

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

**Crl. Appeal No.S-2018-SB of 2004 (O&M)
Date of decision : 25.02.2015**

Billu

...Appellant

versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sidakmeet Sandhu, Advocate,
for the appellant.

Mr. Mikhail Kad, AAG, Punjab.

RITU BAHRI, J.

This appeal has been filed against the judgment of conviction dated 15.09.2004 and order of sentence dated 16.09.2004 passed by the Special Judge, Ferozepur, whereby the accused-appellant, Billu, has been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of `1 lac for commission of an offence punishable under Section 15 of Narcotic Drugs & Psychotropic Substances Act (for brevity 'the NDPS Act'). In default of payment of fine, he was further sentenced to undergo rigorous imprisonment for 1 year.

Brief facts of the case are that on 21.03.1997, ASI Dev Raj along with other police officials was going, under the supervision of ASI Jaspal Singh, from Kot Ise Khan towards village Gehliwala in a private vehicle. When they reached near the bridge (canal minor) of village Gehliwala, three persons were found sitting on two bags and seeing the police party, they became perplexed. On the basis of suspicion, ASI Dev

Raj, apprehended accused-appellant, Billu with the help of other police officials. The remaining two accused were apprehended by ASI Jaspal Singh and ASI Gurbhej Singh and initiated separate proceedings against them. ASI Dev Raj asked the accused-appellant, as to whether he wanted to be searched in the presence of a Gazetted Officer or Magistrate, whereupon he opted to be searched in the presence of some Gazetted Officer. His consent memo (Ex.P8) was prepared accordingly. Thereafter, a message was sent to DSP, Zira requesting him to reach at the spot. After sometime, Mr. Nachhattar Singh, DSP reached at the spot. Thereafter, on conducting the search of the bags, on which the accused-appellant was sitting, the same were found to be containing poppy husk, out of which, separate samples of 250 grams were separated and converted into a parcels. The remaining poppy husk contained in two bags, on weightment, came to be 64.500 Kgs (i.e. 32 Kgs each). The same were also converted into separate parcels. All the parcels were sealed by ASI Dev Raj with his seals bearing impressions 'DR' and taken into police possession vide separate recovery memos. Accused-appellant was formally arrested and currency notes of Rs.15/-were recovered from him, which were taken into possession vide *jamatalashi* memo (Ex.P9). After completion of necessary formalities, challan was prepared and presented before the Court.

After presentation of the challan, charge under Section 15 of the NDPS Act was framed against the accused-appellant, to which, he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as five witnesses and thereafter, the evidence of the prosecution was closed.

Statement of accused-appellant under Section 313 Cr.P.C., was

recorded, wherein entire incriminating evidence was put to him, however, he denied the same and pleaded false implication. In defence, the accused-appellant examined Constable Sewak Singh as DW-1.

The trial Court after going through the entire evidence led by the prosecution, convicted and sentenced the accused-appellant in the aforesaid terms.

Recovery of 64.500 Kgs. of poppy husk was effected from the bags of the appellant. As per Section 50 of the NDPS Act, if the contraband was not recovered from the personal search of the accused, but from the bag which the accused was carrying, then non compliance of Section 50 would not vitiate the recovery effected from the accused. Hence, the appellant is not entitled to get any benefit on this account.

The defence of the accused-appellant that no independent witness was joined, has been elaborately discussed by the trial Court. The trial Court has referred the judgments of this Court in **Pala Singh Vs. State of Punjab**, 1994 (4) RCR 46 and **Shish Ram Vs. State of Haryana**, 2000 (1) RCR 823, wherein it has been observed that if, the recovery was otherwise proved by the prosecution and it was not a case where the police officer had any grievance against the accused, then non joining of any independent witness was not fatal to the prosecution case. The possibility to find independent witness at all the places at all the times is not probable. The trial Court did not extend any benefit to the appellant on this account.

The trial Court has considered the aspect of sealing of the bags, on which the accused was found sitting. There were minor discrepancies in the depositions of ASI Dev Raj (PW-4) and HC Nirmaljit Singh (PW-5) with regarding to tying of the mouth of two bags, from where the poppy

husk was recovered. These discrepancies were treated to be minor, as the recovery was effected on 21.03.1997 and cross-examination of ASI Dev Raj (PW-4) was conducted on 06.05.2003. Hence, the version of the prosecution, after ignoring the above said discrepancies, was not found to be doubtful.

Final argument of learned counsel for the accused-appellant was that the police party was on a private jeep and the recovery witnesses were not able to give the registration number of the said jeep or the name of its owner. HC Nirmaljit Singh (PW-5), in his cross-examination, stated that the private jeep was requisitioned by ASI Dev Raj and the driver of the said jeep came to the police station and left the jeep there at about 5.00 A.M. This jeep was driven by the police party and the owner of the jeep had simply left the same at the police station before the departure of the police party. Non mentioning of the name of driver and registration number of the jeep, in view of the deposition of HC Nirmaljit Singh, was not sufficient to make out a dent in the prosecution version.

The trial Court has further held that the Investigating Officer had called DSP, Zira at the spot, who came there and attested the recovery memos. Hence, the presence of the DSP was not doubtful and merely the fact that he had not sealed the case property, would not lead to any material discrepancy in the process of making the recovery.

In these circumstances, this Court is of the opinion that the judgment passed by the trial Court does not require any interference and the same is, accordingly, upheld. However, a lenient view can be taken on the quantum of sentence of the appellant.

Recovery of 64.500 Kgs. of poppy husk was effected from the

appellant, which is marginally higher than the 'commercial' quantity. As per custody certificate, the appellant has undergone 3 years, 6 months and 3 days in custody. In this case, the appellant was released on bail vide order dated 19.10.2007 and till date, he has not misused the concession of bail. Moreover, he is not involved in any other case under the NDPS Act.

Resultantly, the present appeal is dismissed. However, keeping in view the fact that the appellant is facing the agony of a criminal trial for the last about 16 years and is not involved in any other criminal case under the NDPS Act, the sentence of imprisonment awarded to the appellant is reduced to the period already undergone.

With the above modification/direction, the present appeal stands disposed of.

(RITU BAHRI)
JUDGE

25.02.2015
ajp