

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

CRA No.S-2021-SB-2004

Date of Decision: 22.09.2016.

Darshan Singh

...Appellant

Versus

The State of Punjab

...Respondent

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

**Present: Mr. D.N.Ganeriwala, Advocate,
for the appellant.**

Ms. Rimplejit Kaur, AAG, Punjab.

A.B.CHAUDHARI, J. (ORAL)

Being aggrieved by the judgment and order dated 02.09.2004, passed by Judge, Special Court, Barnala, in Sessions Case No.85, dated 07.10.1996, by which the appellant was convicted for offence under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short, the NDPS Act) and was sentenced to undergo rigorous imprisonment for a period of five years and was ordered to pay a fine in the sum of Rs.10,000/-, in default to further undergo rigorous imprisonment for a period of three months, the present appeal was filed by him in this Court.

Heard learned counsel for the appellant, who vehemently contended that the prosecution had miserably failed to prove its case beyond reasonable doubt. According to him, there was non compliance of mandatory provision of Section 50 of the NDPS Act,

apart from Sections 52 and 55 of the NDPS Act, in addition. It is submitted that the independent witness was not examined by the prosecution and, therefore, it was wholly unjustified to record the conviction against the appellant only on the basis of evidence of official witnesses or the police witnesses. It is, therefore, contended that the order of conviction deserves to be set aside.

Per contra, learned counsel for the State-Ms. Rimplejeet Kaur, AAG,Punjab, opposed the appeal and supported the impugned judgment and order of conviction and prayed for dismissal of the appeal.

I have gone through the impugned judgment and order of conviction and sentence passed by the learned trial Judge so also the reasons stated therein.

The incident is of the date,namely, 10.07.1996 when the appellant was found with contraband, namely 2 Kg of opium.

The learned trial Judge has recorded reasons for convicting the appellant and instead of repeating the reasons, it would be appropriate to quote the reasons recorded by the trial Judge, which are hereunder extracted from paragraph 15, which reads thus:-

“ As per the report of the Chemical Examiner, seals on the sealed parcel were found to be tallying with the seal impressions. After the withdrawl of the case property from the Malkhana, docket is to be got prepared from the office of S.S.P. For official work, time is required. After recovery, D.S.P. Came

to his office. There was no idea to obtain the seal of the D.S.P. To re-seal the case property. Defence counsel pointed out minor discrepancies, in the statements of Pws. Nachhatar Singh SI stated that case property was weighed three times. Samples were drawn in a piece of cloth. Whereas ASI Harbhajan Singh stated that case property was weighed six times. Samples were drawn in small stitched bags. Recovery was effected on 10.07.1996. Nachhatar Singh SI and Harbhajan Singh ASI appeared in the Court on 24.4.2002. With the passge of time, minor discrepancies are bound to occur in the statements of Pws. If there is no discrepancy, then witnesses are to be criticised, as tutored one. Police officials daily apprehend criminals and also appear in the Court, in different cases. They cannot be expected to depose all the facts minutely. Appearance of discrepancies rather shows that story is natural one. Accused is to criticise the witnesses, if there is any discrepancy. If there is no discrepancy, then again witnesses are to be criticised as tutored one. Question is why he was choosened for implication, their was no enimity with the police party. No allegation of the accused that why he was falsely implicated. Simple version of the accused is that no recovery was effected.

Case is false. But, to support this allegation, no cogent and convincing evidence. In defence, AMHC Kaur Singh appeared and proved copy of entry of register no.19. Amarjit Singh is one of the recovery witness, but his statement inspires no confidence, when he admitted his signatures on all the documents, but did not file complaint as to why his signatures were obtained.”

Having look to the aforesaid reasons, I am of the opinion that no fault can be found out with the finding of conviction, which is based on evidence. I, therefore, confirm the findings of conviction recorded by the learned trial Judge against the appellant under Section 18 of the NDPS Act.

The next question is about the award of sentence. The offence took place in the year, 1996 and the appellant underwent the sentence to the extent of one year three months and 17 days . The period of more than 20 years have already passed from the date of incident.

The appellant has already undergone the sentence as aforesaid. The trial court awarded sentence of five years plus fine. In my opinion, looking to the efflux of the period that has passed, it would be harsh to push the appellant again in jail to serve out the remaining sentence. In the interest of justice, therefore, I think that the impugned judgment awarding sentence will have to be interfered with and the sentence awarded to the appellant will have to be reduced to the one which he has already undergone. In the result, I

make the following order:-

ORDER

- (i) CRM No.2021-SB of 2004 is partly allowed.
- (ii) The judgment and impugned order recording the conviction against the appellant under Section 18 of the NDPS Act is confirmed.
- (iii) The judgment and order regarding sentence of five years is set aside and is modified by the sentence to undergo rigorous imprisonment for the period the appellant 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