

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

**CRA NO.S-5133-SB OF 2014(O&M)
DECIDED ON : 29.01.2015**

Manoj Kumar

...Appellant

versus

State of Punjab

...Respondent

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

Present : Mr. Vineet Kaushal, Advocate,
for the appellant.

Mr. Gurinderjit Singh, DAG, Punjab.

K. C. PURI, J. (ORAL)

Challenge in this appeal is to the judgment of conviction and order of sentence dated 04.11.2014 passed by Shri Ajaib Singh, Special Judge, Fatehgarh Sahib, vide which the accused/appellant has been convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act (in short "the Act") and sentenced to undergo rigorous imprisonment for a period of one year and six months and to pay fine of ₹15,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

Briefly stated, the facts as enumerated from the record are that on 09.10.2013 at about 7.30 AM, SI Satinder Kumar along with fellow officials was on patrolling duty near sign

board at Platform No.1, Railway Station Sirhind. The accused was seen going friskily towards the outer side and was carrying a plastic bag in his right hand. On seeing the police party, he tried to whisk away. On the basis of suspicion, he was apprehended by the police party. SI Satinder Kumar disclosed his identity to the accused and told him that some contraband is suspected to be in the bag carried by him and showed his intention to search the bag. He also apprised the accused that he can be searched before the Magistrate or a Gazetted Officer but the accused reposed confidence in SI Satinder Kumar. Accordingly, the bag was searched which led to recovery of poppy husk. The accused failed to produce any license or permit for keeping the same. Thereafter, two samples of 250 gms each were taken out. On weighment, the remaining poppy husk was found to be 11 kg 500 gms. The samples as well as the remaining poppy husk were made into parcels and sealed with seal "SK". The sample of seal was also prepared. The sealed case property was also taken into possession vide separate memo. Ruqa was sent to police station, on the basis of which, formal FIR was registered. Investigation was carried out. The accused was arrested. The statements of witnesses were recorded. After completion of investigation, challan against the accused was presented in court.

On presentation of challan, copies of same as envisaged under Section 207 Cr.P.C were supplied to the accused free of costs.

On finding a prima-facie case made out against the accused, charge under Section 15 of the Act was framed against the accused, to which, he pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined SI Satinder Kumar as PW-1, ASI Mewa Singh as PW-2, HC Nirmal Singh as PW-3, ASI Major Singh as PW-4, HC Tejinder Singh as PW-5 and closed the evidence.

Statement of accused under Section 313 Cr.P.C was recorded wherein all the incriminating evidence was put to him, to which he denied and pleaded false implication.

The accused was called upon to lead defence evidence but he has not examined even a single witness in his defence.

The learned trial court, after appraisal of the evidence, convicted the accused under Section 15 of the Act and sentenced him to undergo imprisonment and fine, as narrated above.

Feeling dissatisfied with the above said judgment of conviction and order of sentence dated 04.11.2014, the accused/appellant has preferred the present appeal.

Learned counsel for the appellant has not challenged the conviction recorded by the trial court but has submitted that appellant has already undergone incarceration for a period of 01 year 03 months and 16 days out of the substantive sentence of 01 year and 06 months. It is further submitted that the appellant is neither the previous convict nor involved in any other case. It is further contended that appellant is facing trial since

09.10.2013. So, prayer has been made for taking lenient view regarding the quantum of sentence.

Learned State counsel has opposed the prayer and has supported the judgment passed by the trial court.

I have heard learned counsel for the parties and have gone through the records carefully.

Although learned counsel for the appellant has not challenged the conviction recorded by the trial court, since this is the first appeal, I have myself gone through the file. The mandatory provisions of the Act seems to have been complied with. No other ground for acquittal is available on the file. So, the conviction recorded by the trial court stands affirmed.

Now reverting the quantum of sentence, it is contended that the appellant has already undergone 01 year 03 months and 16 days out of the substantive sentence of 01 year 06 months. As per the conviction slip, he is neither previous convict nor involved in any other case. He is facing the trial for the last about one and half year. So, the sentence of imprisonment of the appellant stands reduced to the period already undergone. However, the sentence of fine stands affirmed.

Disposed of accordingly.

A copy of this order be sent to the concerned quarters for compliance.

CRM NOS. 38201-02 OF 2014

Both the applications stand dismissed as having been rendered infructuous as the main appeal stands disposed of.

JANUARY 29, 2015

shalini

(K. C. PURI)

JUDGE