

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

CRA-S-2074-SB of 2003 (O&M)

Date of decision:11.02.2015

Madan Lal alias Maddi

... Appellant

Versus

State of Punjab

...Respondent.

CORAM: HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA

Present: None for the appellant.

Ms. Munisha Gandhi, Addl. Advocate General, Punjab.

ASHUTOSH MOHUNTA, J. (Oral)

Appellant-Madan Lal alias Maddi has filed this appeal being aggrieved by the judgment of conviction and order of sentence dated 23.07.2003 passed by the Special Judge, Fatehgarh Sahib, vide which the appellant was convicted under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for two months.

The case of the prosecution in brief is that the FIR (Ex.P-9) was lodged on the basis of ruqa (Ex.P-8) sent by ASI Ajaib Singh. As per the ruqa, ASI Ajaib Singh along with Head Constable Kashmiri Lal, PHG Jai Singh, SPO Rattan Singh had gone for

patrolling in a Government vehicle and when the police party reached near 'T' point Mathi after patrolling, through Jalberi Thumi, Phatak Majri, Sadhugarh etc. then one person was noticed coming on foot, who was carrying a bag on his head. The police party asked the person to stop as there was suspicion that he was carrying some contraband. On being asked what he was carrying in the bag, the accused could not tell anything satisfactorily regarding the contents of the bag and accordingly he was told that the bag is to be searched and as to whether he wants the search to be conducted in the presence of the Magistrate or some Gazetted Officer. The accused-Madan Lal opted to be searched in the presence of some gazetted officer and signed the consent memo in this regard. A wireless message was sent to the DSP who reached the spot and the bag was searched which was carried by the accused-Madan Lal.

On search, which was conducted in front of officials as well as witnesses, 25 Kgs of poppy husk was found in the bag. After completing all the formalities, samples of the poppy husk were drawn and the accused was arrested. The contraband was sent to the Chemical Examiner, Patiala. On analysis, it was found that the sample was that of a poppy husk. The accused was charge sheeted to which he pleaded not guilty, however, on examination of the witnesses of the prosecution, the trial Court held the accused guilty under Section 15 of the NDPS Act and sentenced him to undergo

rigorous imprisonment for two years and to pay a fine of Rs.2,000/- for being found in illegal possession of 25 kgs of poppy husk.

It has been averred on behalf of the accused that no independent witness was examined at the time of recovery of the poppy husk and non-examination of the independent witness clearly goes on to show that it is a planted case and the appellant cannot be convicted on this account.

It has been held in 1999 (3) R.C.R. 499 Pon Adithan Vs. Deputy Director Narcotic Bureau, Madras that there is no mandate of law that an independent witness must be examined. In the present case, all the official witnesses have deposed that the poppy husk was seized from the appellant and their testimony cannot be discarded.

It has also been averred that there is a delay of about 15 days in sending the sample for analysis to the Chemical Examiner and hence, no sanctity can be attached to the report of the Chemical Examiner.

A perusal of the case file shows that the samples were duly sealed with the seal of the Investigating Officer ASI Ajaib Singh as well as with the seal of DSP Sukhwant Singh Gill and thereafter, with the seals of the SHO Raj Kumar. All the seals were found to be intact and none of them was broken. The report of the Chemical Examiner (Ex.P-13) also does not show that any of the seals was broken. In this view of the matter, the accused cannot be get any benefit because of

the delay in sending the sample to the Chemical Examiner.

Taking into consideration the entire evidence in the present case, I am of the considered view that the prosecution has fully proved its case against the accused who was found to be in possession of 25 Kgs of poppy husk. The trial Court has rightly convicted the accused under Section 15 of the NDPS Act 1985 and I uphold the said findings and convict the accused under the aforesaid Section.

Now, coming to the question of quantum of sentence to be imposed upon the accused-appellant, it is to be borne in mind that 25 kgs of poppy husk was seized from the appellant which is non-commercial in nature. The accused has also faced the agony of long protracted trial of more than 13 years. He has undergone more than 8 months of actual imprisonment and is not a habitual offender.

Taking all the circumstances into consideration, I uphold the conviction of the appellant under Section 15 of the NDPS Act, however, I reduce the sentence of the appellant to the one already undergone by him.

The appeal stands disposed of, accordingly.

(ASHUTOSH MOHUNTA)
JUDGE