

CRA S-1938-SB of 2004

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

CRA S-1938 SB of 2004

Decided on: 27.7.2016

Krishan Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: Hon'ble Mr. Justice Jitendra Chauhan

Present:- Ms. Gurpal Kaur Dulat Advocate,
for the appellant.

Mr. Luvider Sofat, AAG, Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against judgment and order dated 28.7.2004, passed by Special Court, Sangrur vide which the accused-appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") and sentenced to undergo rigorous imprisonment for nine months and to pay fine of Rs.2,000/- with default stipulation.

The facts of the case as noticed in the judgment passed by the trial Court are as under:-

"The case of the prosecution, in brief, is that on 29.12.2002 SI Sarabjit Singh SHO, Police Station Lehra alongwith other police party on Govt. vehicle Allwyn Nissan bearing No.PB-13B-1581 was going towards village Khokhar from Village Sangarpura. Surjit Singh son of Puran Singh caste Jheur resident of

Lehra met and was joined in the police party. When the police party was short of one kms from bus stand keokhar while on patrolling, then a person was seen on the Katcha Path in the fields on the right side who was carrying a plastic bag on his head and was coming towards metalled road. He on seeing the police party got preplexed and immediately retreated. SI stopped the vehicle and said person was arrested on suspicion. On asking he disclosed his name as Krishan Singh son of Matta Bux caste bohria resident of Mehmra Police Station Ratia (Haryana). SI asked him that he suspecting some intoxicant in the bag which he was carrying. He has got a right to be searched in the presence of Magistrate or Gazetted Officer. The abovesaid Krishan Singh reposed confidence in ASI and asked him to conduct search himself. His statement was recorded. The bag was got down, some was found containing poppy husk. Two samples of 250 grams each out of the said poppy husk were separated. Remaining poppy husk on weighment came to be 8 kgs.500 grams. The poppy husk so weighed was put in the same plastic bag. Both the sample parcels and the bag containing poppy husk sealed by SI bearing seal impression 'SS' and were taken into possession alongwith the sample seal chit vide separate

recovery memo. Seal after use was handed over to HC Dharamvir Singh. Ruqa was sent on the basis of which case against the accused was registered. Case property was deposited with MHC. One part was sent to the Chemical Examiner and report was received. After completion of investigation and formalities. Challan against the accused was presented in the Court”.

2. Copies of documents as envisaged under Section 207 Cr.P.C. were supplied to the accused, free of costs. Charge under Section 15 of the Act was framed against the accused to which the accused did not plead guilty and claimed trial.

3. In order to prove, its case, the prosecution examined C.II Gurlal Singh PW-1, HC Kuldeep Singh PW-2, SI Sarabjit Singh PW-3, HC Dharamvir Singh PW-4 and closed the evidence.

4. The statement of accused was recorded under Section 313 of Cr.P.C. and all incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied the same and pleaded false implications. It was further stated by the accused that he was arrested from the Bus Stand Lehra.

5. No defence evidence was led by the accused.

6. After appraisal of the evidence, the learned trial Court convicted and sentence the accused as narrated above.

7. Feeling dis-satisfied, the present appeal was filed on 30.09.2004. Vide the order dated 07.10.2004, the present appeal was admitted by this Court.

8. On behalf of the appellant, it is contended that the trial Court fell in error in convicting the accused. The prosecution has failed to prove its case beyond reasonable shadow of doubt. The witness, Surjit Singh in whose presence the recovery was effected, has not been examined as a prosecution witness. His non-examination is fatal to the case of the prosecution. There are material contradictions in the statements of PWs. SI Sarbjit Singh, PW-3 stated that the statement of Surjit Singh was recorded at 2. p.m. but PW-4 HC, Dharavir Singh stated that the statement of Surjit Singh was recorded at 12.15 pm..

9. On the other hand, the learned State Counsel states that the trial Court has rightly convicted the accused under Section 15 of the Act and he has been rightly awarded the sentence of nine months. It is further contended by the learned counsel for the State that the accused has already undergone the sentence awarded to him.

10. I have heard the learned counsel for the parties and have gone through the record of the case.

11. As per the case of the prosecution, the recovery of 9 kgs.of poppy husk was effected from the appellant on 29.12.2002. The factum of recovery was proved by SI Sarabjit Singh, the Investigating Officer of the case and the witness of recovery, HC Dharamvir Singh. They have proved that the contraband was recovered from the accused on the said date. It is

difficult for a person to remember minute details of each and every case. In the face of the factum of recovery having been proved by the Investigating Officer, PW3, Saravjit Singh and the witness of recovery HC, Dharamvir Singh PW4, minor contradictions lose its significance. Witness SI Surjit Singh was not examined by the prosecution as he had been allegedly won over by the accused. This Court is of the opinion that the prosecution has successfully established its case against the accused. The judgment and the order passed by the trial Court do not warrant any interference by this Court. Consequently, finding no merit, the present appeal is dismissed.

Dated: 27.7.2016
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No