

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

Criminal Appeal No. S.379 -SB of 2004
Date of decision : 06.02.2015

Jagdip Singh

..... Appellant.

versus

State of Punjab

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

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

Present : Mr. Veneet Sharma, Advocate for the appellant.
Mr. Yogesh Gupta, AAG, Punjab.

K.C.PURI, J.

Jagdip Singh has directed the present appeal against the judgment of conviction and order of sentence dated 09.02.2004 passed by Shri M. S. Chauhan, Special Judge, Amritsar, vide which accused/appellant stood convicted under Section 21 of Narcotic Drugs and Psychotropic Substances Act (in short “the NDPS Act”) and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.20,000/- and in default thereof to further undergo rigorous imprisonment for a period of three months.

2. The prosecution story in brief is that on 08.01.2002, Inspector Rajinder Kumar along with ASI Gulzar Singh and other police officials was on patrolling duty on a Govt gypsy bearing registration No. PB-02-D-1393. They were standing on the turn of Miri Piri Academy, Jhabhal Road, Amrtisar where Tara Chand son of Joti Ram came and was joined in the police party. Inspector received secret information that Jagdip Singh was engaged in sale of smack and he was coming towards Chheharata and he could be nabbed and smack could be recovered from him. Accordingly, he was apprehended on suspicion. He told his name as Jagdip Singh. Inspector Rajinder Kumar told him that he was suspected of having some contraband in his possession and his search was to be conducted. He was also told that he had a right to get himself searched from him or from a Gazetted Officer or a Magistrate. Accused reposed confidence in the Inspector. Accordingly, consent memo was prepared. Inspector Rajinder Kumar conducted the personal search of accused. From the right hand side pocket of the pant worn by the accused, smack wrapped in glazed paper was recovered, for which the accused failed to produce any permit or licence. On weighing, the same, it was found to be 12gms. Out of the same, 05gms was taken out as sample. Sample and the remainder were converted into two separate parcels and were sealed with seal bearing impression "RK". The same was taken into possession. Sample seal was separately prepared. Ruqa was sent on the basis of which formal FIR was recorded. The accused was arrested and investigation was carried out. Statements of witnesses were recorded. After completion of investigation, challan against the accused was presented in

Court.

3. Copies of the documents were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C. On finding a prima-facie case made out against the accused under Section 21 of the Act, charge was framed to which the accused pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined ASI Gulzar Singh as PW-1, HC Jaswinder Singh as PW-2, Inspector Rajinder Kumar as PW-3, Constable Sanjeev Kumar as PW-4 and closed the prosecution evidence after giving up certain witnesses.

5. Statement of accused under Section 313 Cr.P.C was recorded wherein all the incriminating evidence was put to him, to which he denied and pleaded false implication. The accused was called upon to lead defence evidence but he has not examined even a single witness in his defence.

6. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused vide judgment and order dated 09.02.2004, as narrated above.

7. Feeling dissatisfied with the aforesaid judgment and order dated 09.02.2004, the present appeal has been directed.

8. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

9. Learned counsel for the accused-appellant has not challenged the order of conviction but has submitted that the quantity of smack alleged stated to be recovered from the accused is only 12 grams which is less than commercial quantity. The accused is not a previous convict nor

involved in any other similar type of case. The appellant has undergone incarceration for a period of three months and three days out of substantive sentence of one year. So, prayer has been made for taking lenient view regarding quantum of sentence.

10. The State counsel has opposed the prayer.

11. I have considered the submissions made by both the sides.

12. Since this is the first appeal, I have myself perused the record. All the mandatory provisions seems to have been complied with. The testimony of the prosecution witnesses inspire confidence and as such learned trial Court has rightly recorded the conviction and sentence of the accused and no ground for acquittal is made out. So, the conviction recorded by the trial Court is affirmed.

13. Now reverting to the quantum of sentence.

14. Appellant -Jagdip Singh has undergone incarceration for a period of three months and three days out of substantive sentence of one year. The occurrence in this case took place on 08.01.2002. Since then, accused/appellant is facing protracted trial. Appellant must have settled in his life. So, in these circumstances, the sentence of appellant imposed under Section 21 of the Act stands reduced to the period already undergone. However, his sentence of fine stands affirmed. The said amount of fine, if not deposited earlier, be deposited within two months failing which he has to undergo the imprisonment imposed under default clause.

15. In the manner indicated above, the appeal stands disposed of accordingly.

16. A copy of this order be conveyed to the trial Court for strict compliance.

February 06, 2015

SV

**(K. C. PURI)
JUDGE**