

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRA-S-1153-SB of 2004 (O&M)

Date of decision: 17.02.2016

Mohan Lal

.....Appellant

versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Dr.Deepak Jindal, Advocate,
Amicus Curiae for the appellant
Mr.Ashish Sanghi, DAG Punjab

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

This appeal is directed against the judgment of conviction and order of sentence dated 11.5.2004, passed by the learned Judge Special Court, Bathinda, vide which the accused appellant was convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.3,000/-. In default thereof, to undergo further Rigorous Imprisonment for one month, for allegedly keeping in his possession 35 kgs. of poppy husk on 1.5.2000.

The brief prosecution story is that on 1.5.2000, ASI Balwinder Singh along with the other police officials laid a *naka* at bus

stop of village Pathrala. The accused came in his car bearing registration number PIK-777 from the side of Bathinda and was stopped by giving signal. There a gunny bag was found lying on the rear seat of the car. He was apprised of his right of getting himself searched before a gazetted officer or a magistrate. The accused opted for search before the gazetted officer. Accordingly, DSP Jaspreet Singh Sidhu was called at the spot and after completing the formalities, search of the vehicle was conducted. Consequently 35 kgs. of poppy husk was found in the said bag. 250 grams was separated as a sample. Currency notes worth Rs.40,000/- were also recovered beneath the driver seat. The registration certificate of the car, currency notes, sample as well as bulk poppy husk were taken into possession.

In support of its case, the prosecution examined PW1 DSP Jaspreet Singh Sidhu, PW2 ASI Balwinder Singh, PW3 Constable Bohar Singh, PW4 Jatinder Singh, Clerk of DTO Office, Bathinda, PW5 Neel Kamal, PW6, SI Manjit Singh and closed the prosecution evidence.

When examined under Section 313 Cr.P.C. the accused pleaded innocence. In defence, he examined DW1 Sohan Singh and closed his defence evidence.

After hearing the learned Addl. PP for the State, learned defence counsel and going through the file, the learned Judge Special Court Bathinda convicted and sentenced the accused as aforesaid.

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

In this case, ASI Balwinder Singh as well as Jaspreet Singh Sidhu, DSP have been examined, who have fully supported the prosecution case. Statement of Jatinder Singh, Clerk of DTO Office, Bathinda (PW4) shows that car number PIK-777 was transferred in the name of Neel Kamal Jain. Said Neel Kamal Jain also appeared as PW5 and proved that he had sold the said car to Mohan Lal the present accused. He proved affidavit and receipt in this regard. Therefore, it comes out that the car was owned by the accused himself.

Learned amicus curiae appearing for the appellant has assailed the prosecution story mainly on the ground that the only independent witness Sohan Singh who has joined at the time of recovery, has not supported the prosecution case. He was given up as having been won over by the accused. However, he appeared in defence and categorically stated that no recovery was effected in his presence and that his signatures were obtained on blank papers. The testimony of Sohan Singh was discarded by the trial Court.

After going through the testimony of Sohan Singh, I am of the view that Sohan Singh DW1 is not a dependable witness. He was given up as having been won over by the accused. During his cross examination as DW1, he admitted his signatures on the memos. He has also admitted that he never signed the blank papers. Then there is no reason why he will sign the blank papers in the present case. The statements of the investigating officer and the DSP are duly corroborated by the recovery of the car, contraband as well as currency notes, which were found in the car and lying under the seat

of the driver.

In these circumstances, no concession can be given to the accused on account of the fact that Sohan Singh independent witness has supported his defence by saying that no recovery was effected in his presence. The prosecution case has been proved beyond all reasonable doubts.

Faced with the circumstances, the learned counsel for the appellant has argued that accused has already undergone more than 5– ½ months of sentence and that a lenient view in the sentence may be taken.

Keeping in view the facts and circumstances and the fact that the appeal pertains to the year 2004, Rigorous Imprisonment for two years is reduced to one year. With this modification, the appeal is dismissed. The accused be arrested and commit to jail to undergo remaining part of sentence.

17.02.2016
gk

(Kuldip Singh)
Judge