nitrox, 50 capsules of Hypronex and 22 capsules of Dionindon from the Ice box on December 16, 1995. On the day of recovery of alleged narcotic substance, notification dated November 18, 2009 was not in existence. Moreover, this notification was not applicable from retrospective effect, rather, the same is applicable prospectively, according to which, entire drug contents, solution or mixture is to be seen and not only the pure drug content of narcotic psychotropic substance. In view of the same, recovered contraband does not fall in commercial quantity. Moreover, it has been fairly conceded by learned State counsel that on the day of recovery all contraband/narcotic psychotropic substance, was non commercial and in view of the afore-said fact, learned counsel for the appellant submitted that he does not challenge the conviction of appellant on merit and only seeks indulgence of this court in the matter of quantum of sentence.

This court has given an anxious thought to the above said submission(s); gone through the grounds of appeal; and has also scrutinized the impugned judgment from all angles but does not find any scope of interference. As such, the conviction recorded by learned trial Court is maintained.

As far as the quantum of sentence is concerned, learned trial Court has sentenced the appellant considering the recovery of contraband to be commercial one and has sentenced him to undergo RI for a period of 10 years and to pay a fine of ₹ 1,00,000/-. But in the case in hand since notification dated November 18, 2009 is not attracted. Thus, entire drug content is not to be taken into consideration. Rather, only the pure drug content of the narcotic psychotropic substance is to be seen which if calculated as a whole it comes out to 2.251 gms,

which falls within the ambit of small quantity is much less than 20 gms. The old provision contained in Section 21 of the Act provides that where contraband involves small quantity, it is punishable with RI for a term which may extend to six months or with fine which may extend to ₹ 10,000/- as fine or with both.

The appellant has already undergone for a period of two months and 16 days. Neither he is a previous convict nor any other case is either pending or disposed of earlier against him. Moreover, he is facing the agony of protracted trial for the last about 20 years i.e. from the date of his arrest i.e. December 16, 1995.

Taking into consideration all the above-mentioned aspects, this Court is of the considered view that imposing of sentence for a period of RI of 10 years and fine to the tune of ₹ 1,00,000/- is absolutely unjustified and illegal. Taking into consideration the afore-said aspect, this Court is of the considered view that it would suffice that he is to be sentenced to only for the period which he has already undergone.

In the light of what has been discussed above, appeal is dismissed but with modification that the sentence imposed upon the appellant is reduced to the period already undergone by him.

September 16, 2015

avin/sham

(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No