

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

CRA No. S-2353-SB of 2003

Date of decision : 09.03.2015

Bharat Bhushan

....Appellant

V/s

State of Punjab

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. D.S. Sukarchakia, Advocate for the appellant.

Mr. Shilesh Gupta, Addl. A.G. Punjab.

RAJAN GUPTA J.

This is an appeal against the judgment of conviction and order of sentence dated 25.11.2003, delivered by Special Judge, Moga. The trial court after recording the prosecution evidence came to the conclusion that the accused-appellant was guilty of possession of contraband (i.e. 500 grams of charas). He was convicted under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act') and sentenced to undergo RI for five years and to pay a fine of ₹50,000/-, in default whereof to further undergo RI for five months.

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 the sole bread winner of his family and has three minor children to support. According to him, in the present case the quantity of charas recovered from the possession of appellant is below the commercial quantity and out of the total sentence of five years awarded to the appellant, he has undergone 02 years and 05 months approximately by now. Learned counsel, therefore, prays that keeping in view the fact that appellant has to support his family, sentence awarded to him be reduced to the period already undergone by him.

Learned State counsel has placed on record custody certificate by way of affidavit dated 03.03.2015 of the Superintendent, Central Jail, Ferozepur, according to which the appellant had undergone 02 years 05 months and 14 days of sentence as on 18.03.2004. He 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 the parties.

Briefly, the prosecution case is that on 03.06.1999, a police party headed by ASI Gurcharan Singh was going in official van on Gill Road towards by-pass in search of some suspected persons. When the said police party was about 50 yards short from by-pass, they saw the accused coming from the side of by-pass carrying a raxin bag in his right hand. On seeing the police party, he turned back. On suspicion, accused was nabbed and his name and address was asked. As it was suspected that the accused was in possession of some contraband, he was apprised about his legal right of search in the presence of Gazetted Officer or a Magistrate.

Accused consented for his search to be conducted by Gazetted Officer. Jarnail Singh SP (D), Moga was called on the spot. The accused reposed confidence in him and preferred search in his presence. After following the necessary formalities, search of accused was conducted, which led to recovery of 500 grams of charas, out of which sample of 20 grams was separated and put into a plastic box. Remaining charas was put in separate plastic box and separate parcel was prepared. These parcels were sealed by the investigating officer and SP(D) with their respective seals bearing impressions "GS" and "JSD". On 04.06.1999, SHO, Police Station, City Moga-I handed over the accused and entire case property to ASI Balraj Singh. After completion of investigation and on receipt of report of chemical examiner, challan was submitted before the competent court.

Finding a prima facie case under Section 20 of the 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, the prosecution examined as many as seven witnesses.

Statement of the accused under Section 313 Cr.P.C. was recorded wherein the incriminating evidence available on record was put to him. He denied the incriminating evidence and pleaded false implication. Accused adduced eight witnesses in his defence.

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

On a perusal of record and judgment of the court below, 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 main bread winner of his family and three children to support.

Keeping in view the facts and circumstances of the case as also the fact that the appellant is the sole bread winner of his family, I deem it fit to reduce his substantive sentence to the period already undergone by him. However, the fine imposed by the trial court shall remain intact.

The fine, if not deposited already, be deposited within three months from the date of receipt of certified copy of this order, failing which the modification in quantum of sentence shall stand withdrawn and the appellant shall undergo remaining period of sentence as awarded by the trial court.

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

March 09, 2015

Ajay

(RAJAN GUPTA)
JUDGE