

(206) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No.D-707-DB of 2012
Date of decision: 15.12.2016

Shashi Kant

..... Appellant

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR.JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE GURMIT RAM.

Present: Mr. Swarn Singh Tiwana, Advocate for the appellant.
Ms. Ritu Punj, Addl. A.G., Punjab.

S.S. Saron, J.

This appeal has been filed by the appellant Shashi Kant against the judgment and order dated 25.3.2008 passed by the learned Judge Special Court, Ludhiana whereby the appellant has been convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 ("NDPS Act" – for short) and has been sentenced to undergo rigorous imprisonment for 12 years; besides, pay a fine of Rs.1,00,000/- and in default thereof, undergo rigorous imprisonment for one year.

FIR No.118 dated 17.6.2004 (Ex.PK/1) was registered at Police Station Basti Jodhewal, Ludhiana for the offence under Section 15 NDPS Act on the basis of 'ruqa' (memo) (Ex.PK). SI Gurbans Singh Bains (PW-4), SHO Police Station Basti Jodhewal, Ludhiana along with other police officials was patrolling in the area. The police party was going from 'T' point GT Road Kirpal Nagar to Mohalla New Madhopuri and Sunder Nagar on a 'Gypsy' vehicle on the road adjoining 'Budha Nala'. They were patrolling and

conducting checking of suspects. The police party had reached little ahead of Kirpal Nagar Mohalla near the electric transformer. At that time a clean shaven person pulling a rickshaw cart with a heavy article on the back was seen coming on the road adjoining the drain. The heavy article was tied with a plastic rope and wrapped with black waterproof tarpaulin. On seeing the police party the rickshaw puller got perplexed and he sat down on the pretext of mending the chain of the rickshaw cart. SI Gurbans Singh Bains (PW-4) on suspicion apprehended the accused. On enquiry the accused disclosed his name and address. In the meanwhile Sham Lal son of Gian Chand a public witness came there on his bicycle and after being apprised of the facts, he was joined by the police party.

The Investigating Officer informed the accused that a search of the article was to be conducted and he had a right to get the search conducted in the presence of some Gazetted Officer or a Magistrate. The Gazetted Officer/Magistrate if the accused so desired could be called at the spot. The accused opted for his search in the presence of a Gazetted Officer. His non-consent memo (Ex.PA) in this regard was prepared which he signed. Mr. Satbir Singh Atwal, DSP Rural, Ludhiana was asked to come at the spot through wireless message. The DSP Rural reached the spot with his personal staff and introduced himself to the accused as DSP Rural. He informed the accused that he and his articles were to be searched and if the accused so desired then some other Gazetted Officer or Magistrate could be called at the spot. The accused reposed confidence in the DSP and gave his no objection if he and his articles were searched in the presence of DSP. His consent

memo Ex.PB in this regard was prepared which was signed by him. The search of the rickshaw was carried out and 10 plastic bags loaded in the 'rehra' (cart) were found to contain poppy husk. Two samples each weighing 250 gms from each bag were taken and their separate parcels were prepared. On weighing, each bag was found to weigh 24.5 kgs. Therefore, poppy husk weighing 250 kgs was recovered from the appellant. The Investigating Officer numbered the bags that were recovered from serial No.1 to 10 and the sample parcels were also numbered as 1 and 1A to 10 and 10A. All the parcels were sealed with the seal bearing initials 'GS'. The DSP also sealed all the parcels with his seal bearing initials 'SS'. The specimen seal was separately prepared and seals after use were handed over to the public witness Sham Lal. Thereafter, 20 sample parcels and 10 bulk parcels of poppy husk along with sample seals were taken in possession vide recovery memo Ex.PC, which was attested by the witnesses. The rickshaw cart (Ex.P1), plastic cover (Ex.P2) and rope (Ex.P3) were also taken in possession vide memo Ex.PD. The appellant was carrying poppy husk without any permit or licence. Therefore, 'ruqa' (memo) was sent to the Police Station on the basis of which FIR was registered.

The investigation was carried out and after completion of investigation; police report (challan) was filed. The appellant was charged for committing the offence punishable under Section 15 NDPS Act. The prosecution in order to prove its case examined Constable Waryam Singh (PW-1), ASI Harbans Singh (PW-2), AMHC Pargan Chand (PW-3), Inspector Gurbans Singh (PW-4), DSP Satbir Singh (PW-5). Sham Lal the independent witness was given up as having been won over by the accused. The Chemical Examiner

report was tendered in evidence. The incriminating evidence appearing against the appellant was put to him and his statement under Section 313 of the Code of Criminal Procedure was recorded. He claimed that he was innocent and had been falsely implicated.

The learned Judge Special Court after considering the evidence and material on record found the prosecution case to be made out and accordingly convicted and sentenced the appellant for the offence under Section 15 NDPS Act.

Learned State Counsel has filed affidavit of Sh. Joginder Singh, PPS Superintendent, Central Prison, Ludhiana mentioning the period of imprisonment undergone by the appellant Shashi Kant. It is submitted that the appellant has undergone eleven years, eleven months and twenty-eight days of imprisonment as on 18.6.2016. It is further stated that he was released on 18.6.2016 after completion of his actual sentence but he had not paid the amount of fine. Therefore, he was undergoing sentence in lieu of fine in the case. It is also submitted that the appellant has been convicted by the learned Judicial Magistrate Ist Class, Ludhiana on 6.10.2010 in case FIR No.326 of 2001 registered at Police Station Basti Jodhewal, Ludhiana for the offence under Section 61 of the Excise Act. He was sentenced to undergo rigorous imprisonment for one year; besides, pay a fine of Rs.1000/- and in default thereof, undergo rigorous imprisonment for one month. He has also been convicted by the learned Additional Chief Judicial Magistrate, Ludhiana on 6.1.2012 in case FIR No.297 dated 23.8.2001 registered at Police Station Division No.5, Ludhiana for the offence under Section 379 IPC. He was sentenced to rigorous imprisonment for five months. He has also been convicted by the learned Additional Chief Judicial

Magistrate Ist Class, Ludhiana on 19.1.2012 in case FIR No.421 dated 14.10.2003 registered at Police Station Basti Jodhewal, Ludhiana for the offence under Section 379 IPC. He was sentenced to rigorous imprisonment for nine months. He has further been convicted on 19.1.2012 by the learned Additional Chief Judicial Magistrate Ist Class, Ludhiana in case FIR No.441 dated 20.11.2003 registered at Police Station Basti Jodhewal, Ludhiana for the offence under Section 379 IPC. He was sentenced to rigorous imprisonment for nine months. He was also convicted by the learned Judge, Special Court, Ludhiana on 8.1.2015 in case FIR No.223 dated 6.10.2004 registered at Police Station Basti Jodhewal for the offence under Section 15 NDPS Act. He was sentenced to rigorous imprisonment for two years; besides, pay a fine of Rs.10,000/- and in default thereof, undergo rigorous imprisonment for two months. He was acquitted by the learned Judicial Magistrate Ist Class, Ludhiana on 2.5.2011 in case FIR No.241 of 2002 registered under the Excise Act at Police Station Basti Jodhewal, Ludhiana.

Learned Counsel for the appellant submits that the appellant has undergone his imprisonments in the other cases. Besides, in the present case, it is submitted that he is in custody for twelve years for being in possession of 250 kgs of poppy husk. He is now undergoing imprisonment for the default in non-payment of fine. Being in custody, it is submitted that he is unable to pay a fine of Rs.1,00,000/- that has been imposed in the present case.

It may be noticed that Section 15 of the NDPS Act for which the appellant has been convicted provides that whoever in contravention of any provisions of the NDPS Act or any rule or order

made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable; where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

The appellant as already noticed has been sentenced for the offence under Section 15 NDPS Act to rigorous imprisonment for twelve years; besides, pay a fine of Rs.1,00,000/- and in default thereof undergo rigorous imprisonment for one year. There is no condition in terms of Section 15 NDPS Act that in the event of default of payment of fine, the convict is to undergo imprisonment in default of payment of fine. Therefore, while maintaining the order of conviction, the sentence of imprisonment and the payment of fine of Rs.1,00,000/- for committing the offence under Section 15 of the NDPS Act; the further condition of undergoing rigorous imprisonment for one year in default of payment of fine, is set aside. In the circumstances, the appellant having completed his imprisonment and the condition of undergoing imprisonment in default of payment of fine being set aside, he shall be entitled to release forthwith if not wanted in any other case.

Accordingly, the appeal is disposed of by maintaining the order of conviction and sentence of imprisonment of twelve years and payment of fine of Rs.1,00,000/-; however, the condition that the appellant shall undergo rigorous imprisonment for one year in

default of payment of fine, is set aside. The fine shall be recoverable in terms of Section 421 CrPC. The appellant, if not wanted in any other case, shall be released forthwith.

(S.S. Saron)
Judge

(Gurmit Ram)
Judge

15.12.2016
amit

Note:

1. Whether the order is speaking/reasoned: Yes.
2. Whether the order is reportable : Yes.