

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

CRA-S-3474-SB of 2012 (O&M)

DATE OF DECISION: December 03, 2015.

Makhan Singh

....Appellant.

VERSUS

State of Haryana

....Respondent.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Ms. Gurpal Kaur, Advocate for the appellant.

Mr. Naveen Sheoran, Deputy Advocate General, Haryana.

Shekher Dhawan, J. (Oral)

Present appeal has been filed by appellant Makhan Singh against judgment of conviction dated 24.02.2011 and order of sentence dated 26.02.2011 for commission of offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter mentioned as 'the Act') whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.50,000/- and in default of payment of fine, to further undergo simple imprisonment for one year.

Relevant facts of the case that on 30.09.2005 appellant Makhan Singh along with Ajaib Singh was allegedly found to be in

conscious possession of 51 Kgs of poppy straw. He was apprehended by the police party while on crime detection duty. On seeing the police party, both the accused persons fled away from the spot. Thereafter, police party completed various proceedings of investigation including seizure of contraband material on the spot, drawing of sample and sealing after weighing the same. As per prosecution version, total poppy straw was weighed to be 50 Kgs 800 grams which included weight of one gunny bag. Statement of witnesses were recorded. Site plan was prepared and after completion of investigation, challan was presented in the Court.

During the course of trial, learned trial Judge completed various proceedings including framing of charge against the accused, recording of statement of prosecution witnesses, examination of accused under Section 313 of Code of Criminal Procedure and after considering the prosecution evidence and defence evidence, held both the appellants/accused guilty for commission of offence under Section 15 of the Act. Accused Ajaib Singh was sentenced to undergo 3-1/2 months imprisonment which he had already undergone while remaining in custody and as per record Ajaib Singh has not filed any appeal.

At the time of arguments, learned counsel for appellant mainly argued that accused has been awarded sentence of five years rigorous imprisonment for having possession of 49 Kgs of poppy straw though, in fact, no recovery was effected from him. Appellant was not apprehended on the spot. Even the Investigating Officer and alleged eyewitnesses were not known to the accused person even if, the entire prosecution case is taken to be correct. Investigating Officer ASI Gopi Ram had conducted raid at the residential house of the appellant Makhan Singh about 15 days prior to the

alleged occurrence and at that time, no recovery could be effected. Investigating Officer falsely implicated the appellant in the present case. More so, no independent witness was joined at the time of alleged recovery though eyewitnesses were easily available on the spot. Learned trial Judge has completely ignored these facts while recording the judgment of conviction and order of sentence and the same be set aside.

Learned State counsel, while arguing on the point of conviction and sentence, took the plea that, in fact, Makhan Singh is habitual offender as he is involved in one more case bearing FIR No.21 dated 07.02.2004 and he stands convicted and sentenced to undergo rigorous imprisonment for ten years for commission of offence under Section 15 of the Act. There is no dispute about identity of the accused because it had come in the statement of Investigating Officer ASI Gopi Ram that accused Makhan Singh was known to him as he had conducted raid at his residential house earlier. Independent witnesses were not ready to join the investigation and law on the point is settled that police officials are as good as witnesses from the general public, if their statement inspire confidence and reflect that there is nothing on the file to disbelieve the testimony of police officials who had seen the accused while leaving the gunny bag on the spot. More so, there is no enmity of Investigating Officer with the accused persons to falsely implicate them in the case.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that learned trial Judge has rightly held appellant Makhan Singh guilty for commission of offence under Section 15 of the Act and sentenced him to undergo rigorous imprisonment for five years. For that purpose, both Investigating Officer

ASI Gopi Ram as well as Bhoop Singh PW6 have stated in so many words that accused Makhan Singh was known to them earlier. As such, the testimony of these two witnesses was rightly relied upon by learned trial Judge. There is no reason for Investigating Officer to falsely implicate the present appellant in this case. More so, no complaint to the higher police authorities was ever made by appellant/accused for falsely implicating him in the present case. These facts reflect that even appellant Makhan Singh was satisfied that he was rightly involved in this case though he managed to slip away from the spot. Learned counsel for the appellant relied upon testimony of DW1 HC Sita Ram and DW2 Jagroop Singh who have simply deposed that Roznamcha dated 30.09.2005 of Police Station Kalanwali was destroyed. No adverse inference can be drawn on this point because Roznamcha is such a record of police which is to be destroyed after a limited period. As regard to DW2 Jagroop Singh, he had never made any complaint regarding false implication of Makhan Singh before any police authorities or before the Court and thereafter, his statement as defence witness is just an afterthought and as such, learned trial Judge rightly ignored the testimony of DW1 and DW2 and no reliance was put on their statement. As such, the present appeal against judgment of conviction dated 24.02.2011 without any merit stands dismissed.

As regard to order on quantum of sentence dated 26.02.2011, learned counsel for the appellant took the plea that alleged recovery of 49 Kgs poppy straw, co-accused Ajaib Singh was ordered to undergo 3-1/2 months whereas appellant Makhan Singh was ordered to undergo rigorous imprisonment for five years and pay a fine of Rs.50,000/-. A lenient view on the point be taken. Learned State counsel took the plea that

no leniency is called for in the case as appellant Makhan Singh is habitual offender.

Having considered all these aspects, this Court is inclined to take a little lenient view on the point of sentence because co-accused Ajai Singh has been ordered to undergo 3-1/2 months imprisonment. As such, the order of sentence stands modified to the extent that appellant Makhan Singh shall undergo 3 years rigorous imprisonment for commission of offence under Section 15 of the Act and shall pay a fine of Rs.5,000/- and in case default in payment of fine, he shall have to further undergo one month rigorous imprisonment. It is made clear that appellant Makhan Singh shall be entitled to set off the period which he has spent while remaining in custody during trial and post conviction period, if any.

With the above modifications in the order of sentence, present appeal stands disposed of.

(SHEKHER DHAWAN)
JUDGE

December 03, 2015.

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