

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

CRA-S-418-SB of 2004

DATE OF DECISION :- October 12, 2015

Arvind

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. Akshay Jain, Advocate for the appellant.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. Accused Arvind S/o Jai Singh was convicted under Section 15 of the NDPS Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of three months.

2. The sum and substance of the case of the prosecution is that on 8.3.2003, PW4 Surinder Pal, S.I., C.I.A. Staff Yamuna Nagar

was present along with other police officials near railway crossing Pansra where the accused was seen coming from the side of village Kalanaur with a bag on his shoulder. As the accused turned back on seeing the police party, he was apprehended on suspicion. PW4 conducted search of the bag carried by the accused. It contained 5 Kg of choora post (Poppy Straw). Two samples of 100 gm each were separated for analysis. The samples and the residue were converted into separate parcels and were sealed separately with seal bearing mark 'SP'. The accused and the case property were produced before PW1 Suresh Kumar ASI/SHO of Police Station Sadar, Yamunanagar, who reached the spot. After verifying the facts, he also put his seal bearing mark 'AS' on the parcels containing the case property. Based on the ruqa Ex. PF, an F.I.R. Ex. PG was registered. PW4 drew rough site plan Ex. PE reflecting the place of recovery. The case property was deposited with the Incharge Malkhana of the Police Station for safe custody. The sample collected was sent for examination. The FSL report discloses that the sample sent for examination was nothing but Poppy Straw (Chooru Post). On completion of investigation, the accused was charge sheeted under Section 15 of the NDPS Act.

3. PW4 Surender Pal has categorically spoken about the apprehension of the accused on suspicion, recovery of 5 Kg of Chooru Post, the samples drawn by him and the registration of FIR based on the ruqa sent by him. PW1 Suresh Kumar also has affixed

his seal on the case property. The FSL report categorically states that the sample sent for examination was nothing but Poppy Straw. There is no reason discord the above evidence.

4. The learned counsel appearing for the appellant would vehemently submit that PW4 had not complied with the mandatory provisions under Section 50 of the NDPS Act. A formal information as regards the right of search to be exercised by the accused was not passed on to him.

5. Per contra, learned State counsel would submit that there was no necessity to conduct a search in the presence of a Gazetted Officer or a Magistrate, as no personal search was undertaken by PW4.

6. As rightly pointed out by learned State counsel, it is found that only a bag carried by the accused was searched by PW4 Surender Pal. When the personal search was not to be conducted in that case presence of a Gazetted Officer or a Magistrate, offer of search in their presence is totally redundant. Therefore, in my considered view, Section 50 of the NDPS Act does not apply to the facts and circumstances of this case.

7. It was further submitted by learned counsel appearing for the appellant referring to the evidence of PW5 Jaswant Singh, the constable who was employed for taking the sample to the FSL, that the parcel which was entrusted to him bore the seal of 'KS' and 'AS'. It is his submission that it was not the version of PW1 and PW4 that

any other police official put the seal with the marking 'KS'. Learned counsel appearing for the State referring to the FSL report would submit that the parcels bore the seal only 'SP' and 'AS' and not 'KS' and 'AS'. The wrong reference made by PW5 as regards the marking found on the parcels cannot be blown out of proportion, it was submitted.

8. It is true that PW5 has stated that the parcel entrusted to him bore seal 'KS' and 'AS'. It is found that PW5 has come out with a wrong information as regards the marking of the seal on the parcel as it was found from the FSL report that the parcel bore seal 'SP' and 'AS'. Therefore, as rightly pointed out by learned counsel appearing for the State, the wrong reference made by PW5 as regards the marking of the seal cannot be taken serious note of.

9. Learned counsel appearing for the appellant referred to the FSL report and submitted that six seals bearing the mark 'SP' was found on the parcel sent for examination. It is no-body's case that PW4 affixed his seal six times on the parcel, it was submitted.

10. On a careful perusal of the evidence of PW5, I find that he had not referred specifically as to the number of seals, affixed on the parcel. Inasmuch as PW4 has not spoken about the number of seals he put on the parcels, in my considered view, the reference made in the FSL report that six 'SP' seals were found on the parcel does not contradict of the prosecution case.

11. Learned counsel appearing for the accused submitted

that PW4 failed to associate any independent witness for the arrest of the accused and recovery of the contraband from the accused, in spite of the fact that recovery was made in a crowded place.

12. It is true that PW4 had not chosen to associate any independent witness during the course of investigation, he has embarked upon. But it is a common knowledge that no person from the public associates himself willingly in the course of investigation of a case under the NDPS Act. Even if they are associated they do not support the case of the prosecution. In fact, they turn hostile during the course of investigation. Such a practical difficulty faced by the investigating Agency also will have to be taken note of by the Court of Law. At any rate, non association of an independent witness does create a dent in the case of the prosecution, inasmuch as the other evidence adduced by the prosecution completely establishes that the accused was found in conscious possession of 5 Kgs of Poppy Straw.

13. Coming to the quantum of sentence, learned counsel appearing for the appellant would submit that the case originated way back in the year 2003. After all, the appellant was allegedly found in possession of only 5 Kgs of Poppy Straw. He has already undergone 19 days. Therefore, the period already undergone may be ordered as the sentence to be undergone by the accused, it was submitted.

14. It is true that this was the first and the last case of the

appellant. The quantity is comparatively less and it falls under the category of 'non commercial quantity'.

15. Considering the above facts and circumstances, the sentence cannot be reduced to the period already undergone. But considering the passage of time from the date of occurrence and the fact that the accused was a first offender who did not have any other case of criminal nature till today, I am of the view that the sentence imposed by the trial Court deserves to be reduced substantially.

16. In view of the above, confirming the conviction of the accused for the offence under Section 15 of the NDPS Act, the sentence imposed by the trial Court is reduced to the period of six months' rigorous imprisonment. The fine amount and the default sentence imposed by the trial Court stand maintained. The bail bond executed by the accused stands revoked. The accused shall surrender within 15 days from the date of this judgment before learned Chief Judicial Magistrate, Jagadhri, failing which learned Chief Judicial Magistrate, Jagadhri shall issue warrant of arrest and send him to jail to undergo the unexpired portion of sentence.

17. Resultantly, the Criminal appeal stands disposed of in the aforesaid terms.

**(M. JEYAPPAUL)
JUDGE**

October 12, 2015

p.singh