

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-617 DB of 2012(O&M)
Date of Decision: 16.9.2015

Harpal Singh

---Appellant

versus

State of Punjab

---Respondent

Coram: Hon'ble Mr. Justice S.S.Saron
Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Satnam Singh Gill, Advocate
for the appellant
Mr. P.P.S.Theti, Addl. A.G.Punjab

- 1. Whether Reporters of local papers may be allowed to see the judgment?
- 2. To be referred to the Reporter or not?
- 3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against the judgment of conviction and order of sentence dated 15.9.2011 passed by the Judge, Special Court, Tarn Taran whereby the appellant has been convicted and sentenced for commission of offence punishable under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“ND&PS Act” -for short) in respect of keeping in possession 2.5 kgs of opium without any licence, detailed hereinbelow:-

<i>Under Section</i>	<i>Sentence imposed</i>
18(c) ND&PS Act	To undergo rigorous imprisonment for 11 years, besides, pay a fine of ₹1,00,000/-. In default of payment of fine to further undergo rigorous imprisonment for two years.

On 29.6.2009, Surjit Singh Sub Inspector/Station House Officer alongwith a police party was present near bus stand Ram Khara in connection with general checking. Jaimal Singh, Ex-Sarpanch met him and he was joined in the police party. In the meantime, one bus came from the side of Pattu and two persons alighted from the bus. They were carrying bags over their shoulders. On seeing the police party, they tried to flee away from the back side of the bus. Surjit Singh, Sub Inspector alongwith other police officials arrested Harpal Singh son of Ajaib Singh (appellant herein). The Investigating officer suspected that the bag carried by the appellant was containing some intoxicant, he offered to search his bag in the presence of some gazetted officer. The accused expressed his desire to be searched before a gazetted officer, therefore, Kirpal Singh, Deputy Superintendent of Police was requested to reach the spot. DSP Kirpal Singh on arrival at the spot asked the accused to be searched before some Magistrate or by him and the accused agreed to get his search conducted from the Deputy Superintendent of Police. On search of the bag, opium wrapped in a plastic paper was recovered. Two samples of 20 grams each were separated and the remaining opium came to be 2 kgs and 460 grams. The samples and bulk opium were sealed separately. Ruqa was sent to the police station on the basis whereof, formal FIR was registered. On completion of investigation and receipt of report of the forensic science laboratory, report under Section 173 of the Code of Criminal Procedure ("Cr.P.C."-for short) was submitted in the Court.

Copies of the documents in compliance with the provisions of Section 207 Cr.P.C. were supplied to the accused. On finding a prima facie

case, charge under Section 18 of the Act was framed to which the accused pleaded not guilty and claimed trial.

To prove its case, the prosecution examined Sub Inspector Surjit Singh (Investigating Officer) PW1, Head Constable Ranjit Singh PW2 and Kirpal Singh, Deputy Superintendent of Police (PW3).

Statement of the accused in terms of Section 313 Cr.P.C. was recorded wherein he denied the incriminating circumstances put to him and pleaded innocence and false implication. He examined Darshan Singh DW1 and Daulat Ram DW2, in defence.

The learned trial court, on bestowing its thoughtful consideration to the evidence adduced by the prosecution and the accused coupled with rival submissions made by counsel for the parties came to hold that the accused was found in possession of 2.5 kgs of opium and the same falls within the scope of commercial quantity and as a consequence, the appellant has been convicted and sentenced, noticed hereinbefore.

Feeling aggrieved against the judgment and order passed by the learned trial court, the present appeal has been preferred.

Counsel for the appellant has fairly conceded that he does not assail the findings of the learned trial court in regard to the appellant being found in possession of 2.5 kgs of opium without any permit or licence, however, he has assailed verdict of the learned trial court so far as holding that the alleged recovery falls within the purview of commercial quantity and as a result, awarding sentence of rigorous imprisonment for a period of 11 years, besides payment of fine of ₹1,00,000/- and in default thereof, undergo rigorous imprisonment for two years. To substantiate his

