

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

**CRA NO.S-479-SB OF 2004 (O&M)
DECIDED ON : 19.01.2015**

Gurvinder Kaur

..... Appellant

versus

State of Punjab and another

..... Respondents

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

Present : Mr. Damanjeet Singh, Advocate and
Mr. D. S. Pheruman, Advocate,
for the appellant.

Ms. Simsi Dhir Malhotra, DAG, Punjab.

K. C. PURI, J. (ORAL)

Gurvinder Kaur has directed the present appeal against the judgment of conviction and order of sentence dated 24.02.2004 passed by Shri M. S. Chauhan, the then Special Judge, Amritsar, vide which the accused/appellant was convicted under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (in short "the Act") and sentenced to undergo rigorous imprisonment for a period of ten months and to pay a fine of ₹2000/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.

The prosecution story in brief is that On 19.09.2002 ASI Bakhtawar Singh along with his fellow officials was present at T.Point Sau Footi Road, Amritsar. Swaran Singh, Pradhan, Katra Karam Singh also met him there. They were also joined in the police party. At about 7:00 PM, a secret information was received that accused Gurwinder Kaur is selling smack and if raid is conducted, she can be caught red handed. Accordingly, raid was conducted. Gurwinder Kaur was found present in the house. ASI Bakhtawar Singh told her that they suspect that she is having some contraband and her personal search is required. She was further asked if she wanted her person to be searched before the Seizing Officer or a Gazetted Officer or a Magistrate. She opted to be searched before the Gazetted Officer. Accordingly, memo was prepared. DSP Jagdish Singh Khehra was requested to reach the spot. Accordingly, DSP reached the spot and disclosed his identity to the accused. Accused opted to get herself searched by the DSP. Accordingly, memo was prepared. Lady Constable Sukhraj Kaur was directed to personally search the accused and from brassier worn by the accused, smack wrapped in a glazed paper was recovered. Out of it, the sample weighing 5 gms was separated. The remainder was also weighed and found to be 5 gms. The sample and remainder were sealed in separate parcels and sealed with seal bearing impression 'BS'. Sample seal was also prepared. The seal after use was handed over to the Sarwan Singh(independent witness).Ruqa was sent to the police

station on the basis of which, formal FIR was recorded. The accused was arrested. Statements of the independent witnesses were recorded. After completion of necessary investigation challan against the accused was presented in the Court.

Copies of the documents as envisaged under Section 207 Cr.P.C, were supplied to the accused free of costs.

On finding a prima facie case made out against the accused, charge under Section 21 of the Act was framed against the accused, to which, she pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Constable Surinder Pal Singh as PW-1, DSP Jagdish Singh Khehra as PW-2, ASI Bakhtawar Singh as PW-3, Inspector Surinder Singh as PW-4 and closed the prosecution evidence.

Thereafter the statement of accused under Section 313 Cr.P.C was recorded wherein all the incriminating evidence was put to her to which she denied and pleaded false implication.

The accused was called upon to lead defence evidence but she has not examined even a single witness in her defence.

The learned trial Court, after appraisal of the evidence, convicted the accused and sentenced her to undergo rigorous imprisonment and fine, as narrated above.

Feeling dissatisfied with the aforesaid judgment of conviction and order of sentence dated 24.02.2004, the present appeal has been directed.

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

Learned counsel for appellant has not challenged the conviction but has submitted that lenient view regarding quantum of sentence be taken. It is submitted that the quantity recovered from the appellant was marginally high from the small quantity. It is further submitted that the appellant is a lady and she is already facing the agony of protracted trial for the last ten years. It is further contended that as per custody certificate, the appellant has undergone incarceration for a period of 01 month and 04 days out of the substantive sentence of 10 months. No other case is pending against the appellant. So, prayer has been made for taking lenient view regarding the quantum of sentence.

Learned State counsel has supported the judgment passed by the trial court.

I have considered the submissions made by both the sides and have gone through the records of the case.

Although learned counsel for the appellant has not challenged the conviction recorded by the trial court but since this is the first appeal I have myself gone through the records of the case. All the mandatory provisions have been complied with. So conviction under Section 21 of the Act, stands affirmed.

Now reverting to the quantum of sentence, only 10 gms of smack was said to be recovered from the appellant. The small quantity is 5 gms. So, the quantity recovered is marginally

high than the small quantity. The appellant is a lady and she has already undergone incarceration for a period of 01 month and 04 days out of the substantive sentence of 10 months. The appellant is neither a previous convict nor involved in any other case. The case relates to more than 12 years ago. So, taking into account whole of the circumstances, the sentence of the appellant stands reduced to the period already undergone by her.

The appeal stands disposed of accordingly.

A copy of the order be sent to the trial court for strict compliance.

JANUARY 19, 2015
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(K. C. PURI)
JUDGE