

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1424-SB of 2004
Date of Decision: February 19, 2016

Chhinder Pal Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Simble, Advocate for
Mr.P.S.Brar, 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 dated 15.07.2004 and order of sentence dated 16.07.2004 passed by learned Special Judge, Moga, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 15(b) of the NDPS Act.

The brief facts of the prosecution case are that on 10.03.2002, SI/SHO Jasvir Singh along with other police officials was going towards Takhanwadh in connection with search of suspicious

persons. At about 1.30 P.M., when the police party reached on bridge of canal minor, a person was seen coming from the side of village Takhanwadh having a gunny bag on his head. On seeing the police party, he tried to slip away. On suspicion, he was apprehended. One Lovely Chopra was joined in the police party. 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 asked DSP Sh.Jagmohan Singh to come on the spot and he came there. He also apprised the accused of his legal right to get search conducted before some other Gazetted Officer but the accused reposed confidence in the DSP. On search, as per rules, poppy straw was recovered from the gunny 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 'JS' and DSP also put impression of seal of letter "JS". 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. 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 Head Constable Komal Singh, formal witness. PW-2 ASI Hardeep Singh, recovery witness, who deposed as per prosecution version and regarding the recovery from the accused. PW-3 Constable Romesh Kumar, PW-4 ASI Narinder Singh, PW-5 DSP Jagmohan Singh and PW-6 SI Jasvir Singh, Investigating Officer, who deposed regarding investigation conducted by him in the present case.

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 but he denied the correctness of the evidence and pleaded himself as innocent.

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 only on one point that the independent witness has not been examined in this case. No other discrepancy or contradiction has been pointed out nor any other argument has been advanced. Learned counsel for the appellant, in the alternative, prayed for reduction of sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs and they have consistently deposed regarding the prosecution version. He next

argued that all the mandatory provisions of the NDPS Act have been complied with. Link evidence is complete. 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 it is settled law 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 has been proved by the accused-appellant. Therefore, there is no ground to disbelieve the statements of the PWs. Otherwise also, no material contradictions or material improvements have been pointed out at the time of arguments. The PWs have consistently deposed regarding the prosecution version. Even from their cross-examination, there is nothing which may make their statements unreliable. Link evidence is complete. All the mandatory provisions of NDPS Act have been complied with.

As regarding non-examination of the independent witness, I find that the independent witness was given up by learned Public Prosecutor being won over by the accused. It is for the prosecution to examine the witness which it likes to prove its case. If the witness has been won over by the accused, the Public Prosecutor has every right to give him up.

From the evidence on record, I find that prosecution has duly proved its case beyond reasonable doubt by leading cogent

evidence. The judgment of conviction dated 15.07.2004 passed by learned Special Judge, Moga, is correct, as per law and does not require any interference from this Court.

As regarding the prayer for reduction of sentence, learned counsel for the appellant contended that accused is first offender and has not been convicted by any other Court. He further contended that appellant was young man of 30 years at the time of recovery and he is suffering from the criminal proceedings since 2002.

As stated, accused-appellant is poor person and only bread earner of the family. He is first offender and suffering from long protracted criminal proceedings since 2002 i.e. for the last 14 years. Further, I find that appellant has already undergone 5 months 7 days out of the actual sentence.

Keeping in view the above facts and circumstances, the sentence imposed upon the appellant is reduced to already undergone by him. The fine imposed upon the appellant is also reduced and he is directed to pay fine of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months. The appellant is directed to pay the fine within two months, failing which, the trial Court will be at liberty to take action as per law.

Resultantly, the present appeal stands partly allowed.

February 19, 2016
Vgulati

(INDERJIT SINGH)
JUDGE