

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

Criminal Appeal No. S. 4322 SB of 2013(O&M)
Date of decision : 19.02.2015.

Hardev Singh **Appellant.**

versus

State of Punjab **Respondent.**

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

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

Present : Mr. B.S.Jatana, Advocate, for the appellant.
Mr. Yogesh Gupta, AAG, Punjab.

K.C.PURI, J.

Challenge in this appeal is the judgment and order dated 27.11.2013 passed by Shri Raj Kumar, Judge, Special Court, Mansa vide which the accused-appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short – the Act) and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default thereof to further undergo rigorous imprisonment for a period of one month.

2. Briefly stated, prosecution story is that on 26.09.2010 ASI Jagdev Singh along with other police officials was going in a Government Vehicle bearing registration No. MH-15/TR(T) RT 816 Scorpio being

driven by PHG Hari Singh. The police party was on patrol duty and checking of suspected persons. When the police party reached on the bridge of the minor in the area of village Narinderpura after crossing the bridge of the minor, one person was seen sitting below the papal tree. He was tying the string of bag. On seeing the police party, he became perturbed. ASI Jagdev Singh got stopped the vehicle on suspicion and apprehended him with the help of other police officials. In the meantime, from the side of Kulheri, Hansa Singh panch came and was joined in the police party. On asking the apprehended person, he disclosed his name as Hardev Singh son of Ajmer Singh. SI introduced himself to the accused and stated that he suspected some intoxicating material in the plastic bag and search of the bag has to be conducted and further offered the accused that if he so desired then some Gazetted Officer or Magistrate could be called at the spot. Accused reposed confidence on the investigating officer. His statement to that effect was recorded. Then plastic bag was open and from the same poppy husk was recovered. One sample of 100grams was separated and separate parcel was prepared. The remaining poppy husk was weighed and found to be 25kgs along with plastic bag. The sample parcel and the remaining poppy husk were sealed by him with his seal bearing impression 'JS'. Seal after use was handed over to HC Gamdoor Singh. Case property was taken into possession. Accused was arrested. He also prepared rough site plan of place of recovery with correct marginal notes and further recorded statements of the witnesses. After receipt of report of FSL, and completion of formal investigation, challan against the accused was presented in Court for his trial.

3. On presentation of challan, copies of documents were supplied to accused free of costs as required under section 207 Cr.P.C. Charge under Section 15 of the Act, was framed against the accused. Accused pleaded not guilty and claimed trial.

4. In support of its case prosecution examined PW1 Kulwinder Singh, PW2 ASI Jagdev Singh, PW3 Harpal Singh, PW4 HC Gamdoor Singh, and thereafter learned Public Prosecutor for the State closed the prosecution evidence.

5. After the closure of prosecution evidence, all the incriminating circumstances appearing against the accused were put to accused in his statement recorded under section 313 Cr.P.C., to which he denied the prosecution allegations and pleaded his innocence. However, accused tendered documents Ex.D-1 to Ex.D-3 in his defence.

6. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused vide judgment and order dated 27.11.2013, as aforesaid.

7. Feeling dissatisfied with the aforesaid judgment and order dated 27.11.2013, accused had directed the present appeal.

8. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

9. Learned counsel for the accused-appellant has not challenged the conviction recorded by the trial Court but has submitted that the accused-appellant is first offender and no other criminal case under the same offence is pending nor convicted. He has further contended that he is facing trial for the last more than four years and has undergone incarceration

for a period of one year, one month and 18 days as on 12.01.2015. Thereafter he was granted concession of parole and he has surrendered after parole on 10.02.2015 and since then he is in custody. He has to support whole the family. The recovery of contraband is of non-commercial nature. So, prayer has been made for taking a lenient view regarding quantum of sentence.

11. The State counsel has supported the judgment and order of the trial court.

12. I have carefully considered the submissions made by both the sides and have carefully gone through the records of the case with their able assistance.

13. Since this is the first appeal, I have myself perused the record. All the mandatory provisions seems to have been complied with. The testimony of the prosecution witnesses inspire confidence and as such guilt of the accused under Section 15 of the Act is made out, therefore, the conviction recorded by the trial Court stands affirmed.

14. Now reverting to the quantum of sentence.

15. The occurrence relates to four years and five months back. Since then, accused/appellant is facing protracted trial. The accused is not a previous convict. He has to support whole of his family. So, in these circumstances, the sentence of appellant imposed under Section 15 of the Act stands reduced to the period already undergone. However, his sentence of fine stands affirmed. He be released immediately on deposit of fine amount in case already not deposited, failing which he has to undergo the imprisonment imposed under default clause.

16. In the manner indicated above, the appeal stands disposed of accordingly.

17. A copy of this order be conveyed to the trial Court for strict compliance.

February 19, 2015

SV

**(K. C. PURI)
JUDGE**