

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

CRA-S-1114-SB of 2004.

Decided on:-13.1.2016.

Amrik Singh.

.....Appellant.

Versus

Inspector of Customs.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. A.S. Sandhu, Advocate
for the appellant.

Mr. D.D. Sharma, Standing counsel
for the respondent.

HARI PAL VERMA, J.

Amrik Singh son of Gurbachan Singh has filed the present appeal against judgment and order dated 13.5.2004 passed by learned Special Judge, Amritsar in complaint case under Sections 8, 21, 22, 25 and 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the Act), whereby he was convicted under Sections 21 and 27 of the Act and sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.5,000/- and in default to pay fine, to further undergo rigorous imprisonment for 2 months under Section 21 of the Act. He was further sentenced to undergo rigorous imprisonment for 3 months under Section 27 of the Act. However, both the substantive sentences were ordered to run

concurrently.

At the very outset, learned counsel for the appellant has contended that he does not challenge the conviction. However, he has submitted that the appellant has already undergone imprisonment for 2 months and 10 days and the case relates to non-commercial quantity. The appellant was found in possession of 32 Gms of heroine which was for his personal consumption. However, the trial Court has awarded the sentence as if the quantity was for commercial use. He has further contended that the appellant has been facing the agony of trial for the last more than 13 years. He has undergone sufficient punishment. During the intervening period, the appellant has not been found indulged in any of the case of such like nature. Learned counsel for the appellant has, therefore, pleaded that the sentence awarded to the appellant may be reduced to the period already undergone by him.

In support of his contentions, learned counsel for the appellant has relied upon the judgments of this Court in ***Jagat Singh Versus State of Haryana 2015(1) RCR (Criminal) 837*** and ***Nishan Singh Versus State of Punjab 2011(3) Law Herald 1944*** where for having possession of 1 Kg Charas, the accused was convicted and sentenced to undergo RI for 10 years by the trial Court. However, this Court reduced his sentence to the period already undergone by him which was 3 years and 18 days.

On the other hand, learned counsel for the respondent has

contended that the appellant was found in possession of 32 Gms of heroine and, therefore, the sentence awarded by learned trial Court is commensurate to the offence committed by him. He has further contended that in these circumstances, no interference is warranted in the well-reasoned judgment passed by learned trial Court.

I have heard learned counsel for the parties.

Learned counsel for the appellant has not challenged the conviction and, rather, confined himself to assail the order on quantum of sentence only. Even then this Court is required to satisfy itself as to whether the conviction of the appellant has rightly been recorded by learned trial Court or not. Therefore, this Court has re-scanned the material available on record.

The record nowhere suggests that the appellant was found indulged in any other case. The quantity of contraband recovered from his possession is also not on higher side. It is not disputed at Bar that recovery of 32 Gms of heroine does not fall within the definition of commercial quantity as the same is not greater than the quantity specified by the Central Government.

Learned trial Court has awarded the sentence of 1 year for offence under Section 21 of the Act. The complaint was filed on 29.11.2002 and now we are in the year 2016. In this manner, the appellant has undergone sufficient agony of these proceedings for more than 13 years. As

per his statement made on the point of quantum of sentence before learned trial Court, he has 6 children including 4 daughters to support and in his absence, there would be none to take care of them. The quantity of contraband recovered from his possession is less than the minimum commercial quantity prescribed under the Act. Thus in these circumstances, even the lenient view in the matter of sentence will suffice to meet the ends of justice. As per the custody certificate placed on record, the appellant has already undergone imprisonment for 2 months and 10 days which is quite sufficient viz. a viz. the contraband found in his possession.

Thus, keeping in view my aforesaid discussion and taking into consideration *Jagat Singh's case (supra)*, the conviction of the appellant recorded by learned trial Court is hereby maintained. However, the order on quantum of sentence dated 13.5.2004 stands modified. The appellant is sentenced to the imprisonment already undergone by him i.e. 2 months and 10 days. He is also ordered to pay fine as imposed by learned trial Court. He is given time of one month from today to deposit the amount of fine with the learned trial Court failing which he will undergo rigorous imprisonment for a period of two months.

With the aforesaid modification in the quantum of sentence, the present appeal is hereby dismissed.

January 13, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE