

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

CRA-S-No.138-SB OF 2004
DATE OF DECISION : 24th AUGUST, 2016

Nirmal Singh

.... Appellant

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : None for the appellant.

Mr. Karan Sharma, Assistant Advocate General, Haryana.

* * * *

A. B. CHAUDHARI, J. (ORAL)

This appeal is directed against the judgment and order dated 06.01.2004 passed by Judge, Special Court, Karnal in NDPS case No.57 of 2002 by which the appellant was convicted for offence under Section 15 (b) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short, the NDPS Act) and was sentenced to undergo rigorous imprisonment for a period of one years six months and was ordered to pay fine in the sum of ₹5,000/-. The offence is said to have taken place on 08.04.2002.

When the appeal was called out for hearing yesterday none remain present for the appellant and in order to give opportunity the case was fixed for today as part heard. Today again there is no appearance on behalf of the appellant.

I have heard learned State counsel and perused the record of the court below.

I have gone through the judgment and order so also the reasons given by the trial Judge for recording order of conviction. Learned trial Judge found that PW-3-Dharam Pal, Naib Tehsildar-cum-Executive Magistrate had gone to the spot on the invitation of the police where the appellant was detained along with 30 Kg of poppy husk. I have seen the evidence of PW-3-Dharam Pal and have found that his evidence is trustworthy as was also found by the learned trial Judge. The argument of the defence was that the Ex-Sarpanch Balkar Singh was the independent witness and had turned hostile and, therefore, the prosecution case should have been disbelieved by the trial Judge. As stated earlier, the evidence of PW 3-Dharam Pal, Naib Tehsildar being trustworthy, I do not think that the trial Judge committed any error in relying on his sole testimony merely because he was a Government officer. I, therefore, find that the finding of conviction recorded by the trial Judge cannot be faulted and, therefore, the conviction will have to be upheld.

The next question is about the award of sentence to the appellant by the trial Court. The trial Court awarded sentence of rigorous imprisonment for a period of one year and six months and fine of ₹5,000/-. The incident took place in the year 2002 and the appellant underwent trial for number of years. The appeal is pending in this Court since after his conviction and this Court had suspended his sentence. The appellant has undergone sentence of about two months.

Looking to the lapse of time from the year 2002 and the fact that the appellant is a villager who was caught with small quantity of poppy husk and that he has undergone sentence of about two months, I think it would be harsh to put him again in the jail, particularly when the sentence awarded to him was one year six months only.

In that view of the matter, I think this order of sentence should be modified to the sentence which he has already undergone. In the result I make the following order:

ORDER

- (i) CRA-S-No.138-SB OF 2004 is partly allowed.
- (ii) The judgment and order of conviction of the appellant under Section 15(b) of the NDPS Act is confirmed.
- (iii) The order awarding sentence of rigorous imprisonment for a period of one year six months only is modified and the appellant is sentenced to undergo rigorous imprisonment for the period he has already undergone.
- (iv) However, the sentence of fine shall remain intact.

24th AUGUST, 2016
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No.</i>