

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

Crl. Appeal S-3327-SB of 2013
Date of Decision : October 14, 2015

Gurcharan Singh @ Channa

.....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Nakul Sharma, Advocate
for the appellant.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

T.P.S. MANN, J. (Oral)

The appellant was tried for committing the offence punishable under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 on the allegations that on 24.12.2009 at about 5.30 p.m., he was found in conscious possession of 2 kgs of opium in the area of village Manochahal but without possessing any valid permit or licence for the same. Vide judgment and order dated 6.9.2013, learned Special Judge, Ferozepur convicted the appellant for the aforementioned offence and sentenced him to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs. 30,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year.

As per the case of the prosecution, on 24.12.2009 at about 5.30 p.m., Inspector Palwinder Singh, who was posted as

Station House Officer, Police Station Mallanwala alongwith fellow officials, was going on a Government vehicle on patrol duty. When the police party reached in between the two canals in the area of village Manochahal, the appellant was seen coming riding a motor-cycle from the side of Gurditi Wala Head Work. On the basis of suspicion, he was apprehended. The search of the piece of cloth (Safa) wrapped by him around his waist led to recovery of 2 kgs of opium. Two samples of 10 grams each were separated. The samples and the remainder were taken into possession. One of the samples was later on sent to the Chemical Examiner, Kharar and on analysis, it was found to contain 2.4% morphine.

In support of its case, the prosecution had examined PW1 Wazir Singh DSP, PW2 HC Inder Pal, PW3 SI Kartar Singh, PW4 Inspector Palwinder Singh, PW5 ASI Balbir Singh and PW6 SI Jaswant Singh.

When examined under Section 313 Cr.P.C., the appellant had pleaded false implication. However, no witness was examined in defence.

The trial Court believed the prosecution version and convicted and sentenced the appellant, as mentioned above.

Having heard learned counsel for the parties and on going through the evidence, this Court finds that the prosecution has been successful in proving its case against the appellant

beyond reasonable doubt. In regard to the recovery of the contraband, the prosecution examined PW4 Inspector Palwinder Singh, PW3 SI Kartar Singh, PW5 ASI Balbir Singh and PW1 DSP Wazir Singh. All of them had testified that the appellant was apprehended on suspicion and the search of the Safa worn by him around his waist was found to contain 2 kgs of opium. The aforementioned prosecution witnesses were subjected to lengthy cross-examination but the defence could not bring any material on record from which, it could be indicated that the appellant had been falsely implicated in the case. One of the samples of the contraband taken at the spot was subjected to chemical examination. Vide report Ex. P19, the Chemical Examiner, after observing that the sample contained 2.4% of morphine, opined that the same was of opium.

In view of the above, this Court is of the considered opinion that the appellant has been rightly convicted by the trial Court for committing the offence punishable under Section 18 (c) of the NDPS Act.

Learned counsel for the appellant has submitted that the appellant is a young offender and the only bread winner of his family. He is not involved in any other criminal case. The contraband recovered from the appellant fell within the category of medium quantity. Further, the appellant has already undergone

a period of more than two years and three months out of the sentence of six years imposed upon him. During his stay in jail as a convict, he has availed parole for about two months and there is no allegation that the appellant has misused the concession in any manner. Prayer has, accordingly, been made for reducing the sentence of imprisonment of the appellant.

Per-contra, learned State counsel has submitted that the appellant was found in possession of huge quantity of contraband and, that too, by concealing it in a Safa and wrapped it around his waist. It is also submitted that apart from the present case, the appellant was involved in one more case under Section 18 of the NDPS Act i.e. FIR No. 78 dated 15.5.2010 registered at Police Station Division No. 7, Jalandhar. Learned State counsel has, however, produced the custody certificate, which indicates that the appellant has undergone an actual period of two years and three months.

It is true that the appellant already stands convicted in FIR No. 78 dated 15.5.2010 under Section 18 of the NDPS Act registered at Police Station Division No. 7, Jalandhar as mentioned in the custody certificate itself but in the said case, he was convicted on 6.10.2012 and awarded imprisonment for one year. Further, on expiry of the sentence of imprisonment imposed upon him and on depositing the fine at the jail gate, the appellant

was released on 12.10.2012.

Taking into consideration the totality of the circumstances, this Court is of the considered view that the appellant has already undergone sufficient sentence of imprisonment for committing the offence under Section 18 (c) of the NDPS Act. Under these circumstances, ends of justice would be best met if the remaining sentence of imprisonment of the appellant is set-aside.

Resultantly, the conviction of the appellant under Section 18 (c) of the NDPS Act is upheld. However, his substantive sentence of imprisonment is reduced to the one already undergone by him. The sentence of fine alongwith its default clause is maintained.

The appeal is, accordingly, disposed of.

October 14, 2015
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(T.P.S. MANN)
JUDGE