

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1387-SB of 2004

Date of Decision:13.01.2016

Dalip Singh

...Appellant

Versus

State of Haryana

...Respondent

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

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

Present: - Mr. Rahul Vats, Advocate for the appellant

Mr. Manish Bansal, DAG Haryana.

HARI PAL VERMA, J (ORAL)

Appellant-Dalip Singh has filed the present appeal against the judgment of conviction dated 02.06.2004 passed by learned Special Judge, Sonapat in case FIR No. 19, dated 05.03.2003, under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity "the NDPS Act"), registered at Police Station, Baroda.

Vide judgement of conviction dated 02.06.2004, learned Special Judge, Sonapat, had convicted the appellant for offence punishable under Section 20(b) of the NPDS Act and vide separate order dated 04.06.2004, sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of

Rs.1,00,000/-(Rs. One lac). In default of payment of fine, he was to further undergo rigorous imprisonment for a period of one year.

Facts of the case in brief are that on 05.03.2003 ASI Rajiv Kumar alongwith ASI Om Parkash and other police officials on the basis of a reliable secret information laid *Nakabandi* on the drain in the area of village Kathura where accused Dalip was seen coming from Katwara side. On seeing the police party he retraced his steps towards southern pavement of the drain. On suspicion he was apprehended and served with a notice under Section 50 of the Act, appraising his right to be searched before a Gazetted Officer or a Magistrate. Accused opted for search to be made by a Gazetted Officer. Accordingly a message was sent to Sh. Sham Singh Rana, DSP Gohana who reached the spot. During search of accused, 1 Kilogram of *charas* was recovered from his possession. Ruqa Ex.PB was sent to the police station, upon which FIR Ex.PB/1 was registered. Accused was charge sheeted for offence under Section 20(b) of the NDPS Act on 20.05.2003, to which he pleaded not guilty and claimed trial.

Prosecution in order to prove its case examined as many as eight witnesses namely DSP Sham Singh Rana,PW1; ASI Siri Kishan, PW2; C. Jagbir Singh, PW3; ASI Om Parkash, PW4; ASI Rajiv Kumar, PW5; Vijender Singh, SI/SHO, PW6; C. Rajesh Kumar 956, PW7 and ASI Ram Niwas as PW8. In statement under section 313 Cr.P.C., accused refuted the allegations against him and examined Satpal Singh, DW1 in his defence.

On appraisal of the available evidence, the learned Trial Court vide judgment dated 02.06.2004, held the accused guilty of offence under Section 20(b) of the NDPS Act and sentenced him vide order dated 04.06.2004 as aforesaid.

Learned counsel for the appellant submits that though the case relates to the non commercial quantity, however, learned trial court has awarded the sentence the appellant as if the quantity was commercial. He contends that after the amendment of the NDPS Act, vide Act No. 9 of 2001, the punishment was to be awarded as per amended Act. Imprisonment for 10 years was the maximum punishment which has been awarded in the present case.

Learned counsel for the appellant further contends that though during the pendency of the present appeal, appellant, namely, Dalip Singh had died, but his right to pursue the present appeal still survive and in support thereof, he relied upon a judgment of this Court in ***Bhupinder Singh Vs. State of Punjab, 2011(7) R.C.R.(Criminal) 130***. He submits that in a case of NDPS Act, where conviction is challenged, on the death of appellant during the pendency of appeal, the whole appeal cannot abate. Only appeal qua the order of conviction and sentence in default of payment of fine shall abate. Hence appeal qua the payment of fine still survives. Therefore, he confined his arguments only on the issue of quantum of fine and does not challenge the conviction on merits.

On the other hand, learned counsel for the State submits that the petitioner was found in conscious possession of 1 kilogram

charas. However, on the point whether the alleged recovery of contraband is commercial or non-commercial, he admits that the same is same is non-commercial, but more than the small one.

I have heard learned counsel for the parties and perused the record.

The recovery in the present case was affected on 05.03.2003 and learned trial court has decided the present case on 02.06.2004. The NDPS Act was amended vide the Narcotic Drugs and Psychotropic Substances Amended Act, 2001 i.e. Act No.9 of 2001 (9th May, 2001). Act No.9 of 2001 came into force in October, 2001. So, the present case has been decided after the enforcement of Act No.9 of 2001. Section 41 of Act No.9 of 2001 reads as under: -

"41. Application of this Act to pending cases.-(1)
Notwithstanding anything contained in sub-section (2) of section 1, all cases pending before the courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:

Provided that nothing in this section shall apply to cases pending in appeal."

As per the aforesaid provision of law, sentence was to be awarded as per the amended Act in the present case.

This Court in ***Dharambir Vs. Union Territory, Chandigarh, 2004(1) R.C.R. (Criminal) 704***, where for 100 grams of charas, accused was convicted and sentenced to 10 years of RI and fine of Rs. 2 lacs, in view of the amended provisions of the Act, reduced the sentence to the period already undergone (6 months) and reduced the fine to Rs.5000/-.

Similarly, this court in ***Jagat Singh Vs. State of Haryana, 2015(1) R.C.R.(Criminal) 837***, where recovery was of one kilogram of *charas* and the accused was convicted and sentenced for rigorous imprisonment for 10 years and to pay a fine of Rs. 1,00,000/-, reduced the sentence to the period already undergone and the fine to Rs.20,000/- on the ground that the quantity of *charas* recovered from appellant was non-commercial.

Taking into consideration that the quantity of alleged recovery made from the appellant was non-commercial and the judgment of this court in Jagat ***Singh's case (supra)*** and ***Dharambir's case (supra)*** as well as the fact that the appellant has died during the pendency of the appeal, I am of the view that ends of justice would be adequately met, if the sentence of fine awarded by the trial Court is reduced to some extent.

Accordingly, the sentence of fine of an amount of Rs.1,00,000/- imposed upon the appellant by the trial Court is reduced to an amount of Rs.10,000/-. The said amount be paid within a period

of one month from the date of receipt of certified copy of this order,
failing which the present appeal shall stands dismissed in toto.

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

13.01.2016

ANJAL

**(HARI PAL VERMA)
JUDGE**