

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1691-SB of 2004 (O&M)
Date of Decision: March 30, 2016

Harchand Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Dhawan, Advocate for
Mr.Pankaj Bhardwaj, Advocate
for the appellant.

Mr.Subhash Godara, Legal Aid counsel
for the appellant.

Mr.T.N.Sarup, Addl. 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 03.08.2004 passed by learned Judge, Special Court, Ludhiana, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of fifteen days under Section 15 of the NDPS Act.

The brief facts of the prosecution case are that on 15.08.2001, ASI Rachhpal Singh along with other police officials was on G.T. road in a private vehicle. When the police party reached near bus stand Didhwan College, there ASI Major Singh along with other

police officials met him. Then, all the police officials started towards village Gurhe and when they reached 3/4 kms. ahead from bridge canal minor, at that time, one person was seen coming on a cycle carrying one gunny bag on the bicycle from the side of village Ramgarh. On seeing the police party, he tried to turn his bicycle and on suspicion he was apprehended. He disclosed his name as Harchand Singh alias Chand Singh alias Giani. An offer was given apprising the accused of his legal right to get the search conducted in the presence of any Gazetted Officer or Magistrate and the accused desired to get search conducted in front of some Gazetted Officer. DSP Kashmir Singh Gill was requested to come at the spot on mobile phone, who reached at the spot. DSP also gave offer to accused of his legal right to get the search in the presence of some other gazetted officer or Magistrate but the accused reposed confidence in the DSP. Then, on search as per law, poppy husk was recovered from the gunny bag. Two samples of 250 grams each were separated and converted into sealed parcel and remaining poppy husk, on weighment, came to 18½ kgs., which was converted into bulk parcel. The sample parcels and bulk parcels were sealed and the seal after use, was handed over to HC Major Singh. The case property were 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 Baljit Singh, PW-2 Constable Harjinder Singh, PW-3 Inspector Nahar Singh, PW-4 ASI Major Singh, PW-5 Kashmir Singh Gill, S.P.(D) Muktsar and PW-6 ASI Rachhpal Singh, Investigating Officer.

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 and stated that he has been falsely implicated in this case. He further stated that he was apprehended from his house and thereafter false case has been foisted upon him.

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. In the alternative, learned counsel for the appellant, 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. The PWs have consistently deposed regarding the prosecution version. Link evidence is complete. 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 and after going through the record, 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. No defence evidence has been produced by the accused. The police party was on patrol duty and the recovery from the accused is sudden and by chance. There was no opportunity with the police party to join the independent witness. No material contradictions or discrepancies have been pointed out in the statements of the PWs at the time of arguments. The PWs have consistently deposed regarding the prosecution version. Even, there is nothing in their cross-examinations, which may make their statements unreliable. 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 evidence beyond reasonable doubt. Therefore, the judgment of conviction dated

03.08.2004 passed by learned Judge, Special Court, Ludhiana, is correct, as per law and does not require any interference from this Court.

As regarding the alternative prayer for reducing the sentence, learned counsel for the appellant contended that appellant is a poor person and only bread earner of the family. He further contended that appellant is first offender and also contended that the recovery from the accused-appellant falls under category of non-commercial quantity.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is suffering from long protracted criminal proceedings since 2001 i.e. for the last about 15 years and further in view of the fact that appellant has already undergone imprisonment of more than 4 months out of the actual sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 19 kgs. poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him, subject to payment of fine. The appellant is directed to deposit the fine within a period of two months, if already not paid, otherwise, the trial Court would take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, the appellant Harchand Singh is on bail, his bail/surety bonds stand discharged.

March 30, 2016

Vgulati

**(INDERJIT SINGH)
JUDGE**