

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1467-DB-2013

Date of decision: 29.01.2016

Kallu

..... Appellant

Versus

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Gulam Nabi Malik, Advocate
for the appellant.

Mr. S.S. Dhaliwal, Addl. A.G. Punjab.

RAMENDRA JAIN, J.

The instant appeal has been preferred by Kallu S/o Yashin @ Yamin against the judgment of conviction and order of sentence dated 24.09.2013, passed by the learned Judge, Special Court, Ludhiana convicting him under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and sentencing him to undergo rigorous imprisonment for a period of 15 years and to pay a fine of ₹ 1, 50,000/- and in default thereof, to further undergo rigorous imprisonment for a period of two years.

2. Briefly stated, that on 02.04.2004, the appellant along with Mohd. Bhoora was apprehended with 25 gunny bags containing poppy husk weighing 10 quintals and 25 Kgs. i.e. 41 Kgs. in each bag by Inspector Sawinder Singh.

3. After completion of investigation and on receipt of the report of Forensic Science Laboratory (FSL) Ex. PN, the final report under Section 173 Cr.P.C. was filed against them in the Court.

4. On finding a *prima facie* case, the appellant and his co-accused Mohd. Bhoora were charge-sheeted under Section 15 of the NDPS Act, to which they pleaded not guilty and claimed trial.

5. During the pendency of proceedings, the appellant remained absented as his presence could not be procured despite issuance of non-bailable warrants. Finally, he was declared as proclaimed offender vide order dated 26.10.2006.

6. Hence, his co-accused Mohd. Bhoora alone was tried. He was held guilty under Section 15 of the NDPS Act for having in possession of 10 quintals and 25 Kgs. of poppy husk without any permit or licence vide judgment of conviction dated 22.09.2008 and sentenced him to undergo rigorous imprisonment for a period of 13 years and to pay a fine of ₹ 2 lacs. In default of payment of fine, he was required to further undergo rigorous imprisonment for a period of two years vide order of sentence of even date.

7. Thereafter, appellant-Kallu was arrested and supplementary challan against him was presented in the Court. After complying with the provisions of Section 207 Cr.P.C. and on finding a *prima facie* case, the

appellant was charge-sheeted under Section 15 of the NDPS Act to which he pleaded not guilty and claimed trial.

8. After hearing learned counsel for the parties and going through the evidence brought on record, the learned Judge, Special Court, Ludhiana, convicted and sentenced the accused vide impugned judgment of conviction and order of sentence dated 24.09.2013, in the manner, indicated above in the opening part of this judgment.

9. Aggrieved against the same, the appellant has preferred the instant appeal.

10. Learned counsel for the appellant contended that he does not challenge the judgment of conviction on merits. He simply prayed for taking a lenient view in the matter of sentence of the appellant.

11. On the other hand, learned State counsel vehemently opposed the said prayer by submitting that the appellant does not deserve any leniency, keeping in view the offence committed by him.

12. After giving our thoughtful consideration to the matter, we are of the considered opinion that the appellant deserves some leniency in the matter of sentence by treating his case on the same parity as that of his co-accused, Mohd. Bhoora. The sentence of co-accused, Mohd. Bhoora had been reduced by this Court vide judgment dated 03.04.2012 from 13 years to 10 years and his fine has also been reduced from ₹ 2 lacs to ₹ 1 lac. The case of the appellant is on the same footing as that of his co-accused as both of them were arrested together on the same day while carrying 25 gunny bags of poppy husk without any permit or licence. However, since the appellant had absconded during trial before the

learned trial Court, therefore, he deserves a little bit more punishment than his co-accused, Mohd. Bhoora.

13. Hence, by considering the overall facts and circumstances, we reduce the sentence of appellant from 15 years' rigorous imprisonment to 11 years' rigorous imprisonment. His sentence of fine is also reduced from ₹ 1.5 lacs to ₹ 1 lac and in default of payment of the same, the appellant shall further undergo rigorous imprisonment for a period of 6 months.

14. With the above modification in the order of sentence of the appellant Kallu S/o Yashin @ Yamin, the instant appeal is accordingly, disposed of.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 29, 2016
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