

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1322-SB of 2004
Date of Decision: February 17, 2016

Gurmeet Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Kaura, Advocate
for the appellant.

Mr.Sidakmeet Sandhu, Asstt. 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 21.05.2004 passed by learned Special Judge, Moga, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 15(b) of the NDPS Act.

The brief facts of the prosecution case are that on 23.10.2001, Davinder Singh SHO along with police officials was going on gypsy from village Boghewala towards village Mudarpur on patrol duty. When the police party was some distance short of Ban (Dam), they saw a man coming who was carrying a bag on his head. On

seeing the police party, he tried to slip away. On suspicion, he was apprehended. The accused was apprised of his legal right to get the search conducted in the presence of any Gazetted Officer or Magistrate and the accused desired to get the search conducted before some Gazetted Officer. The Investigating Officer sent a wireless message to Nachhattar Singh, DSP(D), Moga, who came on the spot. On search, as per rules, poppy straw was recovered from the plastic bag. A sample of 250 grams was separated and the remaining poppy straw, on weighment, came to 14 kgs. 750 grams. The sample parcels and bulk parcels were prepared and sealed with the seal of Investigating Officer bearing impression 'DS' and seal of DSP bearing impression 'NS'. Case property was taken into police possession. Ruqa was sent to the police station, on the basis of which FIR was registered. Accused was arrested. Statements of witnesses were recorded. On return to the police station, case property along with sample seal and accused were produced before SI Gurdev Singh, SHO, who verified the recovery and also sealed the parcel with his seal bearing impression 'GS'. 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 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Sarabjit Singh, who mainly deposed regarding producing the case property before the Court. PW-2 DSP Nachhattar Singh mainly deposed regarding the recovery from the accused. PW-3 SI Davinder Singh, is the Investigating Officer, who deposed regarding investigation conducted by him in the present case. PW-4 ASI Kundha Singh, is the recovery witness, who was with the police party. He deposed as per the prosecution version. PW-5 Head Constable Parmatma Singh, is the formal witness, with whom the case property was deposited. PW-6 Constable Balwinder Singh mainly deposed regarding taking the sample to Analysis Laboratory.

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 nothing incriminating was recovered from his possession and he has been falsely implicated in this case.

No witness was examined in defence.

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 mainly on one point that no independent witness was joined by the police party and there are only testimonies of police officials, which cannot be believed.

On the other hand, learned State counsel argued that case

of the prosecution has been duly proved by the PWs. Link evidence is complete. The PWs have consistently deposed regarding the prosecution version. There are no material contradictions or material improvements in the statements of the PWs. He further argued that all the mandatory provisions of the NDPS Act have been complied with. 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, I find that it is settled law that the testimony of police official is as good as of any other witness unless some enmity or motive of the police official to falsely implicate the accused is alleged and proved. In the present case, no such enmity of the police officials against the accused has been alleged. I have gone through the statements of the PWs. There is nothing in their cross-examination, which may make their statements unreliable. No material contradictions or material improvements have been pointed by learned learned counsel for the appellant. The PWs have consistently deposed regarding the recovery of 15 kgs. of poppy straw from the accused-appellant and have supported and corroborated the prosecution version. The recovery from the appellant is sudden and by chance and there was no opportunity with the police party to join independent witness. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is also complete.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent beyond reasonable doubt.

Therefore, the judgment of conviction dated 21.05.2004 passed by learned Special Judge, Moga, is correct, as per law and does not require any interference from this Court.

As regarding the quantum of sentence, learned counsel for the appellant, prayed for lenient view. He contended that appellant is suffering from long protracted criminal proceedings since the year 2001 and he has already undergone sentence of more than nine month.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is stated to be a poor person and only bread earner of the family and further the fact that the appellant is suffering from long protracted criminal proceedings and no other conviction has been proved and further in view of the fact that appellant was young man of 23 years at the time of recovery, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and default sentence shall remain the same. The accused-appellant is directed to deposit the fine within a period of two months from today, otherwise, the trial Court would take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed. Since, appellant Gurmeet Singh is on bail, his bail/surety bonds stand discharged.

February 17, 2016
Vgulati

(INDERJIT SINGH)
JUDGE