

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

Criminal Appeal S-2396-SB of 2003

Date of Decision: August 19, 2015

Balwant Singh @ Banti

.....Appellant

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Abhilaksh Grover, Advocate
as Amicus Curiae, for the appellant.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S.MANN, J. (Oral)

The appellant was tried for committing the offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985, for being found in possession of 15 kgs of *Choori Post*. Vide judgment and order dated 27.11.2003, the Additional Sessions Judge, Sirsa, convicted the appellant for the aforementioned offence and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo imprisonment for six

months.

The case of the prosecution, in nutshell, is that on 22.8.2001, the appellant was proceeding on a scooter and on seeing the police party, he tried to slip away. His conduct led to suspicion in the mind of ASI-Baldev Raj, who was heading the police party that he might be carrying some contraband. Accordingly, ASI Baldev Raj stopped the appellant and after giving him an offer in terms of Section 50 of the Act, searched the bag carried by the appellant. Upon search, it was found to contain *Choori Post*. Two samples were drawn from the recovered contraband. As the appellant failed to produce any permit or licence to keep the contraband, he was found to have committed the offence punishable under Section 15 of the Act. Accordingly, he was arrested.

At the trial of the case, the prosecution examined PW1 Sub-Inspector Zile Singh, PW2 Head Constable Somvir Singh, PW3 Constable Jangi Ram, PW4 Inspector Sube Singh, PW5 Assistant Sub Inspector Baldev Raj and PW6 Head Constable Joginder Kumar.

When examined under Section 313 Cr.P.C., the appellant denied the allegations of prosecution and pleaded false implication at the instance of Jai Dayal, Municipal

Commissioner. He, however, did not produce any evidence in defence.

The trial Court believed the prosecution version and convicted and sentenced the appellant, as mentioned above.

This Court has heard learned counsel for the parties and perused the impugned judgment as well as the trial Court record.

From the evidence available on the file, it stands established that the appellant was found to be carrying some contraband, when he was intercepted by ASI Baldev Raj on suspicion. The search of the bag led to recovery of 15 kgs of *Choorā Post*. Two samples out of the same were drawn and it was confirmed that they were of *Choorā Post*.

The plea of the appellant that Section 50 of the Act has not been fully complied with by ASI Baldev Raj while effecting the search of the bag, which led to recovery of *Choorā Post* does not cut any ice with the Court as the recovery was made from the bag and not from the person of the appellant. Similarly, the objection of the defence that no independent witness was associated to lend independent corroboration to the recovery of the contraband from the

appellant is without any merit as no suggestion had been put to any of the prosecution witnesses that the police had any reason to falsely implicate the appellant.

In view of above, no ground is made out for any interference with the impugned judgment of conviction passed by the trial Court.

Coming to the quantum of sentence of imprisonment, it may be noticed that during his examination under Section 235 Cr.P.C. before the trial Court, the appellant had pleaded that he was the only bread earner of his family and his old parents were fully dependent on him. Further, he was a poor person and was not a previous convict. It was also pleaded on behalf of the appellant that he was 18/19 years of age at the time of the recovery and less than 21 years at the time of his conviction.

From a perusal of the record, it is made out that the appellant was arrested on 22.8.2001 and was later on released on bail on 15.11.2001 when the bonds furnished by the appellant were duly attested by the trial Court. As such, the appellant had remained in jail for about three months during the trial of the case.

Taking into consideration the totality of the

circumstances, this Court is of the considered view that no useful purpose would be served by sending the appellant behind the bars, once again, to undergo the remaining sentence of imprisonment imposed upon him. Ends of justice would be suitably met if the remaining sentence of imprisonment imposed upon him is set aside.

Resultantly, the conviction of the appellant under Section 15 of the Act is maintained. The substantive sentence of imprisonment is, however, reduced to the one already undergone by him. The sentence of fine alongwith its default clause is maintained.

The appeal is, accordingly, disposed of.

August 19, 2015
amit rana

(T.P.S. MANN)
JUDGE