

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

CRA-S-231-SB of 2004 (O&M)

Date of decision: 17.08.2015

Hakam Ali

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. G.N. Malik, Advocate for the appellant.

Mr. Luvinder Sofat, AAG, Punjab.

Jitendra Chauhan, J.

The present appeal is directed against the judgment of conviction and order of sentence dated dated 07.01.2004 , passed by the Court of learned Special Judge, Ferozepur, whereby, the accused/appellant has been convicted for the commission of crime punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as 'the Act') and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- or in default of payment thereof, to further undergo imprisonment for six months.

The prosecution case against the appellant is that on 12.11.2001, the appellant was apprehended while he was having in his possession a bag containing 10 kgs. of poppy husk, without any permit or licence.

On commitment, the accused was charged under Section 15 of the Act, to which the accused/appellant pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ASI Banta Singh as PW1; ASI Narinderpal Singh as PW2; HC Bakhshish Masih as PW3; and HC Devinder Singh as PW4.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. However, he did not lead any evidence in defence.

After hearing the Public Prosecutor for the State, the Counsel for the accused, and after going through the evidence, on record, the trial Court convicted and sentenced the accused/appellant, as noticed at the outset.

Feeling aggrieved against the judgment of conviction and the order of sentence passed by the learned trial Court, the instant appeal was filed by the accused/appellant which was admitted on 29.01.2004. The sentence of accused/appellant was suspended on the same day.

The learned counsel for the appellant does not press the appeal on merits and has submitted that the appellant was a young man of 22 years at the time of the alleged occurrence. He has suffered a protracted trial as the FIR was registered on 12.11.2001. The appellant did not misuse the concession of bail during the trial as well as during the pendency of the present appeal. He is a first offender and he has already undergone 07 months and 08 days out of substantive sentence of 03 years. Thus, the learned counsel prays that a lenient view may be taken as regards the quantum of sentence imposed by the trial Court.

On the other hand, the learned State counsel opposed the prayer of appellant/accused and supported the judgment of conviction and order of sentence passed by the trial Court.

I have heard the arguments of the learned counsel for the parties and has carefully gone through the record of the case.

The prosecution case is fully proved by the statements of the prosecution. There is no flaw in the unassailed judgment of conviction. Thus, the present appeal as regards the judgment of conviction is concerned, is dismissed. Now, this Court would deal with the quantum of sentence.

In **Ramakant Gopalsaran Shahu Vs. State of Gujarat**, 2005(3) RCR (Criminal) 204, it is held as under:-

“9. In the case before us, since the contraband article recovered from the house of the appellant weighing 1 Kg. and 300 gms. is neither a small quantity nor a commercial quantity but less than commercial quantity and more than small quantity, Sec.20(b)(ii)(B) has to be kept in mind. This means that proportion of sentence in relation to quantity has to be maintained by the Court. If the trial court fails to maintain the proportion and award sentence regardless of quantity recovered, there would be disparity in the sentence awarded. Since the quantity recovered from the present appellant is only 300 gms. more than the small quantity and 19 kgs. less than the commercial quantity, the sentence prescribed may extent to 10 years. However, merely because the sentence prescribed by the legislature may extent to 10 years, it should not ordinarily be awarded by the trial court for the aforesaid period but for a period keeping in mind the quantity of contraband substance recovered. In the present case, the trial court has awarded R.I. of 10 years with a fine of Rs.1,00,000/- which appears to be unjust, improper and disproportionate. Besides, the trial court has not exercised its discretionary power while awarding alternative sentence also. In default of payment of fine, it has awarded five years R.I. Hence, we are of the opinion that even for fine also, same proportion is required to be maintained.”

In *Ghosito Sahu Vs. State of Madhya Pradesh, 2008(1)*

RCR (Criminal) 901, since the quantity recovered was less than the commercial quantity, the punishment awarded was reduced to the period already undergone by the convict.

The appellant has suffered agony of criminal trial. It is one of the mitigating circumstances to treat him leniently. The appellant is stated to be a first time offender. He has already undergone more than seven months' sentence, out of the substantive sentence of three years.

In view of the above, the prayer made on behalf of the appellant is accepted. The sentence awarded to the appellant is ordered to be reduced to the period already undergone.

Ordered accordingly.

However, the fine is enhanced to Rs.15,000/-, to be paid within four months after the receipt of certified copy of the order. It is made clear that if the enhanced amount of fine is not paid within the stipulated period, the present appeal shall be deemed to have been dismissed, without any notice.

17.08.2015

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(JITENDRA CHAUHAN)
JUDGE