

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH.**

CRA-S-2312-SB-2013 (O&M)

Date of decision: 21.5.2015

Mohinder Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Dinesh Nagar, Advocate for the appellant.
Mr. Ankur Jain, AAG, Punjab.

Rajan Gupta, J. (oral)

This is an appeal against the judgment of conviction and order of sentence dated 17.05.2013, delivered by Special Court, Shaheed Bhagat Singh Nagar. The trial court after recording the prosecution evidence, came to the conclusion that the accused/appellant was guilty of possession of contraband (i.e. 35 Kgs. of poppy husk). The accused was convicted under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to be as “NDPS Act”) and sentenced to undergo RI for five years and to pay a fine of Rs.50,000/-.

Feeling aggrieved against the judgment of the trial court, the appellant has approached this court through the instant appeal.

Learned counsel for the appellant states that he is limiting his prayer only to the extent of reduction in the sentence awarded and does not assail the judgment of conviction. Learned counsel has submitted that the appellant is a poor person and the only bread winner

of his family and has already faced agony of protracted trial. He has further submitted that the appellant is not involved in any other case. According to him, in the present case the quantity of contraband (poppy husk) recovered from the possession of the appellant is much below the commercial quantity and out of the total awarded sentence of three years, by now he has undergone 02 years 01 months and 26 days. He has placed on record custody certificate in this regard. Learned counsel, therefore, prays that keeping in view the fact that the appellant has to support his family and the quantity of contraband recovered from him is much below the commercial quantity, the sentence be reduced to the period already undergone by him.

Learned State counsel submits that in case conviction of the appellant is maintained, the court may reduce the sentence as deemed appropriate in the circumstances of the case.

I have heard learned counsel for both the parties.

Briefly, the prosecution case runs thus:

On 01.08.2009 SI Amrik Singh alongwith other officials was present in village Bhangla for checking. At about 5.15 P.M., a person was seen coming on a motorcycle from opposite side, who on seeing the police party tried to turn back and suddenly fell down from the motorcycle. He was apprehended by the police on suspicion. His whereabouts were inquired. Thereafter, SI Amrik Singh disclosed his identity to the accused and told the accused that it is suspected that there is some contraband material in the bag which was lying on his

motorcycle and search of the same was required. He also told the accused about his legal right to get the search conducted in the presence of any Gazetted Officer or a Magistrate, but the accused (appellant herein) reposed confidence in S.I. Amrik Singh. After recording consent statement, search of the bag of the accused was conducted, which led recovery of poppy husk. 250 grams was taken as sample and remaining on weighing came to be 34.750 Kgs. of poppy husk. Parcels of the same were prepared and were sealed with impression "AS". After completion of investigation and on receipt of report of chemical examiner, the accused was sent up for trial.

Finding a prima facie case under Section 15 of the NDPS Act, charge sheet was framed against the accused/appellant to which he pleaded not guilty and claimed trial.

To substantiate its case against the accused/appellant the prosecution examined as many as six witnesses.

The statement of accused under Section 313 Cr.P.C. was recorded, wherein the incriminating evidence available on record was put to him. He refuted the incriminating circumstances and pleaded false implication. He did not examine any witness in his defence.

On the basis of the evidence on record, the learned trial court held the appellant guilty of the charge framed against him and sentenced him as already indicated above.

On a perusal of the impugned judgment as well as trial court record, I am of the considered view that the trial court has rightly

appreciated the evidence on record while holding the appellant guilty of the charge framed against him. There is no infirmity or illegality in the findings given by the court below. The conviction of the appellant is, thus, affirmed.

Even counsel for the appellant, during the course of arguments, has not assailed the judgment of conviction. He has, however, pleaded for reduction in the quantum of sentence on the ground that the appellant is the only bread winner of his family.

Keeping in view facts and circumstances of the case, as also the fact that the appellant has to maintain his family, I deem it fit to reduce his substantive sentence to a period 02 years and 06 months. However, the fine imposed by the trial court shall remain intact. Ordered accordingly.

Except with the modification in the quantum of sentence, as indicated hereinabove, the appeal stands dismissed.

May 21, 2015
'Rajpal'

(RAJAN GUPTA)
JUDGE