

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

**Criminal Appeal No. S-2788-SB of 2014
Date of Decision:-07.7.2015**

Union Territory of Chandigarh

...Appellant

Versus

Raju

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment? YES*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Amarjit Singh Virk, Advocate
for the appellant.

HARI PAL VERMA J.

The appellant has filed the present appeal against the judgment dated 2.4.2014 passed by the Judge, Special Court, Chandigarh, for enhancement of sentence.

The trial Court vide judgment dated 2.4.2014 while noticing the fact that accused remained in custody in the case from 25.2.2010 to 25.3.2010, sentenced him for the period already undergone by him along with fine of Rs.5,000/- in a case registered i.e. FIR No.77 dated 25.2.2010, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the 'NDPS Act'), Police Station 11, Chandigarh.

As per FIR, SI Rakesh Kumar along with other police officials was on patrolling duty on 25.2.2010 and holding a naka near Wine shop, Maloya, Chandigarh. At about 8.15 pm, one person, carrying a plastic bag in his right hand was coming on foot from the side of Gwala Colony, Chandigarh. Seeing the police party he tried to turn back. On suspicion that he might be carrying some stolen property, he was apprehended by SI Rakesh Kumar with the assistance of police party. On inquiry, he disclosed his name as Raju son of Sohan Lal, resident of Village Jujhar Nagar, Police Station Balongi, District Mohali. On search of the accused, 'Charas' weighing 500 grams wrapped in a polythene was recovered from the bag carried by the accused, for which he could not produce any permit or licence. SI Rakesh Kumar though tried to join some independent witnesses, but nobody came forward to depose in the case. Two samples of 100 grams each were taken out of the recovered contraband and were put in a container. The remnant quantity of 300 grams Charas in the polythene was put in a separate container. The samples as well as the remnant quantity were converted into sealed parcel and were taken into possession through separate memos attested by the witnesses. After use, the seal was handed over to Constable Manoj Kumar, SI Rakesh Kumar sent a ruqa through Constable Jaimal Singh for the registration of the FIR. Accordingly, vide separate endorsement FIR was registered in the case.

After investigation, challan was prepared and presented in the Court for trial for an offence punishable under Section 20 of the NDPS Act, 1985.

As envisaged under Section 208 Cr.P.C., copies of challan and other documents were supplied to the accused. The respondent-accused was charge-sheeted for an offence punishable under Section 20 of the NDPS Act vide order dated 26.2.2011. The accused pleaded not guilty to the charge and claimed trial.

The trial Court examined HC Yash Pal as PW1, Constable Manoj Kumar as PW2, Dr. Bhagat Singh as PW3, MMHC Sukhchain as PW4, SI Rakesh Kumar 1st Investigating Officer as PW6, Constable Jaimal Singh as PW7 and Inspector Janak Singh Rana (Retired) as PW8. PWs Madhur Verma, Ms. Amandeep Kaur, the then learned Judicial Magistrate 1st Class, Chandigarh, MHC Baljinder Singh, SI Balbir Singh and SI Ashok Kumar were given up by learned Public Prosecutor, being unnecessary and thereafter, prosecution evidence was closed.

The accused while making statement as provided under Section 313 Cr.P.C. denied each and every incriminating substance appearing against him in the prosecution evidence and stated that he has been falsely implicated by the police in this case.

The trial Court while observing that the named witnesses have been produced during the trial, they have no ill-will or malice towards the accused and the case property remained intact and safe during the investigation as well as during the trial has convicted the respondent-accused for an offence under Section 20 of the NDPS Act vide judgment dated 2.4.2012. It was observed that the case property was intact and found to be safe as seals were intact and, therefore, the link evidence was fully complete. Vide separate order dated 2.4.2014 on

the issue of quantum of sentence, the respondent-accused has been sentenced for the period already undergone by him in the custody along with fine of Rs.5000/-. The respondent-accused remained in custody from 25.2.2010 to 25.3.2010.

Thus the present appeal is sought to be filed for the enhancement of sentence, on the ground that the sentence awarded by the trial Court is on lower side. The respondent-accused deserves to be sentenced for longer period.

I have heard learned counsel for the appellant. He submits that the order passed by the trial Court while awarding the sentence to the respondent-accused is in contradiction to the observation made in the order dated 2.4.2014 passed on quantum.

In the case in hand, though there was no compliance of Section 50 of the NDPS Act and the learned trial Court has met the aforesaid objection of the accused that this is a chance recovery of narcotic drugs during the search and, therefore, compliance of Section 50 of the NDPS Act does not arise. Since the accused has not come forward to challenge the order of conviction, this Court cannot go into the compliance/non-compliance of provision of Section 50 of the NDPS Act. However, learned counsel for the appellant has submitted that the sentence as awarded by the trial Court is not in consonance to the offence committed by the accused. For the recovered quantity of narcotic drugs, the respondent-accused was required to be sentenced for a longer period.

Perusal of the judgment shows that in the case in hand, the

respondent-accused is not a habitual offender. During trial nothing has come on record to show that he is involved in any other case including of NDPS Act. The quantity allegedly recovered from the respondent-accused is non-commercial in nature and there are no other cases against him. The Hon'ble Apex Court in **Mukesh Kumar vs. State of M.P. (now Chattisgarh) 2015(1) RCR (Criminal) 251** had an occasion to adjudicate criminal appeal of an accused convicted under Section 20(b)(ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985, wherein the accused was found carrying Cannabis (Ganja) and on search conducted within the statutory provisions, the contraband to the extent of 500 grams was recovered from the dicky of the scooter. The trial Court had convicted and sentenced the accused to undergo rigorous imprisonment for six months and to pay fine of Rs.2000/-. However, the Apex Court after hearing the counsel for the parties on the quantum of sentence, had reduced the period of sentence to already undergone.

Considering the fact that the quantity found in possession of the accused is non-commercial in nature and having considered the judgment in Mukesh Kumar's case (supra) no interference in the quantum of sentence is warranted.

Therefore, I find no ground to interfere with the judgment and order dated 2.4.2014 passed by the trial Court.

Dismissed.

July 07, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE