

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S No.3146-SB of 2012

Date of decision: December 07, 2015.

Gian Singh

... **Appellant**

v.

State of Punjab

... **Respondent**

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

CORAM: **HON'BLE MRs. JUSTICE RAJ RAHUL GARG**

Argued by: Shri Farid Singh Virk, Advocate for the appellant.

Shri Surjeet Singh Choudhary, Dy. Advocate General, Punjab.

Raj Rahul Garg, J. (Oral):

The instant appeal at the instance of the appellant is directed against the judgment of conviction and the order of sentence dated 14.8.2012 passed by the learned Judge, Special Court Patiala, whereby he has been sentenced to undergo RI for eight months and also to pay fine of Rs.1,000/-, in default whereof to undergo further RI for a period of two months for commission of an offence punishable under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

As per the prosecution story, on 22.3.2010 ASI Nirmal Singh along with his companion police officials was proceeding from village Adalatiwala towards village Binjal in connection with patrol duty. At about 2.00 p.m., upon crossing bridge of Tangri river towards village Adalatiwala,

one Sikh gentleman was spotted coming on foot. On seeing the police party, the suspect sat on his left side pretending to urinate. On suspicion, ASI Nirmal Singh with the help of other police officials intercepted him, who, on inquiry, disclosed his name as Gian Singh and also disclosed the other particulars. ASI Nirmal Singh disclosed his apprehension to the suspect that he was carrying some contraband for which he intends to conduct his personal search. Gian Singh was also apprised of his statutory right to get the search effected from a Gazetted Officer or a Magistrate. However, Gian Singh confided in ASI Nirmal Singh and desired to get the search conducted in his presence upon which consent memo was separately prepared. Thereafter, search by ASI Nirmal Singh led to recovery of opium wrapped in a glazed paper from the side pocket of the shirt which Gian Singh was wearing. Two samples of 10 grams each were separated and the remaining opium weighed 380 grams. Thereafter necessary formalities as required under the Act were fulfilled and the case property along with the accused, samples and sample seal bearing impression 'NS' were produced before Inspector Chand Singh, SHO, PS Julkan. Formal FIR was registered at the Police Station.

During the course of investigation, one sample was sent to the office of the Chemical Examiner who opined the contents thereof to be opium. Thereafter, the accused was sent to stand trial for an offence under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

On completion of investigation, the accused was charge sheeted

under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and sent to face trial to the Court of Special Judge.

After taking entire prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. and all the incriminating material appearing in the prosecution version were put to him, to which he denied; pleaded innocence and false implication.

At the very outset, without going into merits of the case, learned Counsel for the appellant-accused contended that he does not contest the findings recorded by the learned trial court on merits of the case. The appellant has in fact confessed his guilt even before the learned trial court. He is of the age more than 60 years. The appellant-accused shall feel satisfied in case his sentence is reduced to the one already undergone.

Shri Surjeet Singh Choudhary, Dy. Advocate General, Punjab, appearing for the respondent-State, had no serious objection about reduction of sentence as the appellant-accused has already undergone more than five months of sentence out of total of 8 months sentence awarded to him. However, he has simply contended that since accused had confessed his guilt before the learned trial court, as such he does not deserve any leniency in the matter of sentence.

Custody certificate has been placed on the file by learned State Counsel today in the Court. The same is taken on record. As per the custody certificate dated 12.1.2015, the appellant-accused has undergone actual period of sentence as 5 months and 10 days.

The case of sentence on the basis of confession made by the accused is on better footing than the case of sentence awarded to the accused after recording judgment of conviction on merits. The fact remains is this that the offence is proved against the accused and he only desires leniency in the matter of sentence. Keeping in view the facts and circumstances of the case and further the age of the accused, I am satisfied that the ends of justice would be met if his sentence is reduced to the one already undergone.

For the reasons recorded above, maintaining the impugned judgment of conviction dated 14.8.2012 against the appellant-accused, the order of sentence of the even date is modified to the extent only that the sentence awarded to the appellant-accused by the trial court is reduced to the one already undergone, whereas the sentence of fine of Rs.1,000/- shall remain intact. Learned Counsel for the appellant contended that he shall deposit the amount of fine with the learned trial court within one month from today. He is allowed to do so. The reduction in sentence is only subject to the deposit of fine of Rs.1,000/-, as directed above.

Copy of this order be sent to the learned trial court and the concerned jail authorities for information and necessary compliance.

Appeal stands disposed of in the above terms.

December 07, 2015.
kadyan

[Raj Rahul Garg]
Judge