

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

**Criminal Appeal S-622-SB of 2004
Date of Decision: September 7, 2015**

Jagdish alias Bua

.....Appellant

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Rajinder Goyal, Advocate
for the appellant.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S.MANN, J. (Oral)

The appellant was tried for committing offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act'), for being found in unlawful possession of 10 kgs of poppy husk.

Vide judgment and order dated 26.2.2004, the Judge, Special Court, Kaithal, convicted the appellant for the aforementioned offence and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo

rigorous imprisonment for fifteen days. The period already undergone by him in custody was ordered to be set off against the substantive term of imprisonment as provided under Section 428 of the Code of Criminal Procedure.

The case of the prosecution, in nutshell, is that on 16.8.2001, the appellant was apprehended on suspicion by a police party headed by ASI Sultan Singh, as he tried to retreat from the spot while riding scooter and in the process, the scooter fell down and so also the plastic bag kept on the front footrest on the scooter. The search of the bag led to recovery of 10 kgs of poppy husk.

Upon completion of investigation and presentation of challan, the appellant was charged for the offence under Section 15 of the Act to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 MHC Satbir Singh, PW2 EHC Mahabir Singh, PW3 Sub Inspector Gurmel Singh, PW4 DSP Dharam Pal Singh and PW5 Sub Inspector Sultan Singh. The prosecution also tendered in evidence report Ex.PA of the Forensic Science Laboratory.

The plea of the appellant during his examination under Section 313 Cr.P.C. was of innocence and false implication. In defence, he examined his father Sikander as DW1, Nura Ram

son of Bahadur, Ex-Sarpanch as DW2 and co-villager Darshan Singh as DW3.

The trial Court, after hearing learned counsel for the parties and perusing the record, believed the prosecution case and convicted and sentenced the appellant, as mentioned above.

After hearing learned counsel for the appellant as well as learned State counsel besides perusing evidence on record, this Court is of the considered view that the prosecution has successfully proved the commission of offence under Section 15 of the Act by the appellant as he was found to be carrying 10 kgs of poppy husk in a plastic bag, which he had kept on the front footrest of his scooter. Sample taken out of the recovered contraband was found to contain meconic acid and, thus, opined to be that of poppy husk. The defence plea is nothing but an afterthought and, therefore, no relief can be granted to the appellant in the matter of his conviction under Section 15 of the Act.

Coming to the quantum of sentence, it may be noticed that after being arrested on 16.8.2001, the appellant was granted concession of bail on 1.12.2001. Thus, he has already remained behind the bars as an undertrial for a period of three and half

months. The appellant is not shown to be a previous convict. When examined under Section 235 Cr.P.C. before the trial Court, the appellant had pleaded that he had a minor daughter to look-after. It was also pleaded that he was twenty three years of age. Prayer has, accordingly, been made for reducing the sentence of imprisonment imposed upon the appellant.

Learned State counsel has opposed the prayer made by the appellant by submitting that the appellant was found in possession of poppy husk without having any licence or permit to carry the same. He has also submitted that the menace of the drugs is on the increase which requires to be curbed with heavy hand.

After hearing learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the considered view that as the appellant has already undergone three and half months out of the sentence of six months imposed upon him, and he is on bail for the last more than ten years, no useful purpose will be served by sending the appellant behind the bars, once again, to undergo the remaining sentence of imprisonment. Ends of justice would be best met if his remaining sentence of imprisonment is set aside.

Resultantly, the conviction of the appellant under

Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 is upheld. However, his sentence of imprisonment is reduced to the one already undergone by him. The sentence of fine, alongwith its default clause, is maintained.

The appeal is, accordingly, disposed of.

September 7, 2015
amit rana

(T.P.S. MANN)
JUDGE