

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH.**

CRA-S-5051-SB-2014 (O&M)

Date of decision: 13.5.2015

Sikander Singh @ Rida

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Vivek Goyal, Advocate for the appellant.
Mr. Shilesh Gupta, Addl. Advocate General, Punjab.

Rajan Gupta, J. (oral)

This is an appeal against the judgment of conviction and order of sentence dated 01.12.2014, delivered by Special Court, Faridkot. The trial court after recording the prosecution evidence, came to the conclusion that the accused/appellant was guilty of possession of contraband (i.e. 10 grams smack and 60 grams intoxicating powder). The accused was convicted under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to be as “NDPS Act”) and sentenced to undergo RI for three years and to pay a fine of Rs.10,000/-.

Feeling aggrieved against the judgment of the trial court, the appellant has approached this court through the instant appeal.

Learned counsel for the appellant states that he is limiting his prayer only to the extent of reduction in the sentence awarded and does not assail the judgment of conviction. Learned counsel has submitted that the appellant is a poor person and the only bread winner

of his family and has already faced agony of protracted trial. He has further submitted that the appellant is not involved in any other case. According to him, in the present case the quantity of contraband (smack) recovered from the possession of the appellant is much below the commercial quantity and out of the total awarded sentence of three years, by now he has undergone 01 year 02 months and 26 days. He has placed on record custody certificate in this regard. Learned counsel, therefore, prays that keeping in view the fact that the appellant has to support his family and the quantity of contraband recovered from him is much below the commercial quantity, the sentence be reduced to the period already undergone by him.

Learned State counsel submits that in case conviction of the appellant is maintained, the court may reduce the sentence as deemed appropriate in the circumstances of the case.

I have heard learned counsel for both the parties.

Briefly, the prosecution case runs thus:

On 23.07.2013, ASI Balwant Singh alongwith other police officials was going from Military area to Sadiq Chowk towards T-point in Faridkot City. When the police party reached near Aerodrome at about 6.20 P.M., one person came out from behind the bushes and tried to come on the road. He was coming from *Bajigar Basti*, Faridkot. On seeing police party, he tried to enter back behind the bushes, but he was apprehended on the basis of suspicion. ASI Balwant Singh disclosed his identity to accused and on enquiry, he disclosed his name as Sikander Singh alias Rida (appellant herein). ASI Balwant Singh told

the accused that he suspected some intoxicant material in his possession and his search was required to be conducted and also apprised him about his legal right to get his search conducted in the presence of Magistrate or a gazetted officer but he reposed his confidence in ASI Balwant Singh. Then consent memo was prepared and his search was effected. From right pocket of his pant, smack was recovered which was wrapped in a polythene bag, out of which two samples of one gram each were separated and were put in plastic boxes and parcels were prepared and remaining smack on weighment came out to be 8 grams including the envelope. ASI Balwant Singh prepared the bulk parcel of the same. Then on search of the left pocket of pant of the accused, intoxicant powder was recovered which was wrapped in a polythene bag, out of which two samples of 5 grams each were separated and the same were put in plastic boxes and sample parcels were prepared. Remaining powder came to be 50 grams which was also put in a plastic box and a bulk parcel was prepared. Four samples were prepared which were sealed with seal bearing impression BS. The entire case property was taken into police possession. After completion of investigation and on receipt of report of chemical examiner, the accused was sent up for trial.

Finding a prima facie case under Section 21 of the NDPS Act, charge sheet was framed against the accused/appellant to which he pleaded not guilty and claimed trial.

To substantiate its case against the accused/appellant the prosecution examined as many as four witnesses.

The statement of accused under Section 313 Cr.P.C. was

recorded, wherein the incriminating evidence available on record was put to him. He refuted the incriminating circumstances and pleaded false implication. He examined one witness, namely, Rajesh Kumar as DW1 in his defence evidence.

On the basis of the evidence on record, the learned trial court held the appellant guilty of the charge framed against him and sentenced him as already indicated above.

On a perusal of the impugned judgment as well as trial court record, I am of the considered view that the trial court has rightly appreciated the evidence on record while holding the appellant guilty of the charge framed against him. There is no infirmity or illegality in the findings given by the court below. The conviction of the appellant is, thus, affirmed.

Even counsel for the appellant, during the course of arguments, has not assailed the judgment of conviction. He has, however, pleaded for reduction in the quantum of sentence on the ground that the appellant is the only bread winner of his family.

Keeping in view facts and circumstances of the case, as also the fact that the appellant has to maintain his family, I deem it fit to reduce his substantive sentence to a period 1½ years. However, the fine imposed by the trial court shall remain intact. Ordered accordingly.

Except with the modification in the quantum of sentence, as indicated hereinabove, the appeal stands dismissed.

May 13, 2015
'Rajpal'

(RAJAN GUPTA)
JUDGE