

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

Crl. Appeal No.S-1032-SB of 2016 (O&M)
Date of Decision: September 05, 2016

Gagandeep Shukla

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arpan Sabharwal, Advocate
for the appellant.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 23.02.2016 passed by learned Judge, Special Court, Patiala, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 21 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Patiala, are as under:-

“1. The accused described in detail herein above, been sent up to face trial on the accusations that accused having been found in unauthorized possession of 35 gram of Smack of Smack on 18.10.2012 in the area of AGM Resort, Basantpura, as is set up in the final report submitted under section 173 of Criminal

Procedure Code and the documents appended therewith, the case of the prosecution is that on 18.10.2012 IO along with HC Jaswinder Pal, HC Sinderpal, PHG Balbir Singh and PHG Mewa Singh on government vehicle driven by HC Darshan Singh in connection with Naka Bandi were present near AGM Resort Basanpura opposite to main GT Road High Way and they were checking the vehicles and at that place they saw that accused present in the court was coming on foot from the side of Basanpura and on seeing the police party accused perplexed and tried to turn back and on suspicion, accused apprehended by the police, IO firstly disclosed identity and then after inquiring name, parentage and address, conveyed suspicion to the accused that accused carrying some contraband and IO wanted to search accused and opted accused being searched by Gazetted Officer or a Magistrate, after recording memo of consent, search was made and smack was recovered. Ruqa was sent, FIR was registered, rough site plan was prepared. Accused arrested after serving grounds of arrest, intimation regarding arrest was given.

On return to the police station IO produced the case property, accused, witnesses before SHO, SHO verified the factum of recovery and found it to be correct and thereafter affixed seal. Thereafter the case property was deposited with MHC. Case property thereafter was produced before the Ilqa Magistrate who inspected the case property and returned back the same after inspection, the case property after inspection was again deposited with MHC. After completing necessary formalities challan was presented in the court.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 21 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Darshan Singh, PW-2 ASI Bhinder Singh, PW-3 Head Constable Jaswinder Pal, PW-4 SI Raghbir Singh and PW-5 MHC Balkar Singh.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence

himself as innocent and has been falsely implicated.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that 35 grams of smack has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2012. He further contended that the appellant is first offender and only bread earner of the family. He further contended that accused-appellant has already undergone more than 4 months of actual sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 23.02.2016 passed by learned Judge, Special Judge, Patiala, is correct, as per law and does not require any

interference from this Court.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is first offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2012 i.e. for the last about 4 years and further in view of the fact that appellant has already undergone actual sentence of 4 months and 3 days as on 16.05.2016 out of the total sentence (the date on which his sentence was suspended by this Court) and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 35 grams of smack, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof shall remain the same. The appellant is directed to pay the fine within one month from the date of receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Gagandeep Shukla is on bail, his bail/surety bonds stand discharged.

September 05, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No