

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

**Crl. Appeal No.S-2966-SB of 2012 (O&M)
Date of decision : 17.03.2015**

Resham Singh and another

...Appellants

versus

The State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. G.S. Sidhu, Advocate,
for the appellants.

Mr. Daljit Singh Virk, AAG, Punjab.

RITU BAHRI, J.

This appeal has been filed against the judgment of conviction and order of sentence dated 05.10.2012 and order of sentence dated 16.09.2004 passed by the Special Judge, Sri Muktsar Sahib, whereby the accused-appellants, Resham Singh and Gurdeep Singh have been convicted and sentenced to undergo rigorous imprisonment for a period of 4 months and to pay a fine of Rs.1,000/- each for commission of an offence punishable under Section 15 of Narcotic Drugs & Psychotropic Substances Act (for brevity 'the NDPS Act'). In default of payment of fine, they were further sentenced to undergo rigorous imprisonment for 15 days.

Brief facts of the case are that on 16.04.2008, ASI Makhan Singh along with other police officials was going in a private vehicle in connection with patrolling duty. When they reached near the bridge leading from Abohar Dabwali to Middu Khera, two persons were seen coming from the opposite side on a yellow coloured motorcycle and on seeing the police

party, they tried to turn back. However, ASI Makhan Singh apprehended them with the help of other police officials. One plastic bag was lying in between both the riders. The person, who was driving the motorcycle, disclosed his name as Resham Singh-appellant No.1, whereas the second person, who was a pillion rider, disclosed his name as Gurdeep Singh @ Raju-appellant No.2. Thereafter, ASI Makhan Singh told the accused-appellants that he suspected that there was some contraband material in the the plastic bag which they were carrying. Therefore, they were asked, as to whether they wanted to be searched in the presence of a Gazetted Officer or Magistrate, whereupon they reposed faith and confidence in the Investigating Officer (ASI Makhan Singh). Their consent memo was prepared accordingly. Thereafter, on conducting the search of the plastic bag, the same were found to be containing poppy husk, out of which, one sample of 250 grams was separated and converted into a parcel. The remaining poppy husk, on weighment, came to be 2¼ Kgs. The same was also converted into separate parcel. Both the parcels were sealed by ASI Makhan Singh with his seals bearing impressions 'MS' and taken into police possession vide separate recovery memo. Accused-appellant were formally arrested and currency notes of Rs.80/- and Rs.30/- were recovered from Resham Singh and Gurdeep Singh respectively, which were taken into possession vide separate memo of *jamatalashi*. The motorcycle was also taken into police possession vide separate recovery memo. After completion of necessary formalities, challan was prepared and presented before the Court.

After presentation of the challan, charge under Section 15 of the NDPS Act was framed against the accused-appellants, to which, they

pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as six witnesses and thereafter, the evidence of the prosecution was closed.

Statements of accused-appellants under Section 313 Cr.P.C., were recorded, wherein entire incriminating evidence was put to them, however, he denied the same and pleaded false implication. Accused-appellant Resham Singh stated that nothing was recovered from him and he along with his son Gurdeep Singh have been falsely implicated due to party faction and political rivalry in the village. In defence, the accused-appellants examined Santa Singh as DW-1.

The trial Court after going through the entire evidence led by the prosecution, convicted and sentenced the accused-appellants in the aforesaid terms.

While convicting the accused, the trial Court observed that recovery 2½ kgs of poppy husk was effected from the plastic bag, which was being carried by both the accused-appellants on a motorcycle. Hence, there was no requirement for complying with the provisions of Section 50 of the NDPS Act. The question of compliance or non-compliance of Section 50 of NDPS Act was relevant, only in case of personal search of a person. This provision does not extent to the search of vehicle, container or a bag. Similar view has been made by the Hon'ble Supreme Court in **Ajmer Singh Vs. State of Haryana**, 2010 (2) RCR 132.

The stand of the appellants that a false case has been planted upon them due to party faction in the village, could not be proved by deposition of Santa Singh, Member Panchayat, who appeared as DW-1. His deposition was that about 4½ years ago, a police party had raided thehouse

of the accused, but nothing incriminating had been recovered. He had not made any statement with regard to the party faction or rivalry in the village of the appellants. He had deposed in favour of the accused-appellant being a neighbour. On the next date of the alleged recovery, the accused-appellants along with the case property were produced before the Illaqa Magistrate and as per the orders (Ex.PW5/C) passed by the Illaqa Magistrate, one representative sample of 250 grams was drawn by removing the seal from the bulk parcel. Thereafter, the representative sample and the bulk parcel were sealed with his seal bearing impression 'FSD MLT'. The same was deposited with the MHC on reaching back to the police station. There was no occasion for any police official to tamper with its seal after passing of the order (Ex.PW5/C) by the Illaqa Magistrate. Therefore, the delay of 12 days in sending the sample to the Chemical Examiner would not rendered the prosecution version doubtful. Moreover, the report of the Chemical Examiner (Ex.P12) further established that the seal on the sample was intact when it reached to the office of the Chemical Examiner. In these circumstances, delay of 12 days would not cause any dent to the prosecution version.

Furthermore, both the sealed parcels, specimen seal slip, Form M-29, motorcycle and currency notes, recovered from the personal search of the accused-appellants, were taken into police possession by ASI Gurnam Singh vide memo, Ex.P11. This memo was attested by him. ASI Gurnam Singh retained the case property in his safe custody and produced the same, along with the accused, before the Illaqa Magistrate. Hence, the argument of learned counsel for the appellants that Form M-29 was not made at the spot carries no weight, as ASI Makhan Singh had filled up the said form in his

own hands, which was bearing the date as 16.04.2008.

In the present case, at the time of recovery of poppy husk, the prosecution has carried all the mandatory provisions of NDPS Act with regard to preparation of samples and taking of one representative sample before the Illaqa Magistrate etc. Furthermore, all the seals were intact at the time of sending the sample to the Chemical Examiner.

In these circumstances, this Court is of the opinion that the judgment passed by the trial Court does not require any interference and the same is, accordingly, upheld. However, a lenient view can be taken on the quantum of sentence of the appellant.

Recovery of 2½ Kgs. of poppy husk was effected from the appellants. As per custody certificate, both the appellants have undergone 27 days in custody. In this case, the appellants were released on bail vide order dated 12.10.2012 and till date, they have not misused the concession of bail.

Resultantly, the present appeal is dismissed. However, keeping in view the fact that the appellants are facing the agony of a criminal trial for the last more than 6 years and are not involved in any other criminal case under the NDPS Act, the sentence of imprisonment awarded to the appellants is reduced to the period already undergone.

With the above modification/direction, the present appeal stands disposed of.

(RITU BAHRI)
JUDGE

17.03.2015
ajp