

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-4913-SB of 2015 (O&M)

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Date of decision:14.12.2015

Krishan Lal

...Appellant

v.

State of Haryana

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Mohit Jaggi, Advocate for the appellant.

Mr. Anmol Malik, Assistant Advocate General, Haryana for the
respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed challenging the impugned judgment of conviction and order of sentence dated 5.11.2015 passed by learned Sessions Judge, Ambala, whereby the accused/appellant has been held guilty and convicted for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). He has been sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹6,000/- and in default of payment of fine to further undergo rigorous imprisonment for two months for the offence under Section 15 of the Act.

The brief facts of the prosecution case are that on 11.11.2012, a police party was present at Bus Stop, Magharpura in connection with crime checking when ASI Vijay Kumar received a secret information that Krishan Lal, who owns New Annapurna Dhaba adjoining Bus Stand, Magharpura,

used to sell poppy husk at his Dhaba and that after some time, he will come from the side of Shahzadpur with poppy husk and if a siege is laid at the Bus Stop, said Krishan Lal could be apprehended with poppy husk. A 'Naka' was laid. On the basis of secret information, ACP Ms. Purnima Singh was informed and he prepared a notice under Section 42 of the Act. The passersby were tried to be associated, but everyone shown his inability. After some time, a person came on foot from the side of Shahzadpur, carrying a plastic bag in his left hand, who on the pointing out of the secret informer, was apprehended by ASI Vijay Kumar with the help of accompanying officials. He was served with a notice under Section 50 of the Act disclosing him that he was suspected of carrying contraband – poppy husk in the plastic bag and he has a right to be searched in the presence of a Gazetted Officer or a Magistrate. However, the accused-appellant gave option to be searched in the presence of a Gazetted Officer. In the meantime, ACP Ms. Purnima Singh reached at the spot. Search was conducted of the plastic bag, which was found containing poppy husk. Out of it, two samples each weighing 200 grams were taken and converted into separate sealed parcels. The remaining residue poppy husk on weightment was found to be 2 Kgs. 600 grams. The residue i.e. 2 Kgs. 600 grams of poppy husk was put back in the plastic bag, which was also sealed. The case property was taken into police possession vide recovery memo. 'Ruqa' was sent to the Police Station, on the basis of which formal FIR was registered against the accused. Rough site plan was prepared. Statements of the witnesses were recorded. Accused-Krishan Lal was arrested. On

return to the Police Station, the sealed parcels along with accused, witnesses were produced by ASI Vijay Kumar before the Inspector Suresh Kumar, S.H.O., Police Station Shahzadpur. The Inspector/SHO inspected the case property along with samples and put his seal 'SK' on each of the three parcels and after making endorsement handed over the same to ASI Vijay Kumar for depositing the same with MHC. Next day, the accused and case property was produced before learned Area Magistrate. After necessary investigation and after the receipt of FSL report, the challan was presented in Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused-appellant framed charge for the offence under Sections 15 of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 SI Joginder Singh, PW-2 E/ASI Jai Gopal, PW-3 Constable Vikas, PW-4 E/ASI Ram Pal, PW-5 EHC Krishan Kumar, PW-6 E/ASI Anang Pal, PW-7 Sanjay Kumar, Criminal Ahlmad in the Court of Judicial Magistrate Ist Class, Naraingarh, PW-8 Buti Nath, Photographer, PW-9 ASI Vijay Kumar, (Investigating Officer of the case), PW-10 Ms. Purnima Singh, ACP, Panchkula and PW-11 Inspector Suresh Kumar.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent. He controverted the same and pleaded his false

implication.

After appreciating the evidence on record, the learned Special Judge, Ambala vide its impugned judgment and order dated 5.11.2015 convicted and sentenced the accused-appellant for the offence as mentioned above. Aggrieved against the impugned judgment and order, the present appeal has been filed.

Notice of motion has been issued in this appeal.

Mr. Anmol Malik, learned Assistant Advocate General, Haryana has put in appearance on behalf of the respondent-State and contested this appeal. Record of the learned trial Court was also summoned, which has been received.

At the time of arguments, learned counsel for the appellant has not argued regarding the conviction of the appellant by the learned trial Court. He only prayed for taking a lenient view qua the quantum of sentence.

The learned State counsel has produced custody certificate vide which the appellant has already undergone three months and five days of sentence of imprisonment upto 11.12.2015.

I have heard learned counsel for the appellant and learned Assistant Advocate General, Haryana appearing for the respondent-State and have gone through the record.

From the record, I find that the PWs have consistently deposed regarding the prosecution version. The link evidence is complete. The mandatory provisions under the Act have been complied with. A perusal of

the evidence on record shows nothing from which the statements of the witnesses can be held as unreliable. As the PWs have consistently deposed regarding the recovery from the appellant and further more, learned counsel for the appellant has not contested the findings given by the Court below and has not pointed out any material contradiction or material improvements in the statements of the witnesses, therefore, the conviction of the appellant by the learned trial Court is correct and as per law and the same is upheld.

As regards the reduction of the sentence, I find that the present appellant is an old man of 70 years. He is the first offender and even no other case is pending against him. It has also been argued that he is suffering from various ailments.

Keeping in view the above facts and also that he is suffering long criminal protracted proceedings for the last about three years and in view of the recovery i.e. only three Kgs. of poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and in default of payment of fine will remain the same. Appellant-Krishan Lal, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

With this modification in the sentence of imprisonment, the appeal is partly allowed.

December 14, 2015.

(Inderjit Singh)
Judge

hsp