

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

CRA No.S-2006-SB-2004

Date of Decision: 22.09.2016.

Lal Singh alias Lala

...Appellant

Versus

The State of Punjab

...Respondent

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

Present: None for the appellant.

Ms. Rimplejit Kaur, AAG, Punjab.

A.B.CHAUDHARI, J. (ORAL)

Being aggrieved by the judgment and order dated 17.07.2004, passed by Special Judge, Sangrur, in Sessions Case No.278, dated 23.09.2000, by which the Special Court convicted the appellant for the offence under Section 15 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 and half year and was ordered to pay a fine in the sum of Rs.2,500/-, in default to further undergo rigorous imprisonment for a period of two months, the present appeal was filed by him in this Court.

Neither the appellant nor his counsel is present.

In the light of the decision of the Hon'ble Supreme Court in **K.S.Panduranga v. State of Karnataka, 2013(2) R.C.R. (Criminal), 219**, this Court can decide the appeal on its own merits and accordingly I proceed to do so.

I have seen the grounds raised by the appellant in the memo of appeal. The challenge to the judgment impugned in question is that the prosecution failed to prove the guilt beyond doubt and failed to discharge its initial burden of proof. That the evidence of the prosecution witnesses was most untrustworthy as they were police officials. There were discrepancies in the prosecution evidence. That the inconsistency as to whether the bag was on the head of the accused was serious, which has been ignored by the learned trial Judge. The appellant therefore, has prayed for order of acquittal from this court.

I have perused the reasons recorded by the learned trial Judge for convicting the appellant for the aforesaid offence. The learned trial Judge has given the reasons for recording the order of conviction in paragraph 10 and I quote the relevant portion therefrom as under:-

“10. After considering the submission of the learned Additional Public Prosecutor for the State and the learned counsel for the accused, I am of the view that law is well established that the joining of independent witness is not rule of law but rule of caution. When no independent witness is joined then duty is cast upon the court to scrutinize the evidence of the prosecution minutely and with great care. The witnesses of the police department are competent witnesses. Their statement cannot be brushed aside simply on the ground of their official

status. The recovery was effected in presence of Shri R.K.Jaiswal, IPS. He has deposed in a satisfactory manner. He had not enmity with the accused. Such a senior officer is not expected to tell lie in the Court.”

Upon perusal of the aforesaid reasons, I am inclined to concur with the findings of fact, which is based on evidence, recorded by the trial court. I, therefore, confirm the findings of conviction of the appellant for the aforesaid offence.

Per contra, learned counsel for the State opposed the appeal and supported the impugned judgment and order of conviction and prayed for dismissal of the appeal.

The next questions is about the award of sentence of one and half year to the appellant. The appellant has undergone the sentence of more than five months and this Court had suspended the sentence on 16.12.2004. The incident in question had taken place on 02.06.2000. In my opinion, it would be harsh at such a late stage to push the appellant in jail again to serve out the remaining sentence, as he has already undergone sentence of about more than five years.

In that view of the matter, I think that the sentence of one and half year and fine awarded to the appellant deserves to be brought down to five months which he has already undergone. In the result, I make the following order:

ORDER

- (i) CRM No.S-2006-SB of 2004 is partly allowed.

- (ii) The judgment and order of conviction of the appellant for the offence punishable under Section 15 of the NDPS Act is confirmed.
- (iii) The judgment and order regarding sentence awarded to the appellant, namely of one and half year is modified and the appellant is ordered to undergo the sentence for the period which has already undergone.

The appeal is disposed of accordingly.

September 22, 2016
nt/pankaj

(A.B.CHAUDHARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No