

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1184-SB of 2004
Date of Decision: January 13, 2016

Subhash Chander alias Siasi

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.L.Singla, Advocate
for the appellant.

Ms.Simsi Dhir Malhotra, Deputy Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 04.05.2004 passed by learned Special Judge, Moga, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of 1 year and to pay a fine of ₹5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month under Section 15(b) of the NDPS Act.

The brief facts of the prosecution case are that on 25.12.2002, ASI Balwant Singh along with other police officials was on patrol duty. Baldev Singh alias Dev Singh was joined in the police party. When they were going towards Octroi post No.3 bypass and were two furlong short of said Octroi post, they saw a man coming

ahead, who was carrying a gunny bag on his right shoulder and he was stopped. On enquiry, he disclosed his name as Subhash Chander. An offer, as a right, was given to him to get the search conducted before ASI Balwant Singh, Investigating Officer or some gazetted officer. The accused reposed confidence in the Investigating Officer. On search as per rules, poppy husk was recovered from the bag. One sample of 250 grams was drawn from the poppy husk and separate parcel was prepared. The remaining poppy husk came to 6 kgs. on weightment. The case property was taken into police possession. Ruqa was sent to the police station, on the basis of which, formal FIR was recorded. Accused was arrested. Statements of witnesses were recorded. Rough site plan was prepared. On return to the police station, the case property along with accused was produced before ASI Mukhtiar Singh, who after verifying the case property, also put his seal on the parcels bearing impression 'MS'. The case property was also produced before the Duty Magistrate. After necessary investigation, the challan was presented against the accused-appellant.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 15(b) of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Inspector Mukhtiar Singh, who was posted as SHO and deposed

regarding verification of the case property which was produced before him and also deposed regarding putting his seal on the parcels. PW-2 ASI Balwant Singh, Investigating Officer, who deposed regarding investigation conducted by him in the present case. PW-3 Head Constable Makhan Singh, is the recovery witness, who was in the police party. He deposed regarding the recovery from the accused. PW-4 Constable Pavittar Singh, PW-5 LC Balwinder Singh and PW-6 Head Constable Gulzar Singh, are the formal witnesses, who tendered into evidence their affidavit Ex.P11, P12 and P13 respectively.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent. He also pleaded that he has been falsely implicated in the present case. He was brought to the police station from his house and at that time, no incriminating article was recovered from his possession.

Accused-appellant examined DW-1 Sukhpal Singh, who deposed that about one and a half year back, accused was taken away by the police from his house. He was boarded in the Tata Sumo. At that time, no incriminating article was recovered from the possession of the accused. DW-2 Baldev Singh, deposed that in his presence, no recovery was effected from Subhash Chander. He further deposed that his thumb impressions were obtained by the police on blank papers.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued that accused-appellant is innocent and has been falsely implicated in the present case by bringing him from the house. He further argued that PWs have deposed falsely against the accused-appellant and therefore, he deserves to be acquitted. Learned counsel for the appellant, in the alternative, prayed for reduction of the sentence imposed upon the appellant.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence and there is nothing on the record that the appellant is innocent and has been falsely implicated. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that the testimony of police official is as good as of any other witness unless some enmity or motive of the police official against the accused is alleged and proved. In the present case, no such enmity or motive of the police official against the accused has been alleged. Baldev Singh, independent witness, who appeared as DW-2 has admitted his thumb impressions on the memos Ex.P5 to P7 and Ex.P10. In cross-examination, DW-2 Baldev Singh stated that it is correct that on 25.12.2002, in his presence, the poppy husk was

recovered from the accused but he cannot tell the weight of that poppy husk. This witness, also in cross-examination has admitted prosecution version. As regarding DW-1 Sukhpal Singh, his statement cannot be relied upon as neither he has filed any application/representation before the higher authorities nor reported the matter to the Gram Panchayat regarding the false implication of the accused.

As regarding false implication of the accused-appellant, I have gone through the statements of witnesses. There is nothing in the cross-examination of the PWs, which may make their statements unreliable. No material contradictions or material improvements have been pointed out by learned counsel for the appellant, which may go to the root of the case. PWs have consistently deposed regarding the recovery of 6 kgs. 250 grams of poppy husk from the present appellant. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is complete. The prosecution has duly proved its case by leading cogent evidence beyond any reasonable doubt. Therefore, the judgment of conviction dated 04.05.2004 passed by learned trial Court is correct, as per law and does not require any interference from this Court and the same is upheld.

As regarding, quantum of sentence, I find that the accused-appellant is stated to be of about 50 years of age now. He is suffering from long protracted criminal proceedings since 2002 i.e. for the last more than 13 years. He is a poor person and only bread earner of the family. The recovery from the appellant is 6kgs. 250

grams poppy husk which falls under non-commercial quantity. The appellant has already undergone 2 months and 1 day out of the total sentence of one year. The appellant is first offender and there is no other conviction against him.

Keeping in view the above facts and circumstances of the case, the sentence imposed upon the appellant is reduced to already undergone by him. Learned counsel for the appellant contended that fine has already been paid and produced the receipt, which is taken on record.

Resultantly, the present appeal stands partly allowed accordingly. Since, appellant Subhash Chander alias Siasi is on bail, his bail/surety bonds stand discharged.

January 13, 2016
Vgulati

(INDERJIT SINGH)
JUDGE