contention, it is argued that the ND&PS Act was amended in the year 2001 vide amendment Act 9 of 2001. On the basis of amendment made vide notification dated 27.9.2001 published in the Gazette of India, Extra Part.II, Section 3(ii) dated 27.9.2001, notification specifying small quantity and commercial quantity vide S.O. 1055 (E) dated 19.10.2001 was published in the Gazette of India, Extra, Part II, Section 3(ii) dated 19.10.2001. It is argued that as per table specifying small quantity and commercial quantity against Serial No. 92, opium weighing 2.5 kgs falls within the scope of commercial quantity. The commercial quantity, however, has been defined in Section 2(viia) of the ND&PS Act and as per the definition, the 'commercial quantity' means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. It is further argued that as 2.5 kgs of opium is not greater than the commercial quantity specified by the Central Government by notification, the same does not fall within the scope of commercial quantity and case of the appellant would be covered under Section 18 (c) of the ND&PS Act. In addition, it is submitted that though the learned trial court has held that 2.5 kgs of opium recovered from the accused is commercial one but in the concluding para 23 of the judgment, the appellant was convicted under Section 18(c) of the ND&PS Act. The learned trial court while awarding sentence has over looked the fact that for cases falling under clause (c) of Section 18 of the ND&PS Act, the sentence of imprisonment cannot be awarded more than 10 years period.

The next submission made by learned counsel is that as recovery effected from the appellant falls in between small quantity and

commercial quantity for which the provision has been made in Section 18(c) of the ND&PS Act, the sentence awarded to the appellant is liable to be reduced. It is submitted that the appellant has already undergone custody for a period of six years, two months and ten days as on date and his sentence may be reduced to the period already undergone. It is further prayed that even sentence of fine may be reduced in view of clause (c) of Section 18 of the ND&PS Act.

Counsel for the respondent, on the contrary, has not disputed that in view of definition of commercial quantity under the ND&PS Act when read with entry at Serial No. 92 of the table specifying the small quantity and commercial quantity of the narcotic and psychotropic substances, 2.5 kgs of opium will not fall within the scope of commercial quantity but it would be in between commercial quantity and small quantity.

We have heard counsel for the parties and perused the records.

As has been noticed hereinbefore, counsel for the appellant has not challenged the findings of the learned trial court in regard to conviction of the appellant for possessing 2.5 kgs of opium without any permit or licence. The only question that survives for consideration is whether 2.5kgs of opium falls within the purview of commercial quantity or otherwise. In the table appended to the ND&PS Act by way of amendment in the year 2001, against serial No. 92 which deal with opium, 25 grams of opium is specified as small quantity depicted in column No. 5 and 2.5 kgs is specified as commercial quantity reflected in column No. 6 thereof. Nevertheless, commercial quantity has been defined in Section 2(viia) and it

reads as follows:-

“Commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.”

A conjoint reading of entry against serial No. 92 of the table and the commercial quantity defined in the aforesaid provision, it leaves no manner of doubt that opium greater than 2.5 kgs would fall within the scope of commercial quantity and, therefore, 2.5 kgs of opium would fall within the purview of more than small quantity but less than commercial quantity, thus, would be punishable under Section 18(c) of the ND&PS Act.

In cases falling under Section 18 (c) of the ND&PS Act, the offence is punishable with rigorous imprisonment which may extend to 10 years with fine which may extend to ₹1,00,000/-. In this view of the matter, we find force in the contention of the appellant that opium recovered from his possession would not fall within the scope of commercial quantity for which the punishment is provided under clause (b) of Section 18 of the ND&PS Act and on the contrary, his case would fall under clause (c) of Section 18 of the ND&PS Act.

This brings the Court to the question of sentence liable to be imposed in the aforesaid circumstances. As per affidavit dated 15.9.2015 filed by Shri Gurcharan Singh Dhaliwal, Deputy Superintendent, Central Jail, Patiala, the appellant has undergone six years, two months and 10 days imprisonment. He was convicted and sentenced under Section 18 of the ND&PS Act in respect of FIR No. 129 dated 19.7.2006 and has

already undergone the sentence of imprisonment awarded in the said case. Keeping in view the nature and extent of recovery, in our considered opinion, ends of justice would be served if substantive sentence awarded to the appellant is reduced to the period already undergone by him. The sentence of fine is also reduced to ₹20,000/-. Counsel for the appellant has submitted that the appellant is ready to deposit the fine in the court of Chief Judicial Magistrate, Tarn Taran. However, the appellant shall be liable to imprisonment for a period of one year in case of default in payment of fine of ₹ 20,000/-.

The appeal stands disposed of subject to modification in the aforesaid terms.

(Rekha Mittal)
Judge

(S.S.Saron)
Judge

16.9.2015

PARAMJIT