

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

CRA-S-793-SB of 2004 (O&M)

Date of decision: 17.08.2015

Kundal Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Vinod Bhardwaj, Advocate for the appellant.

Mr. Arun Luthra, AAG, Haryana
for the State.

Jitendra Chauhan, J.

The present appeal is directed against the judgment of conviction dated 18.03.2004 and the order of sentence dated 20.03.2004, passed by the Court of Special Court, Kurukshetra, vide which the accused/appellant Kundal Singh, was convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as 'the Act') and sentenced him to undergo rigorous imprisonment for a period of three months, and to pay a fine of ₹5000/- or in default of payment thereof, to further undergo imprisonment for one month.

The prosecution case against the appellant is that on 21.03.2002, the appellant was apprehended while he was having in his possession a bag containing 2 kg and 600 grams of poppy husk, without any permit or licence.

On commitment, the accused was charged under Section 15 of the Act, to which the accused/appellant pleaded not guilty and claimed trial.

In support of the case of prosecution, it examined PW-1 ASI Dhanpat Singh; PW-2 ASI Raj Kumar; PW-3 EHC Ram Lal; PW-4 HC Mange Ram; PW-5 SI Chhatar Pal Singh; PW-6 ASI Om Pal; PW-7 ASI Kartar Singh and PW-8 SI Paras Kumar.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. In support of his defence, the accused/appellant examined DW1- Jarnail Singh and DW-2 Raghbir Singh.

After hearing the Public Prosecutor for the State, the Counsel for the accused, and after going through the evidence, on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

Feeling aggrieved against the judgment of conviction and the order of sentence passed by the Trial Court, the instant appeal was filed by the accused/appellant which was admitted on 16.04.2004. The sentence of accused/appellant was suspended on the

same day.

The learned counsel for the appellant does not press the appeal on merits and has submitted that the appellant is now more than 80 years old and is completely bed ridden and is dependent for carrying out day to day activities. He has further submitted that the appellant has suffered a protracted trial as the FIR was registered on 21.03.2002. The appellant has never misused the concession of bail during the trial as well as during the pendency of the present appeal. He is a first offender and he has already undergone one month out of substantive sentence of three months. Thus, the learned counsel prays for a lenient view on the quantum of sentence imposed by the trial Court.

On the other hand, the learned State counsel opposed the prayer of appellant/accused and supported the judgment of conviction and order of sentence passed by the trial Court.

I have heard the arguments of the learned counsel for the parties and has carefully gone through the record of the case.

The prosecution case is fully proved by the statements of the prosecution. There is no flaw in the unassailed judgment of conviction. There is no merit in this appeal which is dismissed on merits.

In **Ghasita Sahu Vs. State of Madhya Pradesh, 2008**

(1) *RCR (Criminal) 901*, that since the quantity recovered was less

than the commercial quantity though more than the small quantity, the punishment awarded was reduced to already undergone.

Further in **Ramakant Gopalsaran Shahu Vs. State of Gujarat**, 2005(3) RCR (Criminal) 204, it has been held as under:-

“9. In the case before us, since the contraband article recovered from the house of the appellant weighing 1 Kg. and 300 gms. is neither a small quantity nor a commercial quantity but less than commercial quantity and more than small quantity, Sec.20(b)(ii)(B) has to be kept in mind. This means that proportion of sentence in relation to quantity has to be maintained by the Court. If the trial court fails to maintain the proportion and award sentence regardless of quantity recovered, there would be disparity in the sentence awarded. Since the quantity recovered from the present appellant is only 300 gms. more than the small quantity and 19 kgs. less than the commercial quantity, the sentence prescribed may extent to 10 years. However, merely because the sentence prescribed by the legislature may extent to 10 years, it should not ordinarily be awarded by the trial court for the aforesaid period but for a period keeping in mind the quantity of contraband substance recovered. In the present case, the trial court has awarded R.I. of 10 years with a fine of Rs.1,00,000/-which appears to be unjust, improper and disproportionate. Besides, the trial court has not exercised its discretionary power while awarding alternative sentence also. In default of payment of fine, it has awarded five years R.I. Hence, we are of the opinion that even for fine also, same proportion is required to be maintained.”

The appellant has suffered agony of criminal trial. It is one of the mitigating circumstance to treat him leniently. The appellant is stated to be a first time offender. He has already undergone one month sentence, out of the substantive sentence of three months. In view of the above, the prayer made on behalf of the appellant is accepted. The sentence awarded to the appellant is ordered to be reduced to the period already undergone.

Ordered accordingly.

However, the fine is enhanced to ₹10,000/- to be paid within four months after the receipt of certified copy of the order. It is made clear that if the enhanced amount of fine is not paid within the stipulated period, the present appeal shall be deemed to be dismissed without any notice.

17.08.2015

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(JITENDRA CHAUHAN)
JUDGE